

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 17/CTK/2014**  
Assessment Year : 2009-2010

DCIT, Berhampur Circle, Berhampur	Vs.	Sri Gudia Bhaskar Rao, Bhoi Street, Jeypore
PAN/GIR No. ACCPR 7359 D		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

**ITA No. 272/CTK/2014**  
Assessment Year : 2009-2010  
C.O. No.35/CTK/2014  
(in ITA No.17/CTK/2014)

Sri Gudia Bhaskar Rao, Bhoi Street, Jeypore	Vs.	DCIT, Berhampur Circle, Berhampur
PAN/GIR No. ACCPR 7359 D		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri D.K.Sheth, AR  
Revenue by : Shri A.K.Mohapatra, CIT DR

**Date of Hearing : 25/05/ 2017**  
**Date of Pronouncement : 31 /05/ 2017**

**ORDER**

**Per Pavan Kumar Gadale, JM**

The cross appeals filed by the revenue and the assessee and the cross objection filed by the assessee are directed against the order of CIT(A)-

Berhampur, dated 14.3.2014 for the assessment year 2009-2010 and they are disposed off by this common order for the sake of convenience.

2. First, we take up the appeal of the revenue in ITA No.17/CTK/2014 and the facts narrated therein.

3. The revenue has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in deleting the addition of Rs. 5.00 crore made by the AO on account of undisclosed investment in cold storage recorded in impounded book of account by accepting the assessee's contention that the noting in book were estimate only.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in deleting the addition of Rs. 57,50,000 made by the AO on account of undisclosed investment in cold storage recorded in impounded book of account by accepting the assessee's contention that the noting in book were estimate only.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in deleting Rs. 1,05,40,531/- out of the addition made by the AO on account of unaccounted sales by the assessee shown in the impounded books, when there was no evidence that expenses were not already claimed by the assessee.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in accepting the contention of the assessee and deleting the addition of Rs.6,43,50,000/- made by the AO on account of unexplained investment of the assessee with various parties and banks as recorded in the impounded books of account.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in deleting of Rs.7,33,704/- made by the AO on account of unexplained investment in gold jewellery found during search."

4. Brief facts of the case are that the assessee is an individual. Search and seizure operation u/s.132 of the I.T.Act, 1961 was conducted in the residential and business premises of Shri Gudla Venkata Ramana & Sri

Gudia Bhaskar Rao on 21.1.2009. The Assessing Officer issued notice under section 142(1) of the Act with a questionnaire calling for the information. The Assessing Officer, in the assessment proceedings, found that as per the books of account, there is a negative cash balance. The assessee filed revised return on 9.12.2010 disclosing additional income of Rs.20,00,000/-. Since the income was not disclosed during the search operations or during statement u/s.132(4), the Assessing Officer initiated penalty proceedings. On the disputed issue of addition of Rs.5 crores on verification of impounded books of account, the Assessing Officer found that there is a handwritten entry of Rs.5 crores and the assessee was confronted in the statement recorded u/s.131 and whereas the assessee has submitted that these were only notings of estimate for the proposed cold storage and there was no actual investment. The Assessing Officer was not satisfied with the explanations of the assessee and considered Rs.5 crores as unexplained investment of the assessee.

4.1 Similarly, on verification of impounded documents, the Assessing Officer found that Rs.57.5 lakhs was invested by the assessee without disclosing in the books of account. The assessee has made a statement that these are operational estimation of expenses of the proposed cold storage which did not materialise. The Assessing Officer was not convinced with the explanations and made addition of Rs.57,50,000/- treating the same unexplained investment.

4.2 Further, the Assessing Officer found discrepancies in the sales of various commodities in respect of quantity and value. The assessee explained that the amount written formed part of aggregate of loans availed from various banks and syndicate was formed for trading of Rajma seeds. The Assessing Officer was not satisfied with the statement, dealt at para 6 of the assessment order and also ignored the confirmation letters of the persons in respect of whom, the transactions have been made and made addition of Rs.1,24,86,110/- to the total income of the assessee treating the same as unaccounted sales.

4.3 Similarly, on verification of the impounded documents, the Assessing Officer found that there is a list of parties against whom certain amounts have been written and the amount aggregated to Rs.643 lakhs but in the statement recorded, it was mentioned that 643.5 kgs and not Rs.643.5 lakhs. The Assessing Officer, however, found that there are controversial statements and not satisfactory explanation were filed and treated Rs.643 lakhs- as unexplained investments and added to the total income of the assessee.

4.4 During the course of search, the Assessing Officer found 250 gms of gold from the residence and 1522.20 grams of gold from locker maintained with Andhra Bank, Jeypore and the explanations were called for on the acquisition of such gold. The assessee filed the reply referred at page 5 of the assessment order. However, the Assessing Officer granted certain

consideration in respect of gold held by the wife and mother of the assessee as stridhan and allowed 300 gms each to two married lady members i.e. wife and mother of the assessee and balance 1172.20 gms of gold was treated as unexplained. The departmental valuer has estimated the value of gold at Rs.1,061/- per and the Assessing Officer finally treated Rs.12,43,704/- as unexplained investment in gold and made addition.

4.5 On verification of the annexure for unsecured long term loans from others, the Assessing Officer found that the assessee has availed loans and paid interest on loans. However, no TDS was deducted on the interest as per section u/s.194A of the Act and hence made addition of Rs.4,60,000/.

4.6. Accordingly, the Assessing Officer completed the assessment u/s.143(3) on 31.12.2010 determining the total income at Rs.13,71,30,890/-.

5. Aggrieved by the order of the Assessing Officer, the assessee filed appeal with the CIT(A). Before the CIT(A), Id A.R. of the assessee filed the written submissions referred at page 3 of the impugned order and the CIT(A) called for a remand report from the Assessing Officer and also provided an opportunity to the assessee, whereas the CIT(A) having considered the seized documents, findings of the Assessing Officer and explanation of the assessee found that the Assessing Officer does not have any evidence to make addition except relying on the statement of the

assessee. The CIT(A) deleted the addition referred at para 4.3 of the order as under:

"I have carefully considered the matter, gone through the assessment orders and the copies of the seized papers. The seized papers *are* not part of any books of account and are only scribbles on a paper. It does not indicate specifically any investment. The first seized paper simply mentions words like area, party, time, budget, stock, maintenance and also contains some phone numbers and the figure of Rs.5crores. The appellant under oath stated before the AO that the figures represent an estimate for a cold storage project which did not materialize. The AO has not brought anything on record to rebut this sworn statement of the appellant. During the remand proceeding, the AO checked these phone numbers and the result did not indicate that the appellant is owner of any cold storage. At best it indirectly confirmed the contention that the appellant was thinking about setting up a cold storage and thus has scribbled some figures and phone numbers of an engineer and a contractor. Similarly, the other seized page also mentions various amounts in round figures totaling Rs.57.50lacs, The.AO says that since this includes staff cost, it cannot be a projected operational cost. I am unable to agree with such reasoning. The staff cost is a very legitimate part of any projected cost. There is nothing on record that the appellant or any member of his family is engaged in operation of a cold storage. It needs to be emphasized that a search and seizure operation was conducted in the residential and business premises of the appellant, his family members and its business enterprises. This search and the subsequent enquiries did not reveal ownership and operation of any such cold storage by the appellant or any member of the group. It has been held by the Hon'ble Delhi High Court in **CIT vs. Lubtec India Ltd.(2009) 311 ITR 175(Del)** that no addition towards unexplained expenditure as done by the AO in this case can be made simply based on certain figures jotted down on loose papers found during the course of search. In the case before the Hon'ble High Court, two sheets of papers were seized in which some figures were noted in respect of items like dinner, gift, projector etc. The revenue held that these amounts represent unexplained expenditure on the part of the appellant. The addition was deleted by the CIT(A) and subsequently by the Tribunal. The Hon'ble High Court dismissing the appeal of the revenue held that since there is nothing on record to show that the assessee has indeed incurred the expenditure and, therefore, no addition can be made when the appellant has stated that he did not incur any such expenditure. In the instant case, the appellant has stated that the figures relate to a proposed cold storage project and an estimate of operational expenditure, As I have already pointed out there is nothing on record to rebut this contention of the appellant. The results of the enquiry conducted by the AO during the remand do not indicate the ownership or operation of any such cold storage on the part of the appellant. Therefore, considering the overall facts of the case, the remand report of the AO and relying on the decision of the Hon'ble Delhi High Court referred above, I am inclined to agree with the contention

of the Id. A/R that these documents only represent certain estimates and no actual investment or expenditure has been made. **The addition of Rs.5crore and Rs.57.57lacs are accordingly deleted. The ground No.1 and 2 are thus decided in favour of the appellant."**

6. On appeal to the Tribunal by the revenue, Id D.R. argued that the CIT(A) erred in deleting the addition in respect of undisclosed investment in cold storage of Rs.5,00,00,000/- and Rs.57,50,000/- without considering the findings of the Assessing Officer. The Assessing Officer has made the assessment based on the seized documents and statement whereas the Id A.R. relied on the order of the CIT(A) on this issue.

7. We heard the rival submissions and perused the judicial decisions relied by the CIT(A). Prima facie, the CIT(A) has called for the remand report on the disputed issues and copy was provided to the assessee to submit the comments of the assessee. The CIT(A) has elaborately discussed on the disputed issues at pages 2 to 4 of this order and relied on the judicial decisions and observed that there is nothing on record to explain that the assessee has incurred certain expenditures except the Assessing Officer relied on the statements. We find that the CIT(A) has dealt on the provisions and the findings of the Assessing Officer and supporting evidences as mentioned in the impugned order, therefore, we are not inclined to interfere with the order on the disputes issue and dismiss the ground of the revenue.

8. So far as the deletion of Rs.1,05,40,531/- on account of unaccounted sales is concerned, the CIT(A) found that the Assessing Officer made the

addition on account of unaccounted sales of Rs.1,24,86,110/- and it was explained before the Assessing Officer that sales are conducted by forming syndicate and the same has been disclosed in their books. Ld A.R. filed written submission before the CIT(A), referred at para 5.2 of the impugned order and the CIT(A) has dealt on the submissions recorded in respect of transactions and the same was referred to the Assessing Officer for verification, at para 5.2.1 of the order and based on the remand report finally concluded that the assessee's sales has to be taken at Rs.1,55,64,628/- and estimated the profit at 12.5% which worked out to Rs.19,45,579/- and partly allowed the appeal of the assessee.

9. On appeal before us, Id D.R. argued that the assessee has not produced any evidence in respect of expenditure and the CIT(A) is not justified in deleting the addition of Rs.1,05,40,531/-. Ld A.R. of the assessee relied on the order of the CIT(A) on this issue.

10. We heard the rival submissions and perused the judicial decisions relied by the CIT(A). The CIT(A) has discussed the statements recorded in the course of assessment proceedings in the impugned order. The CIT(A) supported his findings that the sales have been routed through various parties and only profit has to be considered for the purpose of addition. We on perusal of the order of the CIT(A) found that the CIT(A) has dealt the disputed issue at para 5.3 as under:

"I have carefully considered the matter. The appellant agrees that the mount stated in the seized documents represents sale but states that the

same belongs to a syndicate and only a part belongs to him. However, the Id. A/R has not specifically reconciled the sales represented in these documents with the books. There is also no evidence regarding the syndicate except confirmations from the parties who have business relations with the appellant. Therefore, I am unable to take these confirmations on their face value without any corroborating evidence regarding functioning of such syndicate. Submission of copies of the loan account does not prove that any such syndicate was in operation. The other alleged members of the syndicate who appeared before the AO have also not produced any evidence to suggest that the sales stated to have been conducted by the syndicate on their behalf has been disclosed in their books. I, therefore, find no reason to interfere with the action of the AO in treating these amounts as undisclosed sales. However, if the amount represents undisclosed sales as stated by the AO, the entire amount cannot be added to the total income of the appellant. In fact, in related cases in this group namely, M/s Bhaskar Traders, the AO has computed a percentage on such undisclosed sales. When there is nothing on record to suggest that the purchases are accounted for, it will not be correct to bring to tax the entire sales receipt. Reliance is placed in this regard in the decision of the MP High Court in the case of **CIT vs. Balchand Ajit Kumar**(2003) 263 ITR 610 wherein the Hon'ble Court held that the undisclosed credit sales as recorded in the seized documents cannot be considered as income in its entirety and only profit attributable to such sales should be brought to tax. Therefore, in line with the rate adopted by the AO in M/s Bhaskar Traders, I direct that profit on such undisclosed sales, which should be taken at Rs.1,55,64,628/- as mentioned at page-93 of the seized document, be estimated a **12.5%**. The addition to the total income accordingly shall work out to Rs. 197457579/-. The appellant thus gets a relief of Rs.1,05,40,531/- . Ground No.3 is thus allowed in part."

11. We find the analogy of the CIT(A) is reasonable and is acceptable.

Hence, we are not inclined to interfere with the order of the CIT(A) on this disputed issue and confirm the action of the CIT(A).

12. With regard to deletion of addition of Rs.643 lakhs on account of unexplained investment of the assessee with various parties and banks, we find that the CIT(A) has dealt on the issue at page 6 of the impugned order and considered the written submissions referred at para 6.2 and remand report was called for from the Assessing Officer dated 21.5.2012. On

perusal of the remand report and the findings of the Assessing Officer and comments of the assessee, the CIT(A) was satisfied that the figures 643.5 was kg and not 643.5 lakhs. Ld CIT(A) relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. Giris Choudhury, 296 ITR 619 (Del) and deleted the addition, by observing as under:

"I have carefully considered the matter and looked at the copy of the seized paper. The said seized paper is not part of any books of account. Admittedly, in the id paper against various names and initials, certain figures have been mentioned and e total comes to 643 ½ . The AO states that since one of the entries which appear to house loans has a figure 4 next to it, the amount should be read as Rs.643.5lacs. The AO has not brought anything on record that the appellant has a housing loan of Rs.4lacs. Even during the remand proceeding as is clear from the extracted remand report of the AO, the appellant categorically mentioned that the same is not a housing loan and in fact the said entry represents one labourer who was also produced before the AO. However, the AO has not specifically rebutted this contention of the appellant in his report nor has brought any evidence in support of his conclusion that there is a housing loan of Rs.4lacs. On the contrary, the Id. A/R has referred to the audited balance sheet wherein there is a house owned by the appellant but the said house was purchased long back and there is no housing loan. Other than the alleged housing loan, there is nothing on record to indicate the basis on the part of the AO to hold that the figure 4 refers to Rs.4lac It may also be noted that if it is a housing loan taken by the appellant as stated by the AO, then this stand is inconsistent with AO's final conclusion that the entire amount represents the investment made by the appellant. The AO has referred to initials like SBI, and UGB to stated that these represent State Bank of India and Utkal Gramya Bank and the appellant has invested an amount of Rs.20lacs and Rs.64lacs in these banks. After the search was conducted the Investigation Wing and thereafter the AO have collected all the bank accounts of the appellant. There are 49 entries in the said seized papers. If the AO is to be believed, the appellant has invested amount ranging from Rs.2lacs to Rs.64lacs with these 49 persons or groups(mostly such investments is more than Rs.20lacs per entry), but during the search not a single paper or document was found which could corroborate a single entry in the seized paper. There is nothing on record brought by the AO to indicate that the appellant has made any such investments. More important, to reiterated, there is no basis for the AO to conclude that the figure 643 ½ means Rs.643.50 lacs. A similar case came up before the Hon'ble Delhi High Court in CIT vs. Giris Choudhury (2008) 296 ITR 619 (Del). In that case a loose paper was seized where there was figures showing "cash RB" totaling 48. Further, there was a mention "ch" and a figure of 9.5 was mentioned. The AO held that 9.5 is a cheque transaction

for Rs.9.5lacs and the balance is cash transaction for Rs.48lacs. Since the cheque transaction was apparently disclosed, the AO added Rs.48lacs as unexplained amount. The addition was deleted by CIT(A) and subsequently by the Tribunal. Dismissing the appeal of the revenue, the Hon'ble High Court held that there is no material with the AO to suggest that the figure 48 represents Rs.48lacs. The Hon'ble Court accordingly relying on the decision of the Apex Court in **CBI vs. V.C. Shukla(1998) 3 SCC 410** held that such papers seized during the course of the search is a dumb document and leads to nowhere. Therefore, it sustained the decision of the CIT(A) and Tribunal that no addition on account of undisclosed income can be made on the basis of such a paper. It may be mentioned here that the SLP of the Revenue against the above decision of the High Court has been dismissed by the Hon'ble Apex Court. In the instant case, admittedly, there is nothing on record with the AO to suggest that the figures represent any cash transaction much less any basis to treat that such cash transactions are in lacs. On the contrary, in support of his contention that these figures only represent the quantity of cashew nuts in KGs dealt by the labourers, the appellant has produced the labourers before the AO and they have confirmed the contention of the appellant. In any case, to reiterate, in the absence of a shred of evidence brought on record either during the course of search or in subsequent investigation, it is legally not permissible to hold that the appellant placed money with the 49 parties amounting to Rs.643.50lacs as alleged by the AO. Therefore, considering the overall facts of the case, the nature of entries in the seized papers and relying on the decision of the Delhi High Court referred above, I am unable to sustain the addition based only on presumption and without any supportive or corroborating evidence. **The addition of Rs.643.5lacs is accordingly deleted and the ground No.4 is thus decided in favour of the appellant. "**

13. We uphold the action of the CIT(A) in deleting the addition and dismiss this ground of appeal of the revenue.

14. The last ground is against the deletion of addition of Rs.7,33,704/- on account of unexplained investment in gold jewellery. The facts are that on perusal of the statement recorded and the disclosure made, the Assessing Officer has granted relief of 300 gms of gold per person and treated 1172.20 gms as unexplained in the hands of the assessee. Applying the rate of Rs.1061/-, per gram, the Assessing Officer computed the unexplained investment in gold jewellery at Rs.12,43,704/-

15. On appeal, the CIT(A) considered the written submissions referred at para 72 and the remand report of the Assessing Officer and the decision of Ahmedabad Tribunal in the case of Manilal S.Dave, 17 taxmann. 23 (Ahd) and the decision of Hon'ble Karnataka High Court in the case of Pati Devi vs ITO, 240 ITR 727 (Kar) and granted relief to the extent of Rs.5,10,000/- out of total addition of Rs.12,33,704/- considering the fact that wife of the assessee and mother of the assessee are eligible to hold gold upto 400 gms and out of total gold of 1772.20 gms, and other family members holding 1300 gms as explained and balance 472.20 gms as unexplained and total value of the unexplained jewellery was valued at Rs.5,01,004/-. The CIT(A) accordingly allowed relief of Rs.7,33,704/- to the assessee.

16. We find that the CIT(A) has taken a reasonable ground of allowing the holding of gold by the assessee's family members and children considering the status of the assessee. Accordingly, we are inclined to uphold the CIT(A)'s action and dismiss this ground of the revenue.

17. In the result, appeal filed by the revenue is dismissed.

18. The cross objection filed by the assessee is in support of the order of the CIT(A) with regards to revenue's appeal. Since, we have upheld the action of the CIT(A), the cross objection have become infructuous and same is dismissed.

**Now we take up the appeal of the assessee in ITA No.272/CTK/2014.**

19. The assessee has raised the following grounds:

"1. For that the learned Commissioner is not justified to confirm the view of the learned A.O. to determine the sum of Rs.1,55,64,628/- as undisclosed sales .

2. For that the learned Commissioner is also not justified to apply 12.5% rate of profit to determine undisclosed income from the aforesaid undisclosed sales .

3. For that the learned Commissioner is not justified to sustained the addition of Rs.5,10,000/- as unexplained investment as against Rs.12,43,704/- determined by the learned A.O. . The learned Commissioner should have deleted the total addition.

4. For that the addition / disallowance of Rs.4,60,000/- as made u/s.40(a)(ia) of the I.T. Act. is not justified and the learned Commissioner should not have confirmed the same .

20. Before us, Id A.R. argued that the CIT(A) is not justified in sustaining the addition in treating sales of Rs.1,55,64,628/- and also applying rate of 12.5% as profit. Ld A.R. submitted that the assessee is filing the return of income and the assessee has disclosed profit @ 8% and also filed copy of computation of total income to support that net profit worked out in respect of business of the assessee is 6.84% and prayed for reducing the claim to the extent of 6.84% whereas Id D.R. vehemently objected to the prayer of Id A.R. of the assessee.

21. We heard the rival submissions and perused the judicial decisions relied by the CIT(A). We find that the CIT(A) has exhaustively discussed on the facts, provisions and legal position and came to the conclusion after providing adequate opportunity to the assessee estimated the undisclosed sales at Rs.1,55,64,628/- based on the statement of the assessee and

evidence filed. Ld A.R. accepted that the undisclosed sales was not included in the percentage of profit. We are of the opinion that as per the audited accounts of the assessee who has offered net profit of 6.8% and now praying to accept the same percentage is not reasonable as both sales cannot be equated and are not comparable. Accordingly, we are of the view that the assessee is required to offer on undisclosed sales higher rate of percentage of profit as dealt by the CIT(A) and, therefore, we confirm the action of the CIT(A) and dismiss ground Nos.1 & 2 of the appeal of the assessee.

22. In respect of third ground regarding sustenance of addition of Rs.5,10,000 as unexplained investment as against Rs.12,43,704/- in gold, we find that the CIT(A) has sustained the addition to the extent of Rs.5,10,000/-, which we considered reasonable and further the CIT(A) has granted relief based on the judicial decisions and statement of the assessee. Therefore, we are not inclined to interfere with the findings of the CIT(A) on this issue and dismiss ground of the assessee.

23. The last ground of the assessee relates to addition of Rs.4,60,000/- u/s.40(a)(ia) of the Act.

24. The Assessing Officer found that the assessee had obtained loan from various firms on which has paid interest and claimed as an expenditure. Since TDS was not deducted u/s.194A on the interest payment, the Assessing Officer disallowed Rs.4,60,000/- .

25. Ld A.R. of the assessee even before us could not substantiate with evidence that TDS was deducted on this amount and prima facie, the CIT(A) has considered these facts and provisions and confirmed the addition. Accordingly, we are not inclined to interfere with the order of the CIT(A) and dismiss this ground of appeal of the assessee.

26. In the result, the appeal filed by the assessee is dismissed.  
Order pronounced on 31 /05/2017.

Sd/-

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

Cuttack; Dated 31 /05/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : DCIT, Berhampur Circle,  
Berhampur
2. The Respondent. /assessee : Sri Gudia  
Bhaskar Rao, Bhoi Street, Jeypore
3. The CIT(A) Berhampur
4. Pr.CIT, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**