

## **आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK  
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM**

**आयकर अपील सं./ITA No.329/CTK/2015**

**(निर्धारण वर्ष / Assessment Year :2011-2012)**

Rajendra Prasad Gupta, Near Axis Bank, Bank Street, Jajpur Road, District : Jajpur	Vs.	ITO, Ward-1(2), Cuttack
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>ACDPG 6683 Q</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri P.C.Sethi, AR

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR

सुनवाई की तारीख / Date of Hearing : **06/11/2017**

घोषणा की तारीख/Date of Pronouncement **07/11/2017**

### **आदेश / O R D E R**

**Per Shri Pavan Kumar Gadale, JM:**

The assessee has filed an appeal against the order of CIT(A), Cuttack, in I.T.Appeal No.660/2013-14, dated 10.04.2015, passed u/s.144/250 of the Income Tax Act, 1961 for the assessment year 2011-2012.

2. The sole substantive ground argued by Id. AR that the assessee has filed written submissions before the appellate authorities but the CIT(A) erred in ignoring the submissions and dismissed the appeal.

3. Brief facts of the case are that the assessee is engaged in the business of trading of FMCG products like edible oil, biscuit, tea etc. and filed the return of income for the assessment year 2011-2012 on 20.09.2011 with total income of Rs.5,95,010/- and the return of income was processed u/s.143(1) of the Act and subsequently the case was selected for scrutiny under CASS and notice u/s.143(2) & 142(1) were

duly served on the assessee. There was no compliance by the assessee, hence, the AO issued another notice u/s.142(1) calling assessee's books of account and explanations about the sources of the cash deposits. As the assessee has not responded the AO issued notice u/s.133(6) of the Act to the assessee's banks and called for the information. The AO dealt on the deposits by the assessee in the bank accounts and observed that the assessee being a dealer of Hindustan Lever Products and others has not submitted the entire business receipts for income tax purpose and on the assumption of suppression of business receipts, made an addition of gross profit at 3% Rs.13,75,121/- on unaccounted sales of Rs.4,58,37,381/-. Similarly, the AO also made addition of unaccounted business investments of Rs.24,14,766/- as the assessee has not produced the books of accounts, and the AO was deprived the verification of accounts. The AO considering the circumstances of non-submission of information by the assessee has estimated the net profit at 1% on gross profit Rs.8,05,883/- and the AO also found that the assessee has made investments in mutual funds and since the assessee has failed to submit the details, the AO estimated income @ 20% and worked out to Rs.47,779/- and the AO observed that as the assessee has claimed deduction u/s.80C under Chapter VIA of the Act and no evidence was produced, in respect of deduction, therefore, AO denied the claim under Chapter VIA and assessed the total income at Rs.66,81,150/- and passed the order u/s.144 of the Act dated 20.02.2014.

4. Aggrieved by the order of AO, the assessee has filed an appeal with the CIT(A). In the appellate proceedings the CIT(A) observed that the assessment was best judgment assessment and considered the findings of the AO on various statements. Before CIT(A) the assessee has filed written submissions supporting the facts of the case which were not provided in the assessment proceedings. The Id. CIT(A) has dealt on disputed issues at para 2 to 4 of the order and observed that the assessee has not submitted the details nor produced any evidence in respect of claims, and the Id. CIT(A) concord with the findings of AO and dismissed the assessee's appeal.

5. Aggrieved by the order of CIT(A), the assessee has filed an appeal before the Tribunal.

6. Before us, Id. AR argued that the CIT(A) has erred in ignoring the written submissions filed by the assessee and no proper opportunity was provided before disposal of the appeal and the assessee has the evidences to support the case before the lower authorities and the Id. AR has argued on the above subject matter. Contra, Id. DR relied on the orders of Id. CIT(A) and opposed to the submissions of Id.AR.

7. We have heard the rival submissions and perused the material on record. The sole substantive ground argued by the Id. AR that assessee has filed written submissions in the appellate proceedings along with the evidences which the Id. CIT(A) has overlooked these facts and dismissed the appeal of the assessee with the observations that the assessee has not made any attempt to produce the evidence against the findings of AO, whereas Id. AR vehemently argued that the assessee has substantial

evidence to support his claim in the return of income. Ld. DR submitted that the assessee has not cooperated in the assessment proceedings nor in the appellate proceedings with the revenue authorities. We found there is a strength in the arguments of Id. AR, as the Id. AR emphasized vehemently that the assessee has filed written submissions and they were not considered by the CIT(A) in the decision making of the appeal. Accordingly, we in the interest of substantial justice, shall provide an opportunity to assessee to substantiate its case and set aside the order of the CIT(A) and remit the entire disputed issues to the file of CIT(A) for adjudication afresh and the assessee shall be provided an opportunity of hearing and assessee shall cooperate in submitting the information for disposal of the appeal and we allow the appeal of the assessee for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 07/11/2017.

**Sd/-**  
**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

**कटक** Cuttack; दिनांक Dated 07/11/2017

प्र.कु.मि/PKM, Senior Private Secretary

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-  
Rajendra Prasad Gupta, Near Axis Bank,  
Bank Street, Jajpur Road, District : Jajpur
2. प्रत्यर्थी / The Respondent-  
ITO, Ward-1(2), Cuttack
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Senior Private Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack