

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

**BEFORE S/SHRI N.S SAINI , ACCOUNTANT MEMBER
AND KULDIP SINGH JUDICIAL MEMBER**

ITA No. 74/CTK/2015
Assessment Year : 2010-2011

DCIT, Circle 2(1), Sambalpur	Vs.	Ram Kumar Agarwal Engineer Pvt Ltd., AT: Rly Station Road, PO; Dist: Bolangir
PAN/GIR No. AADCR 1564 q		
(Appellant)	..	(Respondent)

Assessee by : Shri Nakul Agarwal, AR
Revenue by : Shri A.Tigga, DR

Date of Hearing : 25/04/ 2017
Date of Pronouncement : 28 /04/ 2017

ORDER

Per N.S.Saini, AM

This is an appeal filed by the revenue against the order of CIT(A)-1, Bhubaneswar, dated 14.11.2016 for the assessment year 2010-2011.

2. The sole issue involved in this appeal is that the Id CIT(A) erred in restricting the disallowance to 1% as against the disallowance made by the Assessing Officer.

3. We have heard the rival submissions and perused the orders of lower authorities and materials available on record. The brief facts of the case are that the Assessing Officer found that the assessee had made purchase of substantial amount from unregistered dealers on account of

dust, bolder, sand, stone, murrom, chips & metals. Before the Assessing officer, the assessee furnished the ledger copy of expenses, item-wise wherefrom, he observed that the assessee had made cash payment on different dates each payment being below Rs.20,000/-. When the Assessing Officer required the assessee to furnish party-wise list of above expenses, the assessee expressed his inability to furnish party-wise list. However, the assessee submitted that the above purchases were made from unregistered dealers from the different site of works and the suppliers are small traders having no PAN, TAN or TIN . The unregistered suppliers do not issue bills & vouchers for their sale of goods. Since the assessee could not furnish the partywise list and vouchers to verify the genuineness of expenses under these heads, the Assessing Officer disallowed 3 to 4% of the expenses of Rs.22,37,650/-

5. On appeal, the CIT(A) restricted the disallowance to 1% in place of 3 to 4% estimated by the Assessing Officer on the ground that the assessee was doing the business in the remote area and payment in cash may not be avoided while procuring the materials from the small suppliers.

6. Being aggrieved by the said order of the CIT(A), the assessee in appeal before us.

7. Ld A.R. of the assessee argued and submitted that no adhoc disallowance out of genuine business expenditure can be made by the Assessing Officer. He submitted that the materials were purchased at

the worksites from small traders. He submitted that the materials were purchased due to business exigencies in the remote areas where there was no banking facilities and hence, no disallowance can be made out of the same. The genuineness of the expenses has not been doubted either by the Assessing Officer or by the CIT(A) and the disallowance should be deleted.

8. Ld D.R. on the other hand relied on the order of the CIT(A).

9. After considering the rival submissions and perusing the materials available on record, we find that the Assessing Officer has estimated the disallowance @ 3% to 4% of the total expenses debited in the profit and loss account on the ground that the assessee could not produce bills from the parties from whom purchases were made. The contention of the assessee is that these purchases were made from small traders at the worksites of the assessee out of business exigencies. It was therefore, his submission that these were genuine business expenditure and no disallowance can be made u/s.40A(3) of the Act. It has also been argued and submitted by Id A.R. that the genuineness of the expenditure is not doubted and it is not the case of the revenue that the assessee has claimed bogus expenditure to reduce its income. Therefore, it was prayed for deletion of adhoc disallowance of 1% confirmed by the CIT(A).

10. We have heard the rival submissions and perused the orders of lower authorities and materials available on record. We find that the

Assessing Officer has estimated the disallowance without conducting any enquiry as noted by the CIT(A). No material has been brought on record by the revenue to disbelieve the contention of the assessee that the materials were purchased from the small traders in remote areas and were compelled to make payment in cash on account of business expediency. This plausible explanation of the assessee has not been found to be false by the Assessing Officer or by the CIT(A). Further, the genuineness of the expenditure is not in doubt or debate. Hence, we find no good reason to interfere with the order of the CIT(A). Hence, we dismiss the grounds of appeal of the revenue

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

Order pronounced in the open court on 28 /04/2017.

Sd/-

sd/-

(Kuldip Singh)

(N.S Saini)

JUDICIAL MEMBER

ACCOUNTANT MEMBER

Cuttack; Dated 28 /04/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : DCIT, Circle 2(1), Sambalpur
2. The Respondent. Ram Kumar Agarwal Engineer Pvt Ltd., AT: Rly Station Road, PO; Dist: Bolangir
3. The CIT(A) -1, Bhubaneswar.
4. Pr.CIT, Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack