

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

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

ITA No. 73/CTK/2015: Assessment Year : 2010-2011

DCIT, Circle 2(1), Sambalpur	Vs.	D.K.Engineering & construction, At/PO: Belgaon, Dist: Bolangir
PAN/GIR No. AACFD 2681 C		
(Appellant)	..	(Respondent)

ITA No. 80/CTK/2015: Assessment Year : 2010-2011

D.K.Engineering & construction, At/PO: Belgaon, Dist: Bolangir	Vs.	DCIT, Circle 2(1), Sambalpur
PAN/GIR No. AACFD 2681 C		
(Appellant)	..	(Respondent)

Assessee by : Shri Nakul Agrawal, 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

These cross appeals filed by the department and the assessee against the order of CIT(A)- Cuttack, dated 28.11.2014, for the assessment year 2010-2011.

2. The sole issue involved in the appeal of the assessee is that the CIT(A) was not justified in confirming 50% of the addition made by the Assessing Officer out of amounts claimed as purchases made from unregistered dealer and the revenue in its appeal has challenged the restriction of disallowance to 50% out of purchases made from unregistered dealers.

3. As the facts and issue involved are common, both the appeals are considered and decided as under:

4. The brief facts of the case are that the Assessing Officer observed that the assessee was executing civil contract work and that out of material purchased to the tune of Rs.6.62 crores, some materials like cement, bitumen, iron & steel were purchased from registered dealers and some items like sand, morrum, chips, dust, metal and boulders, etc were purchased from the unregistered dealers. On a query by the Assessing Officer, the assessee could not vouch the expenses regarding materials purchased from the unregistered dealers. The assessee could not produce partywise list of material purchased from unregistered dealers and Id A.R. expressed his inability to furnish the details and explained that the above referred purchases were made from unregistered dealers at the different worksite and the suppliers were small traders. Therefore, the Assessing Officer disallowed Rs.21,41,364.85.

5. On appeal, the CIT(A) restricted the disallowance to 50% , which worked out to Rs.14,12,067/-.

6. Being aggrieved by the said order of the CIT(A), the assessee and the revenue are 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 and since they were not having printing bills, the purchases were made on payment vouchers. He submitted that out of total purchases of Rs.6.62 crores, only purchases were made of Rs.28,24,134/- from the locally due to business exigencies and hence, no disallowance can be made out of the same. He submitted that it is not case of the revenue that the assessee has claimed bogus expenditure to reduce its income. 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 Assessing Officer.

9. After considering the rival submissions and perusing the materials available on record, we find that the disallowance of Rs.28,24,134/- was made by the Assessing Officer 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. The small traders do not have any printed bills and purchases were made on the payment vouchers. It was therefore, his submission that these were genuine business expenditure and no disallowance can be made. 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 that the disallowance may be deleted.

10. We find that no material has been brought on record by the revenue to show that the percentage of gross profit shown by the assessee is lower than what has been shown by the assessee itself in earlier or subsequent assessment years or by other assessee's in similar line of business. The disallowance has been made only on the ground that the bills of parties could not be produced by the assessee for the purchases made and the explanation of the assessee is that the small traders do not have printed bills and the purchases have been made on payment vouchers. The genuineness of the expenses has not been doubted both by the Assessing Officer and CIT(A). On the very same vouchers deduction for purchases of Rs.14,12,067/- has been allowed out of the total purchases of Rs.28,24,134/-. That being so, we find that there was absolutely no reason for the CIT(A) to not to allow deduction for the balance amount of purchases of Rs.14,12,067/-

without bringing any adverse material on record. Hence, we set aside the order of the CIT(A) and vacate the disallowance of Rs.14,12,017/- and allow the ground of appeal of the assessee and dismiss the ground of appeal of the revenue.

11. In the result, the appeal filed by the assessee is allowed and that the appeal of the revenue is dismissed.

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

Sd/-

sd/-

(Kuldip Singh)
JUDICIAL MEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 28 /04/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant /assessee: D.K.Engineering & construction, At/PO: Belgaon, Dist: Bolangir
2. The Revenue : DCIT, Circle 2(1), Sambalpur
3. The CIT(A) Cuttack
4. Pr.CIT,Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack