

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

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No. 33/CTK/2016
Assessment Year : 2010-2011

Smt. Anima Mohapatra, Prop. M/s. Patra Enterprises, At: Tentulipada, PO: Kanakpur, Jagatsinghpur	Vs.	ITO, Ward-1, Paradeep
PAN/GIR No. AGRPM 8868 R		
(Appellant)	..	(Respondent)

Assessee by : Shri Natabar Panda, AR
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 11 /04/ 2017
Date of Pronouncement : 12 /04/ 2017

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-Cuttack, dated 16.11.2015, for the assessment year 2010-2011.

2. Ground Nos.1 & 8 of the appeal are general in nature and hence, require no separate adjudication by me.

3. Ground Nos.2,4,6 & 7 of the appeal read as under:

"2. For that the LAO has not afforded reasonable opportunity of hearing to the appellant but completed the assessment U/s 144 of the I.T Act.'61 hastily on 19.12.2012 when time limit was upto 31/03/2013, hence the order passed U/s. 144 is challenged and the

same is liable to be quashed. Similarly, the LAO also didn't afford reasonable opportunity of hearing to the appellant while dealing with petition U/s.250(4) of the Act, hence the order passed is liable to be quashed/set aside.

4. For that the addition of Rs.3,40,000/- i.e. "Un-Secured Loan" without affording reasonable opportunity of hearing to explain the case, is illegal and arbitrary and the addition on this account is liable to be deleted. The LAO as well as CIT(A) dealt the matter lightly, hence the matter is liable to be set aside for fresh examination of the creditors.

6. That Hon'ble ITAT in case of the appellant for the Assessment Year-2008-09 in ITA No.510/CTK/2012 dated:-22/02/2013 in identical circumstances has deleted the separate addition on the same ground, which should have been followed. Having not followed the direction of the Higher Forum the order passed is liable to be quashed / modified.

7. For that the determination of Total Income at Rs. 14,76,240/- as against returned income of Rs.3,49,500.00, which resulted net tax demand at Rs.4,42,450/-, is baseless, arbitrary and unwarranted hence the order passed is liable to be quashed and return figure is to be accepted in toto."

4. At the time of hearing, the Authorised Representative of the assessee did not make any submission on the above grounds of appeal and hence, they are dismissed for want of prosecution.

5. In Ground No.3 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the order of the Assessing Officer in estimating the net profit @ 2% of the gross turnover in wholesale business of M.S.Rod and cement.

6. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer observed that the assessee has failed to produce cash book and related bills and vouchers for verification. The assessee also did

not furnish the details of unsecured loans such as copies of cheques, confirmations, sources of such unsecured loan, etc. Therefore, he rejected the books of account of the assessee by invoking the provisions of section 145 of the Act and estimated the net profit by applying rate of 2% to the gross receipts observing that in assessment year 2008-09, the Assessing Officer has estimated the profit of the assessee by applying the rate of 2%, which was confirmed in appeal by the CIT(A).

7. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

8. Before me, the only argument of the Authorised Representative of the assessee was that applying rate of 2% to the gross receipts to estimate the net profit was excessive and should be reduced.

9. Ld Departmental Representative relied on the orders of lower authorities.

10. When questioned by the Bench that in the assessment year 2008-09, the profit of the assessee after rejection of books of account was estimated by applying the rate of 2% to the gross receipts, which was confirmed by the CIT(A) and whether the order of the CIT(A) was varied in appeal by the Tribunal, Id A.R. of the assessee expressed his inability to give information for the assessment year 2008-09.

11. In the given facts and circumstances of the case, I find no good and justifiable reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the assessee is dismissed.

12. In Ground No.5 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the action of the Assessing Officer in adding Rs.1,92,903/- under the head " income from other sources", which is the amount of interest received on security deposit and commission and brokerage.

13. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer assessed the interest on security deposit of Rs.1,09,116/- and commission & brokerage of Rs.83,787/- under the head "income from other sources" both aggregating to Rs.1,92,903/-.

14. On appeal before the CIT(A), the assessee argued that since the books of account are rejected and income was estimated on the gross turnover, there was no reason for treating the above amounts as income from other sources..

15. The CIT(A) observed that the Assessing Officer estimated the net profit of the assessee only from the turnover of wholesale trading in cement and rods by taking gross sales of Rs.4,65,71,468/-. Therefore, the income on security deposit and commission & brokerage are, therefore, treated as income from other sources by the Assessing Officer and, hence, there was no discrepancy in the order of the Assessing Officer.

16. Ld Authorised Representative of the assessee reiterated the submissions made before the lower authorities.

17. Ld Departmental Representative supported the orders of lower authorities.

18. I find that the Id A.R. of the assessee has not produced any positive material to controvert the findings of the CIT(A) that while estimating the net profit, the Assessing Officer took the gross sales turnover on wholesale trading in cement and rods at Rs.4,65,71,468/- and, therefore, has treated the interest receipt on security deposit and commission and brokerage as income of the assessee under the head "income from other sources". Therefore, I find no good and justifiable reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the assessee is dismissed.

19. In the result, the appeal filed by the assessee is dismissed

Order pronounced in the open court on 12 /04/2017.

Sd/-

(N.S Saini)

ACCOUNTANT MEMBER

Cuttack; Dated 12 /04/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Smt. Anima Mohapatra, Prop. M/s. Patra Enterprises, At: Tentulipada, PO: Kanakpur, Jagatsinghpur
2. The Respondent. ITO, Ward-1, Paradeep
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