



**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.26/CTK/2016: Assessment Year : 2009-2010

ITA No.25/CTK/2016: Assessment Year : 2011-2012

Shiv Kumar Poddar, B.C.Sen Road, Balasore.	Vs.	ITO, Ward-2, Balasore, Odisha.
PAN/GIR No.AFVPD 2778 Q		
(Appellant)	..	(Respondent)

ITA No.17/CTK/2016: Assessment Year : 2011-12

ITO, Ward-2, Balasore, Odisha.	Vs.	Shiv Kumar Poddar, B.C.Sen Road, Balasore.
PAN/GIR No.AFVPD 2778 Q		
(Appellant)	..	(Respondent)

Assessee by : Shri Amarendra Mohapatra, AR
Revenue by : Shri S.K.Bandyopadhyay, DR

Date of Hearing : 11/12/ 2017
Date of Pronouncement : 13/12/ 2017

ORDER

Per Pavan Kumar Gadale, JM

The cross appeals have been filed by the assessee and revenue for the assessment year 2011-12 against the order dated 30.10.2015 of the CIT(A), Cuttack and the assessee has filed appeal for the assessment year 2009-2010 against the order dated 18.6.2015 of the CIT(A), Cuttack.



First, we take up the appeals for the assessment year 2011-2012.

2. The grievance of the assessee is that the CIT(A) has not afforded sufficient opportunity of hearing to the assessee while allowing part relief to the assessee.

3. The grievance of the revenue is that the CIT(A) is not justified in restricting the disallowance by relying on the comparative chart of the turnover expenses claimed for the assessment year 2010-2011 as substantial discrepancy was found in survey operations conducted u/s.133A of the Act on 23.3.2011.

4. Brief facts of the case are that the assessee is an individual engaged in the business of trading in KAMCO Branch Power Tiller and Reaper, Honda Pumps in Eastern Enterprises at Bhubaneswar and Balasore and retail trading in Airtel vouchers, Sims in Premier World at Balasore. The assessee filed the return of income declaring income of Rs.20,73,660/- on 30.9.2011 . The case was selected for scrutiny under CASS. Notice u/s.143(2) was issued on 7.9.2012. In response, the assessee filed hard copy of I.T.Return, acknowledgement of E-filed return, computation of income and copy of bank statement. the assessee case exceeded Rs.15,00,000/- and the case was transferred to JCIT, Balasore Range, Balasore. Notices u/s.142(1)/143(2) were issued to the assessee . In compliance, Sri A.Mohapatara, C.A, attended for the assessee and filed reply to the questionnaire and case was discussed. In this case, survey u/s.133A of the Act was carried out at the assessee's business



premises on 23.3.2011 and during the survey, no cash book was found. The statement was recorded from the brother of the assessee, who evidenced that no proper cash book is maintained. Before the Assessing Officer, the assessee produced the cash book, ledger, bank book, purchase register, sales register and hand made vouchers, etc. The Assessing Officer noted that on one occasion the assessee was not maintaining proper books of account and on the other hand, the assessee was debiting heavy expenditure to the profit and loss account. On going through the details, the Assessing Officer opined that the vouchers have been prepared by the Accountant of the assessee, who joined the service of the assessee at a date subsequent to the survey. Therefore, he observed that the books of account and bills, vouchers, etc, produced are not reliable and, accordingly, rejected the same u/s.145(3) of the Act and determined the income of the assessee at Rs.1,70,73,660/- as against the returned income of Rs.20,73,660/- , inter alia, by disallowing various expenses claimed in the profit and loss account of the assessee, as under:

i)	Carriage outward expenses	:	Rs.20,00,000/-
ii)	Turnover discount	:	Rs.60,00,000/-
iii)	Oil & lubricant for PDI	:	Rs.25,00,000/-
iv)	Repair, maint, fuel & insurance:		Rs. 5,00,000/-
v)	Installation charges of Tiller and reaper:		Rs.15,00,000/-
vi)	Travelling & conveyance	:	Rs.10,00,000/-
vii)	Salary	:	Rs.15,00,000/-

5. Being aggrieved by the assessment order, the assessee carried the matter in appeal before the CIT(A).



6. Before the CIT(A), Id A.R. of the assessee furnished a comparative statement of the turnover, G.P., and N.P. rate of the assessee for the assessment years 2009-2010, 2010-2011 and 2011-12 and submitted that the turnover of the assessee for the year under consideration is 164% compared to immediate preceding financial year and the assessee had shown net profit at 0.64% of the turnover.as against disclosed at 0.32% in the immediate preceding year. It was also submitted that no adverse findings such as excess/suppression of stock, debtors, cash and receivable etc, were made by the survey team.

7. The CIT(A) noted that the assessee has not refuted the statement of the Assessing Officer that books of account were not available at the time of survey and the same were prepared later on and, therefore, he upheld the rejection of books of account by the Assessing Officer. However, based on the comparative chart of the turnover and expenses claimed by the assessee for the precedent assessment year i.e. 2010-2011 and for the assessment year under consideration i.e. 2011-12, the CIT(A) directed the Assessing Officer to restrict the disallowance under various heads as under:

i)	Carriage outward expenses	:	Rs.10,00,000/-
ii)	Turnover discount	:	Rs.40,00,000/-
iii)	Oil & lubricant for PDI	:	Rs.15,00,000/-
iv)	Repair, maint, fuel & insurance:		Rs. 1,00,000/-
v)	Installation charges of Tiller and reaper:		Rs.10,00,000/-
vi)	Travelling & conveyance	:	Rs.5,00,000/-
vii)	Salary	:	Rs.10,00,000



8. Being aggrieved, both the assessee and the revenue are in appeal before us.

9. At the time of hearing, Id A.R. of the assessee submitted that there was substantial increase in the turnover of the assessee during the year under appeal than that of the previous year. He also submitted that no adverse findings were made during the survey operation u/s.133A of the Act. Therefore, the CIT(A) was not justified in restricting the disallowance.

10. On the other hand, Id D.R. supported the order of the Assessing Officer.

11. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, a survey u/s.133A was conducted at the business premises of the assessee and it was found that no cash book was maintained. It was further evidenced by the brother of the assessee on a statement recorded at the time of survey. However, the assessee produced the cash book, ledger, bank book, purchase register, sales register and hand made vouchers, etc, which were prepared post survey operation. Therefore, both the authorities were justified in rejecting the books of account. It was also submitted that the turnover of the assessee for the year has substantial increased to 164% than of the preceding year. We also find that the CIT(A) based on the comparative chart furnished by the assessee for the immediate preceding year and that of the present year under



consideration, wherein, the assessee has shown net profit at 0.64% as against 0.32% shown in the preceding year, restricted the disallowances. Before us, Id A.R. could not bring any positive material on record to show that the restriction of disallowance out of expenditures claimed by the assessee was excessive. Id A.R. also could not explain with evidence the reason of increase in salary to more than 50% of the claim from that of the immediate previous year. Similarly, Id D.R. also could not point out any specific error to interfere with the order of the CIT(A). Therefore, we do not find any reason to interfere with the order of the CIT(A), which is hereby confirmed and grounds of appeal of the assessee and the grounds of appeal taken by the revenue are dismissed.

12. In the result, both the appeals filed by the assessee and revenue are dismissed.

Now we take up the appeal of the assessee for the assessment year 2009-10.

13. The appeal filed by the assessee is barred by 122 days. The assessee has filed condonation affidavit supported by prescription of treating doctor explaining the reason for delay in filing the appeal before the Tribunal and praying to condone the delay. After perusing the condonation affidavit and considering the submissions of the parties, we are satisfied that there was reasonable cause for not filing the appeal within the time before the Tribunal. Therefore, we condone the delay and proceed to dispose of the appeal on merits.

14. The assessee has raised the following grounds in his appeal:



- “1. That the order passed by the CIT(A) is arbitrary excessive and bad in law.
2. That the CIT(A) has not applied his mind to the facts submitted during the assessment proceedings.
3. That the CIT(A) has not given sufficient opportunity to the assessee before passing the order.
4. That the CIT(A) has erred in assuming the advance from customers outstanding at the end of the year to whom the sales have been made during subsequent year as the income of the assessee.
5. That the CIT(A) has erred in assuming the loan from the loan creditor carried from earlier year and outstanding at the end of the year as the income of the assessee although the same has been paid to the loan creditor in subsequent year.
6. That the CIT(A) should have allowed an opportunity to the assessee to explain the difference in receipt if any from Bharati Airtel Limited and Honda Siel Power Products Ltd.
7. The CIT(A) should have allowed an opportunity to the assessee to explain the errors committed by the AO in passing the order.
8. That the CIT(A) has erred in not allowing the expenses disallowed by the AO.
9. That the other grounds if any shall be urged at the time of hearing of appeal.”

15. The brief facts of the case are that the assessee derives income from sale of power tiller in retail as well as wholesaling basis and income from mobile voucher telecom services. The assessee filed the return of income on 30.9.2009 showing total income of Rs.6,51,820/-, which was processed u/s 143(1) on 28.10.2010. Subsequently, the case was selected for scrutiny and notice u/s.143(2) was issued and served on the assessee. In response to the notices, Id A.R. of the assessee appeared



from time to time and produced particulars/documents and the case was discussed.

16. On verification of financial statement, the Assessing Officer found that the assessee has shown Rs.4,68,000/- under the head "advance from parties" in schedule-3 of "other creditors" in the balance sheet as on 31.3.2009 in respect of Premier World. However, on details furnished by the assessee, it is revealed that the assessee has taken advance of Rs.4,68,000/- from Meena Poddar, Bhaskarganj, Balasore having Income tax particulars. Ld A.R. submitted the declaration from Meena Poddar in respect of the advance made. The Assessing Officer on perusal of the assessment records of the Meena Poddar found that there is no entry of Rs.4,68,000/- in her account and also presumed that Meena Poddar has not given any advance to the assessee. Since, the assessee could not produce any material evidence in support of payment/acceptance of advance such as bank statement in respect of advance from Meena Poddar, the Assessing Officer made addition of Rs.4,68,000/- as bogus advance.

17. Similarly, the assessee has also shown Rs.1,35,60,068/- as advance from parties in Schedule-4 under the head "other creditors" in the balance sheet as on 31.3.2009. The Assessing Officer called for the information u/s.133(6) from 174 persons as per detailed postal address alongwith advance amount outstanding against each name. The Assessing Officer during the course of hearing found that 33 letters have been returned



back unserved with the postal remarks "no such addressee", amounting to Rs.25,19,617/-. 31 persons intimated that there has been no outstanding advance as on 31.3.2009 with the assessee amounting to Rs.23,14,203/-. It was in this backdrop that the Assessing Officer treated Rs.48,33,720/- (Rs.25,19,617 + Rs.23,14,203) as undisclosed income of the assessee.

18. The Assessing Officer on verification of 26AS statement generated from AST found that the assessee has received Rs.12,27,188/- as gross commission from M/s. Bharati Airtel Limited, whereas the assessee has shown Rs.9,69,271/- as commission on sales as per schedule-7 of profit and loss account as on 31.3.2009. Thus, there is a difference of Rs.2,57,917/-. Therefore, the Assessing Officer added Rs.2,57,917/- to the income of the assessee.

19. Similarly, the Assessing Officer made an addition of Rs.33,290/- as gross receipt from Honda Sael Power Products Ltd., during the previous year 2008-09. Since the same has not been accounted for in the profit & loss account as on 31.3.2009, the Assessing Officer added the same to the income of the assessee.

20. Similarly, the Assessing Officer made addition of Rs.25,000/- u/s.40A(3) of the Act on the ground that the assessee has paid Rs.25,000/- by cash towards decoration of gate and finally assessed the taxable income at Rs.62,69,750/-.



21. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the CIT(A). The CIT(A) called for a remand report from the Assessing Officer and after considering the same, has confirmed the addition and dismissed the assessee's appeal.

22. Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

23. At the time of hearing, Id A.R. contended that the assessee is maintaining regular books of account and the fact that the assessee is receiving advance from various customers interested in purchase of Power Tiller and Reaper, which are in huge demand as the purchasers are eligible for State Government subsidy. In respect of advance of Rs.4,68,000/-, from Meena Poddar, Id A.R. submitted that the amount is received in earlier year and the assessee has discharged his duty by giving evidence like PAN, address and creditworthiness of the creditor. Ld A.R. submitted that both the Assessing Officer and Id CIT(A) have not considered the fact that the assessee has furnished complete details and also substantiated his arguments with paper book, containing details of advance from customers, sample copy of money receipts, sales bills, permits, photo ID, subsidy release letter from Government of Odisha, affidavit of Meena Poddar. He submitted that although these documents were furnished before the authorities below, same have not been considered and prayed that matter may be restored back to the file of the CIT(A) for fresh consideration.



24. Contra, Id D.R. opposed the submission of Id A.R. and submitted that the evidences filed by the assessee before the Tribunal are additional evidence and prayed for dismissal of the appeal.

25. We have heard the rival submissions, perused the materials on record and orders of lower authorities below.

26. In respect of advance of Rs.4,68,000/- received from Meena Poddar, Id A.R. submitted that Meena Poddar is related to the assessee and assessed to tax in the same ward, where, the assessee is assessed to tax and the amount has been disclosed. He submitted that these facts were furnished before the CIT(A) how the money was received. Id A.R. drew our attention to page 87 of PB, where, the assessee has written letter to the CIT(A) that Rs.4,68,000/- is outstanding from financial year 2004-05 in the account of M/s. Premier World against the said loan creditor and the same is repaid by account payee cheque on 16.3.2012. These facts have not been considered by both the authorities below while disallowing the claim of the assessee. Therefore, we consider it appropriate to remand this issue to the CIT(A) for fresh adjudication.

27. In respect of second disputed issue of advance from parties, we find that the assessee receives advances from the customers interested in purchase of Power Tiller and Reaper and as these products were huge demand as the same is eligible for Government subsidy, the assessee effects sale by issuing sale bills to the customers. Though the assessee has disclosed as per the assessment order that advance of



Rs.1,35,60,068/- was received from 174 persons, the Assessing Officer during the course of hearing found that 33 letters have been returned back unserved with the postal remarks "no such addressee", amounting to Rs.25,19,617/-. 31 persons intimated that there has been no outstanding advance as on 31.3.2009 on the assessee amounting to Rs.23,14,203/-. During remand proceedings, letters were again issued to 31 persons as per revised address submitted by the assessee and in 2 cases, there was no revised address. 19 out of 31 envelopes returned as unserved with the postal remark "not known/no such addressee". Only one person has confirmed having paid advance of Rs.86,000/- on 14.3.2009, whereas, the assessee has claimed the same at Rs.1,00,000/-. Therefore, the Assessing Officer gave credit of Rs.86,000/- and treated Rs.48,33,720/- (Rs.25,19,617 + Rs.23,14,203) as undisclosed income of the assessee, which was confirmed in appeal by the CIT(A).

28. Perusal of impugned order reveals that the CIT(A) has passed order exparte as there was non-compliance on the part of the assessee on several occasions. Ld A.R. before us submitted that he has complete set of information and filed the same before the CIT(A), whereas Id CIT(A) has not given adequate opportunity to the assessee. We are not able to understand that how despite giving several opportunities by the CIT(A), the assessee did not co-operate at the appellate stage. Having carefully heard the submissions of the rival parties and perusing the material available on record including the paper book filed by the assessee before us containing details of advance from customers, sample copy of money



receipts, sales bills, permits, photo ID, subsidy release letter from Government of Odisha, we are of the view that the assessee could not substantiate its case before the CIT(A) as the order is passed exparte. Therefore, in the interests of justice, we consider it fair and reasonable that the matter should go back to the file of the Id. CIT(A) and accordingly, we set aside the order passed by the Id. CIT(A) to his file to decide the appeal of the assessee afresh and according to law after providing reasonable opportunity of being heard to the assessee. The assessee is directed to file the evidences as has been filed before the Tribunal before the CIT(A) and co-operate with the CIT(A) for disposal of the appeal. The grounds taken by the assessee are, therefore, allowed for statistical purposes.

29. As regards to the disputed additions of Rs.2,57,917/- as the commission from Bharati Airtel Limited, Rs.33,290/- as gross receipt from Honda Siel Power Products and Rs.25,000/- made u/s. 40A(3) of the Act, Id A.R. of the assessee did not raise any objections against the above additions. Therefore, we confirm the order of the CIT(A) on these issues.

30. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on 13 /12/2017.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Cuttack; Dated 13 /12/2017



B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Shiv Kumar Poddar,
B.C.Sen Road, Balasore.
2. The Respondent. /Revenue: ITO, Ward-2,
Balasore, Odisha.
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