



**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. 300/CTK/2015**  
Assessment Year : 2010-2011

DCIT, Circle 1(2) Bhubaneswar.	Vs.	Trahi Jagannath Construction (P) Ltd., Plot No.481, Sahid Nagar, Bhubaneswar.
PAN/GIR No.AACCT 7402 L		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri T.K.Agarwal, AR  
Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 21/09/ 2017**  
**Date of Pronouncement : 21 /09/ 2017**

**ORDER**

**Per N.S.Saini, AM**

This is an appeal filed by the revenue against the order of the CIT(A)-1, Bhubaneswar dated 30.3.2015 for the assessment year 2010-2011.

2. In Ground No.1 of the appeal, the grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.8,33,074/- under the head incentive, commission, etc."



3. The brief facts of the case are that the Assessing Officer found that the assessee has claimed expenses of Rs.1,65,56,746/- towards incentives, brokerage and commission as under:

1)	Incentive with TDS	:	Rs.42,32,601/-
2)	Incentive to staff -P	:	Rs.27,96,100/-
3)	Incentive to staff	:	Rs.10,25,222/-
4)	Incentive	:	Rs.53,05,723/-
5)	Brokerage and commission	:	<u>Rs.31,97,100</u>

Total: Rs.1,65,56,746/-

The Assessing Officer observed that although the list of payments was furnished but it was not explained how such payments relate to land transactions. The Assessing Officer further found that TDS has been deducted for an amount of Rs.42,32,601/-. Hence, the Assessing Officer disallowed Rs.12,32,414/- being 10% on estimate basis for the amount of Rs.1,23,24,145/- (Rs.1,65,56,746 – Rs.42,32,601/-) and added the same to the income of the assessee.

4. On appeal, the CIT(A) observed that no enquiries were made by the Assessing Officer before estimating the disallowance. The Assessing Officer has himself admitted that the list of expenses runs 49 pages and no sample enquiries were made to test the genuineness of the claim of expenditure. The CIT(A) further observed that TDS has been made on certain incentives. The incentives paid to staff should not have been subjected to the estimated disallowance. The Assessing Officer could have



reservations regarding payment of brokerage & commission for Rs.31,97,100/-and incentives of Rs.53,05,723/-. He observed that the estimate made by the Assessing Officer is wild one, hence the same requires modification. Since the assessee has not supported the expenses in the nature of brokerage & commission (Rs.31,97,100) and incentive (Rs.53,05,723/-) totaling to Rs.85,02,823/-, the CIT(A) found it justifiable to restrict the disallowance to 3% of such expenses, which comes to Rs.2,55,085/-. He also further observed that since provisions of section 194H have been violated, the Assessing Officer was justified in disallowing expenses of Rs.1,44,255/-. Accordingly, the CIT(A) restricted the disallowance to Rs.3,99,340/- and allowed relief of Rs.8,33,074/- to the assessee.

5. Being aggrieved, the revenue is in appeal before us.

6. Ld D.R. supported the order of the Assessing Officer whereas Id A.R. supported the order of the Assessing Officer.

7. After considering the rival submissions and perusing the orders of lower authorities, we find that the Assessing Officer has made disallowance on estimate basis without conducting enquiries although the list of payments made by the assessee was furnished. As the details were before the Assessing Officer, he could have test checked the genuineness of incentives paid to different persons. No specific error could be pointed out by Id D.R. in the findings of the CIT(A) in restricting the disallowance to 3% as against 10% estimated by the Assessing Officer. In view of



above, we find no good and justifiable reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of revenue is dismissed.

8. In Ground No.2 of the appeal, the grievance of the revenue is that the CIT(A) erred in deleting addition of Rs.26,10,773/- under the head "Project & land development expenses".

9. The brief facts of the case are that the Assessing Officer found that the assessee has incurred expenses of Rs.5,22,15,468/- towards project & land development expenses. According to the Assessing Officer, the assessee failed to explain the nature and basis of such high expenses. Therefore, he disallowed an amount of Rs.26,10,773/- @5% of Rs.5,22,15,468/- on estimate basis.

10. On appeal, the CIT(A) observed that assessee submitted that it has furnished all the details and documents and explained the expenses made during the assessment proceedings. He further observed that no enquiries whatsoever were made by the Assessing Officer to find out that the expenses are not genuine or any defects could be pointed out in the bills & vouchers. Hence, the CIT(A) deleted the disallowance made by the Assessing Officer.

11. Ld D.R. supported the order of the Assessing Officer and submitted that the assessee could not explain the nature and basis of expenses



before the Assessing Officer and, therefore, the CIT(A) was not justified in deleting the addition.

12. Ld A.R. supported the order of the Assessing Officer.

13. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. We find that no material could be brought before us by Id D.R. to controvert the above findings of the CIT(A) that the Assessing Officer has not pointed out any defects in the bills and vouchers furnished by the assessee. Therefore, we confirm the order of the CIT(A) and dismiss the ground of appeal of the revenue.

14. In Ground No.3 of the appeal, the grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.1,59,515/- under the head "payment made in respect of prize and gift".

15. The Assessing Officer observed that the assessee has claimed Rs.31,90,319/- towards payments prizes and gifts. The Assessing Officer observed that the assessee failed to furnish the primary documents/ evidence to substantiate that the expenses have been made wholly and exclusively for the purpose of business. Therefore, he estimated the disallowance @ 10% of Rs.31,90,319/- which comes to Rs.3,19,031/-.

16. On appeal, the CIT(A) restricted the disallowance to Rs.1,59,516/- @ 5% of Rs.31,90,319/- as against Rs.3,19,031/- estimate by the Assessing Officer on the ground that all the expenses may not be for business purposes.



17. During the course of hearing, Id D.R. relied on the order of the Assessing Officer. He could not point out any specific error in the findings of the Id CIT(A) that since all evidences were not produced, the expenses have to be estimated. However, since estimate is on higher side, he reduced the disallowance to Rs.1,59,516/- to meet the ends of justice. In view of above, we do not find any good and justifiable reason to interfere with the order of the Id CIT(A), which is hereby confirmed and the ground of appeal of the revenue is dismissed.

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

Order pronounced in the open court on 21/09/2017.

Sd/-

sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 21 /09/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : DCIT, Circle 1(2) Bhubaneswar.
2. The Respondent. Trahi Jagannath Construction (P) Ltd., Plot No.481, Sahid Nagar, Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

**SR.PRIVATE SECRETARY**  
**ITAT, Cuttack**