

**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.246 /CTK/2015**

Assessment Year: 2010-11

ACIT, Circle 2(1), Cuttack	Vs.	M/s. Utkal Highways, Shree Vihar Colony, Tulsipur, Cuttack
PAN/GIR No. AAAFU 8445 M		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

**ITA No. 241/CTK/2015**

Assessment Year: 2010-11

M/s. Utkal Highways, Shree Vihar Colony, Tulsipur, Cuttack	Vs.	ACIT, Circle 2(1), Cuttack
PAN/GIR No. AAAFU 8445 M		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : shri K.K.Bal, AR

Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 11/07/ 2017**

**Date of Pronouncement : 12 /07/ 2017**

**ORDER**

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

These are cross appeals filed by the revenue and the assessee against the order of the Id CIT(A)- Cuttack, dated 27.2.2015 for the assessment year 2010-11.

2. In the assessee's appeal, the grievance of the assessee is that the addition sustained by the CIT(A) of Rs.11,18,426/- under the head "operation and maintenance expenses" and Rs.4,55,999/- under the head "salary and wages" on estimation are without any basis and liable to be deleted.

3. Brief facts of the case are that the Assessing Officer observed that the assessee failed to produce details of documents regarding expenses under the head "operation and maintenance". Since no part of the expenditure could be verified by the Assessing Officer despite opportunities given to the assessee, the Assessing Officer disallowed 2% of the claim of the expenditure amounting to Rs.11,18,426/- from the total expenditure claimed under this head. The Assessing Officer further found that claim of salary, wages and bogus amounting to Rs.98,05,660/- are not fully vouched. Therefore, he disallowed Rs.4,55,999/- out of such expenses.

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

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

6. The only argument of Id A.R. of the assessee that the disallowance made by the Assessing Officer and confirmed by the CIT(A) is very high and, therefore, the disallowance may be restricted to 1% of the expenses under the head "operation and maintenance" and 50% under the head "salary, wages and bonus".

7. On the other hand, Id D.R. relied on the order of the lower authorities.

8. After considering the rival submissions and perusing the materials on record, we find in the statement of facts filed, the assessee has stated that the assessee is a partnership firm and carries on the Business of Extraction, Mechanical Loading & unloading and transportation coal from open cast mines under MCL by deploying heavy machineries and transport vehicles. The assessee is carrying on the same line of Business for the last 30 years. Its accounts comes under regular scrutiny by the income tax department for the last ten years. The assessee maintains all Books of accounts including the Bills and vouchers against the each and every expenses claimed in the Audited profit and loss account. The major head of expenses are the Operation and maintenance expenses and salary and wages expenses. The operation and maintenance expenses includes Oil and lubricant, Spares and accessories and Repair and maintenance of heavy machineries and transport vehicles. The salary and wages includes salary paid to the Machines operators, transport vehicle drives, supervisors and office staffs. The assessee maintains all Bills and vouchers against such expenses, salary register and salary acknowledgment statement in support of the salary payment. During the course of assessment, the Assessee furnished all the Books of accounts, registers and the Bills and vouches for verification. The Assessing officer verified the Books of account, registers and vouchers in detail and found everything in order. But unfortunately, while passing the assessment order, he disallowed 2% of the operation

Maintenance expenses at Rs.11,18,426/-. The reasons assigned for such disallowance is that " No part of the expenditure could be verified in spite of repeated Notices issued". It is stated that this is base less allegation. The Assessing officer should have specified that part of the expenses which the assessee could not furnish for verification. Instead of doing that, the Assessing office has disallowed randomly @2% of the expenditure. The action of the Assessing officer is confusing. On one hand, he is saying no part of the expenses could be verified on the other he is disallowing randomly 2% of the entire expenses claimed. Therefore, the disallowance is arbitrary and liable to be deleted. It is also stated that during the course of assessment, the assessee furnished the salary register including the acknowledgement of the employees. The Assessing officer disallowed the salary and wages paid to the extent of Rs.4,55,999/- on the ground that the salary and wages expenses are not fully vouched. If the salary and wages are not fully vouched, it should have been quantified to what extent it has not been vouched. The disallowance is without any basis.

9. Ld D.R. could not controvert the above statement of facts filed alongwith the appeal before us during the course of hearing. Be that as it may, as Id A.R. of the assessee before us has stated that the disallowance made is on higher side and disallowance should be sustained at 1% of the total expenses of Rs.11,18,426/- under the head " operation and maintenance expenses" and 50% of the disallowance out of expenses under the head "salary, wages and bonus" , therefore, keeping in view the above

stated statement of facts, which remained uncontroverted by Id D.R., accept the plea of Id A.R. of the assessee and modify the order of the CIT(A) accordingly. The Assessing Officer is directed to disallow 1% of the expenses claimed under the head "operation and maintenance" and retain 50% of the disallowance made under the head "salary, wages and bonus". Thus, the appeal filed by the assessee is partly allowed.

10. In revenue's appeal, the sole issue is that the CIT(A) erred in deleting the bad debts written off of Rs.42,78,386/-.

11. Brief facts of the case are that the Assessing Officer observed that in the profit and loss account, the assessee has debited Rs.42,78,386/- as bad debts. He observed that bad debt is allowable as deduction under section 36(1)(vii) of the Act only if it is written off as irrecoverable in the books of account of the assessee in the previous year in which claim for deduction is made. He observed that the assessee failed to produce relevant documents relating to the bad debts and, therefore, he disallowed for the same.

12. On appeal, the CIT(A) observed that the assessee has written of the amounts as irrecoverable in its books of account and, therefore, same is allowable as bad debts to the assessee and deleted the addition.

13. Ld D.R. supported the order of the Assessing Officer whereas Id A.R. of the assessee supported the order of the CIT(A) and relied on the decision of Hon'ble Supreme Court in the case of TRF Limited vs CIT(2010), 323

ITR 397 (SC), wherein, it has been held that it is necessary for the assessee to establish that actually it has written off the amount in the books of accounts, and it is not necessary for him to prove that the amount has actually become bad.

14. After considering the rival submissions and perusing the materials on record, we find that no material has been brought on record by the revenue to show that the assessee has not written off the debts as bad in its books of account. Further, Id D.R. could not point out any specific error in the order of the CIT(A). Hence, we confirm the order of the CIT(A) and dismiss the ground of appeal of the revenue.

15. In the result, appeal of the assessee is partly allowed and the appeal of the revenue is dismissed.

Order pronounced on 12 /07/2017.

Sd/-

sd/-

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

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

Cuttack; Dated 12 /07/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The assessee : M/s. Utkal Highways, Shree Vihar Colony, Tulsipur, Cuttack
2. The Revenue: JCIT, Range-2, Cuttack
3. The CIT(A)- Cuttack
4. The Pr. CIT- Cuttack
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY,  
ITAT, Cuttack