

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

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER**

**ITA No.127/CTK/2014**  
Assessment Year : 2008-09

Sri Dinesh Pratap Singh, S/O. Surendra Pratap Singh, Near NAC Check Gate, Hudi Sahi, Joda, Keonjhar.	Vs.	ACIT, Sambalpur	Circle-1(2),
PAN/GIR No. BAAPS 4341 H			
<b>(Appellant)</b>	..	<b>( Respondent)</b>	

Assessee by : Shri P.C.Sethi, AR  
Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 08 /08/ 2017**  
**Date of Pronouncement : 09 /08/ 2017**

**ORDER**

This is an appeal filed by the assessee against the order of CIT(A)-Berhampur, Camp-Bhubaneswar, dated 29.1.2014 for the assessment year 2008-09.

2. Ground Nos.1 to 5 read as under:

"1. That, the learned Commissioner of Income-tax (A), Berhampur [Hereinafter referred as "**the** learned CIT(A)"] **has** committed a serious error in not quashing the order of assessment passed by the learned Assessing Officer which is illegal, arbitrary, violating the principles of natural justice and contrary to the provisions of the Income-tax Act, 1961 (Hereinafter referred as "the Act").

2. That, the learned CIT (A) has committed a serious error in not quashing the assessment order which is based on notice issued

u/s 143(2) of the Act without processing the return u/s 143(1) of the Act and for which the assessment order passed on such illegal notice is liable to be quashed and or annulled.

3. That, the learned CIT (A) has committed serious error in not quashing the order passed by the learned Assessing Officer which has been passed on the basis of notice u/s **143(2)** of the Act on an extraneous reasons without applying mind.

4. That, the learned CIT (A) has committed a serious error in not quashing the assessment order which has been passed in clear contravention to section 127 of the Act and for which the order passed by the learned Asst. Commissioner of Income-tax, Circle-1(2) Sambalpur is illegal and without jurisdiction.

5. That, the learned CIT (A) has committed a serious error in not quashing the assessment order which has been served on the appellant 63 days after period of limitation and for that matter the assessment order, demand notice, penalty notice is barred by limitation."

3. At the time of hearing, no submissions were made by Id A.R. of the assessee on the above grounds of appeal, hence they are dismissed for want of prosecution.

4. In Ground No.6 of the appeal, the grievance of the assessee is that the CIT(A) erred in upholding the disallowance of Rs.2,00,000/- under the head total expenses.

5. The brief facts of the case are that the Assessing Officer observed that the assessee has claimed the following expenses:

i)	Stores and spares	:	Rs.12,34,560/-
ii)	Repairs and maintenance	:	Rs.22,56,780/-
iii)	Wood expenses	:	Rs. 3,12,560/-
iv)	Vehicle hire charges	:	<u>Rs. 2,12,450/-</u>
	Total	:	Rs.40,16,350/-

6. The Assessing Officer observed that in most of the occasions, the assessee has made cash payment. The assessee has not maintained proper bills

and vouchers for which genuineness of expenses claimed could not be verified. He, therefore, disallowed 10% of above expenses and made addition of Rs.4,01,635/-

6.1 On appeal, the CIT(A) after considering the nature of business of the assessee, turnover and expenses claimed, restricted the disallowance to 50% which works out to Rs.2,00,000/-

7. In Ground No.7 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the disallowance of Rs.3,00,000/- under the head "fuel and lubricant".

7.1. The Assessing Officer observed that the assessee has claimed an amount of Rs.62,05,973/- towards expenses under the head "fuel and lubricant".. Since the assessee could not furnish bills & vouchers, the Assessing Officer disallowed Rs.6,20,597/- being 10% of Rs.62,05,973/-.

7.2 On appeal, the CIT(A) restricted the disallowance to 3,00,000/- being 50% of total expenses claimed by the assessee.

8. In Ground No.8 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the disallowance of Rs.5,354/- under the head "telephone expenses".

8.1 The Assessing Officer observed that the assessee has claimed deduction of Rs.53,540/- under the head "telephone expenses". The Assessing Officer disallowed Rs.13,385/- being 25% of the total claim of Rs.53,540/- on the ground of personal use by the assessee as well as his staff members.

8.2 On appeal, the CIT(A) restricted the disallowance to 5354/- being 10% of total claim of the assessee towards non-business use of telephone.

9. In Ground No.9 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the disallowance of Rs.15,000/- under the head "general expenses and traveling and conveyance".

9.1 The Assessing Officer observed that the assessee has claimed expenses of Rs.80,152/- and Rs.68,780/- totaling to Rs.1,48,932/- under the head "general expenses" and "traveling & conveyance". On verification of ledger accounts, the Assessing Officer found that most of the payments have been made in cash. He also observed that the assessee has not maintained proper bills and vouchers. In view of above, he disallowed 20% of the expenses of Rs.1,48,932/-, which works out to Rs.29,786/-.

9.2 On appeal, the CIT(A) after considering the nature of business of the assessee, turnover and expenses claimed, restricted the disallowance to 50% which works out to Rs.15,000/-.

10. In respect of Ground Nos.6, 7, 8 & 9 of the appeal, Id A.R. of the assessee submitted that the Assessing Officer has made general remarks that the expenses are paid in cash and proper bills and vouchers are not maintained by the assessee. He submitted that the Assessing Officer did not point out which specific vouchers are not maintained by the assessee and, therefore, the adhoc

disallowance of genuine business expenditure of the assessee cannot be sustained in law.

11. Ld D.R. relied on the order of the CIT(A).

12. I have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the assessee has claimed deduction for expenses under four heads totalling to Rs.40,16,350/-. The Assessing Officer observed that expense are paid in cash and proper bills and vouchers are not maintained by the assessee and hence disallowed 10% of the expenses making addition of Rs.4,01,635/-. Similarly, the assessee has claimed deduction of Rs.62,05,973/- under the head "fuel and lubricants" . The Assessing Officer disallowed 10% of the same amounting to Rs.6,20,597/- and same was restricted to Rs.3,00,000/- in appeal by the CIT(A). In respect of claim of telephones expenses of Rs.53,540/-, the Assessing Officer disallowed 25% being Rs.13,385/- on the ground of personal use and in appeal, the same was restricted to 10% by the CIT(A), which woks out to Rs.5354/-. Similarly, in respect of claim of travelling & conveyance, the assessee has claimed Rs.1,48,932/- and in the absence of proper bills and vouchers, the Assessing Officer disallowed 20% of the same amounting to Rs.29,786/- and the disallowance was restricted to 15,000/- in appeal by the CIT(A).

13. Ld A.R. has argued that the Assessing Officer has not pointed out for which specific expenses, the assessee has not maintained vouchers.

The Assessing Officer has made adhoc disallowance out of genuine business expenditure of the assessee which is not permissible in law. I find force in the above arguments of Id A.R. of the assessee that before making the addition to the income of the assessee, the Assessing Officer has to give reasons for addition. In the instant case, no specific defect in the vouchers or books of account maintained by the assessee has been pointed out by the Assessing Officer. Therefore, the disallowance made is not sustainable in law. In regard to restriction of telephone expenses, I find force in the submission of Id A.R. of the assessee that no specific instance of personal user of telephone has been brought on record by the Assessing officer. In the absence of any specific finding about personal use of telephone such ad hoc disallowance is not called for. In view of above discussion, I set aside the orders of lower authorities and delete the disallowance of expenses sustained by the CIT(A). Hence, Ground Nos.6, 7 8 & 9 are allowed.

14. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 09/08/2017.

Sd/-

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

Cuttack; Dated 09 /08/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The appellant : Sri Dinesh Pratap Singh,  
S/O. Surendra Pratap Singh, Near NAC  
Check Gate, Hudi Sahi, Joda, Keonjhar.
2. The Respondent. ACIT, Circle-1(2),  
Sambalpur
3. The CIT(A) Berhampur.
4. Pr.CIT, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

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