

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

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA Nos. 337 & 338/CTK/2015**  
Assessment Years : 2003-04 & 2004-05

M/s. Bijay Kumar Mohapatra, At/PO: Randia, Bhadrak.	Vs.	ITO, Bhadrak Ward, Bhadrak
PAN/GIR No.AADFB 8748 D		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

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

**Date of Hearing : 30/08/ 2017**  
**Date of Pronouncement : 31 /08/ 2017**

**ORDER**

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

These are appeals filed by the assessee against the separate orders of the CIT(A)-Cuttack, both dated 23.4.2015 for the assessment years 2003-04 & 2004-05.

2. In both the appeals, the common ground taken is that the CIT(A) erred in confirming the levy of penalty u/s.271(1)(c) of the Act of Rs.2,58,396/- for the assessment year 2003-04 and Rs.3,13,545/- for the assessment year 2004-05.

3. The brief facts of the case are that the Assessing Officer during the course of assessment proceedings found that the assessee had stated

that security deposit receivable of Rs.4,63,240/- but had not shown the withheld amount receivable of Rs.2,33,446/- in the assessment year 2003-04, which was released to the assessee in the next financial year. He, therefore, treated excess of assets over liabilities of Rs.2,33,446/- which represented the income of the assessee firm from undisclosed source and added the same to the income of the assessee.

4. Similarly, for the assessment year 2004-05, the Assessing Officer observed that the assessee had not included contract receipts of Rs.5,02,822/- into its gross receipts. Therefore, the Assessing Officer rejected the book results of the assessee by invoking the provisions of section 145 of the Act and estimated the income of the assessee @ 8% of the gross receipts arrived at by him.

5. The above additions made in assessment year 2003-04 and 2004-05 were confirmed in appeal by the CIT (A) as well as by the Tribunal.

6. Thereafter, the Assessing Officer levied penalty u/s.271(1)(c) of the Act at Rs.2,58,396/- for the assessment year 2003-04 and Rs.3,13,545/- for the assessment year 2004-05 on the ground of furnishing inaccurate particulars of income by the assessee.

7. On appeal, the CIT(A) confirmed the levy of penalty.

8. Before us, the contention of Id A.R. of the assessee is that the assessee has filed appeal before the Hon'ble High Court of Odisha and Hon'ble High Court has admitted the appeals of the assessee in I.T.A.

No.64/2009 and in I.T.A. No.65/2009 for the assessment years 2003-04 and 2004-05. Therefore, it was his submission that as the appeal against the order of the Tribunal was admitted by the Hon'ble High Court on substantial questions of law, the issue is debatable one and hence, no penalty is leviable on the assessee u/s.271(1)(c) of the Act.

9. On the other hand, Id D.R. supported the orders of lower authorities.

10. We find that the Hon'ble Bombay High Court in the case of CIT vs. M/s. Advaita Estate Development Pvt Ltd., in Income Tax Appeal No.1498 of 2014 order dated 17.2.2017 has held as under:

"Mr Dalal, the Id Counsel for the respondent-assessee invited our "attention to the order of the Tribunal dated 18<sup>th</sup> march 2011 in the case of Nayan Builders and Developers Pvt Ltd. On perusal of the Tribunal order dated 18<sup>th</sup> March, 2011 we note that the Tribunal in Nayan Buildes and Developers Pvt Ltd (supra) had deleted the penalty only on the ground that as substantial question of law had been admitted by this Court in quantum proceedings the issue is debatable. It was on the basis of the aforesaid reasoning of the Tribunal in Nayan Builders and Developers Pvt Ltd. (supra), that this Court held that no penalty is imposable. Thus, the distinction sought to be made by Mr Tqejveer Singh does not assist the revenue, as it does not exist."

11. In the instant case, it is not in dispute that the appeals have been admitted by Hon'ble High Court of Odisha on the additions confirmed by the Tribunal in I.T.A. No.64/2009 and in I.T.A. No.65/2009 for the assessment years 2003-04 and 2004-0 on the substantial questions of law.

12. Thus, the facts in the present appeals are identical to the facts which were before the Hon'ble Bombay High Court in the case of M/s. Advaita Estate Development Pvt Ltd (supra). Therefore, respectfully following the same, we set aside the orders of lower authorities and delete the levy of penalty of Rs.2,58,396/- for the assessment year 2003-04 and Rs.3,13,545/- for the assessment year 2004-05 and allow the ground of appeal of the assessee.

13. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 31 /08/2017.

Sd/-

sd/-

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

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

Cuttack; Dated 31 /08/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : M/s. Bijay Kumar Mohapatra,  
At/PO: Randia, Bhadrak
2. The Respondent. ITO, Bhadrak Ward,  
Bhadrak
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**