

**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.376/CTK/2015: Assessment Year : 2010-2011
 ITA No.377/CTK/2015: Assessment Year : 2010-2011
 ITA No.378/CTK/2015: Assessment Year : 2010-2011

Chandrakanta Pradhan, Plot No.885, Kapil Prasad, Old Town, Bhubaneswar.	Vs.	ITO, Ward 1(2), Bhubaneswar.
PAN/GIR No.AGWPP 8905 D		
(Appellant)	..	(Respondent)

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

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

ORDER

Per N.S.Saini, AM

These are appeals filed by the assessee against the separate orders of the CIT(A)-1,Bhubaneswar, all dated 22.7.2015 for the assessment year 2010-2011.

2. **In ITA No.376/CTK/2015**, the grievance of the assessee is that the CIT(A) erred in confirming the penalty levied u/s.271A of Rs.25,000/-.

3. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. The undisputed facts of the case are that the Assessing Officer observed that the assessee was required to produce books of account but he could not produce any books

of accounts and only produced purchase bills/invoice. Therefore, the Assessing Officer observed that the assessee has not maintained any books of account as required u/s.44AA(i) of the Act and levied penalty of R.25,000/- u/s.271A of the Act for non-maintenance of books of account in violation of section 44AA of the Act.

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

5. Before us, no plausible reason has been given by Id A.R. of the assessee to explain the reason for non-maintenance of books of account by the assessee. Hence, 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 the assessee is dismissed.

6. In the result, appeal filed by the assessee is dismissed.

7. **In ITA No.377/CTK/2015**, the grievance of the assessee is that the CIT(A) erred in confirming the levy of penalty of Rs.31,085/- u/s.271B of the Act.

8. Brief facts of the case are that the Assessing Officer found from the bank accounts of the assessee that there were deposits to the tune of Rs.62,16,989/- during the relevant previous year. The total deposits were considered to be the turnover of the assessee and the profit was determined on estimation thereon. Since the turnover was taken at Rs.62,16,989/-, which exceeds Rs.40 lakhs, the Assessing Officer initiated penalty proceedings u/s.271B of the Act for failure on the part of the

assessee to get the accounts audited u/s.44AB and levied penalty of Rs.31,085/- u/s.271B of the Act. @ ½% of the turnover of Rs.62,16,989/-.

9. On appeal, the CIT(A) confirmed the order of the Assessing Officer.

10. After considering the rival submissions and perusing the orders of lower authorities, we find that the Assessing Officer has levied the penalty u/s.271B of the Act on the ground that the assessee has not got its account audited u/s.44AB of the Act. We also find that the Assessing Officer himself has held that the assessee has not produced books of account, bills and voucher and, therefore, determined the income of the assessee by applying 7.67% to the gross sales of Rs.62,16,989/-. Thus, when the Assessing Officer has come to the conclusion that the assessee has not maintained books of account, therefore, it cannot be produced before him and the question of getting its accounts audited u/s.44AB does not arise. The Assessing Officer has levied penalty u/s.271A of the Act for non-maintenance of books of account by the assessee, which is confirmed by us in the appeal filed by the assessee. Hence, we set aside the orders of lower authorities and delete the penalty of Rs.31,085/- levied u/s.271B of the Act and allow the ground of appeal of the assessee.

11. In the result, appeal filed by the assessee is allowed.

12. **In ITA No.378/CTK/2015**, the grievance of the assessee is that the CIT(A) erred in confirming the levy of penalty of Rs.26,108/- u/s.271(1)(c) of the Act.

13. The brief facts are that the Assessing Officer found that the assessee had disclosed lesser turnover of Rs.39,31,172/- whereas the turnover which was quantified on the basis of deposit in the bank account at Rs.62,16,989/-. Therefore, the Assessing Officer estimated the profit @ 7.67% of the total turnover of Rs.62,16,989/-. Thereafter, the Assessing Officer levied penalty under section 271(1)(c) of the Act for furnishing inaccurate particulars of income of Rs.26,108/-.

14. Before the CIT(A), the assessee contended that since in the assessment order, the income was estimated, the assessee cannot be treated to have concealed his income or have furnished any inaccurate particulars of his income.

15. The CIT(A) confirmed the levy of penalty observing that there was clear case of suppression of turnover to the extent of Rs.22,85,817/- (Rs.62,16,989 – Rs.39,31,172/-). This suppression of turnover could not have come to light had the Assessing Officer not examined the bank accounts. The assessee has not given any convincing reasons for not disclosing the actual turnover.

16. Before us, Id A.R. though submitted that penalty should be deleted as the income of the assessee was estimated by the Assessing Officer but

could not controvert the findings of the CIT(A) that this was a case of suppression of turnover to the extent of Rs.22,85,817/-. Hence, we find no good and justifiable reason to interfere with the order of the CIT(A), which is hereby confirmed and the ground of appeal of the assessee is dismissed.

17. In the result, appeal filed by the assessee is dismissed.

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

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

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

Copy of the Order forwarded to :

1. The appellant :Chandrakanta Pradhan, Plot No.885,
Kapil Prasad, Old Town, Bhubaneswar.
2. The Respondent. ITO, Ward-1(2), 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