



**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.408/CTK/2016: Assessment Year : 2010-2011

ITA No.409/CTK/2016: Assessment Year : 2012-2013

Odisha Construction Corpn. Ltd., Unit-8, Gopabandhu Nagar, Nayapali, Bhubaneswar.	Vs.	ACIT, Corporate Circle-1(2), Bhubaneswar.
PAN/GIR No.AAACO 2571 K		
(Appellant)	..	(Respondent)

ITA No.413/CTK/2016: Assessment Year : 2011-2012

ITA No.414/CTK/2016: Assessment Year : 2012-2013

ACIT, Corporate Circle-1(2), Bhubaneswar	Vs.	Odisha Construction Corpn. Ltd., Unit-8, Gopabandhu Nagar, Nayapali, Bhubaneswar.
PAN/GIR No.AAACO 2571 K		
(Appellant)	..	(Respondent)

Assessee by : Shri G.N. Naik/Rajat Kar, AR
Revenue by : Shri Saad Kidwai, CIT DR

Date of Hearing : 14/12/ 2017
Date of Pronouncement :26/12/ 2017

ORDER

Per Pavan Kumar Gadale, JM

ITA No.408/CTK/2016 is filed by the assessee against the order dated 31.8.2016 of the CIT(A)-1, Bhubaneswar for the assessment year 2010-2011.



2. **ITA No.413/CTK/2016** is filed by the revenue against the order dated 31.8.2016 of the CIT(A)-1, Bhubaneswar for the assessment year 2011-12.

3. The cross appeals filed by the assessee and the revenue against the order dated 31.8.2016 of the CIT(A)-1, Bhubaneswar for the assessment year 2012-2013 in **ITA Nos.409/CTK/2016 and ITA No.414/CTK/2016.**

4. First, we take up the appeal for the assessment year 2010-2011 by the assessee.

5. In the grounds of appeal, the assessee has challenged the confirmation of following additions:

i)	Loss on sale of asset	:	Rs. 72,205/-
ii)	Prior Period expenses	:	Rs.32,59,343/-
iii)	Provision for leave encashment:		Rs.74,05,677/-

6. Brief facts of the case are that the assessee is engaged in the business of execution of construction contracts, providing construction consultancy and services involving information technologies. Return of income for the assessment year 2010-2011 was filed by the assessee on 8.10.2010 showing total income of Rs.2,17,76,068/-. Subsequently, revised return was filed on 29.3.2012 showing total income at Rs.2,02,26,154/-. The Assessing Officer completed the assessment u/s.143(3) of the Act determining the total income at Rs.3,37,16,050/-, inter alia, making various additions/disallowances totalling to



Rs.1,34,89,899/- under different heads. On appeal, the CIT(A) partly allowed the appeal of the assessee and confirmed the following additions:

i)	Loss on sale of asset	:	Rs. 72,205/-
ii)	Prior Period expenses	:	Rs.32,59,343/-
iii)	Provision for leave encashment:		Rs.74,05,677/-

7. The first issue relates to disallowance of Rs.72,205/- on account of loss of assets.

8. The brief facts of the case are that the Assessing Officer found that the assessee has claimed expenses of Rs.72,205/- towards loss on sale of assets. The Assessing Officer held that the loss on sale of depreciable assets was not revenue in nature and, hence disallowed the claim of expenses of Rs.72,205/- u/s.37 of the Act and added the same to the income of the assessee, which was confirmed in first appeal.

9. Before us, Id A.R. of the assessee submitted that the assessee has offered profit and also referred to page of paper book, wherein, the assessee has disclosed these facts. He also drew our attention to page 116 of paper book and submitted that profit on sale of assets was offered by the assessee.

10. Ld D.R. supported the orders of lower authorities.

11. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the assessee has claimed expenses of Rs.72,205/- towards loss on sale of assets, which was disallowed by the Assessing Officer on the ground that



loss on sale of depreciable asset was not revenue in nature. The CIT(A) confirmed the same. Before us, Id A.R. referred to page 123 of PB and submitted that the profit on sale of assets was offered by the assessee. We observe that there is no clarity in respect of offering of profit on sale of assets and for non-adjusting of sale of assets, the concept of gross block of assets has to be considered and if any loss has to be claimed, it should be adjusted in the block of assets. Since this has not been done by the lower authorities, we remit this issue back to the file of the Assessing Officer to re-examine the issue as per our above observation. This issue is restored to the file of the Assessing Officer to decide the issue as per law.

12. The next issue relates to confirmation of addition of Rs.26,50,686/- on account of prior period expenses.

13. The Assessing Officer observed that the assessee has adjusted an amount of Rs.32,59,343/- towards prior period expenses, which includes expenses related to salary, DA , wages paid to labour supplier, sales tax/VAT and professional charges, etc. The Assessing Officer observed that the assessee follows mercantile system of accounting and, therefore, the above amount did not crystallise during the previous year relevant to assessment year under consideration. Therefore, he disallowed the same.

14. On appeal, the CIT(A) has granted relief to the extent of payment of arrear salary, D.A. and professional fees aggregating to Rs.6,08,657/- whereas the CIT(A) has confirmed the addition of Rs.25,45,985/- towards



sales tax/VAT liability as the bills pertain to financial year 2008-09. The CIT(A) also confirmed the addition of Rs.1,04,701/- as there was no explanation offered under the head prior period expenses. Hence, the CIT(A) confirmed the disallowance of Rs.26,50,686/-.

15. Ld A.R. of the assessee substantiated his view by referring to page 111 in audit report. He further drew our attention to ledger account copy referred at page 135 of paper book and details of prior period expenses for the financial year 2010-2011 and submitted that the above liability could not be provided due to lack of document/information from the contractor. Hence, he prayed to remit the matter back to the file of the Assessing Officer to verify and examine these documents and adjudicate the issue afresh.

16. Contra, Id D.R. supported the order of the CIT(A).

17. After hearing the rival submissions and perusing the materials available on record, we find force in the submission of Id A.R. of the assessee that these facts were not discussed or filed during the course of assessment proceedings. Therefore, we consider it fit and appropriate to remit the issue back to the file of the Assessing Officer to examine and verify the documents filed by the assessee and redecide the issue as per law after allowing reasonable opportunity of hearing to the assessee.

18. The last issue relates to provision for leave encashment of Rs.74,05,677/-.



19. The Assessing Officer found that the assessee has claimed expenses of Rs.74,05,677/- towards unavailable leave encashment. The Assessing Officer further observed that as per statutory audit report and suggestion of the Accountant General (A&E) upto 31.3.2010, the amount of provision for leave salary and pension was Rs.3.52 crores. However, the assessee has debited to the profit and loss account of Rs.4.26 crores. Therefore, the Assessing Officer disallowed excess provision of Rs.74,05,677/-.

20. On appeal, the CIT(A) confirmed the addition of Rs.74,05,677/- as the assessee could not explain the reason of excess provision.

21. Ld A.R. of the assessee filed a comparative chart referred at page 149 of paper book, which contain the details of calculation of leave salary and pension contribution as made by the assessee and A.G. for deputed employees and submitted that it is a cumulative effect carry forward from the earlier years. Ld A.,R. submitted that this has been adjusted in subsequent year and, therefore, there is no necessity of disallowance.

22. Contra, Id D.R. supported the order of the CIT(A).

23. We heard the rival submissions and perused the orders of lower authorities and the details of calculation of leave salary and pension contribution as made by the assessee and A.G. for the deputed employees, we are of the considered view that the calculation has to be examined and verified by the Assessing Officer to make the disallowance. Since this has not been done by both the authorities below, we deem it fit and proper to remit the issue to the file of the Assessing Officer for



further verification and adjudication as per law. Hence, this part of issue is restored to the file of the Assessing Officer.

24. In the result, appeal for assessment year 2010-11 is allowed for statistical purposes.

Now, we take up the appeal filed by the revenue for the assessment year 2011-12.

25. The sole grievance of the revenue in this appeal is that the CIT(A) was not justified in deleting the addition of Rs.1,61,57,771/- on account of unascertained liability.

26. The brief facts of the case are that the Assessing Officer observed that the assessee has debited in its profit and loss account in Schedule-8 -Establishment expenses a sum of Rs.1,61,57,771/- towards arrear salary on 6th pay revision. The Assessing Officer observed that the provision for arrear salary of Rs.1,61,57,771/- debited to profit and loss account was not allowable deduction u/s.37 of the Act and, therefore, added the same to the income of the assessee.

27. Before the CIT(A), the assessee submitted as under:

" The above provision of arrear salary has been made on complete calculation and actual due to the employees and not merely anticipated or any lump sum adhoc provision. The above provision is based on office order bearing No.OCC.E-I/679/08/13652(WE) DT. 13.12.2010 in pursuance to the approval by the Additional Secretary to Government Department of Water Resources, Orissa, Bhubaneswar vide letter No.Irrr.II.OCC-8/10/29794/WR dt. 29.11.2010.

After the above office order a thorough calculation was made category wise employees and liability so arrived furnished below:



<i>Total Arrear considering</i>	
<i>6th Pay commission Revision Pay</i>	<i>- Rs.8,98,91,271.00</i>
<i>Less: Provision already made</i>	
<i>F.Y.2008-09</i>	<i>- Rs.5,75,12,130.00</i>
<i>Less: Provision already made</i>	
<i>F.Y.2009-10</i>	<i>- <u>Rs. 1,62,21,370.00</u></i>
	<i>Rs.7,37,33,500.00</i>
<i>Balance amount provided during F.Y. 2010-11</i>	
<i>vide CJV No.171 dt. 31.03.2011</i>	<i>Rs.1,61,57,771.00</i>

Copies of the office order with its enclosures category wise calculation and Journal Voucher is enclosed herewith as Annexure-7 Series.

The above facts were submitted before the learned Assessing Officer in course of hearing of the assessment case on 11.02.2014. However, the learned Assessing Officer without giving any opportunity made the above addition on a wrong footing by citing judgments not applicable to the present case of the appellant. Therefore, the addition of Rs.1,61,57,771/- as made by . the learned Assessing Officer may kindly be deleted. "

28. The CIT(A) deleted the addition made by the Assessing Officer by observing as under:

"9.2 I have considered the matter carefully. The whole issue boils down to a finding as to whether the arrear salary of Rs.1,61,57,771/- debited to the P&L account under the head provision for arrear salary was merely a provision or an ascertained liability. On the facts of the case, I find that the liability was an ascertained one and calculated on the basis of actuals. It was not an unascertained liability to be determined on a future date. Hence, the amount cannot be disallowed only because the word 'provision' is used in the accounts. The case laws relied on by the AO relate to disallowance of unascertained or anticipated liability and not liability which can be accurately ascertained. In this view of the matter, the disallowance of Rs.1,61,57,771 is deleted."

29. Ld D.R. supported the order of the Assessing Officer whereas Id A.R. of the assessee supported the order of the CIT(A).



30. We considering the rival submissions and perusing the orders of lower authorities, find that the liability was an ascertained one and calculated on the basis of actuals. We also find that no specific error in the order of the CIT(A) could be pointed out by Id D.R. Therefore, we do not find any good reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the revenue is rejected.

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

Now, we take up the cross appeals for the assessment year 2012-13.

32. The brief facts of the case are that the return of income for the assessment year 2012-13 was originally filed on 29.9.2012 showing total income of Rs.3,08,88,480/-. Subsequently, a revised return was filed on 28.3.2014 showing a total income of Rs.3,43,37,740/-. The case was selected for scrutiny under CASS. Notices u/s.143(2) and 142(1) were issued and the Id A.R. of the assessee appeared from time to time and case was discussed. The Assessing Officer completed the assessment u/s.143(3) of the Act determining the total income 3,43,37,740/-, inter alia, making various additions/disallowance. On appeal, the CIT(A) partly allowed the appeal. Hence, both the assessee and revenue are in appeal before us.

33. In its appeal, the revenue has challenged the deletion of addition of Rs.34,60,000/- made on account of suspense credit rolling since long time.



34. The brief facts of the case are that the Assessing Officer observed that in the head "other current liability" and under the sub head "suspense (credit) of Rs.34.60 lakhs, the following amounts are outstanding and rolling since long:

- i) CWS 0533 : Rs.8.04 lakhs
- ii) Defunct project : Rs.7.26 lakhs
- iii) Closed project : Rs.. 1.60 lakhs
- iv) In H.O. : Rs.11.45 lakhs
- v) Other project : Rs.6.25 lakhs

The Assessing Officer observed that the above amount was lying in suspense account since long, which resulted into understatement of profit and, therefore, he added the same to the total income of the assessee.

35. Before the CIT(A), the assessee furnished the resultant debit/credit figures in respect of suspense credit (liability) and suspense debit (asset) to suggest that the assessee is taking steps for adjustment of suspense account both debit as well as credit.

36. The CIT(A) deleted the addition by observing as under:

"I have considered the matter. The suspense credit opening balance stood at Rs.36,60,685/- which came down from the earlier previous year. During the relevant previous year, adjustment took place to the extent of Rs.2,00,544/-and the closing balance came down to Rs,34,60,141/-. No suspense credit is there for the previous year 2011-12 relevant to the AY 2012-13. Moreover, suspense debits *are* also there with opening balance of Rs.1,31,29,093/- and closing balance of Rs.1,24,75,139/-. Therefore, in the circumstances of the assessee's case, no addition can be made on account of suspense credit. Hence, the addition of Rs.34,60,000/- is deleted."



37. Ld D.R. submitted that there is no clarity of calculation furnished by the assessee before the Assessing Officer as well as CIT(A). Therefore, the matter needs verification by the Assessing Officer.

38. Ld A.R. supported the order of the CIT(A).

39. After hearing the rival submissions and perusing the orders of lower authorities, we find force in the arguments of Ld D.R. that there is no clarity of calculation made by the assessee. Prima-facie, the department or the assessee has not come forward with the details and the transactions of suspense credit of earlier years and the balance outstanding as on the said date. The Assessing Officer has not verified these facts and dealt on the specific projects and made addition. We are of the considered opinion that the matter needs reexamination in detail from earlier years and the Assessing Officer is directed to call for the information and the assessee shall co-operate by submitting details to the Assessing Officer. Therefore, we set aside the order of the CIT(A) on this issue and remit the file to the Assessing Officer for fresh examination as per law.

40. In the grounds of appeal, the assessee has challenged the confirmation of following additions:

i)	Understatement of income	:	Rs.27,03,097/-
ii)	Int. on construction work advance for more than 20 years	:	Rs.1,06,05,000/-
iii)	Hire charges of machinery rolling since long:		Rs.5,53,000/-
iv)	Long outstanding guarantee fees to Govt.		Rs.7,71,000/-
v)	Non deposit of BOT, CPF	:	Rs.15,21,579/-
vi)	Excess provision of leave salary	:	Rs.32,86,000/-



41. At the time of hearing, Id A.R. of the assessee with regard to addition of understatement of income of Rs.27,03,097/- submitted that necessary adjustments have been made in the subsequent years. As the assessee follows mercantile system of accounting, all incomes accruing or arising to the assessee during a particular accounting year have to be taxed in that year, notwithstanding whether same has been shown in a subsequent year. He also submitted that the assessee has offered Rs.27,03,097/- as income and due tax has already been paid in subsequent year. He also referred to the calculation made by the auditor placed at page 151 & 152 of paper book. Therefore, the addition made by the authorities are not justified.

42. As regards to addition of interest on construction work advance for more than 20 years of Rs.1,06,05,000/-, Id A.R. submitted that the above liability has been arrived after some adjustment made during the financial year 2005-06 against the work advance. He submitted that the above liability is lying since financial year 2005-06 and this being an outstanding liability requires a lot of formality and involves a lot of compliance and approval from the State Government for adjustment and, therefore, it remained as outstanding and there being no transaction during the impugned year, it has no tax impact on the assessee.

43. As regards to the hire charges of machinery rolling since long of Rs.5,53,000/-, Id A.R. submitted that the liability is awaiting adjustment



since long and requires a lot of formality and approval of the Government of Odisha and there being no tax impact on the assessee.

44. As regards to addition on guarantee fees to Govt. of Odisha, Id A.R. submitted that there is typographical mistake in mentioning the addition of Rs.7,71,000/- whereas it should be Rs.7,21,000/-. He submitted that the above amount recorded in the books of account payable to Government of Odisha as guarantee fees since 1982, which awaits adjustment against the amount payable/receivable from Govt. of Odisha. Therefore, the above liability remained as outstanding.

45. With regards to addition of Rs.15,21,579/- on account of non deposit of BOT, CPF, Id A.R. submitted that there is a CPF trust in the Corporation to manage the Provident Fund of the regular employees. The contribution of the employees and the matching contribution of the management are managed by the Trust. He submitted that for the financial year 2009-2010 & 2010-2011, there was a short fall of BOT, CPF of Rs.18,89,067.75. Therefore, the Trust made a claim to the management for payment of this amount to balance their expenditure. The above fund has been considered under the head "contribution to statutory short fall payable to BOT, CPF" in the books of account and the amount has been paid/adjusted during the financial year 2012-13 and 2013-14. He also referred to paper book Annexure-5 placed at pages



155 to 159 wherein, the relevant journal vouchers and payment vouchers are placed.

46. As regards to excess provision of leave salary & pension contribution of Rs.32,85,784/-, Id A.R. of the assessee submitted that the addition of Rs.32,85,784/- is a differential cumulative figure of calculation made by the assessee and A.G. at Rs.551.96 and Rs.519.10 lakhs respectively. Ld A.R. referred to comparative calculation sheet for three financial years i.e. 2009-10, 2010-11 and 2011-12 placed at paper book page 160. He submitted that the excess provision for leave salary and pension contribution is the difference between the closing balance of leave salary and pension contribution as on 31.3.2012 as calculated by the assessee and Accountant General.

47. Ld D.R. supported the order of the CIT(A).

48. We heard the rival submissions and perused the orders of lower authorities. We observe that many of the additions are outstanding since long from the Government of Odisha for adjustments. As the assessee is a Government of Orisha Undertaking, it is hopeful that the same will be adjusted. In this case, the assessee follows mercantile system of accounting. According to past business practice, the expenditure spilled over the next year and was debited in the subsequent years and to be examined by the Assessing officer. Therefore, in order to impart



substantial justice, we are of the considered view that one more opportunity is to be provided to the assessee to represent its case with relevant documents filed in the appellate proceedings before the Assessing Officer. We, accordingly, set aside the order of the CIT(A) and remit the entire issues to the file of the Assessing Officer for fresh adjudication. The Assessing Officer is directed to provide reasonable and proper opportunity of hearing to the assessee

49. In the result, appeals filed by the revenue and assessee are allowed for statistical purposes.

Order pronounced on 26/12/2017.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Cuttack; Dated 26/12/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Assessee: Odisha Construction Corpn. Ltd., Unit-8, Gopabandhu Nagar, Nayapali, Bhubaneswar.
 2. The Respondent. ACIT, Corporate Circle-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