

आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.434/CTK/2017

(निर्धारण वर्ष / Assessment Year :2013-2014)

Subhadra Apartment Owners Welfare Society, Flat No.102B, Subhadra Apartment, Nandan Kanan Road, KIIT, Patia, Bhubaneswar-751024	Vs.	ITO, Ward-5(4), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEAS 3848 K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : None

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR

सुनवाई की तारीख / Date of Hearing : **28/12/2017**

घोषणा की तारीख/Date of Pronouncement **29/12/2017**

आदेश / O R D E R

This is an appeal filed by the assessee against the order of the CIT(A)-2, Bhubaneswar, dated 28.7.2017.

2. The AR of the assessee has filed adjournment petition requesting for adjournment of hearing. The reason stated in the adjournment petition was not found to be a plausible one and, therefore, adjournment petition was rejected and the appeal was disposed off considering the materials available on record and the submissions of Id. Departmental Representative.

3. Ground No.2 of the appeal is directed against the order of CIT(A) confirming the addition of Rs.2,58,310/- being 10% of the total expenditure.

4. Brief facts of the case are that the AO observed that the assessee failed to furnish bills and vouchers for the expenses of Rs.25,83,099/-,

therefore, he made an estimated disallowance of 10% of the expenditure claimed at Rs.25,83,099/- and added Rs.2,58,310/- to the income of the assessee. On appeal, before the CIT(A), the assessee submitted that there was a conflict between the two committee of the society and some of the vouchers could not be made available. The CIT(A) observed that it is a settled principle that the claim of expenditure must be backed by appropriate evidence. He also found that the addition made by the AO was reasonable and, hence, he confirmed the action of the AO.

5. In the above background of the case, I am of the considered opinion that the addition of 10% out of the total expenditure claimed came to be made to the income of the assessee as the assessee failed to produce some of the vouchers before the AO which is not in dispute as before the CIT(A) the assessee accepted the same. In view of this, I find no infirmity in the order of CIT(A), which is confirmed and this ground of appeal of the assessee is dismissed.

6. In ground No.3 of appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.12,09,046/- without deducting tax at source u/s.194C of the Act and, therefore, he added the same by invoking provisions of Section 40(a)(ia) of the Act. On appeal, before the CIT(A) the assessee submitted that these receipts were less than Rs.60,00,000/- and, therefore, provisions of Section 194C are not applicable in its case. The CIT(A) did not accept the submission of the assessee on the ground that the assessee is a registered society under Society Registration Act, 1860 and, therefore, it is a "Specified Person"

under sub-clause (g) of clause (i) of explanation u/s.194C of the Act, 1961, which is required to deduct tax at source.

7. In the above background of the case, I find that explanation to section 194C in clause (i)(l)(b) of the Act, provides that for the purpose of this section "Specified Person" shall mean, any person, being an individual or a Hindu undivided family or an association of persons of a body of individuals, if such person is liable to audit of accounts under clause (a)(b) of Section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor. Further Section 44AB(a) at the relevant point of time, provided that every person carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds Rs.60 lakhs get his accounts of such previous year audited by an Accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

Thus, a reading of above sections of the Income Tax Act shows that the person whose gross receipts from business does not exceed Rs.60 lakhs is not required to get his account audited u/s.44AB of the Act. Consequently, such person is not liable to deduct TDS from the payments made u/s.194C of the Act. I find that the AO as well as the CIT(A) has not examined the case of the assessee under the above provisions of the Act and I am of the view that the matter should be restored back to the file of CIT(A) for readjudicating the issue afresh in the light of the discussion

made hereinabove after allowing reasonable and proper opportunity of hearing to the assessee. I order accordingly, This ground of appeal of the assessee is allowed for statistical purposes.

8. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on this 29/12/2017.

**Sd/-
(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 29/12/2017

प्र.कु.मि/PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. Subhadra Apartment Owners Welfare Society,
Flat No.102B, Subhadra Apartment, Nandan
Kanan Road, KIIT, Patia, Bhubaneswar-
751024
2. प्रत्यर्थी / The Respondent-
ITO, Ward-5(4), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**(Senior Private
Secretary)**

आयकर अपीलीय अधिकरण, कटक /
ITAT, Cuttack

सत्यापित प्रति //True Copy//