



**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.507/CTK/2014**  
 Assessment Year : 2010-2011

ACIT, Circle 2(1), Sambalpur	Vs.	M/s. Divakar Engineering Pvt Ltd., 3 <sup>rd</sup> floor, Paradise Chamber, Budharaja, Sambalpur
PAN/GIR No.AACCD 6203 H		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

C.O. No.08/CTK/2015  
**(in ITA No.507/CTK/2014)**  
 Assessment Year : 2010-2011

M/s. Divakar Engineering Pvt Ltd., 3 <sup>rd</sup> floor, Paradise Chamber, Budharaja, Sambalpur	Vs.	ACIT, Circle 2(1), Sambalpur
PAN/GIR No.AACCD 6203 H		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri B.R. Panda, AR  
 Revenue by : Shri Piyush Kolhe, CIT DR

**Date of Hearing : 27 /02/ 2018**  
**Date of Pronouncement : 28/02/ 2018**

**ORDER**

**Per Pavan Kumar Gadale, JM**

The appeal filed by the revenue and cross objection filed by the assessee are directed against the order of the CIT(A)-II, Bhubaneswar dated 15.10.2014 for the assessment year 2010-2011.

2. The revenue has raised the following grounds of appeal;



1. Whether in the facts and circumstances of the case, the Ld. CIT (A) is correct in deleting the excess claim of depreciation when the assessee failed to produce any evidence in support of the fact that the machinery has been let out on hire to some other party.

2. Whether in the facts and circumstances of the case, the Ld. CIT (A) is correct in deleting the unexplained cash credit in the form of share application when the existence, credit worthiness and genuineness of the share holders was not proved.

3. Whether in the facts and circumstances of the case, the Ld. CIT (A) is correct in deleting the difference in sundry creditors balance of Rs. 1,00,000/- which was based on verification of balance when the assessee failed to offer any plausible explanation."

3. The brief facts of the case are that the assessee is a Private Limited company engaged in the execution and erection of contract work. The main activities of the assessee is to execute their works contract as sub-contractor. The assessee is also giving hydra on hire to different companies. The assessee filed its return of income for the assessment year 2010-11 showing total income of Rs.46,70,930/-. The return was processed u/s.143(1) of the act on 25.5.2011 creating a refund of Rs.13,610/-. The case was selected for scrutiny through CASS. Accordingly, notices u/s.143(2) & 142(1) of the Act were issued and duly served on the assessee. The Id A.R. appeared and the case was discussed.

4. During the course of assessment proceedings, the Assessing Officer noticed that the assessee company has claimed higher rate of depreciation on hydra @ 30%. In response to show cause notice, the assessee submitted that the assessee is carrying on the business of



running the hydra on hire. The hydra given on hire to different companies on which TDS is made as per applicable rate during the year. Therefore, depreciation @ 30% is charged on hydra. It was further stated that the hydra comes under the category of heavy motor vehicle and as the assessee is running them on hire, higher rate of depreciation is allowable. The assessee furnished few bills raised by the assessee on HINDALCO Industries Ltd., showing the hiring out of hydra machine, owned by the assessee. On perusal of statement of gross receipt, the Assessing Officer observed that during the F.Y.2009-10, the assessee received gross contractual receipt of Rs.6518125/- from HINDALCO Industries Ltd.. It is nowhere mentioned that a part of gross contractual receipt of Rs.6518125/- includes machine hire charges and the tax has been deducted separately under section-194-I of the I.T. Act,1961. On perusal of form NO.16A and statement of TDS (26AS), it is seen that all the contractual payments received from HINDALCO Industries Ltd. are made subjected to tax u/s.194C only. Had the total contract receipt from HINDALCO Industries Ltd. included the component of machinery hire charges then that payment would have been subjected to TDS u/s.194-1, but in assessee's case it happens not so. Thus, The Assessing Officer concluded that the whole contractual receipt of Rs.65,18,125/- from HINDALCO Industries Ltd. is nothing but receipt against work contract and not the receipt of machinery hire charges. Further, on perusal of accounts, it is rather seen that the assessee taken machineries like crane



/ hydra on hire from other parties for utilization of assessee's own business and the machine hiring charges are debited to the P&L account. The Assessing Officer referred various judicial decisions, wherein, it was held that the vehicles used for transporting assessee's own goods and merchandise higher rate of depreciation @ 30% cannot be allowed under the Income tax act. The Assessing Officer FOUND that the assessee could not file any evidence to show that hydra given on hire and earned income and also the assessee filed details of income received from Hindalco Industries Ltd., on account of hydra given on hire. Therefore, the Assessing Officer was of the opinion that there is excess claim of depreciation on hydra to the tune of Rs.5,02,955/- and disallowed the same and added to the total income of the assessee.

5. Similarly, the Assessing Officer found that the assessee company raised share capital and share premium to the tune of Rs.72,20,000/- from two shareholders as below:

- 1) M/s. Heed Dealers Pvt Ltd. : Rs.72,00,000/-
- 2) Smt. Nisha Suresh Divkar : Rs. 20,000/-

6. In order to verify the identity, creditworthiness and genuineness of transactions related to share holder M/s. Heed Dealers Pvt Ltd., a commission u/s.131(1)(d) of the Act was issued to the Director of Income Tax (Investigation), Kolkata. Regarding Smt. Nisha Suresh Divakar, who is a Director of the assessee company, notice u/s.133(6) was issued on 7.12.2012. Confirmation was received BUT that shareholder M/s. heed



Dealers Pvt Ltd., could not be traced out at the given address. However, Nisha Suresh Divakar submitted the documents in support of share investment in assessee company. The Assessing Officer observed that the assessee company has shown no interest in participation and co-operation in the assessment proceedings in order to prove the genuineness of creditworthiness and guidance of share transaction. Therefore, he Assessing Officer treated the share application money of Rs.72,00,000/- as unexplained cash credit u/s.68 of the Act.

6. Similarly, the Assessing Officer noticed that the assessee had transaction with party M/s. Vaishnavi Road Carrier. The assessee had shown sundry creditor balance against this party at Rs.1,50,000/-. In reply to notice u/s.133(6), M/s. Vashnavi Road Carrier confirmed that the outstanding balance against the assessee company is Rs.2,50,000/-. On being confronted, the assessee could not explain the difference of sundry creditor balance of Rs.1,00,000/-. Therefore, the Assessing Officer treated Rs.1,00,000/- as bogus liability and added the same to the total income of the assessee.

7. On appeal, The CIT(A) deleted the additions made by the Assessing Officer by observing as under:

**Depreciation:**

"I have examined the substance and content of the impugned assessment order, and after careful consideration of the Grounds of Appeal preferred and the additional submissions made by the Appellant, arrive at the following findings/decisions:



- a) In respect of the depreciation claimed @ 30% on hydra machines, it is determined that these machines are of the nature of mobile excavators that fall in the category of plant and machinery named/styled as "JCB, Pocklin, Loader, Hydra, etc.". Even though such equipment/machines are generally classified as an excavators with their main functions being the removing of soil or earth, they also carry out the alternative function of transporting removed soil, rocks, etc. from one site and dumping it at another. These alternative functions in turn involve the discharging of activities like transshipment, loading into another vehicle, etc. Therefore, for the purpose of depreciation, such equipment (hydra machines) are treated as motor lorries eligible for the higher rate of depreciation (@ 30 % w.e.f A.Y. 2006-07).
- b) In the ratio in the case of *M/s Gaylord Constructions vs. ITO* (2008) 175 Taxman (Magz.) 99 (Cochin), which case involved the hiring out of the JCB, the Hon'ble Kerala High Court held that *"Admittedly JCB which is used on road is registered as a motor vehicle. Though it is not used as a transport vehicle, JCB is a four wheeled excavator-cum-transport vehicle, JCB is a four wheeled excavator-cum-transport vehicle used for excavation of earth and movement of the same, though for limited distances. Even though the purpose of Motor Lorry which is a heavy motor vehicle used for transport of goods from place to place, cannot be served by a JCB, we are of the view that the expression "motor<sup>1</sup> lorry" covered by the above entry of the Income Tax Rules providing for higher rate of depreciation<sup>^</sup> has a wide meaning. JCB though basically is used for excavation of soil, it is a heavy vehicle also used for transport of excavated soil, sand or other goods, for a limited distance and the machine is also used to level and shape the land. Therefore, it serves as transport equipment as well and so long as it is registered under the Motor Vehicles Act, it is a motor vehicle within the meaning of the said term as held by the Supreme Court in the decision above referred. We therefore feel that in a larger sense JCB answers the description of Motor Lorry within the meaning of the entry referred above contained in the IT Rules:*
- c) The Hon'ble Court in the ratio cited above also referred to the decision of the Hon'ble Gujarat High Court in the case of *M/s Gujco Carriers Limited vs. CIT* [2002] 122 Taxman 206 in its support where the facts included the hiring out of mobile cranes and forklifts. The Hon'ble Kerala High Court held thus *"The argument of Senior Standing Counsel that the case decided by the Gujarat High Court is on different facts, appears to be true because the crane in that case is mounted on the truck and the truck is admittedly entitled to depreciation at 40%. When the crane is mounted on the truck, the crane becomes mobile and when both are let out on hire as a mobile crane, the value of the crane also becomes part of the motor lorry entitling for depreciation on the combined value. Even though the facts in the Gujarat decision are different, we still feel the principle applied by the Gujarat High Court is applicable in this case also, because in this case JCB itself is functionally and operationally used as motor vehicle for transport of goods within limited distances".*



d) It is pertinent to note that in both the ratios above, the precedent ratio of the Hon'ble Supreme Court of India in the case of *Bose Abraham vs. State of Kerala and Another* cited in [2001] 9 KTR 366 (SC) was applied, the relevant portion of which ratio reads: "*We hold that the excavators and road rollers are motor vehicles for the purpose of the Motor Vehicles Act and they are registered under that Act..... Merely because a motor vehicle is put to a specific use such as being confined to an enclosed premises, will not render the same to be a different kind of vehicle*".

e) It is therefore proposed to follow the above judicial precedents and hold the hydra machines employed by the Appellant in its business to be classified as "*motor vehicles*" akin to motor lorries, taxis and trucks as stated in the table prescribing the depreciation rates.

f) The higher rate of depreciation is presumably claimed on such vehicles that are hired out owing to, *inter alia*, more intense and frequent use and the consequent higher possibility of wear and tear. Therefore, the contentious actual issue on whether the above hydra machines have been used in the business of hiring out or whether these have been put to use in the Appellant's business needs to be resolved, as the higher rate of depreciation is allowable only in the event of the former situation being true. The AO has in support of his stand pointed out that the TDS on its payments totalling Rs. 65,18,125 made to the Appellant were effected by M/s Hindalco entirely u/s 194C and not u/s 194-1, implying that all of the impugned payments received by the Appellant were contract receipts and were devoid of any machinery hire charge components (on which TDS u/s 194-1 was applicable). The Appellant has in turn contended that TDS on motor vehicle hire charges are entirely covered u/s 194C and not u/s 194-1 of the Act.

g) It may be recalled that the definition of "work" in Explanation (iii) to Section 194C of the Act includes: (i) Advertising; (ii) Broadcasting and telecasting including production of programmes for such broadcasting or telecasting; (iii) *Carriage of goods and passengers by any mode of transport other than railways*; and (iv) Catering

h) Likewise, the operative part of Section 194-1 of the Act reads as follows:

*"Any person, not being an individual or a Hindu undivided family, who is responsible for paying to [a resident] any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, [deduct income-tax thereon at the rate of:*

- (a) ten per cent for the use of any machinery or plant or equipment;
- (b) ...



The Explanation to the above section defines "rent" to mean any payment, by whatever name called, under any *lease, sub-lease, tenancy or any other agreement or arrangement* for the use of (either separately or together) the machinery or plant or equipment above. **Most importantly, the above definition of rent does not provide any item for vehicle hire charges.**

- i) It can therefore be seen that the dialectic on the applicability of Sections 194C and 194-1 under which TDS is to be effected will be resolved based on whether the owner of the impugned vehicle has used it to carry the goods (or passengers) of another person or entity, which will mean that the control of the vehicle, including driver, maintenance, fuel expenses, etc. will primarily rest with such owner, or whether he has handed over the vehicle - lock, stock and barrel - to such end user thereby handing over effective control in return for regular, fixed contractual hire charges. This position is upheld in the various judicial pronouncement-precedents, that have decided in the main that the section under which TDS on hire charges of motor vehicles can be effected depends upon the details of the contract between the vehicle owner and its user, the decisive factor is being the terms and conditions of the contract agreement. Some typical broad situations, depending on the facts of each case, could be:
- a. TDS on hired vehicle for a contracted fixed amount is generally covered under section 194C and not section 1941;
- b. Whenever a motor vehicle is booked for a specific job such as a contract to ferry employees from home to office and back, the vehicle is considered to be not hired as *such*, and TDS is therefore liable to be deducted u/s 194C and not under section 1941;
- c. Whenever the control of vehicle remains with the owner of the vehicle then it usually means that vehicle is on a specific job and not hired as *such*. TDS applicability must therefore be under 194C;
- d. If running and maintenance expenses like petrol, repair, etc has been incurred by the person who has hired the vehicle then we can say that it should be covered under section 194-1.
- j) In the instant case, the AO has not shown that the hydra machine has been *leased out* to M/s Hindalco, nor has he proved or contended that the hire charges received fell under the category of 'rent' as defined u/s 194-1 of the Act. This means that *prima facie*, the amounts received from M/s Hindalco were covered (in the matter of tax withholding/deductibility) u/s 194-C of the Act. The AO has not tried to disprove this position through meaningful debate on the pros and cons of the applicability of either section and/or by showing how the hire charges received from M/s Hindalco were of the nature of *lease rentals*, indicating his proclivity to



impose authority arbitrarily and irresponsibly by decree in violation of fairness and disregardful of law.

Further, the AO has not taken the necessary steps and pains to investigate the matter further to determine whether the running and maintenance expenses like petrol, repair, etc: were incurred by the person who has hired the vehicle (being M/s Hindalco), nor has He been able to confirm that the control of the hydra machines had been transferred to M/s Hindalco. No factual infirmities on such factors/metrics have been determined by the AO. Instead, in a leap more of faith and imagination than based on ground realities, he has surmised and conjectured wrongly based on the mere fact that Tax Deductions at Source were made u/s 194-C to hold that all the receipts from M/s Hindalco were of the nature of work contracts. He has quoted judicial ratios irrelevantly and irreverently, without showing how they relate to the facts of the case on hand. All of these show prejudicial disinclination to apply the law as it stands and in the most charitable interpretation, lack of reading or understanding of the statutory positions (especially the facts that hydra machines are classified as motor vehicles and that hire charges generally fall under the TDS applicability-ambit of Section 194-C, unless specifically shown otherwise). The AO clearly needed to exhibit greater application of mind as well as assiduousness in his carrying out investigations and ferreting out evidences of satisfactory legal worth.

l) Further, the fact that the higher claim of depreciation @ 30%\_has\_been accepted in the instant case for the preceding A.Y. 2009-10 was conveniently ignored or brushed aside.

**m) In view of all the above, the addition/disallowance made by the AO of Rs. 5,02,955 to the assessed taxable income of the Appellant on the count that depreciation has been claimed at an unlawfully higher rate is held to be wrong and bad in law, and is hence deleted."**

**Share Application:**

n) On the following issue of the amount of Rs. 72,00,000 (being share application moneys introduced by M/s Heed) added back by the AO to the assessed taxable income of the Appellant as being sourced from unexplained sources, it is seen that the AO has taken this decision based on 2 factors held by him as conclusive evidences: a) the report of the Inspector of Income-tax of the Kolkata office of the D1T (Inv.) that apparently did not discover the company M/s Heed at the address provided by the Appellant; and b) the nonappearance of the Managing Director of M/s Heed before the AO and the temporary inability of the appellant. Although these by themselves do not prove the non-genuineness of the credits being the share application moneys or of the creditors, they offer some pointers towards carrying out further inquiries/investigations.



o) Brief inquiries carried out by this office showed that the two directors of the Appellant company, namely Shri. Suresh Divakar and Ms. Nisha Suresh are now the directors of M/s Heed Dealers Private Limited also. The stated address of the company is c/o Omkar Banerjee, H. L. Sarkar Road, Bansdronei Park, Kolkata-700070. The Appellant has provided a copy of the Assessment Order of M/s Heed for the A.Y. 2007-08, which order is dated 30.03.2009 and passed u/s 143(3) by the Income-tax Officer, and in which the return of income of M/s Heed has been accepted. The order also states that during the F.Y. 2006-07, M/s Heed had shown issued, subscribed and paid up share capital of Rs. 29,70,000 and share premium amounts totalling Rs. 5,45,30,000. The Appellant has also produced copies of the audited statements of accounts of Heed to show that that company (Heed) was a genuinely extant and functional company that possessed the financial wherewithal and creditworthiness to source the impugned share application moneys of Rs. 72,00,000 to the Appellant. Further, the copy of the assessment order for the following A.Y. 2011-12 in the instant case of the Appellant was produced by the Appellant in which further amounts totalling Rs. 46 crores received by the Appellant as Share Application Moneys from M/s Heed were inquired into and accepted by the AO. All of these show that as per the details available to the >// Department, M/s Heed has been an Income-tax assessee for a few years now and also had certified the financial resources to fund the impugned Share Application Moneys totalling to Rs. 72,00,000 in the impugned F.Y. 2009-10 to the Appellant and that such funding was reported in the statements of accounts and returns of income of M/s Heed.

**p) Under these circumstances, the actions of the AO in assessing the impugned amount of Rs. 72,00,000 to tax u/s 68 of the Act as the Appellant's income from unexplained sources appear factually unfounded, hurried and premature. The said addition is directed to be deleted, and the appeal on this count is allowed."**

**Difference of Rs.1,00,000/-**

v) The .difference of Rs. 1,00,000 in the balance of sundry creditors has already been stated [\eafiier](#) to have been inexplicably added back by the AO. The Appellant<sup>5</sup> has moreover pointed out that a bill raised for a higher amount may be later settled for a lower amount, which happens to be the case in this instance. M/s Vaishnavi Road Carrier had raised a bill of Rs. 2,50,000 on the Appellant for transporting cranes, which -was later, passed and approved for Rs. 1,50,000. The only grounds of the AO appear to be the\* computed 'schoolboy-level' difference above and his unsupported allegation that the Appellant did not provide any supporting details. The AO does not appear to have made any efforts towards determining the true facts behind the said matter, nor does he appear to have considered the accounting treatment of the amounts involved or burdened himself with cardinal elements of law such as the burden of proof or the quality of evidence. **In consequence, the addition and**



**assessment of Rs. 1,00,000 made to the Appellant's taxable income is deleted and the appeal is allowed on this count."**

8. Before us, Id D.R. submitted that the CIT(A) has erred in deleting the excess claim of depreciation irrespective of the fact that the assessee has not produced any evidence. The D.R.'s contention is that the assessee has not disclosed with evidence that hydro was used for the purpose of hiring and depreciation was claimed at higher side.

As regards to deletion of share application money of Rs.72,00,000/- , Id D.R. submitted that the shareholders did not respond to the enquiries and notices issued by the Assessing Officer. Therefore, the Assessing Officer has no alternate but to make the addition. Whereas, Id CIT(A) having accepting the submissions of the assessee and also materials filed by the assessee supporting the evidence and enquiries conducted by the office, held that the assessee has complied the pre-requisite conditions of section 68 and, therefore, deleted the addition, which is not in accordance with the provisions of law and also new evidences were filed.

As regards to deletion of Rs.1,00,000/- being the difference of balance of sundry creditors, Id D.R. submitted that in the assessment proceedings, it was found that the assessee had transactions with M/s. Vaishnavi Road Carriers and the assessee explained that as against the bill of Rs.2,50,000/-, M/s. Vaishnavi Road Carriers approved Rs.1,50,000/-. When the Assessing Officer has issued notice u/s.133(6), the party has referred that the outstanding balance against the assessee



is Rs.2,50,000/-. The Assessing Officer has confronted the same to the assessee and no explanation was provided by the assessee and, therefore, the Assessing Officer was justified in making the addition being the difference of Rs.1,00,000/-. Whereas Id CIT(A) has deleted the addition without considering the fact that no evidence was filed by the assessee.

9. Ld A.R. with regard to depreciation submitted that the vehicle was used exclusively for the purpose of hiring by HINDALCO Industries Ltd., and the assessee has been raising bills. Whereas, the Assessing Officer has made distinction in respect of payment and applicability of TDS provisions under section 194-I and 194-C and the fact that the assessee has perpetually into hiring business of Hydra from the earlier years. Ld A.R. further submitted that in the earlier years, revenue has accepted its claim and there is no disallowance.

With regard to deletion of share application money, Id A.R. submitted that the assessee has filed information in the assessment proceedings and the Assessing Officer has not considered the same and, therefore, the same were filed before the CIT(A).

As regards deletion of Rs.1,00,000/-, Id A.R. supported the order of the CIT(A).

10. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. On the claim of



depreciation on Hydro, we found from the assessment order that the Assessing Officer has disallowed the depreciation treating it as excess claim whereas the CIT(A) in the appellate proceeding has dealt on this disputed issue on the findings of the Assessing Officer on the submission of the assessee and provisions of section 194-C and 194-I and other judicial decisions and also made observation that in the earlier year i.e. A.Y. 2009-2010, the assessing Officer has accepted the depreciation at 30%, which was overlooked in this assessment year. On A query from the Bench to Id D.R. whether the Revenue is in appeal on this issue, the explanations are not satisfactory and assessee being a going concern, it has been following consistently for claim of depreciation, which has been accepted. Accordingly, we are not inclined to interfere with the order of the CIT(A) and uphold the findings of the CIT(A) on this ground.

So far as deletion of Rs.72,00,000/- is concerned, the contention of Id A.R. that the information was filed before the Assessing Officer without any cogent evidence. On perusal of the CIT(A)'s order, we find that at page 13 para -O, the CIT(A) has dealt on this issue as under:

"Brief inquiries carried out by this office showed that the two directors of the Appellant company, namely Shri. Suresh Divakar and Ms. Nisha Suresh are now the directors of M/s Heed Dealers Private Limited also. The stated address of the company is c/o Omkar Banerjee, H. L. Sarkar Road, Bansdrani Park, Kolkata-700070. The Appellant has provided a copy of the Assessment Order of M/s Heed for the A.Y. 2007-08, which order is dated 30.03.2009 and passed u/s 143(3) by the Income-tax Officer, and in which the return of income of M/s Heed has been accepted. The order also states that during the F.Y. 2006-07, M/s Heed had shown issued, subscribed and paid up share capital of Rs. 29,70,000 and share premium amounts totalling Rs. 5,45,30,000. The Appellant has also produced copies of the audited statements of accounts of Heed to show that that



company (Heed) was a genuinely extant and functional company that possessed the financial wherewithal and creditworthiness to source the impugned share application moneys of Rs. 72,00,000 to the Appellant. Further, the copy of the assessment order for the following A.Y. 2011-12 in the instant case of the Appellant was produced by the Appellant in which further amounts totalling Rs. 46 crores received by the Appellant as Share Application Moneys from M/s Heed were inquired into and accepted by the AO. All of these show that as per the details available to the >// Department, M/s Heed has been an Income-tax assessee for a few years now and also had certified the financial resources to fund the impugned Share Application Moneys totalling to Rs. 72,00,000 in the impugned F.Y. 2009-10 to the Appellant and that such funding was reported in the statements of accounts and returns of income of M/s Heed."

Considering the overall factual aspects, we find that the assessee has submitted the information in the appellate proceedings and the CIT(A) has also made enquiries. The CIT(A) has not called for comments of the Assessing Officer or any remand report on the evidences filed in the course of appellate proceedings. Therefore, we are of the considered opinion that the Assessing officer was deprived of to verify and examine the genuineness and creditworthiness of transactions of share application money, and , accordingly, we remit this disputed issue to the file of the Assessing officer to verify and examine the evidence and pass order as per law.

The third disputed issue is that the CIT(A) has erred in deleting the difference of sundry credit balance of Rs.1,00,000/- based on the submission of the assessee. We find that the CIT(A) has dealt on this issue but there is no evidence placed either in the appellate proceedings or during assessment proceedings by the assessee except mentioning that M/s. Vaishnavi Road Carriers has raised bill of higher amount and it



was settled for a lower amount. We find that there should be supporting reasons for reducing the bill and the confirmation of the third party in the assessment proceedings regarding the difference. Accordingly, we set aside the order of the CIT(A) on this issue and remit this back to the file of the Assessing Officer to call for information and verify the same and pass the order as per law.

11. The C.O. filed by the assessee is barred by limitation by 25 days. After considering the condonation petition, we are convinced that the assessee was prevented by sufficient cause in filing the cross objection and filed delayed by 25 days. Hence, we condone the delay and admit the cross objection for our adjudication.

12. We find that the cross objection is in support of the order of the CIT(A). In view of our decision in the revenue's appeal, the C.O. filed by the assessee is rendered infructuous and hence, dismissed.

13. In the result, appeal filed by the revenue is partly allowed for statistical purposes and cross objection filed by the assessee is dismissed as infructuous.

Order pronounced on 28 /02/2018.

SD/-

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

SD/-

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

Cuttack; Dated 28 /02/2018  
B.K.Parida, SPS



**Copy of the Order forwarded to :**

1. The revenue: ACIT, Circle 2(1), Sambalpur
2. The respondent/assessee: M/s. Divakar Engineering Pvt Ltd., 3<sup>rd</sup> floor, Paradise Chamber, Budharaja, Sambalpur
3. The CIT(A)-II, Bhubaneswar
4. Pr.CIT-
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
ITAT, Cuttack