



**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.21/CTK/2017**  
Assessment Year : 2009-2010

M/s Odisha State Police Housing & Welfare Corporation Ltd., Janpath, Bhoi Nagar, Vani Vihar, Bhubaneswar.	Vs.	ACIT, Corporate Circle-1(2), Bhubaneswar
PAN/GIR No.AABCT 7853 N		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri D.K.Mohanty, AR  
Revenue by : Shri Piyush Kohle, CIT DR

**Date of Hearing : 20/03/ 2018**  
**Date of Pronouncement : 20/03/ 2018**

**ORDER**

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

This is an appeal filed by the assessee against the order of the CIT(A)-1, Bhubaneswar dated 31.10.2016 for the assessment year 2009-2010.

2. The assessee has raised the following grounds of appeal:

" 1. For that the order of assessment dated 30.07.2015 as well as the order of the Ld. CIT (A)-I, Bhubaneswar dated 31.10.2016 are void abinitio, against the natural justice, unjustified, erroneous, arbitrary, contrary to facts, bad in law, without jurisdiction and/or in excess of jurisdiction and legally untenable.

2. For that on the facts and peculiar circumstances of the case when the accounts of the assessee company have been accepted in its entirety & having not been rejected, there is no scope for the Ld. A.O. to estimate any income to the work in progress disclosed and

therefore the order of assessment making an addition of Rs. 4,95,96,982/- estimating revenue recognition at 8.56 % of the work in progress are abinitio void, illegal and not sustainable on fact and law. Hence the addition to the extent of Rs. 4,95,96,982/- are liable to be deleted.

3. For that when it was explained that the assessee company are incurring loss on the income from operation i.e., contract works, and therefore the profit estimated @ 8.5% on the work in progress to be recognized as revenue during the impugned year at Rs. 4,95,96,982/-are contrary to the facts and are liable to be deleted.

4. For that when the assessee company is following the method of accountancy consistently and on scrutiny, the assessment for various years have been completed accepting the accounts and the method of accountancy, the present revenue recognition at Rs. 4,95,96,982/-on estimating the profit @ 8.56% on the work in progress on the facts and peculiar circumstances of the case are not only erroneous but also ex facie illegal and liable to be set aside.

5. For that in absence of any finding of manipulation to the valuation of work in progress and/or any infirmity in the accounts, any estimation to the work in progress are not only erroneous but also illegal and liable to be deleted.

6. For that when the method of accounting followed are consistent, there is no change in the method and the income having been deduced properly from the books of accounts of the assessee statutorily audited, the estimated addition to the work in progress are nothing but arbitrary exercise of power, ex facie illegal and are liable to be deleted.

7. For that charging of interest 234B to the tune of Rs. 1,27,84,460/- is illegal, excessive and liable to be deleted/recomputed."

3. The facts in brief are that the assessee company is a 100% Govt owned Corporation, engaged in the business of construction of residential building for Police, vigilance and other Government Departments in odisha. The Assessing Officer found that in the profit and loss account, the assessee has credited Rs.57,94,03,997/- towards work-in-progress. The Assessing Officer applied the Accounting Standard-7 in the case of

the assessee and estimated the profit on work-in-progress at 8.56%. Accordingly, the Assessing Officer made an addition of Rs.4,95,96,982/-to the total income of the assessee.

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

5. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. We find that in the relevant assessment year, the Commissioner of Income Tax had passed order u/s.263 of the Act to revise the order of assessment u/s 143(3) of the Act, inter alia, in respect of profit element embedded in the work -in-progress was to be into account as per AS-7 on construction was not added by the Assessing Officer. Against the said order, the assessee had come in appeal before the Tribunal and the Tribunal vide its order dated 7.6.2017 in ITA No.223/CTK/2014 for the assessment year 2009-2010 has quashed the order u/s.263, by observing as under:

" 6. We find that in the instant case, it is not in dispute that during the course of assessment, the Assessing Officer called for details of closing work-in-progress, which was furnished by the assessee and was also examined by the Assessing Officer. It is not the case of the Id Commissioner of Income Tax that the Assessing Officer has not examined the valuation of closing work in progress. That being so, in our considered view, the Id Commissioner of Income Tax could have interfered with the order of the Assessing Officer u/s.263 only when it finds that the conclusion of the Assessing Officer is either erroneous in fact or erroneous in law. Without returning a clear finding that the order of the Assessing Officer was erroneous, the Id Commissioner of Income Tax could not interfere with such an order u/s.263 for making a fishing or roving enquiry. In this connection, it is observed that the Hon'ble Delhi High Court in the case of **INCOME TAX OFFICER vs. DG HOUSING PROJECTS LTD(2012) 343 ITR 329 (Del)** has held as under:

"20. In the present case, the findings recorded by the Tribunal are correct as the Commissioner of Income-tax has not gone into and has not given any reason for observing that the order passed by the Assessing Officer was erroneous. The finding recorded by the Commissioner of Income-tax is that "order passed by the Assessing Officer may be erroneous". The Commissioner of Income-tax had doubts about the valuation and sale consideration received but the Commissioner of Income-tax should have examined the said aspect himself and given a finding that the order passed by the Assessing Officer was erroneous. He came to the conclusion and finding that the Assessing Officer had examined the said aspect and accepted the respondent's computation figures but he had reservations. The Commissioner of Income-tax in the order has recorded that the consideration receivable was examined by the Assessing Officer but was not properly examined and, therefore, the assessment order is "erroneous". The said finding will be correct, if the Commissioner of Income-tax had examined and verified the said transaction himself and given a finding on the merits. As held above, a distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry ; as lack of enquiry by itself renders the order being erroneous and prejudicial to the interests of the Revenue and cases where the Assessing Officer conducts enquiry but finding recorded is erroneous and which is also prejudicial to the interests of the Revenue. In latter cases, the Commissioner of Income-tax has to examine the order of the Assessing Officer on the merits or the decision taken by the Assessing Officer on the merits and then hold and form an opinion on the merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. In the second set of cases, the Commissioner of Income-tax cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not."

7. In the instant case, we find that the Id Commissioner of Income Tax has simply observed that the submission of the assessee needs verification. As per the provisions of section 263, the Id Commissioner of Income Tax could have either himself verified the submission of the assessee or could have got the submission of the assessee verified by other agencies and thereafter if he would have come to the conclusion that the order passed by the Assessing Officer in respect of the issue was actually erroneous then only he could have interfered with the order of the Assessing Officer. In the circumstances, we find that the order of the Id Commissioner of Income Tax in respect of this issue is bad in law and untenable. We, therefore, set aside the order of the Commissioner of Income Tax in respect of this issue."

6. As the Tribunal quashed the order of the CIT U/S.263 of the Act dated 7.6.2017 on the issue of estimation of net profit, therefore, the order passed by the Assessing Officer in pursuance to the order of the CIT u/s. .263 of the Act does not survive. Therefore, we set aside the order of the CIT(A) and delete the addition of Rs.4,95,96,982/-.

7. In the result, appeal of the assessee is allowed.

Order pronounced on 20/03/2018.

Sd/-

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

sd/-

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

Cuttack; Dated 20/03/2018

B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : M/s Odisha State Police Housing & Welfare Corporation Ltd., Janpath, Bhoi Nagar, Vani Vihar, 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**