



**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. 518/CTK/2017**  
Assessment Year : 2007-2008

Pradeep Singh Grewal, At: Padmapur, Jashipur, Dist: Mayurbhanj	Vs.	ACIT, Balasore Range, Balasore.
PAN/GIR No.AJSPG 0282 H		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri K.K.Bal, AR  
Revenue by : Shri A. Tigga, DR

**Date of Hearing : 26/04/ 2018**  
**Date of Pronouncement : 26 /04/ 2018**

**ORDER**

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

This is an appeal filed by the assessee against the order of the CIT(A)-, Cuttack dated 20.1.2015 for the assessment year 2007-2008.

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

"1. For that the order of the forum below is arbitrary, illegal and unjust in the facts and circumstances of the case and liable to be quashed.

2. For that Ld A.O erred in completed the assessment without issuance of statutory notice u/s 143(2) of the income tax Act. Therefore the assessment is illegal and liable to be quashed.

3. For that Ld. Assessing office erred in disallowing the expenses towards transportation charges paid at Rs.83,64,196/- by applying provisions of Sec 40(a)(ia), on which tax is not deductible and to which provisions of sec 194C is not applicable in absence of any contract between the Assessee and the transporter. Therefore the addition is highly arbitrary and liable to be deleted.



4. For that Ld. Assessing officer erred in completing the assessment u/s 263/144 of the Income tax Act without serving a notice calling upon the Assessee to show cause, why the assessment should not be completed to the best of judgment. Therefore the assessment have been completed violating the principles of natural justice and liable to be quashed.

5. For that Ld. Assessing officer erred in completing the assessment u/s 144, by making addition over and above the income assessed u/s.143(3) of the I.T.Act, which has lost its validity after it was declared erroneous by the CIT and set aside for fresh adjudication. Therefore, the assessment is non-application of mind and liable to be quashed."

3. Brief facts of the case are that the assessee is a proprietor of M/s. J.B. Roadways. During the course of assessment proceedings, the Assessing Officer based on the financial statement found that the assessee has claimed transportation charges of Rs.83,64,196/- debited in the profit and loss account. When the information was called for, the assessee could not substantiate the claim by providing details of transactions, address of the persons to whom the payments were made. According to the Assessing Officer, the assessee was required to deduct TDS at the prescribed rate under the provisions of section 194C applicable in respect of transportation charges and also as per Tax Audit Report, the assessee has not deducted TDS from such persons who had supplied their vehicles on hire to the assessee. The Assessing Officer further relied on the provisions of section 40(a)(ia) and formed an opinion that the provisions of section 194C are attracted and passed order under section 143(3) on 4.9.2009 without considering the facts of non-deduction of TDS.



4. Subsequently, the CIT on perusal of the assessment records found that the assessment order is erroneous and prejudicial to the interests of the revenue in respect of non-deduction of TDS and issued a show cause notice u/s.263 of the Act to the assessee. Finally, the CIT set aside the assessment order for fresh adjudication.

5. Pursuant to the direction of the CIT u/s.263, the Assessing Officer completed the assessment u/s.263/144 of the Act as the assessee failed to appear before him despite giving various opportunities of hearing. The Assessing Officer completed the assessment determining the total income at Rs.91,77,700/-, inter alia, disallowing transportation charges in contravention of section 40(a)(ia) of the Act of Rs.83,64,196/-.

6. On appeal, the CIT(A) dismissed the appeal of the assessee as there was no compliance from the side of the assessee.

7. Before us, Id A.R. of the assessee submitted that the assessee has all the documents in his possession to produce before the Assessing Officer as well as the CIT(A) and in the interest of substantial justice, one more opportunity should be granted to the assessee to present its case.

8. Ld D.R. vehemently opposed the prayer of Id A.R. of the assessee.

9. After considering the rival submissions and perusing the materials on record, we find that the assessee could not appear before the Assessing Officer as well as the CIT(A). On perusal of the order of the CIT(A), we find that the CIT(A) has observed that the assessee did not



appear before the Assessing Officer as well as before him or file the written submission in spite of several opportunities allowed to the assessee. We find that the CIT(A) has mentioned three dates of hearing viz; 18.11.2014, 17.12.2014 and 20.1.2015 but there is no mention in the order about issuance of notice to the assessee for the dates of hearing fixed and their service on the assessee. In absence of the same, in our considered view, the CIT(A) was not justified in dismissing the appeal of the assessee for non-appearance of the assessee on the dates of hearing. Therefore, in order to render substantial justice, we set aside the order of the CIT(A) and remand the matter back to his file for fresh adjudication of the appeal of the assessee after allowing reasonable opportunity of hearing. The assessee is directed to appear before the CIT(A) and render full co-operation by filing all the details as and when called upon to do so.

10. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 26 /04/2018.

Sd/-

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

sd/-

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

Cuttack; Dated 26 /04/2018  
B.K.Parida, SPS



**Copy of the Order forwarded to :**

1. The Appellant : Pradeep Singh Grewal, At:  
Padmapur, Jashipur, Dist: Mayurbhanj
2. The Respondent. ACIT, Balasore Range,  
Balasore
3. The CIT(A)- Cuttack
4. Pr.CIT- Cuttack
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**