

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM
ITA No.512/CTK/2017**

(निर्धारण वर्ष / Assessment Year :2007-2008)

Omkar Steels Private Limited Kunjharia, Bijabahal, Sundargarh,	Vs.	ACIT, Rourkela Circle, Rourkela
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACO 8886 H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Ambika Prasad Mohanty, AR
राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR

सुनवाई की तारीख / Date of Hearing : **03/05/2018**

घोषणा की तारीख/Date of Pronouncement **17/05/2018**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The assessee has filed this appeal against the order of CIT(A), Sambalpur, dated 28.09.2017, passed in I.T.Appeal No.0268/10-11, u/s.144/147/250 of the I.T.Act for the assessment year 2007-2008.

2. As per the office note, there is a delay of 10 days in filing the present appeal. The assessee has filed an application for condonation of delay along with an affidavit explaining the reasons for delay. Considering the application of assessee and looking to the facts and circumstances of the case and Id. DR has no serious objection, we allow the application and condone the delay of 10 days in filing the present appeal and the appeal is heard finally.

3. The sole substantive ground raised by the assessee is that the CIT(A) is not justified in upholding the rejection of books of accounts

u/s.145(3) of the Act and also restricting the estimation made by the AO to 6% of the turnover without considering the past profit of the assessee.

4. Brief facts of the case are that the assessee is engaged in the manufacturing of steel and runs its business at Kumjharia, Bijabahal, Sundergarh and filed the return of income electronically on 15.11.2007 for assessment year 2013-2014 declaring total income of Rs.Nil. Subsequently, the return was processed u/s.143(1) of the Act and the case was selected for scrutiny and notice u/s.143(2) and 142(1) of the Act along with questionnaire was issued to the assessee. In compliance the Id. AR of the assessee appeared and submitted the relevant details. The AO found that the assessee has disclosed sundry creditors to the extent of 2,65,72,224/- and to examine the genuineness of sundry creditors, the AO reopened the assessment u/s.147 of the Act and issued notice u/s.148 of the Act on 22.05.2009. In response to that there is no compliance by the assessee and the AO also issued notice u/s.142(1) of the Act however, there was no compliance on the part of assessee. Therefore, the AO found that there is no compliance by the authorized representative of the assessee. Even the audited report was not available during the course of assessment proceedings. On 20.12.2010 the assessee furnished the creditors address at the office of the IT Department and against office letter was issued on 24.11.2010 to the assessee to furnish the details and remain silent till the date of completion of assessment. The AO on verifying the date available on the books of accounts and also relied on the judicial decision and is of the opinion that

the sundry creditors to the extent of Rs.2,65,72,224/- could not be examined because the communicable address of the creditor was furnished before the reception counter only on 20.12.2010 and due to time bound assessment proceedings, the genuineness of the creditor could not be established. Therefore, the AO issued notice u/s.133(6) to the creditors. Since the AO found that there is no cooperation from the assessee and also no details were filed, therefore, the AO applying the provisions of Section 145A has estimated the net profit on turnover and made addition of Rs.66,65,929/- and assessed the income at Rs.67,23,860/- and passed order u/s.31.12.2010.

5. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). Ld. CIT(A) having considered the grounds has dismissed the ground of rejection of books of accounts as the assessee has not complied the notice and also the information was not submitted. In respect of estimation of 8% of the turnover Ld. CIT(A) found that it is on higher side, therefore, restricted the estimation to 6% of the turnover and partly allowed the appeal of the assessee.

6. Aggrieved by the order of CIT(A), the assessee has filed further appeal before the Tribunal.

7. Ld. AR submitted that the CIT(A) has erred in restricting the addition @ 6% and estimating the profit at 6% which is not practicable in the industry and also assessee's earlier record does not reflect the higher percentage, therefore, prayed for setting aside the order of the CIT(A) and

also action of upholding rejection of books of account u/s.145 of the Act is bad in law.

8. Ld.DR relied on the order of lower authorities.

9. We have heard rival submissions and perused the material available on record. Prima facie, Id. AR's contention that the CIT(A) has erred in upholding the rejection of books of account u/s.145(3) of the Act and also estimating the income of 6% is on higher side. On the disputed issue of rejection books of accounts u/s.145(3) of the Act and the books of accounts were not produced, we found that there is no compliance by the assessee, therefore, the AO has no other alternative but to reject the books of accounts u/s.145 of the Act, which in our opinion, the CIT(A) has passed a reasoned order and accordingly, we uphold the same and dismiss this ground of appeal of the assessee.

10. On the second ground of estimating the net profit at 6%, we found that due to time barring the AO passed the best judgment assessment and there is no reply received from the creditors u/s.133(6) of the Act and estimated 8% however, the CIT(A) has restricted to 6%. Ld. AR submitted that the average percentage of around 1 to 2% and also for earlier years the assessee has been disclosing the net profit at .64% and suffering a loss and also company is not in a sound position and is in virtually closure. The AR's contention is that the estimation of 6% is on higher side. We find that this submission of Id. AR cannot be overlooked. The industry average has to be considered and the AO has to consider the industry business and calculate the addition. We found that the assessee

has not cooperated in the assessment proceedings and also the CIT(A) has restricted to 6%, we considering the overall aspects and also the present contention of the assessee, we direct the AO to restrict the addition to the extent of 4% which in our opinion, is reasonable. Accordingly, we partly allow this ground of appeal of assessee.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 17/05/2018.

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 17/05/2018

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack