

**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**

**आयकर अपील सं./ITA No.120/CTK/2017**

**(निर्धारण वर्ष / Assessment Year : 2013-2014)**

VIJAY LAL C/o-Vijay Motors-Mahindra Division, Plot No.27, Near Chintamaniswar Square & ICICI Bank, Cuttack Road, Bhubaneswar-751006	Vs.	DCIT, Bhubaneswar Circle-2(1),
स्थायी लेखा सं./PAN No. : <b>AAEPL 8429 N</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri P.K.Mishra, AR  
राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, CITDR  
सुनवाई की तारीख / Date of Hearing : **08/03/2018**  
घोषणा की तारीख/Date of Pronouncement **20/03/2018**

**आदेश / O R D E R**

**Per Shri Pavan Kumar Gadale, JM:**

This is an appeal filed by the assessee against the order of the CIT(A)-1, Bhubaneswar, dated 23.12.2016 for the assessment year 2013-2014.

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

1. *That the learned Assessing Officer has erred both in law and in fact by making an addition of Rs.2,67,73,661/- to the returned total income as loss of stock by fire as unexplained expenses, which is contrary to the evidence on record, rules and facts, hence the same is liable to be deleted.*
2. *That the learned CIT (A) has erred both in law and in fact by confirming the addition of Rs.2,67,73,661/- to the returned total income as loss of stock by fire being unexplained expenses, which is contrary to the evidence on record, rules and facts, hence the same is liable to be deleted.*
3. *That the learned Assessing Officer has erred both in law and in fact by making an addition of Rs.4,32,692/- to the returned total income as goods delivery expenses being unexplained*

*expenses, which is contrary to the evidence on record, rules and facts, hence the same is liable to be deleted.*

4. *That the learned CIT (A) has erred both in law and in fact by confirming the addition of Rs.4,32,692/- to the returned total income as goods delivery expenses being unexplained expenses, which is contrary to the evidence on record, rules and facts, hence the same is liable to be deleted.*
5. *That the appellant may add, alter, delete or amend any of the grounds at the time of hearing of the matter with the leave of the honorable ITAT.*

3. Facts in brief are that the assessee is a proprietor of M/s Vijay Motors (Mahindra Division) derives income from trading business i.e. retail & wholesale of automobiles & tractor spare parts and filed return of income electronically on 04.10.2013 with total income of Rs.16,70,870/- The return of income was processed u/s.143(1) of the Act. Subsequently case was selected for scrutiny through CASS and notices u/s.143(2) & 142(1) were issued along with questionnaire to the assessee. In compliance, Id. AR of the assessee appeared from time to time, furnished books of account, related documents and ledger account. Information was also filed in respect of the expenses with supporting bills and vouchers and bank statements. On perusal of the financial statements the AO found that the assessee has claimed a loss of stock by fire Rs.2.67 crores and sought for clarifications. In support of the claim, the assessee replied that due to a major fire accident happened in the business premises of the assessee, the assessee has incurred such loss and substantiated with photocopies of local newspaper cuttings. But the AO called for the further clarifications on the method adopted for valuation of stock and loss of Rs.2.6 crores determined. Since the assessee could not give complete

details of loss with explanations and no reimbursement of the actual value of loss, the AO observed that the assessee is not justified to claim the loss and, made addition of Rs.2,67,73,661/- and further the assessee has not supported with evidence in respect of goods delivery, other expenses and could not explain the nature of expenses in the scrutiny proceedings. Hence, made addition of Rs.4,32,692/- and assessed the total income of Rs.2,88,77,220/- and passed order u/s.143(3) of the Act date 21.03.2016.

4. Aggrieved by the order AO, the assessee has filed an appeal before the CIT(A). The Id. CIT(A) having considered the grounds and the findings of the AO issued notice of hearing to the assessee, however, there was no compliance on the part of the assessee. Therefore, the CIT(A) confirmed the addition made by the AO and dismissed the appeal of the assessee.

5. Aggrieved, the assessee has filed appeal before the Tribunal.

6. Ld. AR before us submitted that the CIT(A) has erred in confirming the addition without going into the merits of the case that the assessee's books of accounts are audited under the provisions u/s.44AB of the Act and the assessee has claimed the deduction of loss of stock of fire from the purchases and *prima facie* the assessee has not claimed the value of purchase in trading account and produced the copy of financial statements and Id. AR prayed to allow the appeal of the assessee.

7. Contra, Id. DR opposed the submissions of the assessee and submitted that the assessee has not complied with the appellate hearing proceedings and the CIT(A) has passed an ex-parte order as there is no

information filed by the assessee. In respect of to the Ground No.2, Id. DR submitted that the assessee has incurred this expenditure and could not submit the evidence of claim of expenditure, therefore, and CIT(A) has upheld the addition of Rs.4,32,692/- along with the disallowance of loss of stock and prayed for dismissal of appeal of assessee.

8. We have heard rival submissions and perused the material on record. Prima facie, on the disputed issue of claim of loss of stocks by fire the Id. AR submitted that the assessee has deducted the loss from the purchases and the assessee has not made any claim in the profit and loss account. Whereas the AO treated as claim and made addition. The Id. AR demonstrated before us referring to the audited trading and profit and loss account where the assessee in the trading account has reduced the loss of Rs.2.67 crore from purchases. In our opinion the assessee has reduced the loss of stock by fire from the purchases which indirectly increase the GP percentage and there is no loss of Revenue to the Income Tax Department. Hence, we are of the substantive view that the action of the AO in making disallowance is not sustainable. Accordingly, we set aside the order of CIT(A) and direct the AO to delete the addition.

9. In respect of the second disputed issue of disallowance of goods delivery expenses, the assessee could not submit supporting evidence and establish that expenses are incurred for the business. Even before us, the assessee could not substantiate with any supporting evidence. But considering the overall aspects of assessee's business, we are of the opinion that the AO has not doubted the genuineness of claim but due to

non-availability of evidence the disallowance was made. Considering these facts, we direct the AO to restrict the disallowance to 50% and we order accordingly.

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

Order pronounced in the open court on this 20/03/2018.

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

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

**कटक** Cuttack; दिनांक Dated 20/03/2018

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-  
VIJAY LAL  
C/o-Vijay Motors-Mahindra Division,  
Plot No.27, Near Chintamaniswar  
Square & ICICI Bank, Cuttack  
Road, Bhubaneswar-751006
2. प्रत्यर्थी / The Respondent-  
DCIT, Circle-2(1), 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,

सत्यापित प्रति //True Copy//

**(Senior Private Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack