

**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.296/CTK/2016

(निर्धारण वर्ष / Assessment Year :2011-2012)

ACIT, Corporate Circle-1(2), Bhubaneswar	Vs.	M/s Orissa State Beverages Corporation Limited, 9 <sup>th</sup> Floor, IDCO Tower, Saheed Nagar, Bhubaneswar-2
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAACO 6507 H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**प्रत्याक्षेप सं/Cross Objection No.20/CTK/2016**

(Arising out of ITA No.296/CTK/2016)

(निर्धारण वर्ष / Assessment Year :2011-2012)

M/s Orissa State Beverages Corporation Limited, 9 <sup>th</sup> Floor, IDCO Tower, Saheed Nagar, Bhubaneswar-2	Vs.	ACIT, Corporate Circle-1(2), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAACO 6507 H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Piyush Kolhe, CITDR

निर्धारिती की ओर से /Assessee by : Shri Satyajit Mishra, AR

सुनवाई की तारीख / Date of Hearing : **28/02/2018**

घोषणा की तारीख/Date of Pronouncement **28/02/2018**

**आदेश / O R D E R**

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

This is an appeal filed by the Revenue against the order of the CIT(A)-3, Bhubaneswar, dated 28-4-2016. The assessee has also filed cross objection.

2. In ground No.1 of the appeal, the grievance of the Revenue is that the CIT(A) erred in deleting the addition of Rs.2,75,00,000/- made by the AO on account of security deposits by treating it as revenue expenditure.
3. The CIT(A) has decided the issue by observing as under :-

**“Decision:-** The A.O. made addition of Rs.2,75,00,000/- by treating security deposits as revenue receipts on the basis of findings of CIT(Appeals), Bhubaneswar for A.Y.2004-05. Similar addition was made continuously in subsequent years on same ground. However, the Hon’ble ITAT, Cuttack Bench, Cuttack in consolidated order dt. 04.01.2013 has held that the security deposits should be treated as capital receipts and not revenue receipts. The relevant portion of the order in Para 6.1 is reproduced hereunder:-

*“There is no controversy with respect to the security deposits being held by the assessee as liability which could not be taxed in the hands of the assessee insofar as the accounting procedure indicates the monopolistic trade of IMFL which in one go cannot be pushed aside for a fresh beginning in a subsequent year unless a specific finding for taxing it as income unilaterally. This remains the domain of the assessee being the wholesale procurer and distributor for the State of Orissa. In other words, responsibility and commitment lies with the assessee which can only be on basis of holding the same as capital asset and not revenue to be taxed in one go”.*

The A.O. made addition of Rs.83,00,000/- in A.Y.2005-06 by treating security deposits as revenue receipts. The CIT(A), Bhubaneswar deleted the addition vide order dt.29.05.2015 on the basis of order of the Hon’ble Tribunal dt.01.02.2013. The Hon’ble Tribunal dismissed the appeal of the revenue and affirmed the order of CIT(Appeals) deleting addition of Rs.83,00,000/- by holding that the issue is a covered matter. Keeping in view of the above and respectfully following the ITAT’s order, the appellant is allowed relief

*for this year also. The A.O. is accordingly directed to delete addition of Rs.2,75,00,000/- on account of security deposits.*

4. The DR relied on the order of Assessing Officer.
5. On the other hand, the AR of the assessee supported the order of CIT(A).
6. After considering the rival submissions and perusing the orders of lower authorities and materials available on record, we find that the CIT(A) has deleted the addition following the order of this Bench of the Tribunal in case of assessee itself for assessment year 2004-05. The DR could not point out any distinguishing features during the year under appeal. He also could not bring any material on record to show that the order of the Tribunal in the assessment year 2004-05 followed by the CIT(A) was varied in appeal by any higher forum, hence, we do not find any good reason to interfere with the order of CIT(A), which is hereby confirmed and this ground of appeal of Revenue is dismissed.
7. In ground No.2 of the appeal, the grievance of the Revenue is that the CIT(A) erred in deleting the addition of Rs.36,23,077/- made by the AO on account of loan and advances.
8. The CIT(A) has decided the issue by observing as under :-  
  
*“Decision:- The Statutory Auditor has commented that loans and advances to excise department of Rs.35,30,756/-, legal expenses paid in advance of Rs.34,625/-, professional charges paid in advance of Rs.57,696/- were pending since long without making any provision against them. In reply to the objection, the appellant stated that legal expenses were adjusted in F.Y.2012-13 and professional charges in F.Y.2011-12. The alleged advances of*

*Rs.36,23,077/- are parts of Loans and Advances considered good totaling to Rs. 1,22,62,18,912/-, as per Schedule-6 of Balance Sheet. The advances have no revenue effect only because the appellant has not made any provision against them and alleged addition of Rs.36,23,077/- is found to be not sustainable. Accordingly, the A.O. is directed to allow relief to the appellant on this count.”*

9. The DR during the course of hearing relied on the order of Assessing Officer.

10. On the other hand, the AR of the assessee supported the order of CIT(A).

11. After considering the rival submissions and perusing the orders of lower authorities and materials available on record, we find that no specific error in the order of CIT(A) could be pointed out by the DR by bringing any cogent and positive material on record. Hence, we do not find any good reason to interfere with the order of CIT(A), which is confirmed and this ground of appeal of Revenue is dismissed.

12. In ground No.3 of the appeal, the grievance of the Revenue is that the CIT(A) erred in deleting the addition of Rs.18,01,314/- made by the AO on account of bogus sundry debtors.

13. The CIT(A) has decided the issue by observing as under :-

*“Decision:- The Statutory Auditor has commented that on sundry debtors amounting to Rs.4,50,83,367/-, neither any reconciliation nor any balance confirmation certificates have been obtained. Further, he commented that sundry debtors includes outstanding for more than 6 months amounting to Rs.18,01,314 and neither any reconciliation nor any balance confirmation certificates has been*

*obtained and no provision against the same was made in accounts. In reply to the objection, the appellant stated that reconciliation of the matter is in progress and it would be solved in subsequent year(s). Merely because provision has not been made for sundry debtors outstanding for more than 6 months, addition made by the A.O. without any positive material brought on to the record to prove the sundry debtors as bogus is not sustainable and hence, it is deleted.”*

14. The DR during the course of hearing relied on the order of Assessing Officer.

15. On the other hand, the AR of the assessee supported the order of CIT(A).

16. After considering the rival submissions and perusing the orders of lower authorities and materials available on record, we find that no specific error in the order of CIT(A) could be pointed out by the DR by bringing any cogent and positive material on record. Hence, we do not find any good reason to interfere with the order of CIT(A), which is confirmed and this ground of appeal of Revenue is dismissed.

17. In ground No.4 of the appeal, the grievance of the Revenue is that the CIT(A) erred in deleting the addition of Rs.25,33,267/- made by the AO on account of old excise payment.

18. The CIT(A) has decided the issue by observing as under :-

*“Decision:- The Statutory Auditor has commented that old excise payment of Rs.25,33,267/- shown as advance to others against which no provision was made in account. In reply to the objection, the appellant stated that it was adjusted in the F.Y.2011-12. The alleged sum is part of Loans and Advances considered good*

*totaling to Rs.1,22,62,18,912/- as per Schedule-6 of Balance Sheet. Merely because provision has not been made for the alleged old advance, addition made by the A.O. without establishing the revenue effect of it is not sustainable and hence, it is deleted.”*

19. The DR during the course of hearing relied on the order of Assessing Officer.

20. On the other hand, the AR of the assessee supported the order of CIT(A).

21. After considering the rival submissions and perusing the orders of lower authorities and materials available on record, we find that no specific error in the order of CIT(A) could be pointed out by the DR by bringing any cogent and positive material on record. Hence, we do not find any good reason to interfere with the order of CIT(A), which is confirmed and this ground of appeal of Revenue is dismissed.

22. With regard to cross objection filed by the assessee, the assessee did not press the same and made an endorsement to this effect in Form No.36A. Accordingly, the cross objection filed by the assessee is dismissed as not pressed.

22. In the result, appeal filed by the Revenue and cross objection filed by the assessee, both are dismissed.

Order pronounced in the Court on Wednesday , the 28<sup>th</sup> Day of February, 2018 at Cuttack.

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

न्यायिक सदस्य / JUDICIAL MEMBER

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

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 28/02/2018

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-  
ACIT, Corporate Circle-1(2),  
Bhubaneswar
2. प्रत्यर्थी / The Respondent-  
M/s Orissa State Beverages  
Corporation Limited,  
9<sup>th</sup> Floor, IDCO Tower,  
Saheed Nagar, Bhubaneswar-2
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