

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 Nos.382, 298, 435, 299, 436 & 448/CTK/2015

(निर्धारण वर्ष / Assessment Years :2006-07, 2007-08,2008-09,
2010-11, 2011-12 & 2012-13)

DCIT, Corporate Circle-1(2), Bhubaneswar.	Vs.	Neelachal Ispat Nigam Ltd., 1 st Floor, Annexe Building, IPICOL, House, Janpath, Bhubaneswar-751022
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACN 9433 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

Cross Objection Nos.48, 37, 53, 38 & 54/CTK/2015

(Arising out of ITA Nos.382, 298,435,299,& 436/CTK/2015)

(निर्धारण वर्ष / Assessment Years :2006-07, 2007-08,2008-09,
2010-11, 2011-12)

Neelachal Ispat Nigam Ltd., 1 st Floor, Annexe Building, IPICOL, House, Janpath, Bhubaneswar-751022	Vs.	ACIT, Corporate Circle-1(2), Bhubaneswar.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACN 9433 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.09/CTK/2016

(निर्धारण वर्ष / Assessment Year : 2012-2013)

ACIT, Corporate Circle-1(2), Bhubaneswar.	Vs.	Neelachal Ispat Nigam Ltd., 1 st Floor, Annexe Building, IPICOL, House, Janpath, Bhubaneswar-751022
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACN 9433 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Kunal Singh, DR

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

सुनवाई की तारीख / Date of Hearing : **29/06/2017**

घोषणा की तारीख/Date of Pronouncement **30/06/2017**

आदेश / O R D E R**Per Bench:**

These are the appeals filed by revenue and cross objections filed by the assessee against the separate orders, passed by the CIT(A)-1, Bhubaneswar, for the assessment years 2006-07, 2007-08, 2008-09, 2010-11, 2011-12 & 2012-13, respectively.

2. Since the issues involved in all the appeals filed by the revenue and the cross objections filed by the assessee are identical, therefore, all the appeals along with cross objections have been heard and are being disposed off by this consolidated order *en masse*. For the sake of convenience, we shall take into consideration the grounds and facts mentioned in ITA No.382/CTK/2015 (AY 2006-2007) for deciding all the appeals.

3. The common issue raised in all the appeals of the revenue is that the CIT(A) erred in deleting the addition of Rs.31,20,80,000/- made by the AO u/s.40(a)(ia) on account of sales commission treating it as trade margin instead of sales commission.

4. The facts giving rise to the appeal are that the assessee is engaged in the business of manufacturer of Pig Iron and Billets, filed the return of income for assessment year 2006-07 on 29.11.2006. Subsequently assessment was completed u/s.143(3) on 15.12.2008. Thereafter the AO found that the assessee has not deducted TDS in respect of payments made outside India and applying the provisions of Section 40(a)(ia) made the addition holding that income has escaped. Further, Id. CIT in revision

proceedings u/s.263 has directed for fresh assessment and the assessment was completed as per the revision proceedings on 18.11.2011 determining the loss of Rs.45,26,92,790/-. Since the appellate order of the assessee in ITA No.0115/2008-09, dated 02.11.2011 confirmed the original assessment, on appeal to the Tribunal, the Tribunal granted relief to the assessee by directing the AO to grant certain reliefs and the AO has passed the consequential order giving effect to the ITAT's order. The AO found that the assessee has claimed deduction of sales commission and has not deducted TDS under the provisions of Section 194H, therefore, notice u/s.148 was issued. In compliance to the same, Id. AR of the assessee appeared and submitted information. The assessee explained that the sales commission was paid to the MMTC and it is in the nature of trade margin and not liable for TDS and relied on the decision of the coordinate bench of the ITAT for the assessment years 2006-07, 2007-08,2008-09 and the AO found that since the department has filed an appeal before the High Court under the provisions of Section 260A of the Act and the AO treated the commission is liable for TDS and made disallowance of sale commission and passed the order under Section 143(3)/147, dated 31.7.2013.

5. Aggrieved by the order of AO, the assessee preferred appeal before the CIT(A). In the appellate proceedings Id. CIT(A) on the disputed issue of payment of commission at 3% to MMTC Ltd. found that similar issue was decided by the ITAT in assessee's own case in ITA Nos.295 to

298/CTK/2013 for AYs. 2006-07 to 2009-10, order dated 10.6.2013 and found that the payments made to the MMTC Ltd. is in the nature of trade margin, therefore, not liable to deduct TDS and allowed the appeal of the assessee observing at para 3.1 at page 2 of the appellate order as under:-

3.1 I have considered the matter. For the AY 2007-08 in ITANo.0021/11-12 dt.21.5.2012, I had decided that payment made by the appellant to MMTC is in the nature of commission on which TDS was liable. However, the Hon'ble ITAT, Cuttack Bench in their order dt. 10,6.2013 in the case of the appellant in ITA-Nos.295to298/CTK/2013 for the AYs2006-07 to 2009-10 has allowed relief to the appellant with the finding-that 3% commission is not in the nature of commission but trade margin. In view of the same, the Hon'ble ITAT has directed not to treat the appellant as an assessee-in-default u/s.201(1) in respect of 3% commission/trade margin paid by the appellant to MMTC. I have to necessarily follow the order of the ITAT and accordingly, the payment of Rs. 34,89,90,000/- is treated as trade margin. Accordingly, no tax is deductible u/s.194H on the said amount of Rs.34,89,90,000/-, hence no disallowance u/s.40(a)(ia) can be made. Accordingly, the addition of Rs.34,89,90,000/- is directed to be deleted.

6. Aggrieved by the order of CIT(A), the revenue preferred an appeal before the Tribunal and the assessee also filed cross objections.

7. Ld. DR argued that the CIT(A) was not justified in deleting the addition pertaining to sales commission treating as trade margin and also appeal was filed by the revenue before the Hon'ble High Court of Cuttack and prayed for setting aside the order of CIT(A).

8. *Contra*, Id. AR relied on the order of CIT(A) and the decision of the Tribunal in assessee's own case (*supra*).

9. We heard the rival submissions and perused the material available on record. *Prima facie*, we found that the Id. DR argued challenging the Id. CIT(A)'s action who has relied on the order of ITAT in assessee's own

case and granted relief. We are of the opinion that filing an appeal before the Hon'ble High Court cannot be the sole ground to take a different view, and the Tribunal is bound by the judicial precedence. We, respectfully follow the coordinate bench decision in assessee's own case relied by the CIT(A) in its appellate order and we uphold the order of CIT(A) and dismiss the grounds of appeal of Revenue. Similarly, the appeals of the revenue in ITA Nos.382, 298, 435, 299, 436 & 448/CTK/2015 & ITA No.09/CTK/2016 are also dismissed.

10. The cross objection was filed by the assessee in CO Nos.48/CTK/2015, the Id. AR of the assessee did not press the objection and made endorsement. Accordingly, we dismiss the cross objection filed by the assessee.

11. With regard to Cross objection No. 37, 53, 38/CTK/2015, since we have dismissed the appeals of the revenue, therefore, the cross objections filed by the assessee, being supportive to the CIT(A)'s order and have become infructuous and the same are dismissed.

12. In regard to Cross objection No.54/CTK/2015 (AY :2011-2012), the assessee did not press the same due to smallness of the amount involved. Accordingly, we dismiss the CO No.54/CTK/2015 as not pressed.

13. Now, we take up the appeal filed by the Revenue in ITA No.448/CTK/2015 (AY : 2012-2013), wherein ground Nos. 2 & 3 are with respect to the non-deduction of TDS on sales

commission, since similar issue has been decided by us in para 9 above while considering ITA No.382/CTK/2015 (AY : 2006-2007) and dismissed the Revenue's appeal, we, accordingly, dismiss the grounds of appeal of the revenue.

14. On the second disputed issue, the Id. DR submitted that CIT(A) has erred in directing the AO not to treat the assessee as assessee in default in respect of provisions for expenses made for office and administrative expenses, whereas the Ld.AR submitted that the assessee has made only year-end provisions in the books of accounts and following the trade practice from the earlier period, The Id.CIT(A) found there is no credit given to the concerned authority and hence, allowed the appeal of the assessee and observed at page 4 of the order as under:-

Decision: On careful consideration of submission made by the Ld. A.R., I find that the appellant company created provisions of various expenses of Rs.1,82,97,923/- as crystallized liability of the year under reference by debiting the P & L A/c. under the head "Provisions for work done" with corresponding credit entry to "Outstanding Liability for Expenses Accounts".—The provisions of expenses under the printing, advertisement, civil maintenance work, peripheral development etc. have been created on actuarial valuation of works done by the contractors but bills not raised by them by the end of the year. The appellant company follows this accounting principle regularly and as per the principle of accounting, the alleged outstanding was reversed from the provision account and the contractors were paid as per their bills after deduction of tax at source. Since there was no credit of any sum to any of the contractors from the above provisions for expenses in the year under reference, there is no applicability of provisions of sec.194C. In view of the above, I find strength in the submission of Id.A.R. and hence, the ground of appeal is accepted with a direction to the A.O. not to treat the appellant as " assessee in default" for non-deduction of tax at source on provisions created for crystallized office and administrative expenses.

15. We find the Id. CIT(A) has dealt on the provisions facts and the Accounting principles and further as per Id. AR's submission the assessee has not passed the entries giving effect to the party's account and these provisions were reversed at the time of payment of TDS deducted by the assessee. We are of the opinion that Id. CIT(A) considered the accounting policies adopted by the assessee company, and has dealt with the provisions in accordance with law. Accordingly, we are not inclined to interfere with the order of CIT(A) on this ground and upheld the same. Thus, the appeal of the revenue is dismissed.

16. In the result, appeals filed by the revenue in ITA Nos.382, 298, 435, 299, 436, 448/CTK/2015 and ITA No.09/CTK/2016 and cross objections No.48, 37, 53, 38 & 54/CTK/2015 filed by the assessee are dismissed

Order pronounced in the open court on this 30/06/2017.

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

लेखा सदस्य / ACCOUNTANT MEMBER

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

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 30/06/2017

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Neelachal Ispat Nigam Ltd.

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack