

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.66/CTK/2015

(निर्धारण वर्ष / Assessment Year :2008-2009)

M/s Jaganath Chaudhury, 98, Kharavela Nagar, Bhubaneswar-751001	Vs.	DCIT, Circle-1(1), Bhubaneswar-751007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADFJ 8103 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri B.K.Mahapatra, AR

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR

सुनवाई की तारीख / Date of Hearing : **27/06/2017**

घोषणा की तारीख/Date of Pronouncement **28/06/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The assessee has filed this appeal against the order of CIT(A), Bhubaneswar, dated 5.11.2014 in I.T.Appeal No.0013/13-14, passed u/s.147/144 of the Act. The assessee has raised three substantial grounds i.e. (i) challenging the validity of reopening of assessment u/s.147; (ii) Id. CIT(A) has erred in confirming the addition on interest income of Rs.36,56,283/- and (iii) Id. CIT(A) erred in accepting the miscellaneous income of Rs.5,95,992/- pertains to cessation of loan creditors.

2. At the time of hearing, Id. AR has not pressed ground No.1 regarding reopening of assessment and made endorsement to the grounds of appeal.

3. Brief facts of the case are that the assessee is engaged in the business of execution of contract works of Govt. Departments/undertakings/agencies, filed its return of income of Rs.1,55,53,920/- and the original assessment u/s.143(3) was completed on 31.12.2010 with total income of Rs.2,04,63,138/-. The AO found that there is income escaping assessment in respect of interest income and miscellaneous income and issued notice u/s.148. Since there was no response, the AO had no alternative except to complete under best judgment assessment u/s.144 of the Act. The AO on perusal of the profit and loss account found that the assessee has interest income of Rs.36,56,283/-, whereas the assessee in the original assessment accepted the income at 10.5% as profit from the gross receipts and there was no dispute and also miscellaneous income has not been offered for taxation, therefore, notice u/s.142(1) was issued. Since there was no compliance by the assessee and the assessment being time barred, the AO made addition of interest income and miscellaneous income and assessed total income of Rs.2,47,15,420/- and passed order u/s.147/144, dated 18.02.2013.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). Ld. CIT(A) considering the grounds raised by the assessee and relying on the judicial decisions, confirmed the addition of the AO and reassessment proceedings and dismissed the assessee's appeal.

4. Aggrieved by the order of the CIT(A) the assessee filed the present appeal before the Tribunal.

5. Before us, Id. AR argued that the original assessment was completed u/s.143(3) and the books of accounts has been rejected and the AO in that order made addition on the basis of estimation and accepted the contention of Id. AR that the interest income is part of the business and there is a nexus and supported his arguments with the paper book containing the list of fixed deposits and also the correspondences were with the Executive Engineers (Works) and also the assessee's own case in the Tribunal.

6. *Contra*, Id. DR, explained that there is no nexus of interest income with the assessee's business and should be offered under income from other sources.

7. We heard the rival submissions and perused the material available on record. The contention of Id. AR of the assessee that the interest income is part of the business income and assessee has already accepted income on estimation basis, therefore, interest also shall be part of the receipts and was offered tax. Since books of accounts are rejected the addition on liabilities has to be excluded. We also perused the order of the coordinate bench of this Tribunal in ITA No.511/CTK/2012 for assessment year 2008-09, dated 4-6-2013, where it was observed at para 5 as under :-

We have heard the rival submissions of the parties and perused the material available on record. After consideration of the facts and circumstances of the case, we are inclined to accede to the prayer of the learned Counsel for the assessee insofar as the -

assessee has claimed that on rejection of books of account u/s.145, the provisions of Section 44AD were to be considered for computing the correct, incomes provided under the I.T.Act. It is not the case of the assessee to not have maintained the. books of account but the estimation has been resorted to by the Assessing Officer on the rejection of the books result u/s.145 without pointing out any specific defect on the maintenance thereof. Furthermore the adoption of 10.5% Net Profit rate when he agreed to allow depreciation and interest and salary to the partners thereafter. We see no unjustification in the learned Counsel for the assessee's seeking the estimation to be considered at 10% instead of 10.5% insofar as the method of accounting adopted by the assessee is in accordance with the Accounting Standard and the rejection was without any specific defect pointed out except non-production of the books of account. The assessee had filed the audited balance sheet and financial statements which were certified as were in accordance with the books of account audited by the Chartered Accountant under the provisions of Section 44AB. Therefore, we are inclined to uphold and direct the Assessing Officer to compute the Net Profit at 10% of the gross receipts and thereafter allow depreciation, interest and salary to the partners for the impugned Assessment Year. We also uphold the order of the learned CIT(A) directing the Assessing Officer to verify the credit to be given to the assessee on the basis of TDS certificates to be produced and verified by him in support of the income which has been brought to tax by the Assessing Officer hereafter.

6. In the result, the appeal filed by the assessee is partly allowed."

We, respectfully following the decision of the coordinate bench in assessee's own case (supra), direct the AO to estimate the income at 10% of interest income which has a nexus with the assessee's business in obtaining the contracts. Accordingly, 10% of the interest income is to be considered as business income and on the other disputed issue since the assessee has already claimed the expenditure on incurring the liabilities, therefore, the addition of Rs.5,95,992/- in regard to miscellaneous income is sustained. Accordingly, assessee's appeal is partly allowed.

8. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on this 28/06/2017.

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 28/06/2017

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant- M/s Jaganath Chaudhury,
98, Kharavela Nagar, Bhubaneswar-751001
2. प्रत्यर्थी / The Respondent-DCIT, Circle-1(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