

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.112/CTK/2015

(निर्धारण वर्ष / Assessment Year :2010-2011)

ACIT, Circle-2(1), Sambalpur	Vs.	Shri Jagdeep Bansal, Near Weekly Market, AT/PO-Kantabanji, Bolangir-767039
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEQPB 5201 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.189/CTK/2015

(निर्धारण वर्ष / Assessment Year :2010-2011)

Shri Jagdeep Bansal, Near Weekly Market, AT/PO- Kantabanji, Bolangir- 767039	Vs.	ACIT, Circle-2(1), Sambalpur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEQPB 5201 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

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

निर्धारिती की ओर से /Assessee by : None

सुनवाई की तारीख / Date of Hearing : **28/06/2017**

घोषणा की तारीख/Date of Pronouncement **29/06/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

These are the cross appeals filed by the revenue and assessee against the order of CIT(A)-1, Bhubaneswar, dated 8.1.2015 in I.T.Appeal No.0185/14-15.

2. At the outset, we find that the tax effect in the appeal of the revenue i.e in ITA No.112/CTK/2015 is below Rs.10 lakhs, therefore, the appeal of

the revenue is not maintainable as per the CBDT Instruction No.21/2015 dated 10.12.2015 and the same is hereby dismissed.

3. Now, we shall take up the appeal filed by the assessee in ITA No.189/CTK/2015. None appeared on behalf of the assessee when the matter was called for hearing. Hence, considering the facts of the case and grounds raised therein, we are of the considered opinion, that the appeals can be taken up for hearing and we proceed to dispose off the appeal on the basis of material available on record and the submissions of Id. DR.

4. Brief facts of the case are that the assessee is in the business of execution of contract works and filed the return of income electronically on 18.9.2010 showing total income of Rs.1,21,19,080/- and the return of income was processed u/s.143(1) of the Act on 1.3.2013. Subsequently, the case of the assessee was selected for scrutiny and notice u/s.143(2) & 142(1) of the Act were issued along with detailed questionnaire. In compliance to the notice, Id. AR of the assessee appeared before the AO from time to time and furnished the documents. The AO on perusal of the financial statements found that there are certain claims made by the assessee which are not in accordance with the provisions of law and made disallowance by rejecting the books of account and there is no compliance on the part of the assessee in submitting the information and applied the provisions of Section 144 made the Best judgment assessment and assessed the income at Rs.1,82,82,370/- and passed the order u/s.144 of the Act, dated 14.01.2013.

5. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). In the appellate proceedings, Id. AR of the assessee argued the grounds and reiterated the submissions made in the assessment proceedings. Id. CIT(A) considering the observation and grounds raised, dealt on the coordinate bench decision and the provisions of Section 194C, 145(3) and 40A(3) of the Act considering all the disallowances and the fact that the assessee books of accounts are rejected and the AO adopted 8% of net profit is on the higher side, Id. CIT(A) directed the AO to recompute the income by taking the net profit at 7% of the gross receipts and partly allowed the appeal.

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

7. Before us, Id. DR argued that the Id. CIT(A) is not justified in estimating income at 7% without any material. Further in the case of other assesseees the estimation is at 8%.

8. We heard the submissions of the Id. DR and perused the material available on record. The assessee's books of accounts are rejected and income has been estimated by the AO and disallowances have been made, whereas Id. CIT(A) dealt on the working system of the assessee and also the judicial decisions of the coordinate bench of this Tribunal where the income has been estimated at 5.65% and 6%. We found that Id. CIT(A) has dealt exhaustively on the provisions and the facts of the case and the orders of lower authorities and having satisfied with the activity of assessee's business took a reasonable view of directing the AO

to recompute 7% of the gross receipts as income. Accordingly we are of the opinion that order of CIT(A) cannot be disturbed and, therefore, we are not inclined to interfere with the order of CIT(A) and uphold the same and dismiss the grounds of the assessee on this issue.

9. In the result, appeal of the assessee and appeal of the revenue are dismissed.

Order pronounced in the open court on this 29/06/ 2017.

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

लेखा सदस्य / ACCOUNTANT MEMBER

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

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 29/06/2017

प्र.कु.मि/PKM, Senior Private Secretary

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

1. Assessee- ACIT, Circle-2(1), Sambalpur
2. Department/revenue- Shri Jagdeep Bansal,
Near Weekly Market, AT/PO-
Kantabanji, Bolangir-767039
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