

**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.421/CTK/2015  
(निर्धारण वर्ष / Assessment Year :2011-2012)

Deputy Income Cuttack	Commissioner of Tax, Circle-1(1),	Vs.	Sri Kamalakanta Tripathy Gandarpur, New Malgodown, College Square,Cuttack
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAJPT 4857 D</b>			
(अपीलार्थी /Appellant)		..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, CITDR  
निर्धारिती की ओर से /Assessee by : None

सुनवाई की तारीख / Date of Hearing : **25/07/2017**  
घोषणा की तारीख/Date of Pronouncement **27/07/2017**

**आदेश / ORDER**

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

The revenue has filed the appeal against the order of CIT(A),  
Cuttack, passed in ITAppeal No.0072/2014-15, dated 07.08.2015,  
u/s.143(3) of the Income Tax Act.

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

*"01. Whether in the facts and circumstances of the case, the Ld. First Appellate Authority is justified in restricting the quantum of addition /disallowances made by the AO under the different heads of account such as i) supervision & maintenance – Rs.50,00,000/- ii) Installation & commissioning : Rs.50,00,000 iii) salary : Rs.250,000 iv) Business promotion -Rs.2,50,000 – without assigning any specific reasons – where as in absence of supporting evidences, the claim of the assessee could not be accepted as genuine and assessee had failed to make any effort to show such disallowance as unreasonable.*

*02. Whether in the facts and circumstances of the case, the Ld. First Appellate Authority is justified in deleting the additions made by the AO under the different heads where assessee failed to substantiate the genuineness of various expenditure claimed in the P&L account in view of the decision of Hon'ble ITAT Chennai Bench ' A' in the case of K.J.Prabhakar Vrs ACIT in ITA No.703(Mds) of 2010 dated 08.07.2011 which has upheld that an estimated 25% of expenditure on travelling, conveyance, telephone, mobile, vehicle maintenance, etc was justified.*

3. Brief facts of the case that the assessee is in the business of dealing with scientific equipments and laboratory goods and filed the return of income electronically on 30.01.2012 with total income of Rs.1,12,28,068/- and the Return of income was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s.143(2) & 142(1) of the Act were issued. In compliance to the same, the Id. AR appeared from time to time and furnished the details and the AO observed that though the books of accounts are claimed to have been maintained by the assessee were never produced for examination and only account copies were submitted and the AO in the absence of books of accounts has completed the assessment based on the ledger account copies of expenses claimed in the profit and loss account and the facts available on record and made disallowance of supervision and maintenance charges, installing and commission charges salary and business promotion expenses aggregating to Rs.1,05,00,000/- and assessed total income at Rs.2,17,28,070/- and passed order u/s.143(3) of the Act, dated 25.2.2014.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A). Ld. AR argued the grounds and reiterated the submissions made before the AO. The Id. CIT(A) considering the findings of AO and the submissions of the assessee and dealt on the percentage of the gross profit and the expenses debited to the profit and loss account. On the disallowances the CIT(A) found that the AO has not considered the documents produced before him and the same were submitted in the

appellate proceedings. Further the AO has not given any specific finding of non-satisfaction and rejection of the books of accounts but has made an addition on surmise and Id. CIT(A) partly allowed the appeal and observed at para 5 page 3 of the order as under :-

*“5. I have carefully perused the assessment order made by the AO and the submissions made by the appellant. The AO noted that copies of accounts were produced before him but complete books of accounts along with supporting bills and vouchers were not produced before him for verification. However, the AO had not rejected the book results assessed the income of the assessee u/s.143(3) of the Act and also stated that he determined the total income of the assessee as per the facts available on record. In disallowing the expenses in adhoc manner as above the AO had stated that the expenses claimed are considered as excessive but has not given a finding regarding the nature and excessiveness or any comparable case for that matter. But the fact remains that the appellant has not produced bills and vouchers before the AO to establish the genuineness and quantum of expenses claimed by him. Under the circumstances and with the fact that the books of accounts have not been rejected by the AO, the AO is directed to restrict the disallowance under the head supervision & maintenance and installation & commissioning to Rs.10,00,000/- each. The disallowance of salary by considering the same as excessive would not stand the rigors of facts because the AO has not further verified how the payment of salary is considered excessive by him. The AO is therefore directed to delete the addition made under this head. The AO has disallowed Rs.2,50,000/- from the claim of sales promotion expenses by the assessee for not producing the bills and vouchers supporting the expenses and treated the same as excessive. Since there has been no specific finding made by the AO in this issue he is directed to restrict the disallowance to Rs.50,000/-.”*

5. Being aggrieved with the order of CIT(A), the revenue is in appeal before the Tribunal.

6. Ld. DR argued that the CIT(A) was erred in restricting the disallowance without any specific reasons and evidence and prayed for allowing the revenue's appeal.

7. None appeared on behalf of the assessee.
8. We heard the submissions of Id. DR and perused the material on record. *Prima facie*, as per the assessment order the AO has not rejected the books of accounts but accepts that Ledger account copies and made the disallowance. Ld.CIT(A) has considered the facts that the books of accounts have not been rejected and further the AO has not given any specific finding in respect of disallowances. We have considered the apparent facts and material and found that the CIT(A) has dealt exhaustively on the facts and the findings of AO and passed the reasoned order which in our opinion cannot be disturbed. Accordingly, we are not inclined to interfere with the order of CIT(A) and uphold the same.
9. Thus, appeal of the revenue is dismissed.

Order pronounced in the open court on this 27/07/2017.

**Sd/-**

**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**

**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 27/07/2017

प्र. कु. मि / PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-  
DCIT, Circle-1(1), Cuttack-753008
2. प्रत्यर्थी / The Respondent-  
Sri Kamalakanta Tripathy  
Gandarpur,  
New Malgodown,  
College Square, Cuttack
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