

**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.233/CTK/2015  
(निर्धारण वर्ष / Assessment Year :2010-2011)

DCIT, Circle-2(1), Sambalpur	Vs.	M/s L.N.Infrastructure & Construction Pvt. Ltd., At-Padampur, Dist- Bargarh
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AABCL 3028 R</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR  
निर्धारिती की ओर से /Assessee by : Shri Binod Kumar Agrawal,AR  
सुनवाई की तारीख / Date of Hearing : 11/07/2017  
घोषणा की तारीख/Date of Pronouncement 28/07/2017

**आदेश / ORDER**

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

The revenue has filed an appeal against the order of CIT(A)-2, Bhubaneswar, passed in ITA No.0478/2013-14, dated 20.2.2015, u/s.143(3) of the Income Tax Act.

2. The revenue has raised the and substantive ground that the CIT(A) was not correct in deleting the addition as disallowed by the AO in the absence of bills and vouchers for expenses towards earth, murrom & sand and for stones products.

3. Brief facts of the case are that the assessee is engaged in the execution of contract works and filed the Return of income for the assessment year 2010-2011 on 24.09.2010 with total income of Rs.99,91,910/- and the return of income was processed u/s.143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment through CASS and the Id. AO issued notices u/s.143(2) &

142(1) of the Act. In compliance to the same, Id. AR appeared from time to time and furnished the details and documents and the AO on verification of the various details found that out of the contract, expenses of Rs.23.47 crores which were debited in the profit and loss account, the assessee furnished the explanations and supporting in most of the cases but in the case of other expenses of Rs.18,20,000/- in respect of earth, murrom and sand and Rs.20,38,000/- on account of stone products were not supported and hence, the AO could not verify and disallowed and passed the order u/s.143(3), dated 18.3.2013.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A). In the appellate proceedings, Id. AR argued the grounds and reiterated the submissions made before the Id.AO. Ld.CIT(A) considered the findings of the AO and the arguments of Id. AR and dealt on the disputed issue of consolidated addition of Rs.38,58,000/- at page 4 and also on the various issues relating to net profit margin and finally came to a conclusion at page 4 to 8 and dealt exhaustively on facts considering the turnover of contract receipts of the assessee allowed the appeal and observed at page 9 as under :-

*“Views against the above backdrop, the impugned expenses totalling Rs.38,58,000/- is a meagre 1.45% of the Contract Receipts of the Appellant of Rs.26,61,72,948/- and a similarly low 1.64% of its total contract expenses of 23,47,46,247/-. This percentage is so miniscule to be within statistically permissible limits. These proportions and their acceptable and within bounds statistical aftermath reveal that there was no real need for the AO to make the impugned disallowances. That the Appellant’s Net Profit Margin during the impugned F.Y. 2009-10 was an enhanced value of 4% as against the corresponding value of 3.24% for the preceding F.Y.2008-09 despite the higher claim of depreciation (about 0.8% of the contract receipts) owing to the purchases of new assets and a*

*126% increase in turnover, too are material facts supporting the Appellant's case.*

*i) In view of all the above, the impugned contract expenses totalling Rs. 38,58,000/- treated as non-genuine by the AO and added back and assessed as the taxable income of the Appellant for the impugned A.Y. 2010-11 are held to be genuine and materially relevant to the business affairs and purposes of the Appellant. No contradictory evidence has been determined to negate this latter position and deny the Appellant the claim of the impugned expenses as deductions.*

*7. The contentions of the Appellant vide the Grounds of Appeal filed and the submissions made are accepted in toto. In sum, the Appeal is allowed."*

5. Aggrieved by the order of CIT(A), the revenue is in appeal before the Tribunal.

6. Before us, Id.DR contended that the CIT(A) erred in deleting the addition irrespective of the fact that the AO could not verify the details and were not presented, whereas Id. AR submitted that complete information is furnished before the AO and the Id. CIT(A) has also considered these facts and proof and allowed the appeal.

7. We heard the rival submissions, perused the material on record. *Prima facie*, Id. DR's contention is that the CIT(A) has erred in deleting the addition without considering the findings of AO. We found from the order of the CIT(A) that he has dealt on net profit margin and made comparison of civil construction of various other companies for the said quarter based on the sales and relied on the judicial decisions and also compared net profit margin (NPM) and the percentage of disallowance based on the turnover of the assessee. Further, these facts were not discussed before the AO and the Id. AO has made disallowance purely due to lack of proper supporting evidences. Accordingly, we considered the apparent

facts and material and in the interest of justice remit the disputed issue to the file of AO for verification and examination and the assessee shall be provided adequate opportunity of hearing and shall file information before passing the order and grounds of appeal of the revenue are allowed for statistical purposes.

8. In the result, appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open court on this 28 /07/2017.

**Sd/-**

**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**

**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 28/07/2017

प्र. कु. मि / PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant- DCIT, Circle-2(1), Sambalpur
2. प्रत्यर्थी / The Respondent-  
M/s L.N.Infrastructure & Construction Pvt. Ltd.,  
At-Padampur, Dist-Bargarh
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