

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.412/CTK/2015
(निर्धारण वर्ष / Assessment Year :2008-2009)

DCIT,Circle-1(1), Cuttack	Vs.	Shri Kamlesh Kumar Jain, Prop M/s. Jain Transport, Chandikhole, Jajpur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEJPJ 7984 H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri A.K.Mohapatra, CITDR
निर्धारिती की ओर से /Assessee by : None

सुनवाई की तारीख / **Date of Hearing** : **25/07/2017**
घोषणा की तारीख/**Date of Pronouncement** **28/07/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The revenue has filed an appeal against the order of CIT(A), Cuttack, passed in ITAppeal No.077/2014-15, dated 20.07.2015, u/s.147/143(3) r.w.s.250 of the Income Tax Act.

2. The revenue has raised the sole substantive ground that the CIT(A) erred in considering the assessee's submissions and has not called for the remand report and comments from the AO which are in violation of provisions of Rules 46A of the I.T.Rules.

3. None appeared on behalf of the assessee when the matter was called for hearing. However, an adjournment application was placed on record by the assessee seeking for adjournment of hearing on the ground that Id. AR of the assessee is suffering from high fever and would not be able to attend the same, which, in our considered opinion, is not a plausible one and, thus, we reject the application and 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 that the assessee is engaged in the business of transportation and construction activities and filed the return of income on 31.10.2008 declaring the total income at Rs.68,98,620/-, and the return of income was processed u/s.143(1) of the Act and the assessment was completed u/s.143(3) on 31.12.2010 assessing total income at Rs.1,14,19,200/-. Subsequently, the AO has reason to believe that there is escapement of income on comparison with Form No.26AS and the difference in the receipts should be offered in the financial statements and the AO issued notice u/s.148 of the Act and subsequently notice u/s.143(2) & 142(1) of the Act were issued. In compliance to the same, Id. AR appeared from time to time and furnished the reconciliation of difference of gross receipts and amount disclosed in Form No.26AS. But the AO was not satisfied with the submissions and the details submitted by the assessee and finally made additions and assessed income of Rs.5,57,68,580/- and passed order u/s.143(3) r.w.s147 of the Act, dated 30.03.2014.

5. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A). The Id. CIT(A) considered the grounds raised by the assessee and the submissions made in the course of appellate proceedings and various documents filed before him and found that the assessee has failed to substantiate its claim with proper evidence on

reconciliation and partly allowed the appeal of the assessee and observed at page 3 para 5 of the order as under :-

"5. Reasons for the Decision:

The appellant during appeal hearing submitted that the major difference of Rs.11,48,87,095/- occurred because of wrong entry of one transaction in TDS return filed by one principal contractor. The appellant further submitted that the principal contractor in the meanwhile has rectified the mistakes by filing revised TDS return. The AO is directed to verify the same and give credit to the appellant if found correct. As far as further difference of Rs.59,07,498/- in gross receipt is concerned, the appellant submitted that the same were quick lifting charges forwarded by the principal contractors to the appellant which were directly paid to truck owners. The principal contractors have deducted TDS from such payment whereas the same were not accounted for by the appellant. The appellant had submitted ledger copies of both the principal contractors debiting the contract receipt and receipts on account of quick lifting charges. The AO is directed to delete the addition."

6. Being aggrieved with the order of CIT(A), the revenue has filed an appeal with the Tribunal.

7. Ld. DR submitted that the CIT(A) erred in accepting the submissions of the assessee and not complied with the provisions of Rule 46A of the I.T. Rules in respect of evidence filed in support of gross receipts by the assessee and prayed for allowing the appeal.

8. None appeared on behalf of the assessee.

9. We heard the submissions of Id. DR and perused the material on record. *Prima facie*, the contention of Id. DR that CIT(A) has decided the issue without calling for any information/comments from the AO nor remand report, which is necessary for disposal of the appeal. The Id. CIT(A) dealt on the submissions referred at page 2 of the order. We find strength in the contentions of Id. DR. While the Id. CIT(A) deciding the

appeal, should have called for remand report from the AO and provided an opportunity to verify the details filed in the appellate proceedings. Considering the apparent facts and material on record, we set aside the order of CIT(A) and remit the entire disputed issue to the file of AO to verify and pass the order afresh and considering the material submitted by the assessee in the appellate proceedings. Nevertheless to say that the assessee should be provided adequate opportunity of hearing before passing the order.

10. Thus, appeal of the revenue is allowed for statistical purposes.

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

Sd/-
(N. S. SAINI)

Sd/-
(PAVAN KUMAR GADALE)

लेखा सदस्य / ACCOUNTANT MEMBER

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-1(1), Cuttack
2. प्रत्यर्थी / The Respondent-
Shri Kamlesh Kumar Jain,
Prop M/s. Jain Transport, Chandikhole,
Jaipur
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