

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

ACIT, Circle-2(1), Cuttack	Vs.	M/s M. Cube Construction Pvt. Ltd., Link Road, Arunodaya Market, Cuttack
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AADCM 9847 R</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan,CITDR  
निर्धारिती की ओर से /Assessee by : Shri P.S.Panda/K.Agarwalla, AR  
सुनवाई की तारीख / Date of Hearing : **18/09/2017**  
घोषणा की तारीख/Date of Pronouncement **19/09/2017**

**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, in Appeal No.669/2013-14, dated 10.04.2015, passed u/s.143(3)/144 of the Income Tax Act, 1961 for the assessment year 2011-2012, wherein the revenue has raised the following grounds :-

*01. Whether in the facts and circumstances of the case the Ld.CIT(A) is justified in deleting discrepancy in gross receipts to the tune of Rs.64,77,939 considering that assessee is systematically showing the amount of gross receipts as per bills raised and whereas advance were accounted for in the balance sheet and adjusted in the particular year of concern and subsequent years through bills raised.  
- When the AO specifically noticed the short disclosure of gross contract receipts of Rs.64,77,939 difference between the figure of 26AS statement and amount disclosed in P&L accounts which has not been specifically reconciled by the Id.CIT(A) in the appellate order.*

*02. The Id.CIT(A) has erred in giving direction to delete the addition made for short disclosure of contract receipts of Rs.64,77,939 because Id.CIT(A) relying on the written submissions with materials were not available with the AO while passing the assessment order. Hence on the basis of the fresh materials, substantial relief allowed by the Id.CIT(A) apparently is to be treated as the additional evidence which was not before the AO while completing the assessment. Ld.CIT(A) is not justified in deciding the issue in favour of the*

*assessee without affording an opportunity to the A.O. to examine the issue in question - in contravention of provisions of Rule 46A of the I.T.Rule 1962.*

2. Brief facts of the case are that the assessee is engaged in civil construction work and filed the return of income for the assessment year 2011-2012 on 30.09.2011 with total income of Rs.25,37,470/- and the return of income was processed u/s.143(1) of the Act and subsequently the case was selected for scrutiny under and notice u/s.143(2) & 142(1) was issued. In compliance to the same, Id. AR of the assessee appeared from time to time and produced audited profit and loss account and balance sheet for the relevant assessment year. The AO on perusal of the financial statements found that the assessee has disclosed gross receipts Rs. 8,14,67,213/- and TDS was deducted Rs.22,94,315/- and net income offered at Rs.25,37,470/-, further on perusal of the gross receipts, disclosed in the profit and loss and statement of 26AS, the AO found that there is a difference of Rs.64,77,939/- and the assessee could not explain the difference with supporting documents and AO called for the explanations. Since the assessee could not explain or produce cash book and bank statement, the AO observed in spite of providing opportunities, the assessee has failed to explain the differences and finally the AO assessed total income of the assessee at Rs.90,15,410/- and passed the order u/s.143(3)/144 of the Act, dated 5.3.2014.

3. Aggrieved by the order of AO, the assessee filed an appeal with the CIT(A). In the appellate proceedings, Id. AR of the assessee appeared and argued the grounds and reiterated the submissions made before the

AO. Ld.CIT(A) considering the facts explained by the assessee on difference of receipt has allowed the appeal and observed at para 4 & 5, which reads as under :-

4. *During appeal hearing, the appellant submitted that it is a private limited company and its books of accounts are duly audited under the provisions of company's Act and u/s. 44 of the I.T. Act. There is no question of any suppression of income. The difference in gross amount appearing in 26AS and P/L account was duly explained during assessment proceedings and all the required explanation and details were submitted before the AO. The contention of the AO that assessee has accepted the difference is totally wrong. The appellant had submitted during appeal hearing a copy of the explanation submitted by it before the AO during appeal hearing. The appellant further submitted that it has been showing in gross receipt the amounts for which he is preparing the bills and getting paid. The discrepancy occurs because of the advance payments and other payments from which the contractees deduct TDS. The appellant submitted details of gross receipts as per 26 AS statements as per its books of accounts and details of excess / short as per 26 AS Statement. The appellant further pointed out that the difference in the gross receipts and the 26 AS arose because the appellant has received an advance of Rs.2,76,50,000/- from the contractee M/s. Jindal Steel and Power Limited during the year and from that amount TDS has been deducted by JSPL. The appellant has raised RA Bills of Rs.97,40,606/- during the year and the balances adjusted against such advance in the succeeding year from the total RA Bills of Rs.2,93,60,880/-. The appellant has also produced confirmation letter from M/s. JSPL along with details of Bills raised during the year under consideration. The appellant has also submitted confirmation letter from M/s. JSPL regarding advance receipt and regarding adjustment of advancement of Rs.2,76,50,000/- against provisional bills for the year and bills for the subsequent year. The copy of ledger account of advance from M/s. JSPL and the audit report etc. were submitted by the appellant.*

5. *I have perused the details of gross receipts submitted by the appellant. In the case of gross receipt from SBI Staff Association CEO. Ltd., Kalinga Hospital Limited, L1C of India, the gross bill amount as per the books of the appellant is more than that shown in the 26AS statement. Whereas in the case of M/s. JSPL figure in the 26AS statement is more than the gross bill amount shown by the appellant. This indicates that the appellant is systematically showing the amount of gross receipt as per the bills raised whereas the advances etc. were accounted for in the balance sheet and adjusted in the particular year of concern and subsequent years through such bills raised. The appellant also produced confirmation letters from M/s. JSPL to this account. Under the circumstances, I do not find any reason to add the difference in gross receipt as shown in the 26 AS statement and as shown by the appellant to the total income of the*

*appellant. The AO is directed to delete the addition. But while giving credit to TDS the AO is directed to give credit to the TDS as per the gross receipts shown by the appellant.*

6. *The appellant has during appeal hearing submitted that the AO has not given credit to TDS amount of Rs.2,777/- done from the interest received from bank though the income has been shown in the P/L account under the head Other Income. The AO is to verify the details and give credit to the TDS if found correct.*

7. *As a result, the appeal is allowed.*

4. Aggrieved by the order of CIT(A), the revenue has filed an appeal before the Tribunal.

5. Before us, Id. DR submitted that the assessee has suppressed the fact and the CIT(A) has suo moto dealt with the submissions of the assessee and no material was provided to the AO and prayed that the order of AO be restored. Whereas Id. AR relied on the order of CIT(A) and also submitted that the CIT(A) has dealt on the facts and on law and allowed the appeal of the assessee.

6. We have heard the rival contentions and perused the material on record. The sole contention of Id. DR is that the CIT(A) has erred in deleting the discrepancy in gross receipts. Prima facie, we find the assessee in appellate proceedings has filed the details and the CIT(A) has verified the Form 26AS and satisfied with the reconciled of difference in gross receipts. We find at the time of hearing Id. DR could not controvert the observations of the CIT(A) with any new evidence filed by the assessee and relied on the orders of AO. We find the Id. CIT(A) has dealt on the issue and considered the explanations of the assessee and granted the relief. Accordingly we are not inclined to interfere with the

order of CIT(A) and upheld the action in deleting the addition and dismiss the grounds of appeal of the revenue.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 20/09/2017.

**Sd/-**

**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**

**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 20/09/2017

प्र. कु. मि / PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-  
ACIT, Circle-2(1), Cuttack
2. प्रत्यर्थी / The Respondent-  
M/s M. Cube Construction Pvt. Ltd.,  
Link Road, Arunodaya Market, 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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Senior Private Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack