

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

Sri Kamlesh Kumar Jain, C/o-Jain Transport, Chandikhole, At-Sunguda, Jajpur	Vs.	CIT, Cuttack
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AEJPJ 7987 H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri R.K.Jhunjhunwala, AR  
राजस्व की ओर से /Revenue by : Shri A.K.Mohapatra, CITDR  
सुनवाई की तारीख / Date of Hearing : **19/09/2017**  
घोषणा की तारीख/Date of Pronouncement **22/09/2017**

**आदेश / O R D E R**

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

The assessee has filed an appeal against the order of CIT, Cuttack, dated 31.03.2015, passed u/s.263 of the Income Tax Act, 1961 for the assessment year 2009-2010, wherein the assessee has raised the following grounds :-

- 1.For that the Learned CIT has erred both in law & fact in invoking the provisions of section 263 without satisfying the requirement of law.*
- 2.For That, the learned CIT is wrong and unlawful in passing an order under section 263 for having disagreement with the opinion of AO, which is not unlawful.*
- 3.For that the learned CIT has erred both in law & fact by holding that exercise of power under section 263 is justified even in case of in adequate inquiry by AO.*
- 4.For that the learned CIT (Appeal) has erred both in law & fact by passing order by exercising power under section 263 without having any cogent material on hand.*
- 5.The assessee craves the leave of this Honorable bench to add, alter, modify, substitute any of the above grounds or submit any fresh additional grounds during appeal proceeding.*

2. Brief facts of the case are that the assessee is engaged in the business of transportation and construction activities and filed the return of income for the assessment year 2009-2010 on 13.10.2010 with total income of Rs.1,03,32,253/- 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 submitted written submissions along with bank statement, ledger copies, TDS challans, transport payment ledger & other details, bills and vouchers and supporting documents. Ld. AO during the course of assessment proceedings found that assessee has not produced cash book and books of accounts, ledger accounts etc. Hence, the claims could not be cross checked. He AO is of the opinion that the book results of the assessee reflected in profit and loss account and financial statements could not be relied and accordingly rejected the books of accounts of the assessee u/s.145(3) of the Act and estimated profit @8% on civil contract receipts which works out to Rs.70,205/-. Similarly, the AO estimated income @4% on hiring of machines being Rs.32,574/- and estimated income @3% of the gross receipts of transport contracts worked out to Rs.1,09,38,553/- and assessed total income at Rs.1,10,37,700/- and passed the order u/s.143(3)/144/145(3) of the Act, dated 15.03.2013.

3. Subsequently, the CIT in revisionary proceedings issued notice u/s.263 of the Act dated 10.3.2015 requiring the assessee to clarify on the disputed issues as the AO has not applied his mind while estimating the

income on transportation business. In compliance, Id. AR of the assessee filed written submissions on the disputed issue of income from transportation business and also explained the nature of working and various other operational activities. The CIT observed that the AO has completed the assessment mechanically without making any enquiry and investigation and estimated the profit at 3% on the receipts of transportation business of the assessee. The Id. CIT(A) is of the opinion that as the books of accounts are rejected by the AO u/s.145(3) of the Act and estimating income @5% of transportation business receipts as reasonable and found the assessment order passed by the AO is erroneous and prejudicial to the interest of revenue. Further directed the AO to make de novo assessment after due examination of the disputed issues and passed the order on 31.3.2015.

4. Aggrieved by the order of CIT, the assessee has filed an appeal before the Tribunal.

5. Before us, Id. AR for the assessee submitted that the order passed by the CIT is bad in law and devoid of merits and the AO has estimated income at 3% which is accepted by the assessee and, again making de novo assessment as per the direction are not in accordance with law. Contra, Id. DR for the revenue relied on the order of CIT.

6. We have heard the rival contentions and perused the material on record. The sole crux of the disputed issue is with respect to the validity of revision proceedings. Id. AR's contention that the CIT has erred in both law and facts invoking provisions u/s.263 of the Act and explained that the

AO has already considered the facts of the assessee and made addition and further making de novo assessment is not correct. Ld. AR supported the submissions with judicial decisions. We find the AO has called for the details and also provided opportunity. But the assessee has not submitted the cash book to counter check the claim of expenditure in the profit and loss account. Therefore, rejected the books of accounts u/s.145(3) of the Act and estimated the income. The CIT observed in the order u/s.263 of the Act that when the books of accounts are rejected by the AO invoking powers u/s.145(3) of the Act and due to non-production of books of accounts, CIT has directed the AO to estimate net profit @5% instead of @3% on the gross contract receipts and set aside the order of AO for fresh assessment. The Id. CIT found the order passed by the AO is erroneous and prejudicial to the interest of revenue. Further, Id. AR submitted that the AO has passed order u/s.143(3)/263 of the Act by estimating net profit at 5% on gross receipt from transportation business and appeal is pending for disposal before the CIT(A). We considering these apparent facts and material on record, find that the order passed by CIT u/s.263 of the Act is proper and satisfy the twin conditions of erroneous and prejudicial to the interest of revenue and accordingly confirm the order of CIT and dismiss the grounds of appeal of assessee.

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

Order pronounced in the open court on this 22/09/2017.

**Sd/-**

**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 22/09/2017

प्र.कु.मि/PKM, Senior Private Secretary

**Sd/-**

**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant-  
Sri Kamlesh Kumar Jain,  
C/o-Jain Transport, Chandikhole,  
At-Sunguda, Jajpur
2. प्रत्यर्थी / The Respondent-  
CIT, 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