

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

DCIT, Corporate Circle-1(2), Bhubaneswar	Vs.	Orissa Order Suppliers Private Limited, C-112, Barmunda Housing Board Colony, Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AABCO 1458 J</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR  
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 **22/09/2017**

**आदेश / O R D E R**

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

The revenue has filed an appeal against the order of CIT(A)-1, Cuttack, in Appeal No.0494/2014-15, dated 10.03.2015, passed u/s.143(3) of the Income Tax Act, 1961 for the assessment year 2010-2011, wherein the revenue has raised the following grounds :-

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as on facts in deleting addition of Rs.19,02,085/- without appreciating the fact that the assessee had been paying interest on the huge amount of loan taken from bank and other parties.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as on facts in deleting addition of Rs.9,24,450/- without appreciating the fact that the assessee had made payments in cash in violation of section 40A(3), the details of which have been given in the body of the assessment order.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as on facts by deleting addition of Rs.2,25,136/- ignoring the fact that the expenses claimed by the assessee were not for any business purposes.*
4. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in not accepting the examination of findings made by the AO on the issues.*

2. Brief facts of the case are that the assessee is engaged in the business of supply of Dal to various Government agencies and filed the return of income for the assessment year 2010-2011 on 14.10.2010 with total income of Rs.7,37,892/- 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) along with questionnaire was issued. In compliance to the same, Id. AR of the assessee appeared from time to time and explained the case. The AO on perusal of the profit and loss account found that the assessee has provided loan and advances of Rs.3,55,27,226/- to the Ayush Hospital and no interest is charged by the assessee. In the current financial year the assessee has claimed in profit and loss account Rs.14,58,254/- towards interest, whereas the loan has been obtained for the purpose of business from financial institutions, banks and other parties aggregating to Rs.28,55,28,965/-. The AO found that the interest bearing loan funds from banks and other parties have been diverted as interest free unsecured loan to Ayush Hospital for non-business purpose. Accordingly, the AO estimated disallowance of interest @12.25% on the loan of Rs.1,55,27,226/- which works out to Rs.19,02,085/- and the added to the returned income of the assessee. Similarly, the AO also disallowed expenses of Rs.9,24,450/- claimed towards transportation expenses and Rs.2,25,136/- towards donations and assessed the total income of Rs.3,21,27,830/- and passed the order u/s.143(3) of the Act, dated 6.3.2013.

3. Aggrieved by the order of AO, the assessee filed an appeal with the CIT(A). In the appellate proceedings, the Id. AR of the assessee appeared and argued the grounds and reiterated the submissions made before the AO. On the first issue with respect to the interest free loans provided to the Ayush Hospital, the assessee has made submissions which the CIT(A) has considered at para 3.1 at page 2 to 4 of the order and finally came to the conclusion that there exists nexus with business, and are not provided to the Ayush Hospital in the current financial year but out of business re-organisation of the proprietary concern M/s Kalinga Commercial Corporation as going concern along with another proprietary Business with M/s Orissa Order Suppliers Pvt. Ltd. and relied on the decision of the Tribunal in ITA No.29/CTK/2012, order dated 2.4.2012, and deleted the addition and observed at para 3.2 of the order which read as under :-

*3.2 I have considered the matter. The submission of the appellant has merit. The disallowance of interest of Rs.13,69,057/- in respect of interest free loan of Rs.2 crores given to Ayush Hospital by M/s Kalinga Commercial Corporation during the period relevant to the AY 2008-09 has been deleted by the CIT(A)-II, Bhubaneswar vide his order dt.3.10.2011 in ITA No.0213/10-11 which has been upheld by the ITAT, Cuttack Bench in ITA No.29/CTK/2012 vide order dt.2.4.2012. M/s Kalinga Commercial Corporation (Prop: S.R.Samal) was taken over by the appellant company as a going concern on dt.16.1.2009 along with another proprietary concern M/s Orissa Order Suppliers. M/s Kalinga Commercial Corporation also advanced further loan of Rs.1,55,27,226/- to Ayush Hospital before it was taken over by the appellant company during the period relevant to the AY 2009-10 i.e. total loan given to Ayush Hospital comes to Rs.3,55,27,226/-. The interest on further loan of Rs.1,55,27,226/- disallowed by the AO in the AY 2009-10 for the amount of Rs.8,634,334/- has been deleted by me vide order dt.19.1.2015 in ITA No.0252/14-15. The facts in the impugned assessment year remain same as in the AY 2009-10. In view of the same addition of Rs. 19,02,085/- is hereby deleted.*

4. Similarly, on second disputed issue of disallowance u/s.40A(3) of the Act, the CIT(A) found that the amount dealt by the AO in respect of expenses of the carriage inward expenses and the ledger account do not confirm cash payments. The CIT(A) further emphasised on the narration in the ledger accounts where the payments are routed through journal entries and purchase accounts and deleted the addition of Rs.9,24,450/- referred at para 4.1 & 4.2 of the order as under :-

*4.1 The appellant has made the following submission :*

*"b) Disallowance u/s.40A(3) of Rs.9,24,450/-*

*The Id. A.O. disallowed carried inward expenses amounting to Rs.9,24,450/- u/s.40A(3) of the Income Tax Act, 1961 with a contention that the same were paid in cash exceeding the limit.*

*The appellant's submission on the above is as follows :-*

- 1. During the year the appellant had shown carriage inward expenses amounting to Rs.92,74,060/- the details of which were produced before the Id. A.O. during the course of hearing. Copies of which were duly filed during assessment.*
- 2. From the enclosed ledger copies your honour will find that the disallowances made by the Id. AO are not cash payments.*
- 3. Rather the expenses shown in the ledger copies are journal entries against which cash payments are made in subsequent days which are not in violation of the prov. Of sec.40A(3) of the Income Tax Act, 1961.*
- 4. The Id. AO on presumption basis considered the entries made under the head carriage inward as cash payment and accordingly disallowed u/s.40A(3) of the Income Tax Act, 1961*

*Since the impugned entries are not cash payments, your honour is requested to delete the disallowance made.*

*4.2 I have considered the matter. The amounts considered by the AO for disallowance u/s.40A(3) are in fact expenditure booked in the carriage inward ledger account which do not confirm that cash payments have been made for the said amounts. The amounts have merely booked as expenses in*

*the ledger account which is not same as cash payments. From the narration in the ledger accounts, the payments are booked through journal entries and to purchase accounts. Thus, the AO has wrongly treated the expenses of Rs.9,24,450/- as cash payments in violation of the provisions of section 40A(3). In view of the same, the addition of Rs.9,24,450/- is deleted.*

5. In respect of third disputed issue, the CIT(A) considered the assessee's submissions and came to the conclusion that the amount of Rs.2,25,136/- consist of petty day-to-day expenses which are necessary for running of the business and deleted the addition and allowed the grounds of appeal of the assessee.

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

7. Before us, Id. DR submitted that the CIT(A) has erred in deleting the interest on advances made to Ayush Hospital. Ld.DR further submitted that the assessee after availing loans from bank and paying interest on borrowed funds cannot provide interest free loans to any business concern. On the other hand, Id. AR substantiate his arguments that the interest free loans are provided by Kalinga Commercial Corporation a proprietorship of Sri S.R.Samal in the assessment year 2008-09 and in the said assessment year AO has disallowed the interest payments and the CIT(A) has allowed the appeal of the assessee by deleting the disallowance. Aggrieved by the CIT(A) order, the revenue has filed an appeal with the Tribunal and the same was dismissed by the Tribunal in ITA No.29/CTK/2012, order dated 2.4.2012 and in the present appeal Id. AR relied on the order of CIT(A). 8. We have heard the rival submissions and perused the material on record. The contention of Id. DR

that the assessee has provided interest free loans to its sister concerns and whereas paying interest to the bank on secured loans which is not a prudent commercial principle. Ld. DR emphasised that the CIT(A) erred in deleting the addition without considering the fact that the assessee has substantial loan funds. We find the Id. AR gave detailed explanations on the transfer of funds from the proprietary concern to the company on business -reorganisation. Further the Id. AR emphasised that during the current financial year there is no loan transaction and the entire loan was provided in the assessment year 2008-09. The Id. AR submitted his arguments by filing paper book and drew attention to page 5 of the paper book where the coordinate bench of Tribunal dealt on the similar issue in ITA No.29/CTK/2012 for the assessment year 2008-2009, in order dated 02.04.2012 and dismissed the appeal of revenue and observed at para 10 which reads as under :-

*10. Thereafter the learned CIT(A) has considered the addition made by the Assessing Officer of Rs.13,69,507/- on account of proportionate interest out of the total interest claim of Rs.4,48,06,271/-. The Assessing Officer has observed in the assessment order that the assessee has advanced a sum of Rs.13,11,20,994 to Ayush Hosptial as interest free loan whereas the loan taken by the assessee of Rs.65,55,56,926/- from ,banks and other parties giving interest. The assessee has claimed interest of Rs.4,48,06,271/- and debited the same to the P&L account. Not having been satisfied with the explanation given by the assessee, the Assessing Officer had disallowed the proportionate interest of Rs.13,69,507 out of interest claim of Rs.4,48,06,2741/-. On careful consideration of the material made available in the assessment record and books of account produced by the assessee, the learned CIT9A0 lhas found that the assessee has given loan of Rs.2.00 croes to Ayush Hospital and not Rs.13,11,20,944 as claimed by the Assessing Officer. The assessee has given explanation to the Assessing Officer during the assessment proceedings that this loan was given by the assessee out of its own funds. The opening capital of the assessee at the be4ginning of the year was Rs.1,20,50,128 and during the year the assessee has*

*earned profit of Rs.6,06,67,902. The advance was paid in December, 2007 and February, 2008 which are towards the end of the previous year by which time the assessee has generated its income and advance has been given from won funds and not from borrowed funds as alleged by the Assessing Officer. It is further noticed by the learned CIT(A) that the assessee has paid this loan from its cash credit account and the entire profits of the assessee amounting to Rs.6,06,67,902 was deposited in the cash credit account. From this account, the amount of advance of Rs.2 crores was paid to Ayush Hospital, therefore, the assessee has established that the loan was advanced from own funds and not from borrowed funds made from outside. After details consideration of the judicial pronouncements on this issue, the learned CIT(A) has directed deletion of the addition of Rs.13,69,507 made by the Assessing Officer.*

We respectfully follow the judicial precedence and in the earlier assessment year also the CIT(A) has dealt on the disputed issue and deleted the addition. Accordingly, in the present appeal we are not inclined to interfere with the order of CIT(A) who has deleted the addition, we upheld the same and dismiss the ground of appeal of revenue.

9. On the second disputed issue with respect to payments made in respect of carriage inwards, Id. DR submitted that the assessee has made cash payments and CIT(A) has erred in deleting the addition, whereas Id. AR drew our attention to the page 19 of the paper book where the payments made to the transporters through bank transactions and the Id. AR emphasised on the account copy of transaction, wherein no cash transaction is reflected and supported the CIT(A) order. The Id. DR could not controvert the explanations of the Id. AR with any cogent material except relying on the order of AO. Considering the apparent facts and material on record, we are of the opinion that the Id. CIT(A) has taken a reasoned decision in deleting the addition and accordingly, we are not

inclined to interfere with the order of CIT(A) and dismiss the ground of appeal of revenue.

10. The last ground raised by the revenue with respect to donation made to various agencies. Ld. AR submitted that the assessee company has made donations to the various parties which are necessary to maintain social relationships and work environment and are in the nature of puja expenses and relied on order of CIT(A), whereas Id. DR submitted that these expenses have no direct nexus with assessee business activities. We find most of the donations are in the nature of puja expenses, therefore, considering the business turnover of the assessee and the indirect nexus with the assessee's business, we are not inclined to interfere with the order of CIT(A) and upheld the same and dismiss the ground of appeal of revenue

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

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

**Sd/-**

**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**

**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 22/09/2017

प्र. कु. मि / PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-  
DCIT, Corporate Circle-1(2), Bhubaneswar
2. प्रत्यर्थी / The Respondent-  
Orissa Order Suppliers Private Limited,  
C-112, Barmunda Housing Board Colony,  
Bhubaneswar
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