

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

ACIT, Circle-2(1), Cuttack	Vs.	M/s Rajlaxmi Construction, Shyam Kunj Apartment, Kathojodi Ring Road, Cuttack
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACR 8437 P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan,CITDR
निर्धारिती की ओर से /Assessee by : None
सुनवाई की तारीख / Date of Hearing : **09/08/2017**
घोषणा की तारीख/Date of Pronouncement **16/08/2017**

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.014/2013-14, dated 19.6.2015, u/s.144(3) of the Income Tax Act, wherein the revenue has raised the following grounds :-

01. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is justified in quashing the reassessment proceedings made u/s.147 on the ground that AO had not been able to establish the basis of formation of escapement of income for which assessment had been opened.*
02. *In the facts and in the circumstances of the case, the Ld. CIT(A) has erred in quashing the reassessment proceedings u/s.147 which is not correct because Assessing Officer can bring to tax any income which escaped assessment and which come to his notice subsequently and not only item which led to issuance of notice u/s.148 as per the decision passed by the Hon'ble Supreme Court in the case of CIT Vrs. Sun Engineering Works Pvt.Ltd. (SC) 198 ITR 297 and as per provisions of the said section.*

2. Brief facts of the case are that the assessee engaged in the business of execution of works contract and construction and filed the

return of income for the assessment year 2010-2011 on 13.10.2010 with total income of Rs.6,97,62,382/- and subsequently filed revised return of income on 19.1.2012 with total income of Rs.2,99,56,561/-, wherein the assessee has claimed deduction of Rs.3,99,05,823/- towards security deposit/retention money and the return of income was processed u/s.143(1) of the Act. Subsequently the AO found that the assessee company has understated the income and there is reason to believe to verify and examine the genuineness and the AO issued notice u/s.148 of the Act. In response, Id. AR filed written submissions to consider the revised return filed on 9.1.2012. Subsequently notice u/s.143(2) & 142(1) of the Act were issued. In compliance, the Id. AR appeared from time to time and in the hearing proceedings the assessee submitted the details of security deposits and again on 29.11.2012 Id. AR appeared and filed written submissions with supporting documents in respect of retention money referred at para 3 at page 2 and 4 of the assessment order. Further, Id. AR filed additional details and submitted agreement copies necessary for the purpose of assessment and relied on the judicial decisions. But the AO was not satisfied with the explanations and production of the bills and vouchers and relied on the judicial decisions and rejected the books of accounts u/s.145(3) of the Act and estimated the income at 8% on the gross receipts reflected in 26AS and allowed deduction of retention money from estimating income and determined the taxable income at Rs.3,39,48,500/- and passed the order dated 5.3.2013.

3. Aggrieved by the order of the AO, the assessee has filed an appeal with the CIT(A). In the appellate proceedings Id. AR appeared and argued the grounds and reiterated the submissions made before the AO. Id. AR's contention that the AO has erred in considering the details of 26AS and ignored assessee's submissions. The Id. AR further submitted that the assessee is a limited company maintaining books of accounts, ledger accounts and details were submitted in the hearing proceedings and following mercantile system of accounting, but Id. AO rejected the books of accounts and estimated the income which is not in accordance with law and prayed for allowing of appeal. The Id. CIT(A) considered the grounds argued by the assessee and submissions of the assessee in the appellate proceedings at para 6 at page 3 where the assessee relied on the judicial decisions as the assessment cannot be sustained because the AO has not made addition on the reasons of reassessment u/s.148 of the Act but alternatively made addition of system of accounting and rejected the books of account and estimated the income.

4. The Id. CIT(A) has called for the assessment records and reasons recorded for issue notice u/s.148 of the Act. Further Id. CIT(A) discussed the grounds and reasons on reassessment proceedings at para 9 at page 7 of the order on the disputed issue of estimation of income. In the appellate proceedings, the assessee has submitted various details as referred by the CIT(A) in his appellate order at page 9. Further reconciliation of the turnover was made with gross receipts at page 11 of the CIT(A)'s order. Finally, Id. CIT(A) having considered these facts and

submissions and evidence has allowed appeal of the assessee and observed at para 15 page 11 as under :-

15. Alongwith the submission the appellant had submitted details of earlier bills received in F.Y.2009-10 which is appearing in 26AS but has not been taken by the assessee in his gross turnover, details of bill and escalation provision in f.Y.2009-10 but not appearing in 26AS, details of bills credited and received but not appearing in 26AS and also the form No.16A. The appellant also submitted a copy of the details submitted by it before the AO during the assessment proceedings for the A.Y.2012-2013 where accounting of the retention money/security deposit has been made by him. I find the gross receipts as shown by the appellant in its P/L account reconciled with those of 26AS.

5. Aggrieved by the order of CIT(A), the revenue has filed an appeal before the Tribunal. 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 the Id. AR of the assessee is suffering from severe cold, cough & headache and will not able to appear on the date of hearing, which in our considered, 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.

6. Ld. DR's contention that the CIT(A) was not justified in cancelling the reassessment proceedings because the AO could not establish the confirmation of escapement of income. Ld. CIT(A)'s observation and opinion does not satisfy the condition for quashing of reassessment proceedings and prayed for restoring of the order to the AO.

7. We have heard the submissions of Id. DR and perused the material available on record. Prima facie the contention of Id. DR that the CIT(A) has erred in quashing the assessment and proceedings u/s.147 of the Act

which is not in accordance with the provisions. We found on perusal of the assessment order the AO has issued notice u/s.148 of the Act due to understated income but on perusal we find the AO has rejected the books of accounts and made addition on estimation of income at 8% of the gross receipts disclosed in the Form 26AS and allowed deduction in respect of security/retention of money, whereas Id. CIT(A) has called for the remand report and made reconciliation of the gross receipts as per Form 26AS disclosed by the assessee and retention money. We find the AO has issued notice u/s.148 of the Act in respect of understated income but there is no addition was made by the AO on such income in reassessment proceedings but made a fresh addition on rejecting the books of accounts and estimating the income. We are of the opinion that the order of the AO is not in accordance with law and CIT(A) has rightly called for the remand report from the AO and took reasonable decision in quashing the assessment. There is no addition by the AO on the reasons for issue of notice u/s.148 of the Act. Accordingly, we are not inclined to interfere with the order of CIT(A) and upheld his action and dismiss the grounds of appeal of the revenue.

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

Order pronounced in the open court on this 16/08/2017.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated

प्र. कु. मि/PKM, Senior Private Secretary

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

16/08/2017

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 Rajlaxmi Construction,
Shyam Kunj Apartment,
Kathojodi Ring Road, 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