

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.503/CTK/2017

(निर्धारण वर्ष / Assessment Year :2013-2014)

ITO Ward-1(2), Bhubaneswar	Vs.	Odissi Exports Pvt. Ltd. Plot No.166, 1 st Floor, Forest Park, Ganga Nagar, Bhubaneswar, Odisha
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCO 0337 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, DR

निर्धारिती की ओर से /Assessee by : Shri Purna Chandra Mishra, AR

सुनवाई की तारीख / Date of Hearing : **20/08/2018**

घोषणा की तारीख/Date of Pronouncement **21/08/2018**

आदेश / ORDER

Per Shri Pavan Kumar Gadale, JM:

This is an appeal filed by the Revenue against the order of CIT(A)-1, Bhubaneswar, dated 25.09.2017 passed in I.T.Appeal No.0014/16-17 for the assessment year 2013-14.

2. The Revenue has raised the following grounds of appeal :-

1. *The order of the Ld. CIT(A) is erroneous on facts and in law.*
2. *On the facts and in the circumstances of the case , the Ld. CIT(A) is not justified in deleting disallowance to the extent of Rs.1,69,38,102/- out of total disallowance of Rs.1,78,71,312/- made by the AO in the assessment, when the assessee has not been able to produce supporting vouchers for claim of such expenses during the assessment proceedings as stated and discussed in para-4.1 to 4.3 of the assessment order.*
3. *The Ld. CIT(A) is not justified in deleting the disallowance made by the AO out of freight charges to the extent of Rs.1,69,38,102/- when the assessee has not been able to furnish the details of freight charges paid, as asked vide order sheet noting on 16.03.2016, during the course of*

assessment proceedings, in its reply furnished vide letter dated 21.03.2016 subsequently before the AO.

- 4 *Ld. CIT(A) is not justified in deleting the addition to the extent of Rs.1,69,38,102/- out of the total disallowance of Rs.1,78,71,312/- made by the AO in the assessment accepting the remand report of the AO furnished on the basis of vouchers produced by the assessee during the remand proceedings, when the reasons for not producing the same during the assessment proceedings has not been explained, and it not possible to accept that the same have sanctity.*
- 5 *The appellant craves to alter, amend or add any other ground that may/ be considered necessary in course of the appeal proceedings.*

3. Brief facts of the case are that the assessee is engaged in the business of export of iron ores and carrying on the business in the name and style of M/s Odissi Exports Pvt. Ltd. and filed the return of income electronically on 26.05.2014 for the A.Y.2013-2014 declaring total income of Rs.13,91,620/-. The return of income was processed u/s.143(1) of the Act. Subsequently the case was selected under scrutiny under CASS and notices u/s.143(2) & 142(1) of the Act were issued. In compliance of the same, Id. AR appeared before the AO and case was discussed. Thereafter the AO completed the assessment and passed order u/s.143(3), dated 23.03.2016 and made disallowance u/s.40(a)(ia) of the Act under the head security service charges, difference in Revenue from operations as shown in ITR and Audit report and disallowance of freight charges.

4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). In the appellate proceedings Id. AR made submission and the CIT(A) after considering the findings of the AO and submission of

the assessee, dismissed the grounds with regard to disallowance u/s.40(a)(ia) of the Act made on account of security service charges and difference in Revenue from operations as shown in ITR as not pressed and the partly deleted the disallowance made by the AO on account of freight charges.

5. Aggrieved by the order of the CIT(A) the Revenue has filed an appeal before the Tribunal.

6. Before us, Id. DR submitted that the CIT(A) has erred in granting the relief to the assessee irrespective of the fact that the assessee has not filed the details and also referred to the order of CIT(A) at page 8 para 3 which reads as under :-

“3. In response to such query on 20th July, 2017, the AR of the assessee company, Sri T.K.Das appeared for hearing and produced General Ledger having only the numbers of the trucks without any address or owners details and produced written submission only. The gist of said letter replied by the assessee is furnished as under:

(ii) Detail address, PANo of the truck owners / transporters who were engaged by you.

Reply: We did not maintain or record PAN nos and address of the truck owners at the time of delivery of the ores as it is practically impossible to collect all the details.....

(iii) Bills in respect of the transportation work carried out.

Reply: We never issue any bill excepting vouchers giving details of weight of the goods and amount paid according to rate.....

(iv) Details of agreement, if any, made with the concerned transporter/ truck owners. Reply: : There is no such agreement with any of the driver of the truck owner.....

*(iv) Details of TDS deducted in respect of the payments made to the truck owners as required in terms of provisions of the I.T.Act
Reply: We have not deducted any tax i.e TDS from any truck owners / drivers while making payments as per rate chart.....*

(vii)j In reply to this query, it was stated that we do not possess any trucks of our own.....Daily different trucks are hired for

carrying the goods to the destination without knowing the name of the truck owners and their PAN details..... It is not at all possible to collect the information as asked for and the business will be stand still.....”

and, therefore, the Id. DR prayed for allowing the appeal of Revenue.

7. Contra, Id. AR supported the order of CIT(A) and submitted that the details were furnished before the appellate authority and also remand report was called for and the AO was provided opportunity to verify the details. Ld.AR further submitted that the CIT(A) having considered the submissions of the assessee and remand report from the AO has taken a decision based on the evidences filed which is acceptable in the eyes of law.

8. We have heard rival submissions and perused the materials available on record. Prima facie, we find that the CIT(A) has dealt with the issue in para 6 & 7 and granted partly relief after calling remand report from the AO. The observation of the CIT(A) in para 6 & 7 are as under :-

“6. A copy of the remand report was given to the assessee for its comments , in the course of appeal hearing. The assessee's response in this regard as per its letter dt. 13.9.2017 is as under:

'We have received the Remand Report of the Income -tax Officer, Ward-1(2), Bhubaneswar vide his letter No.4598 dt.28.8.2017.

So far as the disallowance of freight charges 30% of the total expenses amounting to Rs. 1,78,71,312/- is concerned, we beg to submit before your Honour' that we don't have any objection if the report of the ITO is followed while passing the appeal order. However, it may not be out of place to mention here that we had produced all the vouchers with truck numbers regarding payments to truck owners at the time of hearing of Remand Proceedings."

7. The entire gamut of facts involved in this case has been duly considered. The written submission of the assessee and the remand report of the AO have also been perused. The AO, in the course of remand proceeding has verified all the vouchers

pertaining to freight expenses and found out certain vouchers which are highly defective and cannot be considered to be genuine. The list of such vouchers finds place in the remand report of the AO. The total amount involved in such vouchers is Rs.9,33,210/-. In the fitness of things, out of the total freight expenses, this amount of Rs.9,33,210/- is required to be disallowed. Accordingly, based on the remand report of the AO, out of the total disallowance of Rs.1,78,71,312/- in the assessment order, an amount of Rs.9,33,210/- is confirmed and the balance deleted.”

Ld. DR before us could not bring any cogent evidence or any new material fact to controvert the above finding of the CIT(A). Accordingly, we do not see any reason to interfere in the order of CIT(A) in this regard. Hence, we dismiss the ground of appeal of Revenue.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this 21/08/ 2018.

Sd/-
(N.S.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 21/08/2018

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
ITO Ward-1(2), Bhubaneswar
2. प्रत्यर्थी / The Respondent-
Odissi Exports Pvt. Ltd.
Plot No.166, 1st Floor, Forest Park, Ganga
Nagar, Bhubaneswar, Odisha
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