

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.33/CTK/2015

(निर्धारण वर्ष / Assessment Year :2010-2011)

DCIT, Sambalpur	Circle-1(1),	Vs.	M/s Tarini Loading Contractors, At:Jurudi, PO- Jajang, Joda, Keonjhar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACFT 7408 D			
(अपीलार्थी /Appellant)		..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri N.Gupta / S. Nanda, AR
राजस्व की ओर से /Revenue by : Shri D.K.Pradhan,CITDR
सुनवाई की तारीख / Date of Hearing : **21/08/2017**
घोषणा की तारीख/Date of Pronouncement **24/08/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The revenue has filed an appeal against the order of CIT(A), Bhubaneswar, dated 14.11.2014, passed in I.T.Appeal No.0513/2013-14, u/s.143(3) of the Income Tax Act, 1961 for the assessment year 2010-2011, wherein the revenue has raised the following grounds :-

- Whether in the facts and circumstances of the case, the Ld.CIT(A) is correct in law and facts in deleting the addition of Rs.1,80,75,879/- made by the Assessing Officer, when the expenditure in cash of Rs.6,84,36,292/- is more than the amount of Rs.5,30,60,413/- available in cash and the difference of Rs.1,80,75,879/- was treated by the AO as unexplained expenditure u/s.69C of the I.T.Act, 1961.*
- Brief facts of the case are that the assessee is in business of transport contracts and filed the return of income electronically on 06.10.2010 with total income of Rs.33,05,720/- and the return of income was processed u/s.143(1) of the Act. Subsequently notice u/s.143(2) and 142(1) of the Act were issued to the assessee along with questionnaire. In compliance, the Id. AR appeared from time to time and case was

discussed. The AO on perusal of the profit and loss account found that the assessee has claimed expenditure of Rs.6,94,18,753/- under various heads, whereas the turnover was Rs.7,27,24,475/-. Further, out of the said expenses, non-cash expenditure of depreciation was Rs.9,82,463/-, therefore, the AO calculated cash expenses debited to the profit and loss account at Rs.6,84,36,292/-.

3. The AO found that there is no outstanding expenses disclosed in the balance sheet and total expenditure was paid during the current year and also the creditors of the earlier year A.Y.2009-2010 were paid during the current year therefore total cash outflow as per the audited accounts worked out to Rs.6,96,24,323/-. The assessee is maintaining bank account with Indusind Bank and there are cash withdrawals of Rs.3,75,76,552/-. Similarly the partners have also withdrawn money from the bank to the extent of Rs.1,39,62,972/-, considering these facts and figures, the AO found availability of cash with the assessee to the extent of Rs.5,03,60,413/- only, whereas the expenditure claimed by the assessee is Rs.6,84,36,292/-, since there are no satisfactory explanations provided by the assessee on the difference of the cash balance the AO considered unexplained expenditure as deemed income under the provisions of Section 69C of the Act Rs.1,80,75,879/- and assessed the total income of Rs.2,13,81,599/- and passed the order u/s.143(3) of the Act, dated 26.3.2013.

4. Aggrieved by the order, the assessee filed an appeal before the CIT(A). In the appellate proceedings the Id. AR argued the grounds and

reiterated the submissions made before the AO and made elaborate submissions on grounds of appeal and the facts, whereas the CIT(A) dealt on submissions of the assessee on cash reconciliation at page 7 para 7 of the order. The Ld. CIT(A) also dealt on the judicial decisions and submission of the assessee and observed that there is no deficit and allowed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), revenue has filed an appeal before the Tribunal. Before us, Id. DR submitted that the Id. CIT(A) has erred in deleting the addition irrespective of the fact that there is cash deficit as per the financial statements in the assessment proceedings and there is no supporting evidence filed by the assessee to reconcile the difference and prayed for restoring the order of AO.

6. Contra, Id. AR supported the order of CIT(A) and submitted that the assessee is a transport contractor and maintaining the books and accounts and are audited. The AO has made assessment without rejecting the books of accounts and further the AO has ignored the fact that the assessee is following mercantile system of accounting and filed paper book to substantiate the arguments and prayed for dismissal of revenue's appeal.

7. We have heard the rival submissions and perused the material available on record. The sole matrix of the disputed issue that the CIT(A) erred in deleting the addition by the AO due to deficit cash balance and the assessee has incurred the expenditure more than the source as per the findings of the AO. The Id.AR vehemently argued that the AO

accepted the method of accounting as mercantile and failed to accept that some of the payments are pertaining to earlier years and assessee has adequate cash balance and substantiate with reconciliation. The Id. AR drew attention to the paper book where the ledger account, copies of various expenses incurred by the assessee are filed.

8. We have perused the assessment order and the findings of AO and found that the addition was due to unexplained expenditure. On the query of the bench whether reconciliation statement was filed before the assessing authority by the assessee in respect of deficit balance and expenses with supporting evidence, the Id. AR's explanations could not convince us and prima facie we are of the opinion that the assessee is following the mercantile accounting system but in the present case the addition was due to difference of excess claim of expenditure than actual cash availability, therefore, in the interest of substantial justice we remit this disputed issue for limited purpose to file of the AO to verify and examine the correctness of the claim filed before us and reconciliation of cash balance and the assessee should be provided adequate opportunity of hearing before passing the order on merits. Accordingly, the grounds of appeal of the revenue are allowed for statistical purposes.

9. In the result, appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open court on this 24/08/2017.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 24/08/2017

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-
DCIT, Circle-1(1), Sambalpur
2. प्रत्यर्थी / The Respondent-
M/s Tarini Loading Contractors, At:Jurudi,
PO-Jajang, Joda, Keonjhar
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