

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.24/CTK/2015

(निर्धारण वर्ष / Assessment Year :2010-2011)

Shri Jitendra Jaiswal, Jurudi, Jajang, Keonjhar	Vs.	ACIT, Sambalpur	Circle-1(1),
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEQPJ 0045 N			
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)	

AND

आयकर अपील सं./ITA No.30/CTK/2015

(निर्धारण वर्ष / Assessment Year :2010-2011)

ACIT, Sambalpur	Circle-1(1),	Vs.	Shri Jitendra Jaiswal, Jurudi, Jajang, Keonjhar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEQPJ 0045 N			
(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:

These are appeals filed by the assessee and revenue against the order of CIT(A), Cuttack), dated 24.10.2014, passed in I.T.Appeal No.0338/2014-15, u/s.143(3) of the Income Tax Act, 1961 for the assessment year 2010-2011.

2. Since the issues involved in both the appeals are similar, therefore, for the sake of convenience, both the appeals are heard and are being disposed off by this consolidated order. We take up the assessee's appeal and the facts narrated therein for consideration. The grounds raised by the assessee in its appeal are as under :-

“1. Ld. CIT(A) has estimated the income of the year @5% on gross receipt pointing out various defects in the accounts which is a

higher amount since the assessee is a sub-contract and need consideration.

2. *Ld. CIT(A) should not have confirmed Rs.72,00,000/- as bogus liability when the assessment is to be completed on estimation.”*
3. At the time of hearing, the Id. AR of the assessee has not pressed the ground No.1 and made endorsement as not pressed on ground of appeal. Accordingly, ground No.1 is dismissed.
4. Brief facts of the case are that the assessee is engaged in the business of contract works and filed the return of income electronically on 14.10.2010 with total income of Rs.27,66,078/- and return of income was processed u/s.143(1) of the Act. Subsequently notices u/s.143(2) and 142(1) of the Act were issued to the assessee. In compliance, the assessee filed details as per the questionnaire and Id. AR appeared from time to time and case was discussed. The AO on verification of the balance sheet of the company found that the assessee has disclosed liability of Rs.72 lakhs as towards “loading and hire charges” but on perusal of profit and loss account the assessee has not paid a single rupee under the head “loading hire charges”. As per the audited accounts for the assessment year 2009-2010 there was no liability, therefore, the AO concluded the loading hire charges pertains to assessment year 2010-2011 and the assessee is following mercantile system of accounting and also there is no entry in the profit and loss account and the AO was not satisfied with the submissions and made the addition along with other additions and assessed total income of Rs.3,16,97,966/- and passed order u/s.143(3) of the Act.

5. Aggrieved by the order, the assessee filed an appeal before the CIT(A). On the disputed issue of addition of Rs.72 lakhs, the contention of AO in the assessment proceedings that there is no corresponding claim in profit and loss account whereas the Id. AR of the assessee submitted that the addition was in respect of wrong claim of liability disclosed in the balance sheet and submitted that the loading hire charges and shifting charges are under one head i.e. sundry creditors which is correctly reflected in return of income electronically filed. And because of typographical error and due to technicalities difficulties expenditure was wrongly reflected in the accounts. The assessee was provided adequate opportunity to produce the evidence on the typographical error but failed to comply and Id. CIT(A) concord with the findings of the AO and confirmed the action of AO.

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

7. Ld. AR at the time of hearing submitted that the assessee is engaged in shifting of iron ore in the railway siding and it had engaged its machinery i.e. loaders for which it had claimed hire charges besides receiving contract payments for shifting of ores and also Id. AR submitted that due to typographical mistake in respect of statements and the information submitted by the assessee, the audited accounts could not reflect the complete information and, there is confusion in the disclosure of balance sheet and further the assessee should not be penalised for the

wrong statements of accounts and prayed for an opportunity to file correct details. Contra, Id. DR relied on the findings of CIT(A) and AO.

8. We have heard the rival submissions and perused the material available on record. Ld. AR's submissions is solely on the fact that the liability has been shown in the balance sheet and there is no corresponding debit in the profit and loss account. Further the Id. AR explained that the corrected balance sheet is available with the assessee and are ready to reconcile the difference, whereas the Id. DR objected to the submissions of the assessee. We have considered the findings of AO and the observations of the CIT(A). The assessee is in the contract business and has been filing return of income regularly and the claim of liability was disclosed in the balance sheet due to technical and typographical error and assessee has rectified default in the financial statements and prayed for an opportunity to explain before the tax authorities. Therefore, in the interest of substantial justice, we remit this disputed issue to the file of AO for limited purpose to verify and examine the evidence and the assessee should be provided opportunity of hearing and cooperate in filing information before passing the order. Accordingly, assessee's appeal is allowed for statistical purposes.

9. Now, we take up revenues's appeal in ITA No.30/CTK/2015, wherein the revenue has raised the following grounds of appeal :-

1. *Whether in the facts and circumstances of the case, the Ld. CIT(A) is justified in directing the AO to the addition made by him of Rs.13,13,147/- where in fact the difference in closing bank balance as per Balance Sheet and as per Bank account has never been satisfactorily explained during the assessment proceedings.*

2. *whether in the facts and circumstances of the case, the Ld. CIT(A) is justified in directing the AO to take net profit @5% of gross profit of Rs.45,63,846/- ignoring the fact that Rs.2,04,18,746/- was the suppressed turnover for the relevant assessment year.*

3. *The Ld' CIT(A) has failed to appreciate the fact that the AO has arrived at turnover of Rs.9,42,76,532/- as against gross receipt of Rs.8,18,87,936/- claimed by the assessee and the CIT(A) seconding the AO's pleas by arriving re of Rs.9,12,26,532/-*

4. *whether in the facts and circumstances of the case, the Ld. CIT(A) is justified in admitting fresh evidences without giving opportunity to the AO to the genuineness of the same and hence violating the principle of justice.*

5. *other grounds, if any, shall be pressed at the time of hearing.*

10. The Id. DR submitted that the CIT(A) has erred in directing the AO to delete the addition of Rs.13,13,147/- irrespective of difference in the closing balance of bank account and the cash book. In the assessment proceedings, the AO on verification of the statements submitted by the Branch Manager of Bank found the difference and was added, whereas the CIT(A) considered the submissions of the assessee and of the opinion that on the basis of the bank statement the cash balance is tallied and allowed the appeal of the assessee and on contra, Id. AR relied on CIT(A)'s order.

11. We have considered the submissions of both the parties and perused the material on record. We found that the assessee has submitted the evidences of bank statement before the CIT(A) referred at page 4 of the order which the CIT(A) accepted and reconciled. We are of the opinion that the assessee should have filed the information in the assessment proceedings and the AO was deprived an opportunity to verify, hence, we provide an opportunity to the AO to verify the claim and

accordingly we remit the disputed issue to the file of AO and allow the grounds of appeal of the revenue.

12. The Id. DR submitted that ground Nos.2 & 3 in respect of determination of net profit on estimation basis. We find that in assessee's appeal ground No.1 on estimation basis, the Id. AR has not pressed the ground and the Id. AR relied on CIT(A)'s order. Since the revenue's ground referred above are connected to assessee's ground and there is no grievance in accepting the income by the assessee. As the assessee's appeal is set aside to the file of AO, these grounds of appeal of revenue are also set aside to the file of AO to verify and allow the claim. Accordingly, the grounds of appeal of revenue is allowed for statistical purposes.

13. In the result, appeal of the assessee and revenue are 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

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
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//

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

आदेशानुसार / BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack