

**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.122/CTK/2016  
(निर्धारण वर्ष / Assessment Year :2012-2013)

Income Tax Officer, Ward-1(3), Bhubaneswar	Vs.	Bimala Projects Pvt. Ltd., 113, Station Square, Kharavela Nagar, Bhubaneswar-751005
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAACB 9513 E</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**AND**

**Cross Objection No.08/CTK/2016**  
(निर्धारण वर्ष / Assessment Year :2012-2013)

Bimala Projects Pvt. Ltd., 113, Station Square, Kharavela Nagar, Bhubaneswar-751005	Vs.	Income Tax Officer, Ward-1(3), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAACB 9513 E</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan,CITDR  
निर्धारिती की ओर से /Assessee by : Shri Natabar Panda, AR  
सुनवाई की तारीख / Date of Hearing : **22/08/2017**  
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 and the cross objection by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 18.01.2016, passed in I.T.Appeal No.0086/2015-16, u/s.143(3) of the Income Tax Act, 1961 for the assessment year 2012-2013. First we take up the revenue's appeal and the facts narrated therein, 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 the addition of Rs.43,53,123/- made by the AO on account of discount & commission.*

2. *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 issue.*

2. Brief facts of the case are that the assessee is in the business of running hotel, restaurant & bar in the name & style of "Keshari Hotel" in Bhubaneswar and filed the return of income for the assessment year 2013-2013 on 28.9.2012 with total income of Rs.8,75,600/-. The return of income was processed u/s.143(1) of the Act, subsequently the case was selected for scrutiny under the CASS and notices u/s.143(2) and 142(1) were issued along with questionnaire to the assessee. In compliance, Id. AR appeared from time to time and produced the details as per the questionnaire and also submitted other information as called for. The AO on perusal of the profit and loss account found that the assessee company has claimed an expenditure of Rs.1,64,69,828/- under the head "Discount and commission on sales" under the major head "Administrative and other expenses' which also includes discount on room rent.

3. The AO relied on the information submitted and observed that the total room rent received also include the sales tax and found the percentage of discount of room rent allowed by the assessee has worked out to 49% and considered the tariff rates, commission and the room charges of other comparable hotels at page 3 to 6 of the order and finally observed that the discount on room rent and commission ranges on comparison of assessee hotel with the other hotels is between 5% to 35% on room rents, whereas the assessee has claimed at an average rate of 49%, which in the opinion of the AO is higher side and further observed

that bills and vouchers are not properly supported and in most of the case are self made. Finally, considering the facts and bills and vouchers are not properly verifiable, therefore, restricted the discount and commission to the extent of 35% of claim and disallowed the balance at Rs.45,53,123/- and made other additions and assessed the total income of Rs.60,71,520/- and passed the order u/s.143(3) of the Act dated 26.3.2015.

4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). In the appellate proceedings, the Id. AR argued that the assessee has claimed the discount as per trade practice which is genuine and properly supported with the documents and made submission on other grounds. Ld. CIT(A) on the disputed issue relating to disallowance of excess discount and commission has dealt on the submission of the assessee and findings of AO. But Id. CIT(A) observed that the assessee has given valid reasons for claiming the “discount and commission” and in its submissions referred at para 3.2 at page 3 of the appellate order. The CIT(A) has dealt elaborately on this disputed issue and considering the facts and circumstances of the assessee’s case and its submissions came to a conclusion that the discount claimed by the assessee is allowable and cannot be disputed since the assessee could not maintain proper bills and vouchers relevant to the previous year as discussed above. The Id. CIT(A) has confirmed the disallowance to the extent of Rs.2 lakhs and deleted the balance of Rs.43,53,123/- and partly 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 argued that the CIT(A) has erred in deleting the addition of Rs.43,53,123/- in respect of discount and commission irrespective of the fact that the AO has made an elaborate discussion and the discount was restricted to 35% and the excess 14% was disallowed but the Id. CIT(A) relied on the assessee's submission which could not substantiate with proper bills and vouchers and prayed restoration of the order of the AO. Contra, Id. AR relied on the orders of CIT(A) on the disputed issue.

6. We have heard the rival submissions and perused the material on record. The sole contention of Id. DR that the CIT(A) has erred in deleting the discount and commission without considering the facts that the assessee has not properly maintained the bills and vouchers and assessing authority has dealt on the comparable cases, whereas the Id. AR submitted that the assessee has maintained proper books of accounts and were produced in the assessment proceedings and there is no dispute in respect of the genuineness of the transaction. We perused the assessment order and found that the AO has made a comparables cases with respect to the other hotels and restricted the claim to 35% but the Id. CIT(A) has considered the reasons submitted by the assessee for allowing the discount and commission at higher rate referred at page 3 para 3.2 of the appellate order. Further, the Id. CIT(A) having considered the facts of the assessee and findings of the AO has sustained the

addition to the extent of Rs.2 lakhs and deleted Rs.43,53,123/- and partly allowed the appeal of the assessee observing as under :-

*3.3 I have considered the matter carefully and perused the materials on record. It is a fact that the assessee has been claiming substantial discount on room rent year after year. In fact, the discount claimed for the AY 2012-13 is less than the discount claimed in the preceding assessment year. It is also found that in the scrutiny assessment order for the AY 2011-12, the AO has not questioned the reasonableness or- genuineness of the discount claimed. While allowing discount at 35% of the gross receipts, the AO has taken into account the information obtained from certain other hotels in the locality without giving any opportunity to the assessee to respond to such information. Natural justice demanded that the AO should have given an opportunity to the assessee before using the information obtained at its back in assessment. The AO has also not mentioned any reason as to why those hotels could be considered to be comparable cases with the assessee. It appears that the contention of the assessee that those hotels are smaller and low value hotels may be true. The assessee had allowed discounts to the customers in the bills/memos which were produced before the AO at the time of assessment proceeding. But the AO has not made any enquiry to show that discounts were actually not given to the customers and were bogus. In view of the above findings, I am of the opinion that the AO is not justified to allow discount only at 35% (Assessee has claimed Rs.1,59,50,366/- and AO has disallowed Rs.49,53,123/- out of the same). Claim of discount on room rent is a regular feature in the accounts of the assessee and the claim for the year under appeal does not appear to be high and excessive when compared with the claim of earlier years. However, bills & vouchers relating to the last part of the relevant previous year were not produced before the AO which has been clearly mentioned at page 6 of the assessment order and keeping this in view, I am of the opinion that a lump sum disallowance of Rs.5,00,000/- from out of claim of discount of Rs.1,59,50,366/- would serve the ends of justice. Accordingly, out of the disallowance of, Rs,45,53,123/-, a sum of Rs.2,00,000/- is confirmed and the balance of Rs.43,53,123/-“*

We are of the opinion that the Id.CIT(A) has discussed elaborately on the disputed issue and considered the explanations of the assessee and took a reasonable view. Accordingly, we are not inclined to interfere with the order of CIT(A) and upheld the same and dismiss the grounds of appeal of the revenue.

7. In the result, appeal of the revenue is dismissed.
8. The assessee has filed cross objection No.08/CTK/2016 and ground NO.1 of the cross objection is in supportive to the order of CIT(A) and ground No.2 is on the challenging the action the CIT(A) in sustaining the addition of Rs.2 lakhs. The Id. AR has made the submissions that the CIT(A) was not correct in sustaining the addition of Rs.2 lakhs in report of discount and commission . We are of the considered view that the CIT(A) has taken a reasonable view, considering the fact of non-maintenance of proper bills and vouchers which has been discussed in revenue's appeal. Hence, the cross objection filed by the assessee has no merit and the same is dismissed.
9. In the result, appeal of the revenue and cross objection of the assessee are dismissed.

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