

**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.60/CTK/2018**

**(निर्धारण वर्ष / Assessment Year :2012-2013)**

M/s. S.S.Parida, Qr-No-GJAI/689, Madhuban, Paradeep	Vs.	ACIT, Bhubaneswar	Circle-2(1),
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>ABAFS 4284 P</b>			
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)	

निर्धारिती की ओर से /Assessee by : None

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

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

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

**आदेश / O R D E R**

**Per Shri Pavan Kumar Gadale, JM:**

This is an appeal filed by the assessee against the order of CIT(A), Cuttack, dated 04.09.2017 passed in I.T.Appeal No.0106/15-16 for the assessment year 2012-2013.

2. None appeared on behalf of the assessee when the case was called for hearing, however, an adjournment petition has been filed by the assessee on the ground that the relevant document is yet to be handed over to the conducting counsel, which, in our opinion, is not a plausible one and the same is rejected. Accordingly, the bench decided to dispose off the appeal of the assessee after considering the material facts available on record and the submissions of Id. DR.

3. The assessee has raised the following grounds of appeal :-

1. *For that, the order of the forum below is arbitrary, illegal, unjustified and erroneous and has been passed on improper*

*application of mind, being devoid of merit as such deserves to be quashed in limine.*

2. *For that, the disallowance of expenditure of an amount of Rs. Rs. 7,70,000/-claimed towards Hire charges of Machineries on the alleged ground of contravention of provision of section 40(a)(ia) for non deduction of TDS U/s 1941 deserves to be deleted in absence of condition precedent for invocation of section 40(a)(ia), being illegal, unjustified and unwarranted and devoid of any merit, being genuine business expenditures, deserves to be allowed in Toto.*
  3. *For that, the disallowance of expenditure of an amount of Rs. Rs. 42,11,898/-claimed towards Fuel & Lubricant, disallowed on the alleged ground of bogus claim, deserves to be allowed on the ground that, the expenditure having intrinsic and insegregable nexus with the work undertaken being solely for the business has to be allowed and again not only it is unjustified on the facts and in the circumstances of the case as contrary to legislative intentions but also, unwarranted as per the statutory provisions.*
  4. *For that, the disallowance of expenditure of an amount of Rs. 1,60,171/- out of the total claim on the alleged ground of contravention of provision of section 40A(3) is a presumption, assumption & misconception and ought to have been allowed.*
  5. *For that, the disallowance of expenditure of an amount of Rs. 1,60,171/- out of the total claim on the alleged ground of contravention of provision of section 40A(3) deserves to be deleted due to compiling ground realities and existence of exceptional and unavoidable circumstances.*
  6. *For that, the disallowance of expenditure of an amount of Rs. 69,586/- claimed towards donation deserves to be deleted due to compiling ground realities and existence of exceptional and unavoidable circumstances.*
  7. *For that, the appellant craves leave to add/alter/amend further grounds, if any, at the time of hearing of appeal.*
4. Brief facts of the case are that the assessee is a partnership firm engaged in the contractual work and filed the return of income electronically on 31.03.2012 for the A.Y.2012-2013 declaring total income of Rs.29,39,430/-. 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 assessing total income at Rs.5,00,35,040/- and passed order u/s.143(3) of the Act, dated 18.03.2015 making disallowance on account of hire charges of machineries, fuel & lubricants, u/s.40A(3) and under the head donation.

5. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). In the appellate proceedings, the assessee has not complied the statutory notice, therefore, the CIT(A) after considering the findings of the AO, and the additions made by the AO and dismissed the appeal of the assessee.

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

7. Ld.DR relied on the order of CIT(A) and prayed that the assessee has not complied the hearing notice and again praying for opportunity without explaining the reasonable cause.

8. We have heard submissions of Id. DR and perused the materials available on record. We found that the Id. CIT(A) has referred to the hearing dates posted on 28.04.2017, 04.08.2017 & 18.08.2017. Prima facie it shows that the assessee has not made a vigilant attempt to appear before the appellate authorities. Therefore, we considering the apparent facts and also the conduct of the assessee in non-compliance with the date of hearing and keeping in view the above back ground of the case

and also the prayer of the assessee that in the interest of rendering substantial justice, one more opportunity should be granted to the assessee, we are of the considered view that no loss will be caused to the revenue if one more opportunity is allowed to the assessee to present its appeal before the CIT(A). But, keeping in view the conduct of the assessee before the CIT(A), we direct the assessee to deposit **Rs.10000/- (Rupees Ten Thousand Only)** by way of cost to the department within a period of one month from the date of this order and the assessee shall produce a copy of receipt of payment of cost as evidence before the CIT(A).

9. With the above direction, appeal of the assessee is restored back to the file of CIT(A) to dispose off the appeal of the assessee after allowing reasonable and proper opportunity of hearing to the assessee. It is made clear that the CIT(A) shall be at liberty to pass any order as he may deem fit in the matter, if the assessee fails to cooperate with him on the dates of hearing fixed by him. We order accordingly.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 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-  
M/s. S.S.Parida,  
Qr-No-GJAI/689, Madhuban,  
Paradeep
2. प्रत्यर्थी / The Respondent-  
ACIT, Circle-2(1), Bhubaneswar
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