# 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.188/CTK/2016**

(**निर्धारण वर्ष /** Assessment Year :2011-2012)

| | | |
|---|---|---|
| M/s Jyoti Construction, Barbil, Keonjhar | Vs. | DCIT, Circle-2(1), Sambalpur |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AACFJ 8820 D** | | |
| (अपीलार्थी **/Appellant**) | .. | (प्रत्यर्थी / **Respondent**) |

निर्धारिती **की ओर से** /Assessee by : Shri Satyajit Nanda, AR

राजस्व **की ओर से** /Revenue by : Shri Kunal Singh, CITDR

सुनवाई की तारीख **/ Date of Hearing : 24/08/2017**

घोषणा की तारीख**/Date of Pronouncement 29/08/2017**

## आदेश / O R D E R

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

The assessee has filed an appeal against the order of CIT(A), Cuttack, dated 15.03.2016, passed u/s.263 of the Income Tax Act, 1961.

2. The sole substantive ground raised by the assessee that the order passed by ld.CIT is without merit and does not satisfy the twin conditions required under the law.

3. Brief facts of the case are that the assessee is a partnership firm and engaged in contract works and filed the return of income electronically on 19.10.2011 with total income of Rs.70,67,777/-. Subsequently case was selected for scrutiny under CASS and notices u/s.143(2) & 142(1) of the Act were issued. In compliance, ld. AR of the assessee appeared and case was discussed and produced financial statements. Ld. AO after verifying the various documents found that the assessee has not paid the statutory liability before the due date of filing of

return of income u/s.139() of the Act and disallowed u/s.43B of the Act and assessed total income to Rs.1,06,00,150/-, and passed order u/s.143(3) of the Act, dated 22.3.2014.

4. Subsequently, the ld. CIT found that the order passed by the AO has discrepancies because there is difference in the amount disclosed by the assessee in respect of gross contract receipts in the profit and loss account on comparison with the gross receipts reflected in 26AS statement. Further, on perusal the Pr. CIT found there is differential amount in the gross receipts of Rs.3,33,97,942/- and the assessee has also not disclosed rental income in the return of income Rs.1,86,65,922/-. Assessee claimed interest on vehicle loan in the profit and loss account and has not deducted TDS u/s.194H of the Act. Since the AO has not examined these facts, the CIT issued show cause notice and in compliance the assessee filed submissions and explanations on each disputed point of the issues. Prima facie the CIT observed that the AO has not examined the facts in proper perspective before completion of assessment and relied on the judicial decisions and found the assessment order passed u/s.143(3) of the Act is erroneous and prejudicial to the interest of revenue and, therefore, set aside the order and restored the matter to AO for examination on the points discussed and passed order u/s.263 of the Act was passed on 15.3.2016.

5. Aggrieved by the order of the CIT, the assessee has filed an appeal before the before the Tribunal.

6. At the time of hearing, ld. AR of the assessee moved an application for adjournment and the same was rejected and appeal is heard on merits. The ld. AR submitted that the order passed by the CIT u/s.263 of the Act does not satisfy the twin conditions and also the assessee gave a detail disclosure at the time of assessment. Further the ld. AR submitted that the consequential order passed by the AO as per the directions of Pr.CIT in assessment order u/s.143 r.w.s.263 of the Act, where the AO has verified the disputed issue as per the directions of Pr. CIT in the revision order and was satisfied with the submissions on the gross receipts and rental income and was disclosed in the return of income. But the AO made addition of interest on vehicle loan u/s.40(a)(ia) of the Act and passed the order u/s.143(3) of the Act on 31.10.2016, and ld. AR pleaded that the order passed by the Pr. CIT should be quashed. On the other hand, ld. DR relied on the order of Pr.CIT.

7. We heard the rival submissions and perused the material on record. The sole contention of ld. AR that the order passed u/s.263 of the Act is without merits and does not satisfy the twin conditions. The ld. AR further substantiated his arguments that the consequential order passed by the AO giving effect to the directions of Pr. CIT on the gross receipts disclosed in the return of income and form 26AS was satisfactory and produced a copy of the assessment order passed u/s.143(3)/263 of the Act dated 31.10.2016 and drew our attention whereas as per the directions of Pr. CIT the AO has verified and reconciled the difference of gross contract receipts and made addition of Rs.33,770/- and rental

income was disclosed and further in respect of third disallowance of interest on vehicle loan u/s.40(a)(ia) of the Act where the AO was not satisfied with the explanations on non-deduction of TDS u/s.194H of the Act and made addition. Prima facie, we found that the direction in the order of Pr.CIT has been complied by the AO. But AO was not satisfied with respect to non-deduction of TDS u/s.40(a)(ia) of the Act and made disallowance. We are of the opinion that the order of Pr.CIT is sustainable to the extent of disallowance u/s.40(a)(ia) of the Act on interest payments to NBFCs on vehicle loans and accordingly, we confirm the action of Pr. CIT and dismiss the appeal of the assessee.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on this 29/08/2017.

| **Sd/-** | **Sd/-** |
|---|---|
| **(N. S. SAINI)** | **(PAVAN KUMAR GADALE)** |
| **लेखा सदस्य / ACCOUNTANT MEMBER** | **न्यायिक सदस्य / JUDICIAL MEMBER** |

**कटक** Cuttack; दिनांक Dated 29/08/2017

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
   M/s Jyoti Construction, Barbil, Keonjhar
2. प्रत्यर्थी / The Respondent-
   DCIT, Circle-1(1), Sambalpur
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.

**आदेशानुसार/** BY ORDER,

सत्यापित प्रति //True Copy//

(**Senior Private Secretary**)

**आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack**