



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No. 97/CTK/2018
Assessment Year : 2010-11

Prasanna Kumar Mohanty, MIG-II/234, Kanan Vihar, Patia, Bhubaneswar.	Vs.	DCIT, Circle 2(2), Bhubaneswar.
PAN/GIR No.ABKPM 7927 K		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K.Sahoo, AR
Revenue by : Shri Subhendu Datta, DR

Date of Hearing : 30/08/ 2018
Date of Pronouncement : 31/08/ 2018

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the CIT(A_2, Bhubaneswar dated 16.11.2017 for the assessment year 2010-2011.

2. In Ground No.1 of appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.3,36,000/- towards purchase of material.

3. The brief facts of the case are that the assessee is a civil contractor carried on business in rural villages making roads. The Assessing Officer observed that the assessee has made purchase

of materials of Rs.3,36,04,380/- and has not submitted bills and vouchers in support of purchase of materials and hence, made an estimated disallowance by applying rate of 1% out of total purchases and made an addition of Rs.3,36,000/- to the total income of the assessee.

4. On appeal, the CIT(A) confirmed the order of the Assessing Officer observing that it is the responsibility of the assessee for maintaining bills and vouchers in support of the purchases.

5. Being aggrieved by this order, the assessee is in appeal before us.

6. Ld A.R. of the assessee submitted that no adhoc disallowance out of genuine business expenditure of the assessee can be made by the Assessing officer. He submitted that the Assessing Officer has not pointed out for which of the purchases, the bills and vouchers were not produced before him. Making a disallowance summarily by applying rate of 1% on the total purchases by the assessee cannot be sustained in law. Hence, he prayed that same should be deleted.

7. On the other hand, Id D.R. supported the orders of lower authorities.

8. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. We find that in the instant case, the assessee is a civil contractor. The Assessing officer observed that the assessee has claimed to have made purchases of materials of Rs.3,36,04,380/- for which the assessee could not submit bills and vouchers in support of the purchases and, therefore, he made estimated disallowance by applying rate of 1% out of total purchases of Rs.3,36,04,380/- and added Rs.3,36,000/- to the income of the assessee, which was confirmed in appeal by the CIT(A).

9. Ld A.R. of the assessee submitted that no adhoc disallowance out of genuine business expenditure of the assessee can be made by the Assessing Officer without bringing any material on record that for which of the expenses the vouchers are not maintained for producing before him.

10. Ld D.R. relied on the orders of lower authorities.

11. We find that this issue has been considered and decided by Kolkata Bench of the Tribunal in the case of Animesh Sadhu vs ACIT in ITA No.11/Kol/2013 order dated 12.11.2014, wherein, it was held as under:

" 8. We have considered the rival submissions. A perusal of the assessment order shows that the Assessing Officer has disallowed 20% of the expenses on estimate basis on the ground that no independent verification to be made to find out the authenticity of the expenses. Ld. CIT(Appeals) has reduced the same on the same ground. However, we are of the view that no estimated disallowance can be made for inability to make independent verification. If any specific expenditure is unverifiable or is un-vouched, then such specific expenditure is disallowable. Here no such specific identification has been done. In these circumstances, we are of the view that the estimated disallowance as confirmed by the Ld. CIT(Appeals) is unsustainable. Consequently the same stands deleted. In the result, Grounds No. 2 & 3 of the assessee's appeal stand allowed."

12. Facts being identical, respectfully following the above quoted decision of Kolkata Bench of the Tribunal in the case of Animesh Sadhu (supra), we set aside the orders of the lower authorities and vacate the disallowance of expenses of Rs.3,36,000/- and allow this ground of appeal of the assessee.

13. In Ground No.2 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming puja expenses of Rs.39,684/-.

14. We find that in page 4 para 4 of the order the CIT(A) has observed as under:

"In this ground, the appellant has contended the addition made by the AO of Rs.39,684/- on account of puja expenses. During the course of assessment proceedings, the appellant has explained that these expenses are towards the small get-together before the start of construction work.

In my opinion, it is a business expenses and, therefore, the addition of Rs.39.684/- is directed to be deleted."

15. In view of above findings of the CIT(A), wherein, he has deleted the addition, this ground of appeal of the assessee is infructuous and hence dismissed.

16. In ground No.3 of appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.30,000/- made for non-deduction of TDS from payment of audit fees u/s.194-J of the Act.

17. We find that the CIT(A) has observed as under:

"During the course of hearing on 30.8.2016, Shri P.K,.Sahoo, AR of the appellant has withdrawn this ground. Therefore, this ground is dismissed as withdrawn."

18. In view of above findings of the CIT(A) that the assessee has withdrawn this ground of appeal, therefore, the assessee cannot have any grievance against the order of the CIT(A). hence, this ground of appeal of the assessee is dismissed as infructuous.

19. In Ground No.4 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the disallowance of Rs.1,34,820/- as camp expenses and in Ground No.5 of appeal in confirming the disallowance of labour charges of Rs.2,50,000/-.

20. The facts are that the Assessing Officer observed that the assessee has claimed deduction of a sum of rupees 9,51,970/- towards camp expenses(Mess). On test checking bills/vouchers of the said expense, he observed that bills/vouchers in support of the following claim of expenses are not available. On being asked to produce the same, the assessee submitted his inability to produce the details of the following expenses on the plea that the vouchers are maintained at site offices.

Sl.No.	Date	Particulars	Amount
01	15/04/09	Camp expense for Madrange	14,000
02	05/06/09	Camp expense for Nua Budha kera	12,400
03	06/07/09	Subamapur	11,200
04	06/07/09	Astaranq camp expense	14,930
05	03/08/09	-do-	12,400
06	05/09/09	-do	15,700
07	16/11/09	Madranga camp expense	12,490
08	02/01/10	Bada Nimiqa camp expense	5,800
09	15/01/10	-do-	4,200
10	02/02/10	Nua budhakera camp exp.	16,400
11	16/02/10	-do-	15,300
		TOTAL	1,34,820

Therefore, in the absence of primary documents supporting the expenditure, the Assessing officer disallowed Rs. 1,34,820/- and added the same to the income of the assessee.

21. Similarly, the Assessing Officer observed that the assessee has claimed deduction on expenditure of Rs.39,167,056/- under the head labour charges. During the course of hearing the

assessee produced the ledger copy of labour charges. On being asked to furnish the supporting documents regarding such expenses, the assessee could not furnish such documents regarding payment of labour charges. In view of above, the Assessing Officer was of the opinion that the assessee has tried to make an enhanced claim of expenditure. Therefore, he made an adhoc disallowance of Rs.2,50,000/-.

22. On appeal, the CIT(A) confirmed the action of the Assessing Officer, by observing as under:

"In these grounds, the appellant has contested the addition made by the AO of Rs.1,34,820/- from camp expenses and Rs.2,50,000/- from labour charges on the basis that supporting documents in respect of these expenses are not available and that most of them are in cash. I find that camp expenses claimed are of Rs.9,51,970/- and labour charges are of Rs.3,91,67,050/-. The disallowance made by the AO are reasonable. Therefore, additions of Rs.1,34,820/- and of Rs.2,50,000/- are confirmed. The grounds of appeal are dismissed.'

23. At the time of hearing, Id A.R. of the assessee could not bring any cogent material on record to controvert the findings of the CIT(A). Hence, we do not find any reason to interfere with the order of the CIT(A), which is hereby confirmed and ground Nos.4 & 5 of appeal of the assessee are dismissed.



24. In the result, appeal of the assessee is partly allowed.

Order pronounced on 31 /08/2018.

Sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 31/08/2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Prasanna Kumar Mohanty,
MIG-II/234, Kanan Vihar, Patia,
Bhubaneswar
2. The Respondent. DCIT, Circle 2(2),
Bhubaneswar.
3. The CIT(A)- 2, Bhubaneswar
4. Pr.CIT—2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr. Pvt. Secretary,
ITAT, Cuttack