

आयकर अपीलिय अधीकरण, खंडपीठ गुवाहाटी,
*IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.356/Gau/2018
Assessment Year :2015-16

Rakesh Agarwal C/o Satyanarayan Aggarwal, Daccapatty, Nagaon, Assam-782001 [PAN No.ACWPA 5690 C]	V/s.	Income Tax Officer Ward-2, Aayakar Bhawan,Nagaon
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Rahul Jain, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri M. Haokip, JCIT-DR
सुनवाई की तारीख/Date of Hearing	01-07-2019
घोषणा की तारीख/Date of Pronouncement	03 -07-2019

आदेश /ORDER

PER BENCH:-

This assessee's appeal for assessment year 2015-16 arises against the Commissioner of Income Tax (Appeals)-Guwahati-1's order dated 24.09.2018 passed in case No.381409331310118/114 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. It transpires during the course of hearing that the instant lis involves the assessee's sole substantive grievance canvassed in his pleadings that the learned lower authorities have wrongly made sec.115JC(2) computation regarding the cash payments for purchasing soil for the purpose of brick production in the kiln question. Learned counsel's sole argument raised during the course of hearing is that such soil and other materials purchased through

cash does not come within the purview of impugned disallowance provision. The Revenue's case on the other hand is that the assessee has not raised such a ground either in the instant appeal or before the CIT(A). The assessee at this stage quotes hon'ble apex court's decision in *NTPC vs. CIT* (1998) 229 ITR 383 (SC) settling the law that we can very well entertain such a new question in respect of appellate proceeding. Be that as it may, the fact remains that the assessee had not agigated the instant legal/technical issue in the lower appellate proceedings. We therefore remit the instant lis back to the CIT(A) for afresh adjudication regarding applicability of sec.40A(3) disallowance *qua* the assessee's cash purchases for the purpose of his brick kiln production as per law.

3. This assessee's appeal is allowed for statistical purposes in foregoing terms.

Order pronounced in the open court 03/07/2019

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Guwahati,
*Dkp

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

दिनांक:- 03/07/2019 गूवाहाठी ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Rakesh Agarwal, C/o Satyanarayan Agarwal, Dacapatty, Nagaon
2. प्रत्यर्थी/Respondent-ITO Wd-2, Aayakar Bhawan, Nagaon, Asasm
3. संबंधित आयकर आयुक्त गूवाहाठी / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A) Guwahati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, गूवाहाठी खंडपीठ / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True copy/

By order/आदेश से,
Sr. Private Secretary (on tour)
आयकर अपीलीय अधिकरण,
गूवाहाठी ।