



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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.494/CTK/2017
Assessment Year: 2011-12

PGS Construction, AT: Badasankha, Grand Road, Puri.	Vs.	ITO, Puri Ward, Puri
PAN/GIR No.AAIFP 6474 F		
(Appellant)	..	(Respondent)

Assessee by : Shri Brajabandhu Bihari, AR
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 10/07/ 2019
Date of Pronouncement : 23/07/ 2019

ORDER

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax(Appeals)-2, Bhubaneswar dated 24.8.2017 for the assessment year 2011-12.

2. Ground Nos.1,5 & 6 are general in nature and hence, requires no separate adjudication.

3. In Ground No.2 of appeal, the grievance of the assessee is that the CIT(A) is not justified in confirming the addition of Rs.15,50,000/- being differential amount of closing stock shown in balance sheet and closing stock in profit and loss account.

4. I have heard the rival submissions and perused the materials on record of the Tribunal. During the course of assessment proceedings, the Assessing Officer noticed that the assessee derives income from construction and sale of flat during the year under consideration. The assessee has shown stock-in-progress at Rs.16,09,000/- and finished goods at Rs.15,50,000/- i.e. total inventory at Rs.31,59,000/- in the balance sheet of ITR (Part-A -BS) as on 31.3.2011. However, closing stock has been shown at Rs.16,09,000/- in the trading & P&L account for the assessment year 2011-12 instead of Rs.31,59,000/-. It was in this backdrop that the Assessing Officer opined that the closing stock figure got undervalued by Rs.15,50,000/- in the trading and profit and loss account, which resulted into decrease in gross profit. Therefore, the income of Rs.15,50,000/- has escaped assessment. When this fact was confronted to the assessee that though land is shown as current asset in the balance sheet, as to why same has not been reflected as closing stock in the trading account. In reply, the assessee stated that the land valued at Rs.15,50,000/- has been shown in the balance sheet as 'current assets' apart from closing stock of Rs.16,09,000/-, thus the land was not part of closing stock. The Assessing Officer observed that the land purchased and held by the assessee is a part of trading

stock and is rightly reflected in the balance sheet as current assets. He also observed that the assessee could not give plausible explanation which led to an irresistible inference that the land valued at Rs.15,50,000/- was not fixed assets for the impugned assessment year. Since the land has not been reflected in the trading account for the year ending 31.3.2011 as closing stock, the same is assessed to the total income of the assessee.

5. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

6. Before me, Id A.R. of the assessee failed to establish as to why the land was not reflected in the closing stock as at the year end of 31.3.2011. Therefore, I confirm the orders of lower authorities and dismiss this ground of appeal of the assessee.

7. In Ground No.3 of appeal, the assessee is aggrieved by the confirmation of addition of Rs.13,08,377/- to the total income towards negative balance in the cash book.

8. I have heard the rival submissions and perused the record of the case. On this issue, the Assessing officer, on verification of cash book, found that the cash balance of Rs.13,08,377/- has been found negative, which should not have been done as per accounting principle. Therefore, he disallowed the same. On

appeal, the view of the Assessing Officer is confirmed by the CIT(A).

9. Before me, Id A.R. of the assessee referred to paper book, wherein, it is stated as under:

"That Rs.13,08,377/- has been added back to income as unexplained cash investment by the AO because of negative cash balance in cash book of the petitioner, which is incorrect and unjustified. The negative cash balance arises due to several factors of which some are

- a) When cheques are issued over and above the factual bank balance, then negative cash balance is reflected in cash book, as cash & bank both are posted in cash book.
- b) When some money receipts are posted in batch in cash book and the expenditure vouchers are posted on daily basis.
- c) When accounts clerk does a mistake like posting error, there may be negative cash balance, as 'human to err'.

Thus recording of transactions does not mean and imply to happening of a transaction and in the present case the negative cash balance was temporary in nature and did not continue till the end of the financial year resulting to unexplained cash investments."

Hence, a defect in maintenance of books of account should not be treated as unexplained cash investments and the addition of Rs.13,08,377/- may kindly be deleted."

10. Replying to above, Id D.R. submitted that the mistake now pointed out by the Id A.R. of the assessee is an afterthought. Hence, orders of lower authorities be confirmed.

11. I find force in the submissions of Id A.R. of the assessee that the negative cash balance arises due to several factors as submitted in the statements of facts and especially the mistake committed by the clerk in maintenance of books of account. The only reason given by the CIT(A) in upholding the action of the AO is that the submission of the assessee is an afterthought. In my considered opinion, the explanation of assessee could not be brushed aside as there could be error in posting by the clerk. The explanation given by the assessee was quite plausible and if that was accepted in total then entire addition would have been deleted. I find that AO has not examined the assessee's explanation on proper prospective. Be that as it may, I am of the considered view that the explanation of the assessee needs to be verified at the level of the Assessing Officer. Hence, I set aside the orders of lower authorities and remit this issue back to the file of the AO for fresh adjudication in the light of explanation furnished by the assessee after affording reasonable opportunity of hearing to the assessee. This ground of appeal is allowed for statistical purposes.

12. Ground No.4 is as under:

" That the implication of section 40A(3) of the Income Tax Act, 1961 without considering the reasons and facts of the

case is illegal and arbitrary and unjustified and therefore addition of Rs.3,39,382/- is liable to be deleted."

13. The facts of the case are that the Assessing Officer noticed that on various occasions the cash payments above Rs.20,000/- to a person in a day in contravention of provisions of section 40A(3) of the Act as under:

<u>Date</u>	<u>name of the party</u>	<u>Amount</u>
1.5.2010	S.N.S. Suppliers	Rs.65,000/-
15.7.2010	Capital Fancy Light	Rs.31,000/-
14.1.2011	Kishan Enterprises	Rs.30,000/-
25.3.2011	Balaji Ply Houses	<u>Rs.2,12,982</u>
		Rs.3,39,382/-

As the assessee could not furnish plausible explanation regarding payment made above Rs.20,000/- to a person in a day, the Assessing Officer disallowed the same and added to the income of the assessee, which was confirmed in first appeal.

14. At the time of hearing, Id A.R. of the assessee produced xerox copy of debit vouchers in support of the payment of Rs.20,000/- to different parties on different dates and submitted that in each of the payments, the amount does not exceed Rs.20,000/- and, therefore, there is no contravention of provisions of section 40A(3) of the Act.

15. Ld D.R. did not controvert the findings of Id A.R. of the assessee.



16. On perusal of debit vouchers furnished by the assessee, I find that in none of the dates, the amount paid to different parties exceed Rs.20,000/-, and, therefore, in my view no violation of provisions of section 40A(3) is made. Under these circumstances and facts of the present case, I am of the opinion that no addition is called for and addition made by the AO and so sustained by the Id CIT(A) is directed to be deleted. Thus, this ground of appeal of the assessee is allowed.

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

Order pronounced on 23 /07/2019.

Sd/-

(Chandra Mohan Garg)
JUDICIALMEMBER

Cuttack; Dated 23/07/2019
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : PGS Construction, AT:
Badasankha, Grand Road, Puri
2. The Respondent. ITO, Puri Ward, Puri
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