



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

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.28/CTK/2018
Assessment Year : 2014-15

ITO, Ward 1(2), Bhubaneswar.	Vs.	M/s. PGL Projects Limited, Plot No. M/18, Baramunda, Fire Station Square, 3 rd floor, Bhubaneswar
PAN/GIR No.AABCP 8920 E		
(Appellant)	..	(Respondent)

ITA No.105/CTK/2019
Assessment Year : 2014-15

M/s. PGL Projects Limited, Plot No. M/18, Baramunda, Fire Station Square, 3 rd floor, Bhubaneswar.	Vs.	ITO, Ward 1(2), Bhubaneswar
PAN/GIR No.AABCP 8920 E		
(Appellant)	..	(Respondent)

Assessee by : Shri J.M. Patnaik, AR
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 08/08/ 2019
Date of Pronouncement : 08/08/ 2019

ORDER

Per L.P.Sahu, AM

These appeals are filed by the revenue and assessee against the order of the CIT(A)-1, Bhubaneswar dated 5.10.2017 for the assessment year 2014-15.

2. The revenue has raised the following grounds of appeal:

" 1 The order of the Ld. CIT(A) is erroneous on facts and in law.

2. On the facts and in the circumstances and in law, Id. CIT(A) is not justified in deleting the disallowance of Rs.29,82,461/- made by the AO disallowing interest expenses claimed by the assessee, when the assessee, during the assessment proceedings, has failed to prove the credibility of loan and its utilization for business purpose.

3. On the facts and in the circumstances and in law, Id. CIT(A) is not justified in deleted the addition of Rs. 4,47,373/- holding that the said depreciation has been claimed by the assessee on the furniture and fixtures provided in that building to the tenants, when the AO has disallowed the depreciation amount of Rs.4,47,373/-claimed against a building(M-18) sub-let by the assessee vide 'Depreciation Schedule as per the I.T. Act' (certified by the tax auditor) furnished by the assessee during the assessment proceedings.

4. On the facts and in the circumstances and in law, Id. CIT(A) is not justified in deleting the disallowance of Rs. 7,42,427/- made by the AO disallowing the expenses claimed by the assessee in its P&L account towards 'inventory of finished goods, WIP and stock-in-trade' when the assessee, during the assessment proceedings, has failed to establish that the entire expenses to be allowable against the house sold which forms part of the income assessed under the head business as mentioned in the assessment order."

3. Heard both the parties and perused the record.

4. During the course of hearing, the Ld. DR submitted that there is no doubt that tax effect involved in the appeal is less than Rs.20 lakhs, thus, bound by the departmental instruction, the appeal has to be withdrawn. However, attention was invited to para 10 of the Circular No. 3/2018, dated 11th July, 2018, which has been modified by Circular dated 20th August, 2018 and in terms of the said modification the Departmental Representatives made a prayer that permission to pray for recall of the order may be granted in case any of the conditions in the reports made available by the A.O. subsequently, show that the issues were required to be contested. The modified para is extracted hereunder:

“10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

- (a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or*
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or*
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or*
- (d) Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/ undisclosed foreign bank account.*
- (e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/ Directorate General of GST Intelligence (DGGI).*
- (f) Cases where prosecution has been filed by the Department and is pending in the Court. ”*

5. Going by the prescription of Circular No. 3/2018, dated 11th July, 2018, we are of the view that the Revenue should have either not filed the instant appeal before the Tribunal or withdrawn the same as the tax effect in the appeal is admittedly less than the prescribed limit, i.e., Rs. 20,00,000/- for not filing the appeals. Accordingly, we dismiss the appeal filed by the Revenue without going into merits of the case. However, it is made clear that the Department is at liberty to file Miscellaneous Application, if the tax effect is found to be more than the prescribed limit of Rs.20,00,000/- or any of the conditions etc., as available in the amendment carried out in para 10 of Circular No. 3/2018, dated 20.08.2018, is made out. Accordingly, the appeal of the Revenue deserves to be dismissed.

6. So far as the appeal of the assessee is concerned, Id A.R. for the assessee did not press the grounds of appeal, to which, Id D.R. did not have

any objection. Hence, we dismiss the appeal of the assessee as not pressed.

7. In the result, both the appeal of the revenue as well as the appeal of the assessee are dismissed.

Order pronounced on 08/08/2019.

Sd/-

sd/-

(Chandra Mohan Garg)
JUDICIAL MEMBER

(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Cuttack; Dated 08/08/2019

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant :
2. The Respondent.
3. The CIT(A)-, Bhubaneswar
4. Pr.CIT- 2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack