

आयकर अपीलीय अधिकरण, "एस.एम.सी", न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, CUTTACK

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.434/CTK/2016

(निर्धारण वर्ष / Assessment Year :2010-2011)

Sri Santanu Kumar Satpathy, At/PO: Nuapada, Chhendipada, District-Angul	Vs.	ITO, Ward-1, Dhenkanal
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ATOPS 6582 J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Piyus Mishra, Advocate

राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, DR

सुनवाई की तारीख / Date of Hearing : **13/06/2019**

घोषणा की तारीख/Date of Pronouncement **24/07/2019**

आदेश / O R D E R

This is an appeal filed by the assessee against the order of CIT(A)-2, Bhubaneswar, dated 23.08.2016 passed in First Appeal No.118/2015-16 for the assessment year 2010-2011.

2. As per the office note, there is a delay of six days in filing the present appeal. Ld. AR has filed an application along with an affidavit stating therein that due to illness, the Advocate, who is appearing on behalf of the assessee, could not file the appeal in time, which occurred six days delay in filing the appeal and prayed for condonation of delay. Ld.DR did not object to the above contention of the assessee for condoning the delay. I have gone through the application filed by the assessee and observed that there is a sufficient and reasonable cause for

delay in filing the present appeal. Accordingly, I condone the delay of 6 days in filing the present appeal and appeal is heard on merits.

3. First of all, it is worth mentioning that the originally this appeal was heard and dismissed by my predecessor vide order dated 05.04.2017. Thereafter a miscellaneous application No.17/CTK/2017 under Rule 24 of the Income Tax Appellate Tribunal Rules, 1963 was filed which was allowed by this Bench of the Tribunal vide order dated 27.03.2017. Therefore, this appeal is heard and is being disposed off by this order.

4. Apropos grounds No.1 to 3 along with additional ground. I have heard both the sides and carefully perused the materials available on the record of the Tribunal.

5. Learned Assessee's Representative (ld. AR) submitted that the estimation of income made by the AO in the order u/s.144 of the Income Tax Act, 1961 (for short 'the Act') is illegal and arbitrary as the determination made by him has been passed on his surmises and conjectures without any cogent reasons and considering the nature of goods dealt by the assessee and audited certificate submitted by the assessee. Ld. AR submitted that the estimation of 5% of sales/gross receipts/turnover of assessee is justified and correct in the retail business of cement, steel and rod etc. Therefore, the same may kindly be dismissed and returned income of assessee may kindly be accepted.

6. Replying to the above, learned Department Representative (ld. DR) strongly supported the orders of authorities below and submitted that the assessee did not give any details or documents to prove that the profit

percentage estimated by the AO is excessive and despite service of several notice on the assessee the assessee did not comply with the same during the assessment proceedings, as well as no submission has been filed. Ld. DR vehemently pointed out that even during the first appellate proceedings the assessee did not submit any submission or explanation or any other documentary evidence establishing that the profit percentage estimated by the AO is incorrect, arbitrary and not justified. Therefore, Ld. DR submitted that the estimation of gross profit of 5% of turnover is not correct in view of the fact that the assessee has deposited cash of Rs.52,46,120/- in the saving bank account during F.Y.2009-2010 pertaining to A.Y.2010-2011, which is sale proceeds of sales affected by the assessee. Ld. DR finally submitted that the orders of authorities below may kindly be upheld by dismissing the grounds of appeal of the assessee.

7. On careful consideration of rival submissions of both the sides, I am of the view that neither before the authorities below nor before this bench the assessee has submitted any basis or explanation challenging the estimation made by the authorities below @5% of turnover. If I logically evaluate the estimation of gross profit made by the AO @5% of the total sale receipts/turnover and keeping in view the factum of cash sales of more than Rs.50 lakhs undertaken by the assessee then in absence of any other material favouring the contention of assessee, the estimation of gross profit made by the AO and confirmed by the CIT(A) i.e. 5% of total sales receipts/turnover is quite justified and correct. Accordingly, I have no

reason to take a different view as has been taken by the authorities below and there is no ambiguity, perversity or any other valid reason to interfere with the same, hence, the grounds No.1 to 3 and additional ground of appeal of the assessee are dismissed.

8. With regard to ground No.4, Id. AR submitted that the Id. CIT(A) has erred in confirming the addition made by the AO on account of interest from OCL India Ltd. On the other hand, Id. DR relied on the orders of lower authorities.

9. On careful consideration of rival submissions of both the sides, I find that the assessee has neither submitted any submission either during the course of assessment proceeding or during the course of appellate proceedings, even before us, there is no submission on the part of the assessee in this regard. In the appellate proceeding the CIT(A) has observed as under :-

“Ground No, 4:

This ground is regarding addition made by the AO on account of the interest of security deposits and interest received from OCL India Limited. No submission has been made during the course of appeal proceedings before me on this issue. Considering this additions made by the AO of Rs.9,028/- being interest of Rs.5,257/- being interest from OCL India Limited are confirmed and the ground of appeal is dismissed.”

From the above observations of the Id. CIT(A), I do not see any good and valid reason to interfere in the above findings of the CIT(A) and the same is hereby upheld and the ground No.4 of assessee is dismissed.

10. With regard to ground No.5, I find that this issue of determination of income on credit note on Rs.77,709/-, the assessee has not agitated the

same in its grounds of appeal before the CIT(A) and the same has been raised before the Tribunal for the first time. Accordingly, I am of the view that to render substantial justice, this issue is restored to the file of CIT(A) to decide the same afresh and the assessee is directed to substantiate its claim before the CIT(A) with proper documentary evidence. Needless to say, the assessee should be given sufficient opportunity of hearing. Thus, this ground of appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 24/07/2019.

Sd/-
(CHANDRA MOHAN GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 24/07/2019

प्र.कु.मि/PKM, Sr.P.S.

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

1. अपीलार्थी / The Appellant- .
Sri Santanu Kumar Satpathy,
At/PO: Nuapada, Chhendipada,
District-Angul
2. प्रत्यर्थी / The Respondent-
ITO, Ward-1, Dhenkanal
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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack