

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

Before **Shri S.S, Godara, Judicial Member**

**ITA No.79/Gau/2019**  
Assessment Year:2012-13

Bajaj Steel N.T. Road, P.O. North Lakhimpur, Dist. Lakhimpur-787001 [PAN No.AABFB 8410 A]	बनाम/ V/s.	ACIT, Circle-Tezpur Aaykar Bhawan, Ex Police Line, Tezpur Pin-784001
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shri A.K. Bhardwaj, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	11-07-2019
घोषणा की तारीख/Date of Pronouncement	10-10-2019

**आदेश /O R D E R**

This assessee's appeal for assessment year 2012-13, arises against the Commissioner of Income-tax (Appeals)-1, Guwahati's order dated 12.11.2018 passed in case No. TEZ-03/2015-16/178, involving proceedings u/s. 144 of the Income Tax Act, 1961; in short 'the Act'.

Case called twice. None appeared at assessee's behest. I proceed *ex parte* against the assessee in the instant appeal.

2. The assessee's former substantive ground challenges both the lower authorities action disallowing 10% of the expenses claimed under the head carriage inwards amounting to ₹13,25,660/- to a perusal of the assessment order dated 18.03.2015 suggests that this assessee; who is engaged in wholesale and retailer business of hardware and cement, had claimed the impugned payment(s) to truck drivers for

transportation of goods from Guwahati to North Lakhimpur. The Assessing Officer concluded in his assessment that since the assessee had failed to produce the relevant bills alongwith explanation, 10% of the said amount coming to the impugned sum of ₹1,32,56,607/- deserved to be disallowed. The CIT(A) has affirmed the same. Learned departmental representative fails to rebut the clinching fact that neither of the lower authority has drawn any comparative analysis of assessee's similar claim in earlier or latter assessment years. There is also no explanation coming from the assessee's side accompanied by the relevant supporting evidence. I therefore deem it appropriate that a lump sum disallowance of ₹ 5 lac out of that made by the lower authorities of ₹13,256,660/- would be just and proper with a rider that same shall not be treated as a precedent in any other assessment year. This former substantive ground is partly allowed.

3. Next comes sec. 40(a)(ia) disallowance of rent payments made to the Assam State Warehousing Corporation (ASWC) on account of non-deduction of TDS. Section 40(a)(ia) 2<sup>nd</sup> proviso inserted in the Act with effect from 01.04.2013 stipulates that the impugned disallowance does not come into play in case the assessee's concerned is not an assessee in default u/s 201(1) and the payee has been assessed *qua* the same in issue. Hon'ble Delhi high court in *CIT vs. Ansal Land Mark Township Pvt. Ltd.* (2015) 377 ITR 635 (Del) holds that the above proviso applies with retrospective effect being curative in nature. I therefore deem it appropriate to restore the instant issue back to the Assessing Officer for necessary factual verification as to whether the assessee's payee has been assessed to tax *qua* the impugned rental income as per law.

4. This assessee's appeal is partly allowed in above terms.

Order pronounced in accordance with Rule 34(3) of the ITAT Rules by putting on Notice Board 10/10/2019

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

Guwahati

\*Dkp/Sr.PS

दिनांक:- 10/10/2019

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

1. अपीलार्थी/Appellant-Bajaj Steel, N.T. Road, P.O. North lakhimpur, Dist. Lakhimpur  
Asam-787001
2. प्रत्यर्थी/Respondent-ACIT, Cir-Tezpur, Aaykar Bhawan, Ex Police Line, Tezpur  
Pin-784001
3. संबंधित आयकर आयुक्त गृवाहाठी / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण गृवाहाठी / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary (on Tour)  
आयकर अपीलीय अधिकरण,  
गृवाहाठी ।