



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

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

ITA No.294/CTK/2019
Assessment Year : 2013-14

Mangala Builders Associates, BA/2, Port Railway Colony, Paradeep.	Vs.	Pr. CIT, Cuttack
PAN/GIR No.AAOFM 5878 J		
(Appellant)	..	(Respondent)

Assessee by : Shri Natabar Panda, AR
Revenue by : Shri S.M.Keshkamat, CIT DR

Date of Hearing : 16 /01/ 2020
Date of Pronouncement : 20/01/2020

ORDER

Per C.M.Garg.JM

This is an appeal filed by the assessee against the order of the Pr. CIT(A), Cuttack dated 29.3.2019 under section 263 of the Act for the assessment year 2013-14.

2. The appeal was filed after delay of 14 days before the Tribunal. The assessee has filed an Affidavit along with an application for condonation of delay in filing the appeal late. After perusing the condonation petition and considering the submissions of the rival parties, we are satisfied that there was reasonable cause in filing the appeal after delay of 14 days. Hence, we condone the delay and admit the appeal for adjudication.

Admission of additional Grounds.

3. Ld counsel for the assessee submitted that in the present case, Ld Pr. CIT, Cuttack has modified the assessment order dated 30.12.2016 on two points viz; (i) to add the entire undisclosed contract receipts of Rs.15,67,677/- and (ii) to estimate the net profit @ 8% on the disclosed contract receipts instead of income returned by the assessee.

4. Ld counsel for the assessee further submitted that in the main ground, the assessee has challenged the invocation of provisions of section 263 of the Act by Id Pr. CIT and the assessee does not want to press those legal grounds and also additional Ground Nos.6 & 7 agitated in the application of additional grounds. Ld counsel further submitted that the assessee wants to challenge the modification in his order by Pr. CIT on merits. Therefore, additional Ground No.5 is very relevant and necessary for adjudication. Therefore, same may kindly be admitted for adjudication. Ld counsel also submitted that the additional ground sought to be raised by the assessee can be agitated on the basis of materials already available on record without any extraneous exercise or documents, therefore, same be admitted for adjudication.

5. Replying to above, Id CIT DR opposed to the admission of additional ground. However, he did not controvert the fact that in view of modification made by Pr. CIT by way of impugned order passed under section 263 of the Act dated 29.3.2019, the grievance of the assessee regarding addition so made by pr. CIT by way of modification has to be challenged and adjudicated. Therefore, additional ground No.5 is admitted for adjudication. In view of the submissions of Id A.R.

Grounds taken in main grounds of appeal and Ground Nos.6 & 6 of additional grounds are dismissed as not pressed.

6. Apropos additional Ground No.5 of appeal, Id counsel for the assessee submitted a chart showing returned net profit from assessment years 2010-2011 to 2019-2020 including present assessment year 2013-14. In this chart, the assessee has shown net profit before allowing salary and interest on capital to partners and after allowing salary and interest on capital to partners which has not been disputed by Id. Pr. CIT.

7. Id counsel for the assessee submitted that the net profit declared by the assessee on contractual receipts before salary and interest on capital to partners for assessment year 2013-14 is 5.72% and net profit after allowing salary and interest on capital to partners at 2.67%, which is quite justified and reasonable in view of earlier and subsequent assessment years results. Therefore, Id counsel for the assessee prayed that the modification order of Id Pr. CIT in directing the AO to estimate net profit at 8% on contractual receipts is very high and same should be reduced to the returned income.

8. Replying to above, Id CIT DR submitted that from the chart submitted by the assessee, it is clearly discernible that in assessment years 2014-15, 2015-16, 2018-19 and 2019-2020, the net profit shown by the assessee before allowing salary and interest on capital to the partners is ranging between 7-8% and the net profit after allowing salary and interest on capital to the partners is ranging between 4-6%. Therefore, the returned income of the assessee for the assessment year 2013-14 is very low, therefore, the modification made by Id Pr.

CIT may kindly be upheld in estimating the net profit of the assessee at 8% on contractual receipts.

9. On careful consideration of rival submissions, we are of the considered opinion that since the assessee itself is showing net profit on contractual receipts before allowing salary and interest on capital to partners ranging between 7-8% in most of the subsequent years, therefore, the modification made by Pr. CIT that the net profit of the assessee should be estimated at 8% on accounted contractual receipts is correct and sustainable. However, we direct the AO to allow salary and interest on capital to the partners out of said estimated net profit.

10. The next issue for adjudication is that as to whether the Pr. CIT was right in modifying the assessment order and directing the AO to add the entire undisclosed receipts of Rs.15,67,677/- as income of the assessee.

11. Ld counsel for the assessee submitted that as per the decision of Hon'ble M.P.High Court in the case of CIT vs Balchand Ajit Kumar, 263 ITR 610 (MP), the undisclosed credit sales does not represent the profit of the assessee, therefore, the addition cannot be made on entire sale but only the net profit element has to be adopted for the purpose of taxation in the hands of the assessee. Ld counsel also placed reliance on the order of the ITAT, Cuttack Bench in the case of R.R.Carrying Corporation vs ACIT, 126 TTJ (CTK) 240 and submitted that the entire addition of undisclosed receipts or contractual receipts cannot be taxed but only the net profit embedded in the contractual receipts can be taxed.

12. Replying to above, Id CIT DR submitted that it is not a case of the assessee that the assessee has not claimed or adopted the entire expenses incurred by it

while performing contractual work against which undisclosed contract receipts were received. Therefore, the entire amount of contractual receipts should be taxed in the hands of the assessee deeming that the assessee has already claimed entire expenses incurred by it for completion of contractual work assigned to it and against which he received contractual payments by the respective vendors.

13. Placing rejoinder, Id counsel submitted that the assessee has successfully established that there were undisclosed expenses to the unaccounted contract receipts. Therefore, the only profit embedded in the undisclosed contract receipts can be taxed in the hands of the assessee. Ld. Pr. CIT was not correct in directing the AO to add the entire undisclosed receipts to the returned income of the assessee.

14. On careful consideration of rival submissions, we are of the considered opinion that during the proceedings under section 263 of the Act, the assessee has limited scope to substantiate and support the assessment order to establish that it was not erroneous and prejudicial to the interest of the revenue but when the Pr.CIT intends to modify the assessment order, then he is required to show cause the assessee as to whether the entire undisclosed contract receipts should not be taxed in its hands as the assessee has not been able to show that there were undisclosed unaccounted contract receipts. It is also discernible from para 20 of the impugned order that the assessee has not been allowed an opportunity to substantiate and establish its claim regarding the undisclosed expenses to earn the unaccounted contract receipts. In view of above, we are compelled to hold that in view of the proposition rendered by Hon'ble M.P. High Court in the case of

Balchand Ajit Kumar(supra), the entire amount of contract receipts cannot be taxed in the hands of the assessee, only the profit embedded therein can be taxed in the hands of the assessee. Since, in the earlier part of this order, we have confirmed the action of the Ld Pr. CIT to estimate net profit @ 8% of the total contract receipts, but this percentage cannot be completely applied for estimation of net profit embedded in the unaccounted contract receipts. Therefore, keeping in view the entire facts and circumstances of the case, the explanation of the assessee and the modification order of Id. Pr. CIT, to cover the possible leakage of revenue, we direct the AO to estimate the net profit @ 16% of unaccounted contractual receipts, which would meet the ends of justice. Accordingly, appeal of the assessee is partly allowed.

15. In the result, appeal of the assessee is partly allowed.

Order pronounced on 20/01/2020.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 20 /01/2020
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Mangala Builders Associates, BA/2,
Port Railway Colony, Paradeep
2. The Respondent. Pr. CIT, Cuttack
3. The CIT(A)-, Cuttack
- .
4. DR, ITAT, Cuttack
5. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack