

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

आयकर अपील सं./ITA No.222/CTK/2016

(निर्धारण वर्ष / Assessment Year :2001-2002)

M/s Orissa Stevedores Limited OSL Tower, Link Road, Cuttack-753012	Vs.	DCIT, Circle-2(1), Cuttack
PAN No. : AAACO 2100 L		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri P.R.Mohanty, AR
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, DR

सुनवाई की तारीख / Date of Hearing	:	10/03/2021
घोषणा की तारीख/Date of Pronouncement	:	11/03/2021

आदेश / ORDER

Per Bench:

This is an appeal filed by the assessee against the order dated 28.03.2016, passed by the CIT(A), Cuttack for the assessment year 2001-2002, on the following grounds of appeal :-

1. *For that the order passed by the forum below is devoid of merit being against weight of evidence and as such liable to be quashed.*
2. *For that on the facts and under the circumstances of the case, the Ld. Forum below is not justified in disallowing datum loss to the tune of Rs. 40,00,000/- without consideration the nature of business, fact and circumstances of the case as well as the submission made by the Appellant. Therefore, disallowance on this score deserves to be deleted.*
3. *For that the appellant craves leave to submit further points if any, at the time of hearing.*

2. From the above grounds of appeal, it is clear that the assessee has challenged only one issue relating to datum loss to the tune of

Rs.40,00,000/- disallowed by the AO, which was debited into the profit and loss account under the head provision for datum loss.

3. Case file perused and considered the arguments advanced by both the sides. It is clear from the memorandum of payments issued by the Executive Engineer (C), Gopalpur Port Project dated 19.10.2001 that there is a gross amount of bills is Rs.1,11,89,452/- and other recovery is Rs.42,75,632/- and some other deduction i.e. SD,IT & ST has also been mentioned and thereafter net cheque amount is showing. During the course of argument, Id. AR of the assessee submitted that other recovery was provisionally debited into the profit and loss account due to non-availability of memorandum of payments at the time of finalization of the accounts on lumpsum basis of Rs.40 lakhs which is other recovery as shown in the memorandum of payments, which are placed in the paper book. On perusal of the trading profit and loss account under the head operational expenses, which is appearing under the head provision for datum loss of Rs.40 lakhs and further on perusal of the expenses claimed into the profit and loss account there is no any debit entry found of Rs.42,75,632/- as other recovery.

4. Considering to the submissions of both the sides, it is clear that the provisional datum loss claimed by the assessee is less than other recovery shown in the memorandum of payments, which is in the nature of expenditure from the gross amounts received by the

assessee, which is allowable u/s.37(1) of the Act. The contention of the ld. Dr is not acceptable that it is a penalty for breach of contract which cannot be allowable u/s.37(1) of the I.T.Act. In the memorandum of payments there is no any single word used as penalty. Therefore, we are of the opinion that the datum loss claimed by the assessee of Rs.40 lakhs is an allowable expenditure and accordingly held that the assessee is eligible to claim the expenditure under the head datum loss. Thus, the sole ground raised by the assessee is allowed.

4. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 11/03/2021.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 11/03/2021

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
M/s Orissa Stevedores Limited
OSL Tower, Link Road, Cuttack-753012
2. प्रत्यर्थी / The Respondent-
DCIT, Circle-2(1), Cuttack
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