



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

**BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.26/CTK/2020**

Assessment Year : 2014-15

DCIT, Central Circle, Sambalpur	Vs.	Pooja Sponge Pvt Ltd., IDC Plot No.214, Kalunga, Rourkela-770031
PAN/GIR No.AACCP 9822 A		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri K.K.Bajoria, AR  
Revenue by : Shri M.K. Goputam, CIT (DR)

**Date of Hearing : 22 /3/ 2022**  
**Date of Pronouncement : 17 / 5 /2022**

**ORDER**

**Per C.M.Garg, JM**

This is an appeal filed by the revenue against the order of the CIT(A),2, Bhubaneswar dated 18.10.2019 for the assessment year 2014-15.

2. The grounds of appeal raised by the revenue read as under:

"1. In the facts and circumstances, the Ld. CIT(A) erred in deleting addition of Rs.66,00,000/- as payment made by the assessee to M/s. Advaita Reality Pvt. **Ltd.** but showing the same as debited to M/s. Good Luck Traders. The assessee claimed that said payment was made as per verbal advice of M/s. Good Luck Traders but no documentary evidence was produced before AO on this matter.

2. In the facts and circumstances, the CIT(A) ignored the fact that during post search enquiry, M/s. Good Luck Traders had denied to give any such instruction to the assessee for such payment of Rs.66,00,000/- to M/s. Advaita Reality Pvt. Ltd. on its behalf.

3. In the facts and circumstances, the CIT(A) erred in deleting addition of Rs.2,09,88,426/- due to suppression of asset when as per books of M/s. Good Luck Traders, the assessee had a debit balance of Rs.2,76,81,072/- whereas as per seized ledger A/c (SMLO-40, Page-1), M/s. Good Luck Traders had a credit balance of Rs.1,22,809/- as per assessee's books of A/c and thus showing incorrect liability towards M/s. Goodluck Traders and thus suppressed assets to tune of Rs.2,09,88,426/-.

4. In the facts and circumstances, the CIT(A) ignored the fact that the assessee was given opportunity by AO to reconcile the discrepancy of outstanding balance amount with M/s. Good Luck Traders with documentary evidence but the assessee failed to do so. Complete Purchase / Sales register quantitative stock register and sales vouchers could not be produce by the assessee before AO for verification.

5. In the fact and circumstances, the CIT(A) erred in accepting the additional evidence furnished by the assessee during appellate proceedings without given opportunity to AO under Rule 46A."

3. Apropos Ground Nos.1 & 2 of appeal, Id CIT DR supporting the action of the AO submitted that the assessee filed the return of income for assessment year 2014-15 showing total income at Nil. Subsequently, the search and seizure action u/s.132 of the Income tax Act, 1961 (hereinafter called the 'Act') was conducted at the residential, factory and office premises of Shiva Cements Ltd., and other cases in the group on 24<sup>th</sup> and 25<sup>th</sup> September, 2014. The Assessing Officer on the basis of seized documents/materials and/or books of account, initiated the assessment proceedings under section 153C of the Act. The Assessing Officer passed

the assessment order by making certain additions. The CIT(A) allowed the appeal of the assessee. Aggrieved, the revenue has come in the appeal before the Tribunal agitating on two issues i.e. (i) payment made by the assessee to M/s. Advaita Realty Pvt Ltd., but showing the same as debit to Good Luck Traders and (ii) addition made on the allegation of suppressed assets when as per books of Good Luck Traders, the assessee had debit balance of Rs.2,76,81,072/- whereas as per seized ledger account, of M/s. Good Luck Traders had a credit balance of Rs.1,22,809/- only but as per assessee's books of account, showing incorrect liability towards Good Luck Traders and thus, suppressed assets to the tune of Rs.2,09,88,426/-.

4. Ld CIT DR, first of all, submitted that the Id CIT(A) has admitted additional evidence in violation of Rule 46A of I.T.Rules, 1962. He drew our attention towards last sentence at page 5.1 of CIT(A) order and submitted that the assessee filed a letter before the CIT(A) on 13.5.2014 sent by Advaita Realty Pvt Ltd., to Good Luck Traders, which was not submitted before the AO, therefore, the Id CIT(A) while granting relief to the assessee has accepted additional evidence without confronting the same to the AO in violation of Rule 46A of I.T.Rules. Therefore, the Id CIT DR submitted that the matter may be restored to the file of the Id CIT(A) for readjudication after calling a remand report from the AO.

5. Pressing into service Ground No.1 & 2, Id CIT DR. drew our attention towards relevant part of para 4 of the assessment order and submitted that

the assessee could not furnish any convincing explanation although Sri Banka, the AR of the assessee appeared from time to time and reiterated that the said payments are made as per the advice of M/s. Good Luck Traders. The AO has clearly observed that the assessee's explanation is not supported by any documentary evidence, therefore, the same is not acceptable. Ld CIT DR submitted that the Id CIT(A) granted relief to the assessee without any basis by considering additional evidence in violation of Rule 46A of I.T.Rules, therefore, matter may be restored to the file of the Id CIT(A).

6. Replying to above, Id AR submitted that the copy of the explanation submitted by the assessee to the AO alongwith copy of account of Good Luck Trader, copy of letter of Good Luck Trader for transfer of Rs.66,00,000/- and copy of VAT return of Good Luck Traders . Ld AR also submitted the copies of order sheet of the AO from 7.4.2015 to 20.3.2017 and specifically drew our attention towards order sheet dated 21.11.2016 and submitted that the assessee has submitted written reply to the AO during scrutiny assessment proceedings u/s.153C of the Act dated 21.11.2016 and the AO has noted the compliance in the order sheet, therefore, no additional evidence was filed before the Id CIT(A) as all the documents including letter dated 13.5.2014 by Advaita Realty Pvt Ltd., to Good Luck Traders was filed before the AO to substantiate the explanation of the assessee regarding the transfer of Rs.66,00,000/- to Advaita Realty

Pvt Ltd on behalf of Good Luck Traders. Ld A.R. also pointed out that there was a credit balance of Rs.2,76,81,072/- out of which payment of Rs.66,00,000/- was made to Advaita Realty Pvt Ltd., on behalf of Good luck Traders as per letter dated 13.5.2014. Therefore, the Id CIT(A) was right in considering such evidence in right perspective in granting relief to the assessee.

7. In our considered opinion, there is no violation of Rule 46A of I.T.Rules, 1962 by the Id CIT(A) in considering the letter dated 13.5.2014 by Advaita Realty Pvt Ltd to Good Luck Traders. This is a piece of evidence which was ignored by the AO which was filed before him on 21.11.2016. Therefore, we decline to agree with the contention of Id CIT DR that the Id CIT(A) has admitted fresh/additional evidence in violation of Rule 46A of I.T.Rules, 1962. Therefore, Ground No.5 of revenue is dismissed.

8. So far as direct payment by Advaita Realty Pvt Ltd to Good Luck Traders is concerned when there is a credit balance of more than Rs.66,00,000/- as per ledger of the assessee in the credit of Good Luck Traders, then the payment of Rs.66,00,000/- on the instruction of Good Luck Trader to Advaita Realty Pvt Ltd cannot be allowed as not for the purpose of business, we also note that the AO was not correct in dismissing the explanation of the assessee and documentary evidence filed before him on 21.11.2016, which was considered by the Id CIT(A) in right perspective by reasonable and justified appreciation of facts and circumstances of the

case, thereafter deleted the addition. Thus, we are unable to see any ambiguity, perversity and flaw in the findings of the Id CIT(A) to interfere. Thus, we uphold the same. Consequently, Ground No.1 & 2 of the revenue are dismissed.

9. Apropos Ground No.3 & 4, Id CIT DR drew our attention towards para 5 at page 3 of the assessment order and submitted that before the AO, the assessee had not filed any reconciliation statement with Good Luck Traders. Ld CIT DR further alleged that the assessee produced its books of account on 16.11.2016 but could not produce the complete purchases/sale registers and quantitative stock register and sales vouchers. In absence of account produced for verification, the real position is not ascertainable. Therefore, by showing incorrect liability towards M/s. Good Luck Traders, the assessee has suppressed assets to the tune of Rs.2,09,88,426/- against liability of equivalent amount which existed as on 31.3.2014 against M/s. Good Luck Traders. Therefore, the AO was right in considering the said amount as income in the hands of the assessee due to suppression of assets. Ld CIT DR submitted that the Id CIT(A) has granted relief to the assessee by considering the irrelevant facts and wrong appreciation of evidences. Therefore, same may kindly be set aside and restored the order of the AO on this issue.

10. Ld AR again drew our attention to explanation dated 21.11.2016, which was also recorded by the AO in his order sheet dated 21.11.2016 and

submitted that the assessee filed reconciliation of account between the assessee and Good Luck Traders showing credit balance of Rs.1,22,809/- and to reconcile the discrepancy between the books of account of the assessee and books of account of Good Luck Traders but the same was not considered by the AO. Drawing our attention to para 6.1 to 6.3 of the Id CIT(A) order, Id A.R. submitted that the Id CIT(A) after considering the reconciliation statement and other relevant documentary evidence rightly deleted the addition. The assessee's letter giving reconciliation was on the assessment record, which was also referred by the AO in the assessment order. Ld AR submitted that the note sheet entry dated 21.11.2016 clearly reveals that this reconciliation was submitted by the assessee at the time of assessment proceedings and the AO has ignored the same. Ld A.R. submitted that the copy of the VAT return of the month of September, 2013 filed by Good Luck Traders which showed purchases made by Good Luck Traders from the assessee and the AO has not taken into consideration these aspects and made the addition only because the said purchases have been denied by the Good Luck Traders. Ld A.R submitted that the assessee also submitted copy of VAT return and ledger account of Good Luck Traders and after considering the same in right perspective, Id CIT(A) has granted relief to the assessee, therefore, the order of the Id CIT(A) on this issue may kindly be confirmed by dismissing the Ground Nos 3 & 4.

11. Placing rejoinder, Id CIT DR submitted that the VAT papers have not been signed by Good Luck Traders, therefore, same cannot be considered at this belated stage.

12. On consideration of rival submissions, first of all, at the cost of repetition, we may point out that the assessee has filed reply dated 21.11.2016 before the AO during assessment proceedings, which includes reconciliation of account statement with Good Luck Traders, copy of ledger account of Good Luck Traders and copy of VAT return, which in totality makes it clear that the assessee made sales to Good Luck Traders in the month of September, 2013 of Rs.2,09,88,426/- and the AO has not taken into consideration these aspects and relevant evidence and made the addition only on the basis of denial of Good Luck Traders discarding the vital evidence in the form of reconciliation statement, ledger account and above all VAT return of Good Luck Traders and the assessee made sales to Good Luck Traders in the month of September, 2013. Therefore, the Id CIT(A) rightly considered the factual matrix of the issue and appreciation of the explanation of the assessee supported by relevant documentary evidence, which was dismissed by the AO at the threshold without any consideration despite the fact that same were very well before him during assessment records/folders. Therefore, we are unable to see any ambiguity, perversity and flaw in the well reasoned order of the Id CIT(A).

Thus, we uphold the same. Ground Nho.3 & 4 of the revenue are dismissed.

13. In the result, appeal of the revenue is dismissed.

Order pronounced on 17 / 5 /2022.

Sd/-  
**(Arun Khodpia)**  
**ACCOUNTANT MEMBER**

sd/-  
**(Chandra Mohan Garg)**  
**JUDICIAL MEMBER**

Cuttack; Dated 17 /0 5 /2022  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : DCIT, Central Circle, Sambalpur
2. The Respondent. Pooja Sponge Pvt Ltd.,  
IDC Plot No.214, Kalunga, Rourkela-770031
3. The CIT(A)-2, Bhubaneswar
4. Pr.CCIT-, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**