

## **आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक**

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**  
श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

**(THROUGH VIRTUAL HEARING)**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND**

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**आयकर अपील सं/ITA No.109/CTK/2023**

**(निर्धारण वर्ष / Assessment Year : 2017-2018)**

Basanti Auto Agency, Remuna Golai, PO/PS: Januganj, Dist: Balasore-756019	Vs	ACIT, Circle-Balasore, Balasore
PAN No. : <b>AAJTS 1630 D</b>		
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>निर्धारिती की ओर से / Assessee by</b>	:	Shri P.K.Mishra, Advocate
<b>राजस्व की ओर से / Revenue by</b>	:	Shri S.C.Mohanty, Sr. DR
<b>सुनवाई की तारीख / Date of Hearing</b>	:	26/06/2023
<b>घोषणा की तारीख/Date of Pronouncement</b>	:	26/06/2023

### **आदेश / O R D E R**

#### **Per Bench :**

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 31.01.2023, passed in DIN & Oder No.ITBA/NFAC/S/250/2022-23/1049270091(1), for the assessment year 2017-2018.

2. It was submitted by the Id. AR of the assessee that two issues have been raised in the appeal, one against the disallowance made by invoking provisions u/s.40(a)(ia) of the Act on the ground of non-deduction of TDS u/s.194C. The second issue was against the adhoc disallowance of 15% expenses under different heads totaling to Rs.2,13,330/-. It was the submission that in view of the decision of the Hon'ble Supreme Court in the case of R.G.Buildwell Engineers Ltd., 259 Taxman 370 as the books of accounts have not been rejected, no adhoc disallowance can be made.

In respect of the disallowance made by invoking the provisions of Section 40(a)(ia) of the Act, it was submitted that the AO had made disallowance in respect of professional charges, annual maintenance charges and carriage outward, respectively. It was the submission that to such extent as TDS is liable to be made, the assessee has made the same and the AO has not considered the fact that the TDS was not required to be made on the said payments, the assessee has not made the TDS as the amounts were below the limits for deduction of TDS. He had no objection if the issue is restored to the file of AO for verification and re-adjudication of the issue.

3. In reply, Id.Sr. DR vehemently supported the order of the Id. AO and Id. CIT(A) and submitted that the details have not been produced in respect of non-deduction of TDS.

4. We have considered the rival submissions. A perusal of the facts of the present case, clearly shows that the AO has made adhoc disallowance by stating that "in the absence of all the details like bills/vouchers and taking into account the unreasonable increase in the expenses, booked under the head and also the personal use of the above expenses cannot be ruled out", he has disallowed 15% of the expenses. If the AO is of the view that the details have not been produced or that expenses are unreasonable or that there is personal use, any personal expenses has been brought into accounts of the assessee, then it is open to the AO to make the specific disallowance. A disallowance cannot be made on vague terms. This being so, respectfully following the decision in

the case of R.G.Buildwell Engineers Ltd., referred to supra, the disallowance of 15% of the expenses as made by the AO and as confirmed by the Id. CIT(A) stands deleted.

5. Coming to the issue of disallowance made by invoking provisions of Section 40(a)(ia) of the Act, as the assessee has not produced the details of the break-up of the expenses on which he claims that the TDS was not liable to be made and the TDS has been deducted on such payments, which exceeded the prescribed limit, the issue is restored to the file of AO for readjudication after granting adequate opportunity of being heard.

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

Order dictated and pronounced in the open court on 26/06/2023.

**Sd/-**

(राजेश कुमार)

**(RAJESH KUMAR)**

लेखा सदस्य/ **ACCOUNTANT MEMBER**

**Sd/-**

(जार्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य / **JUDICIAL MEMBER**

**कटक** Cuttack; दिनांक Dated 26/06/2023

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-  
Basanti Auto Agency,  
Remuna Golai, PO/PS: Januganj,  
Dist: Balasore-756019
2. प्रत्यर्थी / The Respondent-  
ACIT, Circle-Balasore, Balasore
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.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**(Assistant Registrar)**

**आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack**