



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK  
(through virtual hearing)**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.105/CTK/2022**  
Assessment Year : 2015-16

Biswadarshi Das, Plot No.252/7, Jharana Lane-1, Aerodrome Road, Bhimpur, Bhubaneswar.	Vs.	ACIT, Circle-2(1), Bhubaneswar.
PAN/GIR No.AAYPD 9770 C		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri B.K.Mahapatra, CA  
Revenue by : Dr.Abani Kanta Nayak, CIT DR

**Date of Hearing : 30/11/2023**  
**Date of Pronouncement : 30/11/2023**

**ORDER**

Per Bench

This is an appeal filed by the assessee against the order of the Id Pr.CIT-1, Bhubaneswar passed u/s. 263 of the Act dated 24.3.2020 in Appeal No.ITBA/COM/F/17-2019-20/1026878726(1) for the assessment year 2015-16.

2. Shri B.K.Mahapatra, Id AR appeared for the assessee and Dr. Abani Kanta Nayak, Id CIT DR appeared for the revenue.

**3.** It was submitted by Id AR that the assessee is a civil contractor. It was the submission that in the course of assessment, the Assessing Officer noticed that the gross receipts as per 26AS from BSNL was Rs.1,56,54,678/- whereas the assessee has shown only Rs.1,19,99,804/-. It was the submission that consequently, the Assessing Officer had treated the differential amount of Rs.36,54,874/- as the undisclosed turnover of the assessee and estimated the income of the assessee at 10%. It was the submission that the Id Pr. CIT had invoked his powers u/s.263 of the Act and had directed the Assessing Officer to treat the entire amount of Rs.36,54,874/- as the undisclosed income of the assessee. It was the submission that after giving this direction, he further went on to set aside the assessment order and directed that the assessee may be given sufficient opportunity of being heard in the matter. It was the submission that the addition *per se* was not permissible insofar as the Assessing Officer has considered the difference found and had taken a view that only 10% of the same was liable to be assessed as income of the assessee. It was the submission that the order u/s.263 of the Act is liable to be set aside on account of change of opinion.

**4.** In reply, Id CIT DR vehemently supported the order of the Pr. CIT. It was the submission that he had no objection if the direction as given to add the said amount is deleted from the order of the Pr. CIT. It was the submission that same was liable to be examined by the Assessing Officer.

5. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that the Assessing Officer has considered the fact that there was a difference between the gross receipts as shown in form 26AS and the gross receipts as disclosed in the return of income. The difference admittedly is an amount of Rs.36,54,874/-. The assessee has also submitted the explanation with necessary documents and the same has not been accepted by the Assessing Officer. It is on account of this reason that the Assessing Officer has adopted the estimation of the income from the said turnover at 10%. The direction of Id Pr. CIT now to treat the entire amount of Rs.36,54,874/- as the undisclosed receipts of the assessee is clearly an act of forcing of opinion of Pr. CIT over that of the Assessing Officer. This is not permissible when two views are possible and the Assessing Officer has taken one view. Just because the view of Id Pr. CIT could bring more taxes would not mean that the view taken by the Assessing Officer is erroneous. It is also noticed that before the Assessing Officer, the assessee had given explanation for the difference of Rs.36,54,874/- but before the Id Pr. CIT, admittedly, adequate time had not been given for the assessee to give his reply and explanation. This being so, as it is noticed that the issue on which the Pr.CIT has invoked his powers u/s.263 of the Act is an issue which has been considered by the Assessing Officer and when a view has been taken by the Assessing Officer, the order u/s.63 is not permissible just because there is difference

of opinion by the Pr. CIT. Consequently, we quash the order u/s.263 of the Act.

6. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 30/11/2023.

Sd/-

**(Girish Agrawal)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 30/11/2023  
B.K.Parida, SPS (OS)

sd/-

**(George Mathan)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant : Biswadarshi Das, Plot No.252/7, Jharana Lane-1, Aerodrome Road, Bhimpur, Bhubaneswar
2. The Respondent: ACIT, Circle-2(1), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

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