



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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.56/CTK/2024**

Assessment Year : 2018-19

Santosh Kumar Khandelwal, Ward No.8, Hudco Colony, Madhuban, Baripada, Dist: Mayurbhanj	Vs.	Income Tax officer, Baripada
PAN/GIR No.AAOFS 0967 J		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Mohit Sheth, Adv  
Revenue by : Shri S.C.Mohanty, Id Sr DR

**Date of Hearing : 16/04/2024**

**Date of Pronouncement : 16/04/2024**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 19.1.2024 in Appeal No.NFAC/2017-18/10008505 for the assessment year 2018-19.

2. Shri Mohit Sheth, Id AR appeared for the assessee and Shri S.C.Mohanty, Ld Sr. DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is a partnership firm and the return filed by the assessee came to be assessed u/s.143(3) of the Act

and the books of account came to be rejected by invoking the provisions of section 145(3) of the Act. It was the submission that consequent to the rejection of books of account, the income of the assessee was estimated at 6% of the gross receipts and depreciation was denied. It was the submission that on appeal, the Id CIT(A) following the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2012-13 in ITA No.287/CTK/2017 dated 16.5.2018 held that the income of the assessee is liable to be estimated at 6% of the gross receipts and consequently dismissed the assessee's appeal. Ld CIT(A) had also taken into consideration the fact that for the assessment year 2017-18, similar rejection of the books of the assessee was done and estimation at 6% of the gross receipts was accepted by the assessee and no appeal had been filed. It was the submission by Id AR that on identical circumstances for the assessment years 2008-09 and 2009-10, the Co-ordinate Bench of this Tribunal in ITA Nos.70 & 71/CTK/2013, order dated 22.2.2013 directed the AO to estimate the income of the assessee at 5% and further granted the benefit of provisions of section 28(v) of the Act and also granted depreciation. It was the submission that for the assessment year 2012-13 referred to supra, there was no finding in regard to the disallowance of depreciation. It was the submission that the Tribunal for the assessment year 2012-13 had followed the order of the Co-ordinate Bench of this Tribunal for the assessment years 2008-09 & 2009-10 in regard to all

issues. It was the revenue's appeal and consequently, on corollary, the appeal of the revenue was dismissed by confirming the order of the Id CIT(A), Because there was no appeal from the side of the assessee for the assessment year 2012-13, therefore, the gross profit was fixed at 6% though in principle, the findings of the Co-ordinate Bench of this Tribunal for the assessment year 2008-09 & 2009-10 had been followed by the Tribunal for the assessment year 2012-13. It was the submission that in the impugned appeal, the assessee is challenging the decision of the Id CIT(A) in not granting the depreciation and fixing the gross profit at 6%. It was the submission that on identical circumstances, the Co-ordinate Bench of this Tribunal for the assessment years 2008-09 & 2009-10 had held that the assessee was entitled to claim the depreciation and gross profit rate before depreciation was to be taken at 5%.

4. In reply, Id Sr DR submitted that the allowability of depreciation was subject to various conditions such as utilization of the assets for the purposes of business and the period of holding of the assets. It was the submission that the issues may be sent back to the file of the AO for readjudication. It was the further submission that it is a case of financial dishonesty insofar as the assessee has not furnished the schedules and notes to the accounts to the balance sheets and audited profit and loss account in the course of assessment. It was the submission that the order of the Id CIT(A) is to be upheld and the income of the assessee is liable to

be estimated at 6% and depreciation is not liable to be allowed to the assessee. It was the submission that when the net profit is being estimated, the depreciation is not liable to be allowed insofar as the depreciation has already been taken into consideration when the net profit is being estimated.

5. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that the assessee has not challenged the rejection of books of account. The assessee has only challenged the issue as to whether the Id CIT(A) was right in following the decision of the Co-ordinate Bench of this Tribunal for the assessment years 2012-13 or the Id CIT(A) ought to have followed the decision of the Co-ordinate Bench in assessee's case for the assessment years 2008-09 & 2009-10. Keeping this in mind, if we see the order of the Id CIT(A), it is noticed that in para 5.2 of the order, Id CIT(A) mentions that the AO has followed the order of the Co-ordinate Bench for the assessment year 2012-13, wherein, the rate of gross profit at 6% has been fixed and there is a claim that the depreciation has been disallowed. A perusal of the order of the Co-ordinate Bench of this Tribunal for the assessment year 2012-13 in ITA No.287/CTK/2017 referred to supra show that in para -8 of the order of the Tribunal, the Co-ordinate Bench has held as follows:

"We have heard rival submissions and perused the materials available on record. We found the Id DR has argued on the percentage restricted by the Id CIT(A) as not acceptable and also the

Id DR submitted that remuneration paid to the partners and interest on capital is not in accordance with law. We found that the CIT(A) dealt on the judicial decisions and submission of the assessee and has restricted the estimation of income 6% and similarly in case of payment of salary and interest to partners, the Id AR referred to the order of the Tribunal relied on by Id CIT(A) which the Id DR could not controvert with any new facts in the order of the Id CIT(A). We, therefore, considering the circumstances and facts, are of the opinion that the Id CIT(A) dealt on the submissions and judicial decisions and has passed a reasoned order, which we are not inclined to interfere with the order. Accordingly, we uphold the order of the Id CIT(A) and dismiss the grounds of appeal of the revenue."

6. For the assessment year 2012-13, admittedly, the Tribunal has dismissed the appeal of the revenue and upheld the order of the Id CIT(A), wherein, the income of the assessee has been estimated at 6%. There is no disallowance nor is there any upholding of disallowance of depreciation. In fact in para 4 of the order of the Tribunal, the Tribunal has referred to the order of the Co-ordinate Bench for the assessment years 2008-09 & 2009-10 in ITA Nos.70 & 71/CTK/2013. A perusal of the order of the Co-ordinate Bench for the assessment years 2008-09 & 2009-10 (supra) shows that in page 10 in respect of part of para 6 of the order of the Co-ordinate Bench, the Tribunal has held as follows:

"In this view of the matter, we do find the submissions of the Id Counsel of the assessee justified that in case of other such contractors when the rate of return from the gross receipts is between 4% to 5% has been accepted by the Tribunal, the same therefore is estimated at 5% before depreciation for both the AYs in the case of the assessee which the Id counsel of the assessee has agreed to in view of the Id CIT(A) indication 8% net of depreciation. Depreciation is a charge on profits not related to gross receipts therefore has to be allowed from the estimation rate. As mentioned above, the interest and salary to partners as claimed by the assessee in the profit and loss account of the assessee are to be allowed

insofar as they are to be allowed from the business income estimated at 5% in accordance with the provisions of I.T.Act to be rendered as business income by the partners u/s.28(v) when the correct income has been computed u/s.143(3) and not because there is any failure on the part of the assessee as mentioned u/s.144. We direct accordingly.”

7. The Co-ordinate Bench for the assessment years 2008-09 & 2009-10 (supra) has accepted the estimation of the income of the assessee to be 5% of the gross profit and to allow the depreciation and salary and interest to the partners. A perusal of the assessment order shows that the Assessing Officer himself has allowed the remuneration and interest to the partners. Therefore, there only remains the issue of rate of gross profit and the claim of depreciation. Respectfully following the decision of the Co-ordinate Bench for the assessment years 2008-09 & 2009-10 (supra), as the same order was the foundation for the assessment year 2012-13 (supra), the Assessing Officer is directed to assess the income of the assessee by estimating the gross profit at 5% of the gross receipts and to allow the depreciation thereon.

8. In the result, appeal of the assessee stands partly allowed.

Order dictated and pronounced in the open court on 16/04/2024.

Sd/-  
**(Manish Agarwal)**  
**ACCOUNTANT MEMBER**

sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

Cuttack; Dated 16/04/2024  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : Santosh Kumar  
Khandelwal, Ward No.8, Hudco Colony,  
Madhuban, Baripada, Dist: Mayurbhanj
2. The Respondent: Income Tax officer,  
Baripada
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

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