



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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER**

**ITA No.304/CTK/2024**

Assessment Year : 2009-2010

Ajay Khannawala, C/O. Kadamawala & Co., CA, Budhram Oram Market, Kachery Road, Rourkela.	Vs.	ITO, Ward -2, Rourkela
PAN/GIR No.		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri M.R.Sahu, CA  
Revenue by : Shri S.C.Mohanty, Id Sr DR

**Date of Hearing : 03/09/2024**  
**Date of Pronouncement : 03/09/2024**

**ORDER**

This is an appeal filed by the assessee against the order of the Id Addl/JCIT(A), Madurai dated 5.6.2024 in Appeal No.CIT(A)Sambalpur/10168/2016-17, for the assessment year 2009-2010.

2. Shri M.R.Sahu, Id AR appeared for the assessee. Shri S.C.Mohanty, Id Sr DR represented on behalf of the revenue.

3. At the time of hearing, Id AR has submitted that the legal issue raised in Ground No.1 of appeal is not pressed. Consequently, Ground No.1 of appeal is dismissed as not pressed.

4. In respect of other grounds, it was submitted by Id AR that originally an order u/s.263 had been passed by Id CIT, Sambalpur, wherein, the Id CIT had given the directions as follows:

“The case is set aside to the file of the Assessing Officer with a direction to call for the books of account and vouchers and verify them thoroughly and make proper examination of the facts and documentary evidences to be filed by the assessee regarding business expenditures incurred by the assessee during F.Y. 2008-09 and also verify the correctness of the net profit disclosed, after allowing a reasonable opportunity of being heard to the assessee and then dispose off the case of the assessee for A.Y. 2009-10.”

5. It was the submission that these directions have been extracted by the Assessing Officer in his assessment order at page -1. It was the submission that consequential order has been passed by the Assessing Officer, wherein, the Assessing Officer has estimated the income of the assessee by applying net profit rate at 8% of the gross receipts. It was the submission that the Assessing Officer has not invoked the provisions of section 145(3) of the Act and the books of account of the assessee have not been rejected. It was the submission that in view of the decision of the Co-ordinate Bench (Indore Bench) in the case of Krishna Mohan Choursiya vs ITO (2021) 133 TAXMANN.COM 15 (Indore) and also the decision of Gauhati Bench in the case of Sayqul Islam vs ITO (2020) 118 TAXMANN.COM 347(Gauhati) without rejecting the books of account, the Assessing officer could not have estimated the income of the assessee.

6. In reply, Id Sr DR vehemently supported the order of the Assessing Officer and Id CIT(A). It was the submission by Id AR that the Id CIT(A) in para 5.10 has categorically held that the Id CIT, Sambalpur has in the order u/s.263 given a finding that if the books are rejected then the minimum profit has to be estimated @ 8%. It was the submission that this was what done by the Assessing Officer consequent to the order passed u/s. 263 of the Act. It was the submission that the Assessing Officer has complied with the order of the Id CIT, Sambalpur.

7. I have considered the rival submissions. A perusal of the assessment order clearly shows that the Assessing Officer has extracted the direction of the Id CIT, Sambalpur passed u/s.263 of the Act. Further, a perusal of the assessment order also clearly shows that the Assessing Officer has not rejected the books of account of the assessee nor has invoked the provisions of section 145(3) of the Act. Without rejecting the books of account of the assessee, there is no provision for estimation of the income of the assessee. In the present case, as it is clearly noticed that there is no finding of the Assessing Officer in rejecting the books of account of the assessee nor invoking the provisions of section 145(3) of the Act, the estimation of income as done by the Assessing Officer is unsustainable and consequently, the addition as made by the Assessing officer and as upheld by the Id CIT(A) at 8% of the gross receipts stands deleted. No other arguments have been advanced by Id AR of the assessee.

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

Order dictated and pronounced in the open court on 03/09/2024.

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

Cuttack; Dated 03/09/2024  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : Ajay Khannawala, C/O.  
Kadamawala & Co., CA, Budhram Oram  
Market, Kachery Road, Rourkela
2. The Respondent: ITO, Ward -2,  
Rourkela
3. The Addl/JCIT(A), Madurai
4. Pr.CIT, Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt. Secretary  
**ITAT, Cuttack**

IMPARTIAL, EASY AND  
SPEEDY JUSTICE