



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

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.412/CTK/2024
Assessment Year : 2018-19

Sunil Kumar Mahapatra At; Bandutikra Ward No. 09 PO/PS/Dist: Baragarh, 768028 Odisha	Vs.	ACIT, Balasore Circle, Sambalpur
PAN/GIR No. AIBPM1422F		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K Mishra, Adv
Revenue by : Shri Saroj Kumar Dubey,, Id CIT DR

Date of Hearing : 17/12/2024
Date of Pronouncement : 17/12/2024

ORDER

Per Bench:

This is an appeal filed by the assessee against the order of the Id. CIT(A),Bhubaneswar-2 dated 25.7.2024, in Appeal No.CIT(A), Bhubaneswar-2/11267/2017-18 for the assessment year 2018-2019.

2. Shri P.K. Mishra, advocate appeared for the assessee and Shri Saroj Kumar Dubey, CIT DR appeared for the revenue.

3. The assessee has challenged the first appellate order on the basis of following grounds of appeal:-

GROUNDS OF APPEAL

1. For that, the learned CIT(A) has committed gross error of law as well as of fact, in allowing the appeal partly instead of allowing it in full, ignoring the explanation offered and documentary evidences produced by the Appellant during remand proceeding, as such, the appeal order passed by the learned CIT(A), being not sustainable in the eye of law, needs to be quashed in the interest of justice.

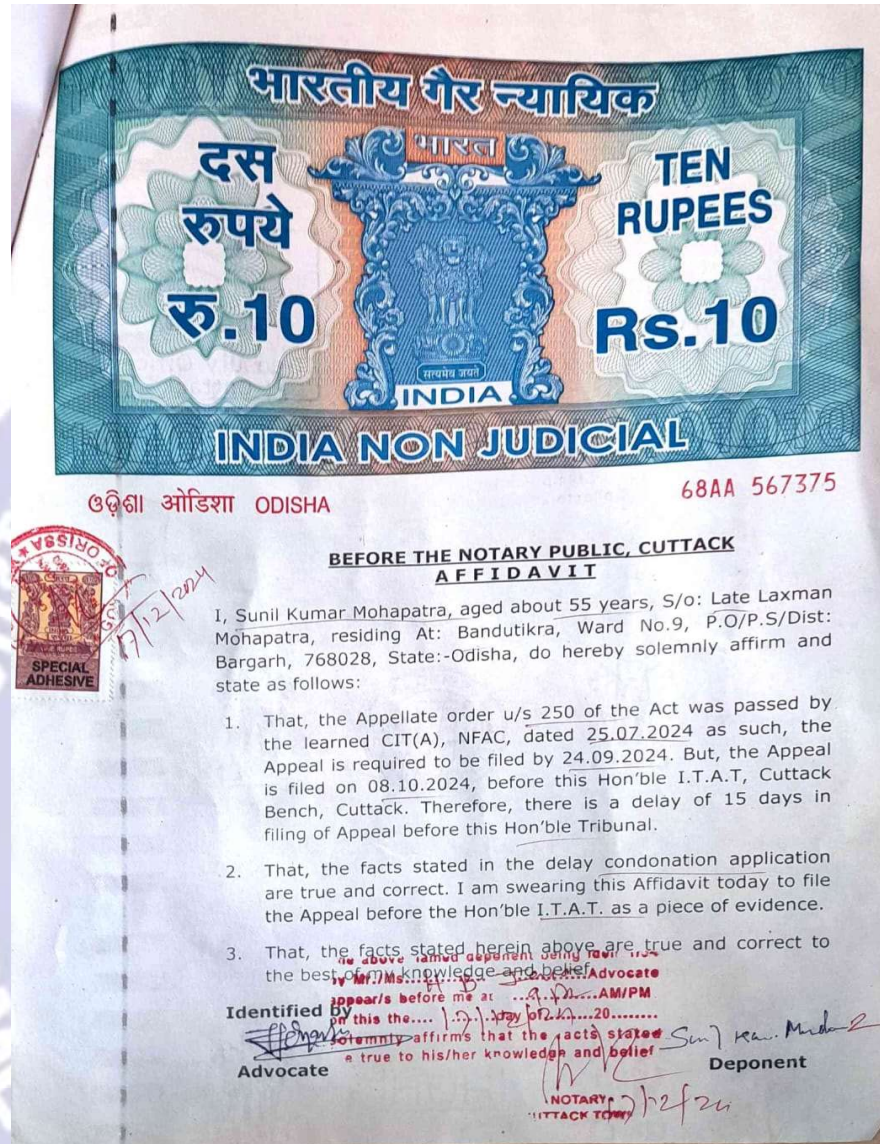
2. For that, the learned CIT(A), without applying his judicious mind, has committed gross error of law as well as of fact in estimating the gross profit @6.91% amounting to Rs.21,56,472.00 on the unaccounted sales determined by the learned A.O. of Rs.3,12,07,989.00 in the remand report and added back the same to the total income of the Appellant, Ignoring the explanation offered and evidences adduced by him. The impugned determination of sales turnover and addition of estimated gross profit to the total income, being not sustainable in the eye, of law, needs to be deleted in the interest of justice.

3. 3. For that, the determination of unaccounted sales and estimation of gross profit during course of remand proceeding by the learned A.O., ignoring explanation offered and detailed evidences adduced by the Appellant is contrary to the facts on record, hence the addition confirmed by the learned CIT(A), on the basis of remand report is illegal, arbitrary and contrary to the facts on record, as such, It being not sustainable in the eye of law is liable to be deleted in the interest of justice.

4. For that, the learned CIT(A) has committed gross error of law as well as of fact in confirming the ad-hoc disallowance of 10% of carriage outward expenses to tune of Rs.8,09,468.00 made by the learned A.O., ignoring the explanation offered and bills and vouchers produced before the learned A.O. during remand proceeding. The impugned ad-hoc disallowances of said expenses, without assigning any valid and cogent reason, being not sustainable in the eye of law is liable to be deleted in the interest of justice.

5. For that, the Appellant craves leave of this Hon'ble Tribunal to add, alter, modify or to urge other grounds of appeal, if any, at the time of hearing in the interest of justice."

4. The appeal was delayed by 15 days for which a condonation application along with an affidavit is filed. The affidavit filed reads as under:



After considering the condonation petition and the facts contained therein, we are satisfied that there is a bonafide cause for delay in filing the appeal for 15 days and therefore, we condone the delay and admit the appeal for hearing on merits.

5. Brief facts of the case are that the assessee is an individual engaged in the business of running a stone crusher and having income from sales of grit and allied products. A survey u/s 133A of the Act was carried out on the business premises of the assessee on 23.03.2018, based on which, the case of the assessee was taken for compulsory scrutiny. The assessment u/s 143(3) was completed on 30.09.2021 at total income of Rs.5,88,28,630/- as against the income declared at Rs.53,69,120/-. Against the said assessment order, the assessee preferred appeal before the CIT(A) Bhubaneswar-2, who vide his order dated 25.07.2024 has allowed part relief and sustained remaining addition against which, the present appeal is filed before us.

6. Here it is relevant to mention that AO has treated Rs.5,20,83,165/- as undisclosed sales of the assessee being the amounts deposits in the bank account maintained by the assessee from the period from April 2017 to November 2017. The Id CIT(A) has though deleted the addition made on the account entire bank deposits, however, held that Rs.3,120,00,989/- as un-accounted sales of the assessee as computed by the AO in the remand proceedings and confirmed the addition of Rs.21,56,472/- being the gross profit @ 6.91% on such undisclosed sales. Besides this, the disallowance expenses @ 10% of Rs.13,76,340/- on account of power & fuel expenses is also confirmed by the CIT(A).

7. Before us Id. AR submits that the assessee is regularly filing his return under VAT and under GST Act which came into the existence with effect from 1st July 2017 and all the sales declared in the VAT and GST returns are duly accounted for based on which final accounts have been prepared and duly audited and verified by the Chartered Accountant as per law. The Id AR further submits that the AO has not doubted the completeness and correctness of books of account and had accepted trading results declared by the assessee based on such books of account. However, without considering the facts that all the entries in the bank accounts of the assessee are duly accounted for in the books of account, going to allege that the deposits made in such bank account were undisclosed sales of assessee. He further submits that during the course of survey, the Survey party has taken a figure of Rs.7,03,79,108/- as sales for the period from December 2017 to 22.03.2018, however, no working was provided to the assessee as to how this figure of sales was computed during the course of survey. Ld AR submits that during the course of appellate proceedings, a detailed submission was made along with month wise sales of the goods sold and declared in GST/VAT return. Besides this reconciliation statement was filed to reconcile the deposit in bank account during the period from 01/04/2017 to 30/11/2017 with the entries recorded in books of accounts and also explain the true nature of all these entries whether they are against sales, loan, contra or realization from debtors. All

these documents were verified by the AO during the remand proceedings however, the AO has failed to appreciate the facts in proper perspective and ultimately alleged Rs.3,12,07,989/- as net unaccounted sales of the assessee on which addition of Rs.21,56,472/- was confirmed by Id. CIT(A) by applying rate of profit @ 6.91%.

8. The Id. AR further stated that reply of the assessee and the remand report and the rejoinder to the remand report as reproduced in the order of CIT(A) proves that assessee has been able to reconcile the deposits made in the bank accounts and despite the repeated request, department has failed to provide the working of sales of Rs.7,03,79,108 made during the period from December 2017 to 23rd March 2018 at the time of survey. He thus submitted that when the Assessing Officer has accepted the sales declared on the basis of books of account maintained in the regular course of business and so called undisclosed sales is part of total sales based on which net profits was declared, any further addition would be double addition of an income which is not permissible under the Act. He, therefore, prayed for the deletion the addition so made.

9. On the other hand the Id CIT DR vehemently supported the orders of lower authorities and submits that the assessee has been provided ample opportunity by the AO as well as by the Id. CIT(A) to explain the difference in sales and bank deposits. During the remand proceedings, the assessee has not been able to satisfy the lower authority about the source of the

deposits made in the bank account and further failed to reconcile the sales as declared in the profit & Loss account and the total amount of sales found during the course of survey for the period from December, 2017 to 23.03.2018. He further submits that Id CIT(A) has taken most judicial approach of applying gross profit rate on the undisclosed sales computed after considering the assessee's submission and therefore, the order of the Id.CIT(A) deserve to be upheld.

10. We have heard the rival submission and perused the matter available on record. Admittedly, in this case, no document whatsoever has been brought on record by the revenue to support the working of turnover of Rs.7,03,79,108/- stated to have been achieved by the assessee during the period from December,2017 to 23rd March 2018 despite of repeated request made by the assessee. From the perusal of the copies of monthly VAT/GST returns filed, it is seen that assessee is having turnover 4,75,02069 during the period of April,2017 to June 2017 and of Rs.11,61,9048/- during the 2nd quarter of year 2017. The sales of the remaining period is also tabulated based on the GST returns at pages 5 & 6 of the CIT(A) orders. These sales are duly recorded in books of account which were not doubted by AO or CIT(A).

11. The trading results declared by the assessee were accepted and also the assessee has filed the accounts of debtors from whom the realization were deposited in the bank accounts which remained uncontroverted. The

assessee has been able to demonstrate with all plausible explanation that there was no difference in the sales declared by the assessee and as declared in the VAT/GST returns and further able to reconcile the same with bank deposits alleged as undisclosed sales and no document was brought on record controverting the claim of the assessee, found during the course of survey. It is also a matter of record that all the bank statements maintained by the assessee are forming part of the books of account of the assessee and all the entries contained therein were duly recorded and itself explain the nature of deposit whether same was on account of sales, loan, realization from debtors etc. It is also relevant to state that no material was found during the course of survey with regard to any excess/shortage of the stock nor any evidence was found leading to believe that the books of account maintained by the assessee are incorrect or any bogus expenditure was booked. Looking to these facts, we are of the considered view that assessee has been able to fully reconcile the sales declared and the bank deposit for whole year and as such there is no undisclosed sales therefore, question of making addition of gross profit on such alleged undisclosed sales does not arise. Since we have already held that there was no undisclosed sales, the addition made on account of gross profit on undisclosed sales is hereby deleted. As a result ground of appeal no. 1 to 3 are allowed.

12. In Ground No. 4, the assessee has challenged the disallowance of Rs.8,09,468 @ 10% out of carriage outward and fuel expenses.

13. Before us Id AR submits that assessee has filed all the necessary bills and vouchers before the AO during the remand proceedings and no defect was pointed out by the AO in the same. He further submits that the trading results declared were accepted by the AO and provisions of section 145(3) of the Act were not invoked. He thus, submits that in such situation no disallowance could be made more particularly when such expenses they are claimed in trading and manufacturing account and the trading results were accepted by AO. He therefore prayed for the deletion of the disallowance so made.

14. *Per contra* the Id CIT DR vehemently supported the lower authorities and submits that the AO in the remand report has examined this issue and after considering the consumption of diesel and other factors, has come to the conclusion that the assessee has inflated the expense. Therefore, he prayed for the confirmation of the addition so made.

15. We have heard the rival submission and perused the materials available on record. It is seen that the AO had not found any defect in bills & voucher produced by the assessee during the remand proceeding and solely on assumption and presumption tried to justify the actions of making disallowances. In this case books of account were accepted and provision of

145(3) of the Act were not invoked. Under these circumstances no adhoc disallowance could be made when the results declared in the books of account were accepted. It is also settled proposition of law that when no doubts were raised about the genuineness and correctness of books of account, no adhoc disallowance out of the expenses claimed could be made. We are also live to fact that these expenses were claimed in trading & manufacturing account and once the trading results are accepted, AO cannot make any further disallowances out of any expenses claimed therein. In view of above discussion, the disallowances of Rs.8,09,468/- is hereby deleted. Ground No.4 of the assessee is allowed.

16. As a result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 17/12/2024.

Sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

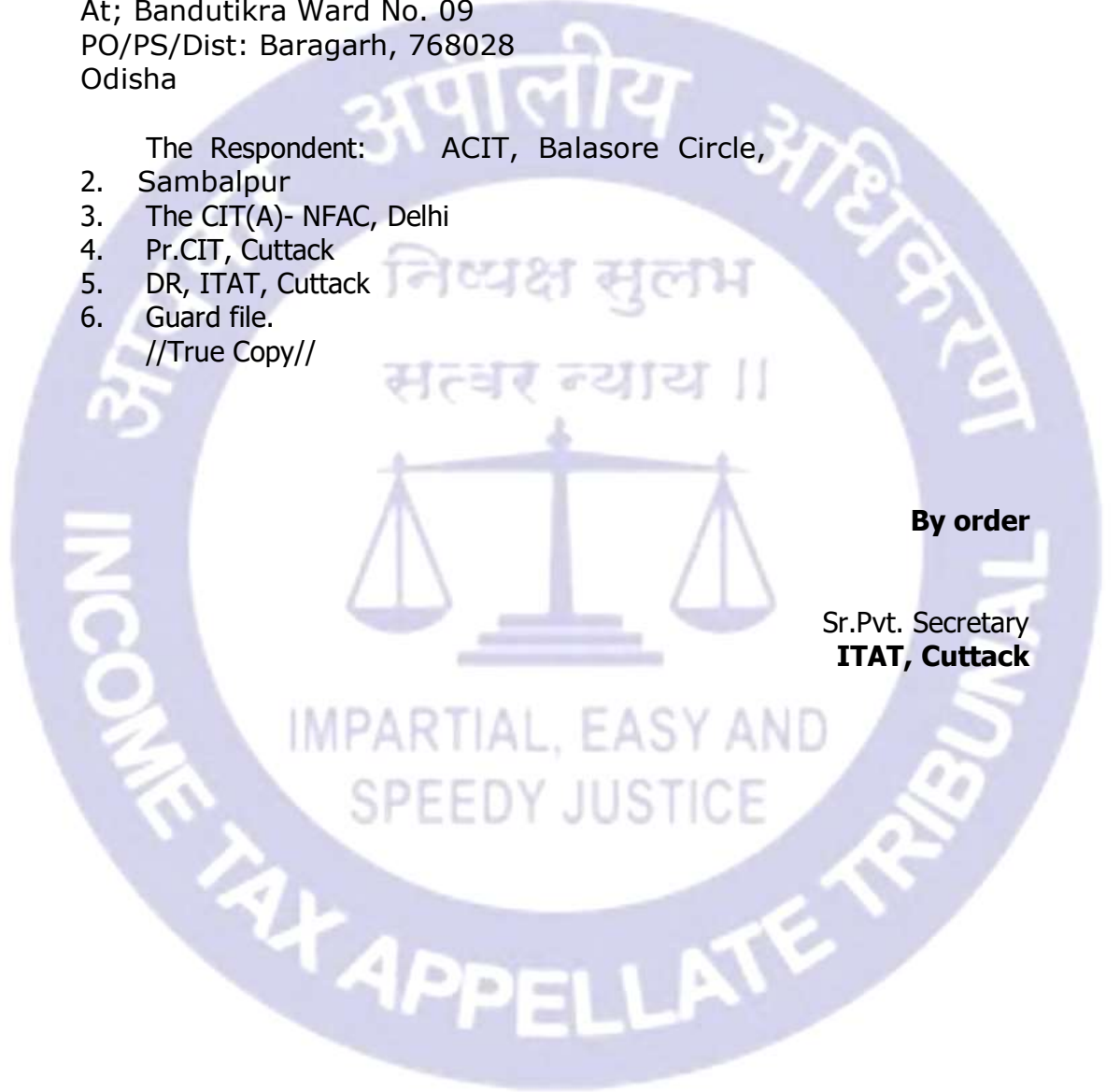
Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Cuttack; Dated 17/12/2024
B.K.Parida, SPS (OS)

Copy forwarded to : Appellant; Sunil Kumar Mahapatra
At; Bandutikra Ward No. 09
PO/PS/Dist: Baragarh, 768028
Odisha

- The Respondent: ACIT, Balasore Circle,
2. Sambalpur
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.

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By order

Sr.Pvt. Secretary
ITAT, Cuttack