

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

(VIRTUAL HEARING AT KOLKATA)

**SHRI DUVVURU RL REDDY, VICE PRESIDENT
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 435/CTK/2024
(Assessment Year 2015-16)**

Ganpati Builders Ltd.,

N.H. 6, Pradhanpali Bargarh,
Orissa - 768028

[PAN: AABCG5592M]

..... **Appellant**

vs.

ITO Ward, Wargarh,

BSF Nagar, NH Street,
Bandu Vikira Chowk, 1st Floor,
Bargarh - 768028

..... **Respondent**

Appearances by:

Assessee represented by : Sh. S.K. Pransukha, AR

Department represented by : Sh. Sanjay Kumar, CIT-DR

Date of concluding the hearing : 22.04.2025

Date of pronouncing the order : 23.04.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. The present appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereinafter “the Act”), passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter the Ld. CIT(A)] vide order dated 26.08.2024 for AY 2015-16.

1.1 In this case, the Ld. AO has basically made three additions as under:

(a) Rs. 3,26,87,350/- u/s 68 of the Act. This addition has been made on account of alleged advances received from customers. For this issue, the Ld. AO has recorded a finding that in-spite of ample opportunities given, the assessee could not produce satisfactory details before him.

(b) Rs. 1,07,85,499/- has been added u/s 40(a)(ia) of the Act. For this issue the Ld. AO found that certain payments were made as per the contract agreement with one M/s Brahmani Developers Pvt. Ltd. But the same were not subjected to TDS.

(c) Rs. 1,65,22,000/- has been added u/s 69A of the Act on account of deposit of this amount in the bank account. The Ld. AO has recorded a finding that the assessee could not explain the source of this deposit satisfactorily.

1.1 Aggrieved with this action of the Ld. AO, the assessee approached the Ld. CIT(A), where also he could not succeed and the Ld. CIT(A) confirmed the action of Ld. AO, who had incidentally followed the directions contained in an order u/s 263 of the Act passed by the Ld. Principal Commissioner of Income Tax, who had noticed the impugned deficiencies in the Ld. AO's order.

2. Further aggrieved, the assessee has approached the ITAT with the following grounds:

"1. For that in facts and circumstances and in law, L'd CIT(A) erred in sustaining the addition made by AO u/s 68 amounting to Rs 3,26,87,350 which was received from the customers as advance for booking flats even though such advances were supported by sale deeds without considering the statement of facts and submission given during appellate proceedings

2. For that Ld CIT(A) erred in sustaining the addition of Rs 1,65,22,000 which were also sourced from customers in whose favor sale deeds were executed.

3. For that Ld CIT(A) erred in sustaining the addition of Rs 32,35,650/- (30% of Rs 1,07,85,499) without verifying that tax deducted and deposited on actual payment basis u/s 43B.

4. The Ld CIT(A) erred in rejecting the documents submitted during the appellant proceedings on technical ground of non submission of application for admitting the additional evidences under rule 46A even when he could have used his power under rule 46A (4) read with section 250(1) as such documents goes to the root of matter and enables the appellant get substantial justice. He further failed to appreciate that compliance with principles of natural justice must necessarily be read in to provisions of rules.

5. For that Appellant crave leave to add, delete, modify any other ground before or at the time of hearing."

2.1 Before us, the Ld. AR argued that while there were some shortcomings in the quality of evidence filed before the Ld. AO, the assessee admitted to filing some factual material before the Ld. CIT(A), but without following the procedure as per IT Rules. The Ld. AR averred that the Ld. CIT(A) refused to take the cognizance of the said documents on the ground that the new evidence was not filed in keeping with Rule 46A of the IT Rules. In this manner, a primary argument of the Ld. AR was denial of opportunity leading to an adverse finding. The Ld. AR drew our attention to a voluminous set of documents which have been presented before the ITAT under Rule 29 of the ITAT Rules for admission as fresh evidence. The Ld. AR pointed out that considerable number of vouchers in the possession of the assessee need to be examined so that the correct assessment of his income can be done.

2.2 The Ld. DR relied on the orders of authorities below.

3. We have carefully gone through the impugned order, the assessment order and the documents placed before us, including the fresh evidence submitted for the first time before the ITAT. We find that this case revolves around the facts surrounding the deposits in bank, the material purchased from supplier etc. In this regard, it is felt that while the assessee may not have succeeded in presenting the facts before the Ld. CIT(A), he does have considerable number of documents which could establish his position, one way or another. Accordingly, in the interest of substantive justice, we deem it fit to set aside the impugned order and remand the matter to the file of Ld. AO for fresh assessment. The Ld. AO would provide ample opportunity and the assessee would be at liberty to file documents and evidences in support of his claim.

4. With these remarks, the appeal is allowed for statistical purposes.

Order pronounced on 23.04.2025

Sd/-
(Duvvuru RL Reddy)
Vice President

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 23.04.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Ganpati Builders Limited
2. ITO Ward, Wargarh
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches