

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

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA NO.176/CTK/2015
(ASSESSMENT YEAR : 2010-11)**

**ITA NO.177/CTK/2015
(ASSESSMENT YEAR : 2011-12)**

M/s. Kumud Bandhu Mohapatra, vs. ACIT,
Sarasatia, Ranital, Balasore Circle,
Bhadrak. Balasore.

(PAN : AHXPM6156F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Prajnaraj Mohanty, AR
REVENUE BY : Shri A. Tigga, DR

Date of Hearing : 27.04.2017
Date of Pronouncement : 29 .05.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The Appellant, M/s. Kumud Bandhu Mohapatra (hereinafter referred to as 'the assessee') by filing the present appeals sought to set aside the impugned orders dated 17.12.2014 & 22.01.2015

passed by the Commissioner of Income-tax (Appeals), Cuttack qua the assessment years 2010-11 & 2011-12 respectively on the grounds inter alia that :-

“ITA NO.176/CTK/2015 (AY 2010-11)

- 1. That the order passed by the learned CIT (A), Cuttack is highly illegal, arbitrary, bad in law, without any basis, contrary to facts, contrary to weight of evidence and ought to be quashed.***
- 2. That the estimation of Net Profit @ 8% on the gross receipt of the learned CIT (A) is very high and ought to be reduced.”***

“ITA NO.177/CTK/2015 (AY 2011-12)

- 1. For that, the order passed U/s 143(3)/145(3)/144 of the I.T., Act, 1961, by the DCIT, Balasore Circle, Balasore on dated 11th Ju1Y,2013 is arbitrary, illegal and devoid of merit, being unjustified deserves to be quashed in limini.***
- 2. For that, the Vat refund of Rs.31,96,971/- added to the total income towards income from "other trading receipt" deserves to be deleted arbitrary, illegal and devoid of merit.***
- 3. For that, the estimation of net profit from works contract @ 5 % of the gross receipt rejecting the book of account & invoking section 145 without referring to comparable cases and without considering past records of the appellant deserves to be set-aside being devoid of merit as illegal & arbitrary.***
- 4. For that, the appellant craves leave to add/alter/amend further grounds, if any, at the time of hearing of appeal.”***

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee is a civil contractor and Assessing Officer from the P&L account noticed gross receipts to the tune of Rs.14,20,11,759/- and Rs.13,09,38,616/- in AY 2010-11 and AY 2011-12 respectively and shown income from other sources to the tune of Rs.10,53,900/- for AY 2010-11. Assessee claimed depreciation on number of machinery items to the tune of Rs.2,22,162/- in AY 2010-11 and deduction on royalties and sales-tax from the gross bill to the tune of Rs.1,00,00,000/- and shown the margin of profit at 2.5% which is not accepted by the AO being on lower side and estimated the net profit @ 6% which comes to Rs.85,20,705/-. Similarly, for AY 2011-12, assessee declared net profit @ 1.93% of the total turnover of Rs.13,09,38,616/-, which is also rejected by AO being on lower side and estimated the net profit at 5% of turnover.

4. Assessee carried the matter before the Id. CIT (A) by way of filing appeals who has dismissed the appeals and also in AY 2010-11, the CIT (A) estimated the net profit @ 8% and enhanced the income of assessee by Rs.22,04,392/- but affirmed the net profit at 5% for AY 2011-12 as assessed by the AO. Feeling aggrieved, the assessee has come up before the Tribunal by filing the present appeals.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. The Id. AR for the assessee by relying upon the order passed by the coordinate Bench of the Tribunal in ITA No.268/CTK/2013 in assessee's own case contended that in this line of the business, net profit @ 6% is not feasible and the Tribunal has already estimated the assessee's net profit @ 4.5% in AY 2008-09.

7. Since the AO has rejected the books of account and merely proceeded to assess the net income at 6% on estimation basis as against the net profit of 2.5% shown by the assessee in P&L account, the same requires to be examined in the light of the net profit shown in the earlier year. In the face of the facts that books of accounts have been rejected and in the totality of facts and circumstances of the case, we are of the considered view that net profit of the assessee should be estimated at 4.5% for both the assessment years i.e. 2010-11 & 2011-12 following the coordinate Bench decision in assessee's own case in AY 2008-09 as there is not an iota of evidence on record, that in the similar line of business some extraordinary circumstances have come on record to

assess the net profit at 8% by the ld. CIT (A) for 2010-11 and 5% by AO for AY 2011-12.

8. Ground No.2 of AY 2011-12 has not been pressed by ld. AR for the assessee, hence determined against the assessee.

9. In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced in open court on this 29th day of May, 2017.

**Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 29th day of May, 2017
TS**

Copy of the order forwarded to:

- 1.Appellant - M/s. Kumud Bandhu Mohapatra, Sarasatia, Ranital, Bhadrak.
 - 2.Respondent ACIT, Balsore Circle, Balasore.
 - 3.CIT
 - 4.CIT (A)-II, Bhubaneswar
 - 5.DR(ITAT), Cuttack.
 - 6.Guard File
- //True Copy//

BY ORDER

**SR. PRIVATE SECRETARY,
ITAT, CUTTACK**