

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

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER**

**ITA No.425/CTK/2014**  
Assessment Year : 2009-2010  
**ITA No.413/CTK/2014**  
Assessment Year: 2009-2010

Sri Sudarshan Bhuyan, Ranipatna, Balasore.	Vs.	JCIT, Balasore
PAN/GIR No. ACZPB 4302 M		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.R.Mohanty  
Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 29 /03/ 2017**  
**Date of Pronouncement : 29/03/ 2017**

**ORDER**

These are appeals filed by the assessee against the order of CIT(A)-1, Bhubaneswar dated 23.1.2014 & 20.8.2014, for the assessment year 2009-2010 .

2. **In ITA No.425/CTK/2014**, Ground No.1 of the appeal is general in nature and hence requires no separate adjudication by me.

3. In Ground Nos.2 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the order of the Assessing Officer disallowing depreciation on fixed assets of Rs.1,70,780/-.

4. I find that the CIT(A) has deleted the addition of Rs.1,70,780/- on the ground that such amount was paid for acquisition of assets and not claimed as expenditure in the profit and loss account. Therefore, the assessee can have no grievance against the order of the CIT(A). Hence, this ground of appeal is dismissed.

5. In Ground No.3 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the disallowance of depreciation of Rs.23,916/- claimed by the assessee.

6. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. I find that the Authorised Representative of the assessee has not controverted the findings of lower authorities that the purchase bills furniture and machineries were found to be false or bogus on an enquiry made by the Assessing Officer through Inspector. As the very existence of the asset is not proved by evidence, the question of allowing depreciation for the use of business does not arise. Hence, I find no infirmity in the order of the CIT(A) in disallowing the claim of depreciation of Rs.23,916/- and dismiss this ground of appeal.

7. In Ground No.4 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.9,906/- towards expenditure against repair and maintenance of assets which is proportionate to Rs.54,570/-.

8. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, the

Assessing Officer disallowed proportionate expenditure on repairs and maintenance of assets of Rs.9,906/- as he has found that purchase of machineries and furniture of Rs.1,70,780/- as bogus.

9. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

10. Before me, Id Authorised Representative of the assessee submitted that the proportionate disallowance of expenditure was not justified.

11. Ld D.R. relied on the orders of lower authorities.

12. I find that the Assessing Officer has disallowed proportionate expenditure of Rs.9,906/- against repairs and maintenance of assets on the ground that he has found the purchase of machineries and furniture of Rs.1,70,780/- as bogus. I find that no material has been brought on record by the lower authorities to show that the assessee in the expenditure of Rs.54,570/- has claimed any expenditure on furniture and machineries purchase of which it was found to be bogus. In absence of any such nexus, in my considered view, adhoc disallowance out of genuine business expenditure cannot be made. I, therefore, vacate the disallowance of Rs.9,906/- made by the lower authorities and allow this ground of appeal of the assessee.

13. In Ground No.5 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.8,00,000/- u/s.68 of the Act.

14. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. The Assessing Officer found from the saving bank account with Dena Bank Account No.113010000332 of the assessee that the assessee had made cash deposit of Rs.8,00,000/- on 28.11.2008. The assessee explained the source of deposit to be out of amounts withdrawn earlier for payment of cement advance and other building materials. The Assessing Officer did not find the explanation of the assessee to be satisfactory and added Rs.8 lakhs u/s.68 of the Act as unexplained cash credit.

15. On appeal before the CIT(A), the assessee reiterated the submissions made before the Assessing Officer and submitted that the details of withdrawals of Rs.8,15,000/- during the period 21.11.2008 to 27.11.2008, which are recorded by the CIT(A) in his order as under:

<u>Date</u>	<u>Amount (Rs.)</u>
21.11.2008	1,20,000/-
21.11.2008	15,000/-
24.11.2008	30,000/-
26.11.2008	5,50,000
27.11.2008	<u>1,00,000/-</u>
Total :	8,15,000/-

The assessee explained that deposit of Rs.8 lakhs on 28.11.2008 was out of previous withdrawals of Rs.8,15,000/-. The CIT(A) did not accept the explanation of the assessee on the ground that when payment has to be made it has to be made in cheque as section 40A(3) provides that no cash payment in excess of Rs.20,000/- can be made by the assessee.

15. Before me, Id Authorised Representative of the assessee reiterated the submissions made before the lower authorities.

16. Id Departmental Representative supported the orders of lower authorities.

17. I find that the explanation of the assessee that deposits of Rs.8,00,000/- in the bank account maintained with Dena Bank on 28.11.2008 was out of his previous withdrawals during the period 21.11.2008 to 27.11.2008 of Rs.8,15,000/- as a plausible one. Further the explanation of the assessee is that he had withdrawn this cash for payment of cement and other building materials and when same was not necessary for that purpose, the assessee re-deposited the amount in his bank account. I find that no positive material has been brought on record by the revenue to show that the assessee could not have made deposit of Rs.8 lakhs on 28.11.2008 out of his previous withdrawals of Rs.8,15,000/-made during the period 21.11.2008 to 27.11.2008. I, therefore, set aside the orders of lower authorities on this issue and delete the addition of Rs.8 lakhs and allow this ground of appeal of the assessee.

18. In the result, the appeal filed by the assessee is partly allowed.

19. **In ITA No.413/CTK/2014**, the grievance of the assessee is that the CIT(A) erred in confirming the levy of penalty u/s.271D of the Act of Rs.2,90,000/-.

20. Assessing Officer found that the assessee has accepted cash loan of Rs.2,90,000/- from the following persons:

1)	Shri Shankar Dinda	:	Rs.70,000/-
2)	Shri Abhimanyu Samal	:	Rs.80,000/-
3)	shri Pankaj Behera	:	Rs.85,000/-
4)	Smt. Minati De	:	Rs.55,000/-

Therefore, he levied penalty u/s.271D of the Act of Rs.2,90,000/- for violation of provisions of section 269SS of the Act.

21. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

22. Before me, Id Authorised Representative of the assessee submitted that the loans were taken from close relatives and they have adequate funds from agricultural sources to meet his business necessity. He submitted that the Hon'ble Jharkhand High Court in the case of OMEC Engineers vs CIT, **(2008) 217 CTR Jharkhand 144**, has held that when there is no finding of assessing authority or appellate authority or the Tribunal that the transaction made by the assessee in breach of provisions of section 269SS was not a genuine transaction, the penalty u/s.269SS is not leviable.

23. Ld D.R. relied on the orders of lower authorities.

24. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, I find that there is no finding either by the Assessing officer or Id CIT(A) that the transaction made by the assessee in breach of provisions of section 269SS are not genuine transaction. I also find that the explanation of the assessee before the lower authorities is that payment was received in cash from

persons who are agriculturist staying in village where there is no banking facility. Thus, it is not in dispute that the payments in cash were received by the assessee out of commercial expediency in order to carry on his business transaction. Therefore, the decision of Hon'ble' Jurisdictional High Court in the case of Omece Engineers (supra) squarely applies to the facts of the assessee's case. Respectfully following the same, I delete the penalty of Rs..2,90,000/- and allow the grounds of appeal of the assessee.

25. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 29/03/2017 in the presence of parties.

Sd/-

(N.S Saini)

**ACCOUNTANT MEMBER**

Cuttack; Dated 29/03/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Sri Sudarshan Bhuyan,  
Ranipatna, Balasore.
2. The Respondent. JCIT, Balasore
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT1-, Bhubaneswar.
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**