

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

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

**ITA Nos.24 & 25/CTK/2016**  
Assessment Year : 2006-07

Swarna Das, Ramakrishna Nagar, Rayagada.	Vs.	ITO, Rayagada
PAN/GIR No. AECPD 7392 C		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.C.Sethi, AR  
Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 16 /05/ 2017**  
**Date of Pronouncement : 16/05/ 2017**

**ORDER**

These are appeals filed by the assessee against the order of CIT(A)-Berhampur dated 14.7.2010 and 29.6.2010, for the assessment year 2006-07.

2. In ITA No.24/CTK/2010, the assessee has raised the following grounds:

- "1. That the order of the AO is unjust.
2. That the assessee is not maintaining regular books of account. Only purchase and sales registers are maintained.
3. That the turnover determined by the AO which is confirmed by CIT(A) is unjust.

4. That the documents filed before the CIT(A) has not at all been considered.

5. The disallowance of expenses on estimation basis is unjust.

6. The income from insurance agency should be estimated on reasonable basis."

3. The CIT(A) has adjudicated the appeal of the assessee as under:

"2. The assessee derives income from three different sources viz .manufacturing of bakery products from the business concern in the name and style of M/s Dassons Baders and confectioners, transporting business in the name of M/s Swarna Travels & commission from insurance business of Bajaj Allianz. The return of income for the concerned assessment year was filed by disclosing total income from three sources at Rs.1,50,880/-. The assessee disclosed gross sales from business from bakery and transport business at Rs.36,93,594/- and Rs.2,16,208/- respectively. Similarly, the gross receipt from Bajaj Allianz was disclosed at Rs.7,25,757/-.

3. In the course of assessment proceeding, the assessee pleaded for the first time that sales turnover of the year was Rs. 19,03,293/- which has been disclosed in Sales Tax return filed before CTO, Rayagada. But the assessee, while filing her income tax return, made a mistake of disclosing the sales turnover at Rs.36,93,594/- due to the sheer mistake of her Accountant. The AO to ascertain the correctness of the claim, wanted to verify the books of account with vouchers and bills and inspite of several opportunities given, she could not produce any material on the basis of which such claim has been made. The A.O.had no materials to verify except, the assessment records available with him & on the basis of his findings kept on record, he took the turnover of the year at Rs.36,93,594/- for purpose of assessment of her total income.

*The appellant is aggrieved and contends that she maintains books of account as required under Sales Tax Act & filed her return in every quarter and the Ld. A.O. did not allow any opportunity to put forth the contentions of the appellant.*

As per the material available on record, the A.O. gave opportunities for hearing on 19.11.2007. 29.11.2007. 07.12.2007. 10.12.2007 and there was no compliance to such notices, inspite of being duly received by her in due time. Hence, the contention that the opportunity was not given by the AO to hear her is not correct.

Regarding the turnover of the year, the Ld. A/R argued that the sales tax return is filed by her as per provisions of Orissa VAT Act- 2004 & Orissa VAT Rules-2005. She has maintained the books of accounts required for sales tax purpose and on the basis of these books of accounts, the actual sales of the year was disclosed in Sales Tax Return at Rs. 19,03,301/-. He contended, further, that the actual purchase of the year is Rs.9,66,112/- as against Rs.26,56,406/- disclosed in the return of income tax and pleaded

that an entry amounting to Rs. L7,90,293/- has been passed by mistake of the Accountant as journal credit to sales and debit to purchase account. This mistake has no effect on income from bakery business disclosed in I.T. Return.

The above contention of the Ld. A/R is considered carefully and it is liable to be rejected for the following reasons.

(i) The return of Sales Tax has been filed as per Self Assessment under OVAT Act and it is pending for assessment by CTO, Rayagada. This is a return filed as per section 34 (6) of the Act. Where a dealer files return for a tax period within the prescribed period is found to be correctly and completely filled in & there is no arithmetical mistake apparent on the face of such return, the said return shall be assessed as self assessed. This return has not been subject to scrutiny as per section 40 or tax audit as per section 41 of the Act. So, the CTO has yet to assessee the sales turn-over of the appellant and hence, can not be treated as accepted by the Sales Tax Authorities.

(ii) As per provision u/s 44AA (2)(i) of the Act, she is required to maintain; such books of accounts and other documents as may enable the A.O. to compute her total income in accordance with provision of this Act. But she does not maintain such books of accounts and other documents and so, failed to produce them before the A.O. to verify the computation of the income as per Manufacturing and P & L A/c filed along with the return. Admittedly, she maintains such books of accounts as are required for the purpose of Sales Tax assessment. Thus, she deliberately avoided producing even such account books before the AO.

(iii). She disclosed sales at Rs.36,93,594/- and purchase at Rs.26,56,406/- . After receipt of notice of hearing, she made a plea before the A.O. that actual purchase and sale of the-year is Rs.9.66,112/- and Rs.19,03,301/- respectively and attributed the reasons for such mistake to wrong entry amounting to Rs. 17,90,293/- passed by the accountant as journal Credit, to sales and debit to purchase account. The Ld. A/R produced the purchase and sales register as material evidence for the revised purchase and sales. There is no reply . from the Ld. AR for failure of producing such purchase and sale register "before the AO. At the time of assessment proceeding. I find the registers not reliable since these are still incomplete, more so there is no stock register which is essential even for Sales Tax assessment. That apart, I find a single entry of Rs. 17,90,293/- in purchase and sale register. The Ld. A/R grossly failed to explain the nature and details of such entry made in the registers along with cogent evidence. It is difficult to believe that entry of such figure has been made without any relevance to her business. Also, she has the vicarious liability for mistakes committed by her employee.

Keeping in view of the above facts, I find that the A.O. is justified in applying the return sales turnover of Rs. 3 6,93,594/- for the purpose of assessing her income. The ground of appeal is rejected.

3.2. The A.O. found that the expenditure of Rs. 8.41.580/- under various Heads claimed in P&L account of bakery business is not verifiable due to non-availability of regular books of accounts, bills and vouchers. Accordingly, due to the above infirmities, he disallowed 10% of such expenses and added Rs.84,158/- back to the total income of the assessee.

Admittedly, the books of account, bills and vouchers in support of the expenditures could not be produced by the appellant for verification. However, looking to the corresponding percentage of net profit to the gross turnover of the previous year relating to the assessment year 2005-06, the disallowance is at a higher side and accordingly, I restrict it to 5% on such expenditures as reasonable. The appellant gets a relief of Rs.42,080/-

3.3. The assessee claimed expenditure of Rs.6,51,533/- on different heads such as salary, bonus, rent, vehicle maintenance etc. on income from insurance commission business of Bajaj Allianz. She failed to produce the salary registers, bills & vouchers in respect of such expenses and consequently, the A.O. disallowed 10% of such expenses and added Rs.65,155/- back to the returned income.

The appellant contends that adhoc disallowance of expenditure under different head without any basis is unjust. The Ld. A/R argued that the Ld. A.O., after reconciliation of TDS Certificates, found the gross receipt of commission from Bajaj Allianz is Rs.8,65,190/- as against Rs.7,25,757/- disclosed by the appellant in her return and added Rs. 1,39,433/- to the returned income. In view of the enhanced gross commission received from Bajaj Allianz, the A.O. is not justified in further disallowing 10% of the expenditures on business of insurance commission.

I have considered the submission of the Ld. A/R carefully. Admittedly, there is understatement of gross commission received from Bajaj Allianz to the extent of Rs.1,39,43,3/- and there is no appeal against addition made by the A.O. on this issue. However, the expenditure on different heads are not corroborated with proper bills and vouchers. There is no acquaintance roll. In given situation, the expenses are not verifiable. In the case of Jayanti Kumari Mohapatra vs ITO, Ward-1, Jeypore for assessment year 2004-05, Hon'ble Cuttack Bench, Cuttack vide I.T.A. No. 293/CTK/07 dt.12.12.2008 observed that the, assessee failed to furnish requisite details on salary and bonus paid to the staff as well as details of other expenses like traveling expenses, telephone & office establishment expenses, miscellaneous expenses, etc and directed the A.O. to disallow 25% of the claim on salary and bonus, 10% on other expenses like traveling expenses, telephone expenses & office establishment expenses, miscellaneous expenses etc. I find the ratio of the case is squarely applicable to the facts of the case of the appellant and disallowance of 10% of the Expenditures made by the A.O. for similar infirmities is held as reasonable. The ground of appeal is dismissed.

3.4. During the course of enquiry, the A.O. ascertained from the Indian Overseas Bank, Rayagada that Smt. Swarna Das was the Proprietor of M/s Embien Enterprises, Rayagada and deposits to the tune of Rs. 1,77,128/-

was made in S.B. A/c No. 6464 during the periods from 01.04.2005 to 31.03.2006. She having failed to explain the source of such deposits, the A.O. treated the entire deposit as unexplained money u/s 69A of the I.T. Act, 1961 and added it to her returned income.

*The appellant contends that she is not the proprietor of M/s Embien Enterprises. But, the Ld. A.O. treated her as proprietor of the above concern and estimated the credits in the bank accounts as income without considering the details of the same.*

I have considered the submission made by the Ld. A/R carefully. As per the information collected by the A.O. u/s 133(6) of the Act from the Branch Manager, I.O.B., Rayagada, the appellant has a S.B. A/c bearing no.6464 maintained at Indian Overseas Bank opened by the appellant as proprietor of M/s Embien Enterprises. The opening balance of the year was Rs.3,797/- . The A.O. got it confirmed from the Sales Tax Officer, Rayagada that the appellant is the proprietor of M/s Embien Enterprises and as per S.T.O's letter no. 5927/CT-2007 dt.02.11.2007, the gross sales of this proprietorship concern in the immediately preceding previous, year relating to the Asst. Yr. 2005-06 was Rs. 7,21,984/-even though there was no sales turnover during the concerned assessment year. Thus, on the basis of the above materials as evidence, the argument of the Ld. A/R that she is not the proprietor of the concern is false and unacceptable. However, regarding the source of deposits of Rs. 1,00,000/- on 26.07.2005, the Ld. A/R produced the receipt issued by L.I.C., Berhampur Division, dt. 14.07.2005 as per which Rs. 1,00,000/- has been paid to her for her policy no 750410531. I find the material evidence as acceptable and accordingly, the source of deposit of Rs. 1,00,000/- is treated as explained. Regarding the deposit of Rs.48,135/- on 27.10.2005, the A.O. produced the receipt of Orissa State Financial Corporation dt.25.10.2000 as per which Rs.25,000/- was invested by the appellant on FDR with that bank. The FDR matured on 25.10.2005 with a maturity value of Rs.48,135/-. I find the material evidence as acceptable and accordingly, the source of deposit of Rs.48,135/- is treated as explained. Similarly, the opening balance of Rs.3,797/- is not a deposit during the year and cannot be added to the returned income of the concerned assessment years deposits from undisclosed source. However, since the Ld. A/R failed to explain the source of deposit of Rs.25,000/r in cash on 16.02.2006 with cogent evidence, I find justification in adding it to her returned income as income from undisclosed, source. The appellant gets a relief of Rs. 1,52,128/"

4. Ld Authorised Representative of the assessee during the course of hearing could not point out any specific error in the order of the CIT(A). He submitted that the Assessing Officer has made disallowance out of the expenditure claimed by the assessee for non-production of bills and

vouchers at 10% and the CIT(A) has restricted the same to 5%. The only submission of the Id A.R. of the assessee is that the disallowance made by the CIT(A) at 5% of the expenses is excessive. Since Id A.R. could not bring any positive material on record to show that how the disallowance out of expenditure claimed by the assessee and confirmed by the CIT(A) at 5% was excessive, I find no good and justifiable reason to interfere with the order of the CIT(A), which is hereby confirmed and grounds of appeal of the assessee are rejected.

5. In the result, the appeal filed by the assessee is dismissed.

6. In ITA No.25/CTK/2011, the grievance of the assessee is that the CIT(A) erred in confirming the order of the Assessing Officer levying penalty under section 271B of the Act of Rs.23,197/-.

7. Brief facts of the case are that the Assessing Officer found that the assessee has disclosed gross receipts of Rs.36,93,594/-, Rs.2,16,208/- and Rs.7,25,757/- respectively. He observed that the gross receipts from the above business exceeded Rs.40,00,000/- and, therefore, the assessee was liable to get her books of account audited u/s.44AB of the Act. Therefore, he levied penalty @ 0.5% on the total turnover of Rs.46,39,559/- amounting to Rs.23,197/-.

8. On appeal, the CIT(A) confirmed the order of the Assessing Officer.

9. Before me, Id A.R. of the assessee filed a paper book, wherein letter No.5344/CT-2007 dated 7.9.2007 placed at page 2 and letter No.4311/CT-

2010 dated 7.7.2010 from the Sales Tax Officer, Rayagada Circle, Rayagada placed at page 3, respectively. He submitted that as per the letter of Sales Tax Officer, which was obtained by the ITO, Rayagada Ward, Rayagada u/s.133(6) 2009-10/639 dated 6.7.2010, the Sales Tax Officer confirmed that the gross turnover of the assessee from bakery business was Rs.19,03,301/- for the impugned assessment year. Therefore, it was his submission that the turnover taken by the Assessing Officer from the bakery business at Rs.36,93,594/- was not correct. He submitted that by mistake, a journal entry was passed for Rs.17,90,293/- by the Accountant and, therefore, by mistake the figure of turnover from bakery business was shown at Rs.36,93,594/-. This mistake has been proved by letter received u/s.133(6) by the Assessing Officer from the Sales Tax Officer, Rayagada certifying that the turnover was Rs.19,03,301/-. Hence, he submitted that the assessee was not liable to penalty.

10. On the other hand, Id D.R. supported the orders of lower authorities.

11. I find that the assessee has explained before the Assessing Officer as well as the CIT(A) that due to mistake in journal entry passed by the Accountant for Rs.17,90,293/-, and the actual turnover from the bakery business of Rs.19,03,301/- was reflected in the return as Rs.36,93,594/-. This fact has been supported from the letter of the Sales Tax Officer, Rayagada obtained by the Assessing Officer u/s.133(6) of the Act. Therefore, on this conclusive proof, the Assessing Officer was not justified in holding that the turnover of the assessee exceeded Rs.40 lakhs and,

therefore, the assessee was liable to get her books of account audited u/s.44AB of the Act and levied penalty of Rs.23,197/- u/s.271B of the Act.

12. In my considered opinion, the penalty levied is not sustainable. My above view finds support from the decision of Hon'ble Supreme Court in the case of [Price Water Coopers \(P\) Ltd. vs CIT](#) 348 ITR 306 (SC), wherein it has been held that no penalty is leviable in case of an inadvertent error committed in the computation of income.

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

Order pronounced in the open court on 16/05/2017 in the presence of parties.

Sd/-

(N.S Saini)

**ACCOUNTANT MEMBER**

Cuttack; Dated 16 /05/2017

B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Swarna Das, Ramakrishna Nagar, Rayagada.
2. The Respondent. ITO, Rayagada
3. The CIT(A) Berhampur
4. Pr.CIT, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**