

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

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No. 07/CTK/2016
Assessment Year : 2008-09

Income Tax Officer, Ward-3, Rourkela.	Vs.	Sri Santosh Kumar Agarwal, S/O Late Kanhaiyalal Agarwal, Plot No.AM-44, Basanti Colony, Rourkela-12
PAN/GIR No. ADHPA 4173 A		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 03 /04/ 2017
Date of Pronouncement : 03/04/ 2017

ORDER

This is an appeal filed by the revenue against the order of CIT(A)-II, Bhubaneswar, dated 21.10.2014, for the assessment year 2008-09 on the following ground:

“Whether in the facts and circumstances of the case, the CIT(A) is correct in deleting the unexplained investment of Rs.25,00,000/- when it was established on record through cross verification of transaction during the assessment proceedings for which the assessee has offered to plausible explanation.”

2. At the time of hearing, an adjournment petition was filed by the Authorised Representative of the assessee on the ground that he has some personal difficulties. It is observed that earlier the hearing was adjourned on various dates at the request of the respondent-assessee i.e. on 4.10.2016, 6.10.2016, 8.11.2016, 2.1.2017, 13.1.2017 and 14.3.2017. As the reason for seeking adjournment by Id Authorised Representative of the assessee was found not convincing, the adjournment petition was rejected and the appeal was heard exparte and disposed of after considering the submission of Id Departmental Representative and materials available on record.

3. I have heard Id D.R. and perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer observed that on examination of S.B. Account No.05782010008580 maintained by the assessee with Oriental Bank of Commerce, Rourkela, the assessee had paid Rs.77,00,000/- to Nisha Data Com Ltd., as under:

<u>Date</u>	<u>Cheque No.</u>	<u>Amount (Rs.)</u>
19.7.2007	586708	20,00,000.00
19.7.2007	586709	25,00,000.00
5.12.2007	586715	27,00,000.00
15.1.2008	586717	<u>5,00,000.00</u>
	Total:	<u>77,00,000.00</u>

4. However, from the information received u/s.133(6) of the I.T.Act, 1961 from Nisha Data Co. Ltd., Basanti Colony, the Assessing Officer found that the assessee had following transactions:

<u>Date</u>	<u>Cheque No.</u>	<u>Amount (Rs.)</u>
19.7.2007	586708	20,00,000.00
5.12.2007	586715	27,00,000.00
15.1.2008	586717	<u>5,00,000.00</u>
	Total:	52,00,000.00

5. From the above, the Assessing Officer observed that it is evident that on 19.7.2007, the assessee had made investment of Rs.20,00,000/- and Rs.25,00,000/- aggregating to Rs.45,00,000/- but investment of Rs.25,00,000/- on 19.7.2007 vide cheque No.58609 in Nisha Data Com Ltd., remained unexplained in both the books of account and this unexplained investment of Rs.25,00,000/- was added to the income of the assessee.

6. During the course of assessment proceedings, Nisha Data Com Ltd., was asked to produce the ledger accounts copies of Sri Kanhayalal Agarwal as per its books of account u/s.133(6) of the Act. In response to same, on 9.11.2010, Nisha Data Com Ltd., produced the ledger account copies of Sri Kanhayalal Agarwal with a forwarding letter and it was found that Rs.25,00,000/- paid to Nisha Data Com Ltd., did not appear. The Assessing officer has observed that in reply dated 20.8.2013, the assessee submitted that he had issued two nos of cheque in favour of M/s. Nisha Data Com Ltd., on 19.7.2007 vide cheque No.586708 for Rs.20,00,000/- and cheque no.586709 for Rs.25,00,000/-. Out of Rs.25,00,000/-, Rs.10,00,000/- was squared up during the financial year by way of payment to M/.s ISE Stock Broking on 16.8.2007 vide cheque No.431502 and Rs.15,00,000/- to

Creditors for shares on 21.7.2007 vide cheque No.294850. The Assessing Officer has not accepted this plea of the assessee by holding it to be an afterthought.

7. On appeal, the CIT(A) deleted the addition by observing as under:

"I have carefully considered the contents and substance of the assessment order and the Grounds of Appeal preferred and the other additional submissions made as above, following which I arrive at the following findings/decision(s):

- a) In respect of the two impugned amounts of Rs. 10 Lakhs and Rs. 25 lakhs assessed as tax, it is clear from the available documentation that the amounts have been squared up by M/s NDCL by making payments on behalf of the Appellant to its share creditor (M/s Tarini Traders) and to M/s ISE Stock Broking(P) Ltd. The statements of accounts of the Appellant too reflect this position. Consequently, the addition made of Rs. 25 lakhs assessed as the Appellant's taxable income is deleted. **Ground Number 1 is allowed."**

8. Before me, Id Departmental Representative relied on the order of the Assessing Officer.

9. After considering the material on record and the arguments of Id D.R, I find that except relying on the order of the Assessing Officer, he could not point out any specific error in the order of the CIT(A). He could not controvert the findings of the CIT(A) by bringing any positive material on record that it is clear from the available documentation that the amount of Rs.25 lakhs have been squared up by M/s. NDCL by making payments on behalf of the assessee to its share creditor M/s. Tarini Traders and to M/s. ISE Stock Broking (P) Ltyd.,. The statements of account of the assessee too reflect this position. Therefore, I do not find any good and justifiable

reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the revenue is dismissed.

10. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 04/04/2017.

Sd/-

(N.S Saini)

ACCOUNTANT MEMBER

Cuttack; Dated 03/04/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Income Tax Officer, Ward-3, Rourkela.
2. The Respondent. Sri Santosh Kumar Agarwal, S/O Late Kanhaiyalal Agarwal, Plot No.AM-44, Basanti Colony, Rourkela-12
3. The CIT(A)-II, Bhubaneswar
4. CIT, Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack