

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

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.321/CTK/2012**  
Assessment Year : 2008-09

Mr Siba Narayan Rout, Prop. Arpita Construction, Bimbalbar, Patuli, Barikpur Bazar, Bhadrak.	Vs.	ACIT, Balasore Circle, Balasore
PAN/GIR No. AGHPR 3192 D		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

**ITA No.387/CTK/2012**  
Assessment Year : 2008-09

ACIT, Balasore Circle, Balasore.	Vs.	Mr Siba Narayan Rout, Prop. Arpita Construction, Bimbalbar, Patuli, Barikpur Bazar, Bhadrak.
PAN/GIR No. AGHPR 3192 D		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

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

**Date of Hearing : 18/05/ 2017**  
**Date of Pronouncement : /05/ 2017**

**ORDER**

**Per Bench:**

These are cross appeals filed by the assessee and the revenue against the order of CIT(A)-Cuttack, dated 23.3.2012, for the assessment year 2008-09.

2. For the sake of convenience, we first take up the appeal of the assessee in ITA No.321/CTK/2012 and the facts narrated therein.

3. Ground No.1 is general in nature and hence, requires no separate adjudication by us.

4. At the time of hearing, Id A.R. of the assessee has not pressed Ground Nos.3,4 & 5 and made an endorsement to the grounds of appeal and, accordingly, they are dismissed as not pressed.

5. The only ground envisaged by the Id A.R. is that the CIT(A) was not justified in confirming the addition of Rs.20 lakhs , which was made as fixed deposits with Union Bank, Cuttack Branch, Cuttack due to contractual obligations and accrued interest.

6. Brief facts of the case are that the assessee is an individual and in the business of execution of works contract and filed the return of income for the assessment year 2008-09 on 29.9.2008 disclosing total income of Rs.8,01,254/- Subsequently, the case was selected for scrutiny and notice under section 143(2) and 142(1) was issued to the assessee. In compliance to the notices, Id A.R. appeared from time to time before the Assessing Officer. The Assessing Officer also issued notice under section 133(6) to various parties calling for information on proposed additions in show cause notice at pages 3 to 5 of the assessment order and Id A.R. filed written submission in reply relied at pages 6 to 8 of the assessment order.

The Assessing Officer on perusal of the Books of account and statement in respect of fixed deposits of Rs.20 lakhs and the contention of the assessee observed that this amount pertains to contractual work receipt and the same is credited to profit and loss account and accordingly, the expenditure has been claimed whereas the Assessing Officer was not satisfied with the explanation and found that the assessee has not offered accrued interest income, under income from other sources and in the assessment proceedings accepted that the same as mistake and offered for taxation and finally, the Assessing Officer has made an addition of fixed deposits and interest on a presumption that the assessee is wilfully trying to avoid tax.

7. Similarly, the Assessing Officer made an addition u/s. 69A of the Act Rs.5,80,000/- as the said amount was not disclosed in the books of account and no material evidence was filed.

8. Further, the assessee had made cash payments exceeding Rs.20,000/- in violation of section 40A(3) of the Act, the Assessing Officer disallowed 20% of total payment of Rs.47,91,700/- which works out to Rs.9,58,340/-.

9. Similarly, the assessee has claimed expenditure of diesel & lubricants of Rs.1,34,85,459/-. The Assessing Officer has issued notice u/s.142(1)

and 133(6), whereas some of the parties have not accepted the claim and, therefore, the Assessing Officer made an addition of Rs.1,34,85,459/-.

10. Similarly, the assessee has claimed depreciation @ 30% on WDV of tippers and road rollers, which was used for less than 180 days and, therefore, the Assessing Officer disallowed 50% of the depreciation and Assessed total income at Rs.1,80,48,740/- and passed order under section 143(3) of the Act on 26.10.2010.

11. Subsequently, the Assessing Officer passed order under section 143(3) r.w.s 154 of the Act on 23.12.2010.

12. Aggrieved by the above additions, the assessee has filed an appeal before the CIT(A).

13. In the first appellate proceedings, the assessee argued the grounds and reiterated the submissions on the disputed issue of Rs.20 lakhs, which was explained and emphasised that the amount has been already considered in the books of account and the assessee has offered for taxation and was credited to the profit and loss account whereas the CIT(A) having considered the findings of the Assessing Officer and the fact that the assessee has made investment by way of fixed deposit has observed that this deposit was not disclosed in the financial statement and, therefore, confirmed the addition of Rs.20 lakhs and interest accrued thereon.

14. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Tribunal.

15. Before us, Id A.R. of the assessee argued that the said amount of Rs.20 lakhs was disclosed in the financial statement and produced copy of Audit report in Form 3CB and 3CD and Audited balance sheet and stated that the amount of fixed deposits is disclosed and was offered for taxation and prayed for allowing the appeal.

16. Contra, Id D.R. relied on the order of the CIT(A).

17. We heard the rival submissions and perused the orders of lower authorities and materials available on record. The sole crux of the addition of Rs.20 lakhs made by the Assessing Officer pertains to fixed deposits made by the assessee in respect of contracts which is not in dispute. The allegation of the lower authorities is that these amounts have not been reflected and was not offered to tax, whereas the Id A.R. drew our attention to the tax audit report u/s.44AB and profit and loss account where the assessee has disclosed this income in the said financial year under gross bills received and made the fixed deposit with Union Bank, Cuttack on 6.11.2007 of Rs.1,25,000/- each aggregating to Rs.20 lakhs. The assessee has recorded the deposits in the financial statement and Books of accounts are audited. The revenue's sole allegation that the said amount has not been reflected in the balance sheet. Ld A.R. drew our attention to the

balance sheet to demonstrate that that the amount of Rs.20 lakhs is disclosed under the security deposits with department of Rs.20,08,027/-, which includes interest component of Rs.8,027/-. Prima facie, the assessee has recorded the said amount in the books of account and complied with the accounting system. We are of the opinion that the said transaction was through banking channel and disclosed in the Audited balance sheet. Therefore, we are inclined to set aside the order of the CIT(A) on this disputed issue and direct the Assessing Officer to delete the addition of Rs.20 lakhs. We also found that the assessee has not disclosed the interest component of these fixed deposits as agreed in the assessment proceedings. Therefore, we confirm the additions of Rs.69,957/- made by the Assessing Officer.

18. In the result, appeal of the assessee is partly allowed.

19. Now we take up the appeal of the revenue in ITA No.387/CTK/2012.

20. The first ground relates to restriction of addition of Rs.31,167/- in place of Rs.5,80,000/- made by the Assessing Officer for unexplained investment u/s.69A in the SB A/c.

21. We considered the rival submissions and find that the CIT(A) was reasonable in considering the reconciliation statement of the assessee's current bank account and saving bank account and the findings of the Assessing Officer in the remand report that the closing balance of

Rs.31,167/- was not disclosed in the financial statement. The CIT(A) having satisfied with the reconciliation directed the Assessing Officer to restrict the addition to Rs.31,167/-, which we found to be in order. Accordingly, we are not inclined to interfere with the order of the CIT(A) and dismiss this ground of appeal of the revenue.

22. The next issue relates to deletion of disallowance of Rs.9,58,340/- made u/s.40A(3) of the Act.

23. Before us, Id D.R. contended that the CIT(A) was not justified in deleting the addition u/s.40A(3) of the Act irrespective of the fact that the assessee has cash payments exceeding Rs.20,000/- violating the provisions of section 40A(3) of the Act whereas Id A.R. relied on the order of the CIT(A).

24. We find that the CIT(A) has called for a remand report and has furnished the copy of remand report to the assessee to file any objections whereas the assessee has explained with reasons for the cash payments and the circumstances in which such payments are made. The CIT(A) has considered the findings of the Assessing Officer and objections of the assessee and found that there was no material before the Assessing Officer while passing order u/s.143(3) to make the disallowance of Rs.9,58,340/- . Therefore, having satisfied with the explanations of the assessee, and remand report, the CIT(A) has deleted the addition. In view of above, we

do not find any infirmity in the order of the CIT(A), which is hereby confirmed and dismiss this ground of appeal of the revenue.

25. The last ground of the revenue relates to deletion of disallowance of Rs.1,34,85,459/- under the head expenditure towards "diesel and lubricants".

26. We heard the rival submissions and find that the Assessing Officer has submitted the remand report in the appellate proceedings. After examining the purchases made by the assessee, the CIT(A) found that the assessee has identified the parties and expenditure has been properly vouched and verified. The CIT(A) has elaborately discussed based on the remand report and found that there was no material before the Assessing Officer in the assessment proceedings except making the allegation as bogus claims prima facie the CIT(A) has justified his action that the department could not bring any facts and circumstances for sustaining the addition. We are of the opinion that the powers of the CIT(A) are co-terminus with that of the Assessing Officer and after verifying the facts on record and the business activity carried on by the assessee, the CIT(A) has deleted the addition. Accordingly, we confirm the order of the CIT(A) and dismiss this ground of appeal of the revenue.

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

28. In the result, the appeal of the assessee is partly allowed and the appeal of the revenue is dismissed.

Order pronounced in the open court on 19 /05/2017 in the presence of parties.

Sd/-

sd/-

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

**(Pavan Kumar Gadale)**  
**JUDICIAL MEMBER**

Cuttack; Dated 19 /05/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant /Assessee: Mr Siba Narayan Rout, Prop. Arpita Construction, Bimbalbar, Patuli, Barikpur Bazar, Bhadrak.
2. The Respondent/Revenue: ACIT, Balasore Circle, Balasore.
3. The CIT(A)Cuttack
4. Pr.CIT, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**