

**आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, कटक**

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK

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

आयकर अपील सं./ITA No.190/CTK/2017

(निर्धारण वर्ष / Assessment Year :2009-2010)

Hemant Kumar Pradhan, Sobhagya Nagar, Dist-Angul-759122	Vs.	ITO, Angul Ward, Angul
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>ALGPP 5977 Q</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri S.S.Padhy, AR  
राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR  
सुनवाई की तारीख / Date of Hearing : 28/11/2017  
घोषणा की तारीख/Date of Pronouncement 29/11/2017

**आदेश / O R D E R**

This is an appeal filed by the assessee against the order of the CIT(A)-2,Bhubaneswar, dated 06.12.2016.

2. There is a delay of 27 days in filing the present appeal by the assessee. The assessee has filed an affidavit explaining the reason for delay of 27 days in filing the appeal. I find that the assessee had sufficient reason for delay in filing the appeal. Therefore, I condone the delay of 27 days in filing the appeal and admit the appeal for hearing.

3. Ground of 1 of the appeal raised by the assessee reads as under :-

1. *Addition of Rs.1,00,000/- u/s.69 of the Income Tax Act by the learned AO in the assessment proceeding u/s.147 read with 144 of the I.T.Act on the premise of failure of the assessee to reconcile the difference of cash balance in the bank account as per books of account and as per the bank statement, is illegal and arbitrary since the original assessment of the appellant u/s.143(3) of the Act has been completed estimating the profit of the appellant @8% of the gross contract receipts.*

4. Brief facts of the case are that the Assessing Officer in the assessment order at page 2 has detailed out in the chart the various dates on which notices were issued to the assessee and the same were not complied by the assessee which are as under :-

Date of issue of notice	Notice u/s.	Date of fixation of hearing	Fate of notice	Remarks
04/02/2014	148	To furnish return of income within one month	Duly served by hand	Request to treat the original return u/s.148
03/06/2014	142(1)	16/06/2014	Notice returned back unserved	
19/06/2014	142(1)	25/06/2014	Duly served by hand	No compliance
13/08/2014	142(1)	25/08/2014	Duly served by Speed Post	No compliance
22/09/2014	Show cause with 142(1)	29/09/2014	Duly served by Speed Post	No compliance
09/10/2014	142(1) 143(2)	28/10/2014	Duly served by Speed Post	No compliance
28/10/2014	142(1)	10/11/2014	Duly served by Speed Post	No compliance
11/11/2014	142(1)	18/11/2014	Duly served by Speed Post	-
08/01/2015	142(1)	27/01/2015	Duly served by Speed Post	No compliance
28/01/2015	142(1)	05.02.2015	Duly served by Speed Post	No compliance
28/01/2015	Show cause for the proposed addition	05.02.2015	Duly served by Speed Post	No compliance

Therefore, the AO completed the assessment u/s.147/144 of the Act on 11.02.2015 assessing total income of the assessee at Rs.4,93,640/- by making an addition of Rs.1,00,000/- u/s.69 of the Act to the originally assessed income of Rs.3,93,640/- u/s.143(3) of the Act vide order dated 23.12.2011.

5. The assessee filed appeal before the CIT(A) and the CIT(A) dismissed the appeal of the assessee on the ground that the assessee

was not able to reconcile the closing balance as per books of accounts and bank pass book during the course of appeal hearing.

6. Ld. AR of the assessee submitted that the original assessment u/s.143(3) of the Act was made on 23.12.2011 by rejecting the books of accounts of the assessee and estimating the income by applying rate of 8% to the gross contract receipt of Rs.49,10,212/-, thereby arriving at an income of the assessee at Rs.3,92,816/-. He submitted that when the AO has rejected the books of accounts of the assessee and made an estimate of the income then on the basis of the very same books of account he cannot reopen the assessment u/s.147 of the Act and make addition of Rs.1 lakh u/s.69 of the Act on the ground of difference in the amount shown in the books of account as deposit with Allahabad Bank of Rs.1,077/- and as per the bank pass book Rs.1,01,077/-

7. Ld. DR supported the orders of the lower authorities.

8. I have heard rival submissions and perused the material available on record. In the instant case, the undisputed facts of the case are that the AO made assessment u/s.143(3) of the Act by passing the order on 23.12.2011 by rejecting the book results of the assessee and estimating the income by applying rate of 8% on the gross contract receipts of Rs.49,10,212/- and estimated the income at Rs.3,92,816/-. Thereafter the AO passed an order u/s.147/144 of the Act on 11.02.2015 making an addition of Rs.1,00,000/- u/s.69 of the Act on account of difference between the amount shown in the bank account maintained with

Allahabad Bank and the amount shown in the books of accounts of assessee. On appeal, the CIT(A) confirmed the action of AO.

9. I find that the original assessment u/s.143(3) of the Act was made by the AO by rejecting the books of accounts of the assessee and estimating the income of the assessee at 8% of the gross contract receipt of Rs.49,10,212/-. It is trite law that once the books of accounts of the assessee are rejected, the same cannot be relied for making addition u/s.69 of the Act. My view finds support from the decision of Lucknow Bench of the Tribunal in the case of ITO Vs. M.S.Builders Pvt. Ltd. in ITA No.564/LKW/2011 (AY : 2008-09), order dated 26.05.2013. Therefore, I set aside the orders of lower authorities and delete the addition of Rs.1,00,000/- u/s.69 of the Act and allow this ground of appeal of assessee.

10. As I have already deleted the addition of Rs.1,00,000/- made u/s.69 of the Act, other grounds of appeal taken by the assessee on reopening of assessment, have become academic in nature and, hence, become infructuous.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 29/11/2017.

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

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 29/11/2017

प्र.कु.मि/PKM, Senior Private Secretary

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Senior Private Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack