आयकर अपीलीय अधिकरण, कटक न्यायपीठ,कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

आयकर अपील सं./ITA No.119/CTK/2019

(**निर्धारण वर्ष /** Assessment Year :2015-2016)

Omkar Technical Services Pvt Ltd Plot No.1407/9200, DGM Residency, Satya Vihar, NH-16, Rasulgarh, Bhubaneswar	Vs.	DCIT, Corporate Circle-1(2), Bhubaneswar
स्थायी लेखा सं./PAN No. : **AABCO 4283 D**		

(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by	:	Shri Gouri Mohan Rath, Advocate
राजस्व **की ओर से** /Revenue by	:	Shri J.K.Lenka, DR

सुनवाई की तारीख / **Date of Hearing**	:	30/01/2020
घोषणा की तारीख/**Date of Pronouncement**	:	16/03/2020

आदेश / O R D E R

Per L.P.Sahu, AM:

This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 22.02.2019, on the following grounds of appeal :-

> *1. Sufficient opportunity has not been given to the assessee to explain the details information required by the Id. Assessing Officer. He has passed the **Assessment order on 05th** December,2C17 where as he has issued notice under section 142(1) of the income Tax Act,1961 vide Letter No - 10112 dated 1st December,2017 for **final hearing on 12th December,2017.** It seems that the assessing officer was in a hurry mood to dispose of the case without giving proper opportunity to the assessee. The Ld CIT (A) has overlooked this point and also not discussed this matter in the appeal order. Hence natural justice to the assessee has not been properly given.*
>
> *2. As per Point No - 4 of the letter No - 8387 dated 25th October,2017 issued by the Dy. Commissioner of Income Tax to the Assessee, the details of Sundry Creditors for labour to be produced in the following format.*

Sl. No.	*Name of Party / Labour with **current address***	*Opening Balance*	*Amount of wages during the year*	*Amount Paid During the year*	*Closing Balance*

*in this regard, the authorised representative of the assessee has informed to the assessing officer that the name of the individual Labour is readily available with the assessee but the **current address** of these labour are not known to the assessee for which it has given the following replied before the assessing officer.*

*Payment of labour charges throughout the year includes iarge number of persons those were **migrated** from other places for their livelihood and worked in the company for a certain period. After completion of particular assignment they are migrating to other place for searching of their livelihood\work. They are individual labour having no particular address and also they are not contractor, hence their present address is not known to the company but if you allow the assessee will produce individual labour wise list along **with the address available with assessee.** These migrated labours were working at the site and only taking money for their basic need (Food and other) and balance major amount they are normally taking while returning to their village or monthly/bimonthly/Quarterly.*

The Ld. Assessing Officer has not properly interpreted the above submission for which he has mentioned in the assessment order that reply of the assessee is suspicious and mentioned that if the individual labours have no particular address how the assessee could produce them.

*Since large number of labour are working and address of ail the labour with their yearly total amount due and paid is time consuming. If the Ld Assessing Officer allow then the assessee can able to produce the same after consolidation of labour charges from labour register along with the address available with the assessee. As they are migrated labour, after completion of particular work the assessee has no control on them. Hence, the Company has no details of **present address** but instead of visualizing the practical issue by the Ld. Assessing Officer, he has considered the reply as suspicious.*

The Ld. CIT (A) has dismissed the appeal on the ground that the assessee has given two contradictory statement regarding the name, present address and PAN of the labour. Neither the Ld CIT (A) has properly interpreted the written submission submitted before her by the assessee nor allows him to produce the name and address of the labour available with the assessee.

The assessee has also mentioned that the present address of the labour is not available with him due to they have left the company/migrated to other place for other work but the address which have given by them at the time of their joining in the company is readily available with the assessee can be produced before CIT (A) for her verification. There is no contradictory/ambiguity in the above statement.

> *Copy of Labour charges payable to various labours as on 31st March, 2015 along with name, address and amount payable to individual labour will be produced at the hearing before you.*

2. Brief facts of the case are that the assessee filed return of income on 05.11.2015 declaring total income of Rs.21,01,170/- . The case was selected for scrutiny under CASS and notice was issued u/s.143(2) of the Act, which was duly served on the assessee and subsequently other statutory notices were issued to the assessee. During the course of assessment proceedings, it was noticed by the AO that the assessee has shown sundry creditors for labour at Rs.40,68,460/-. In this regard, the notice was issued to the assessee on 25.10.2017 asking for the details of the sundry creditors like name, address, PAN, date & mode of payment. In compliance to it, the assessee submitted reply on 20.11.2017 stating as under :-

> *"As regards sundry creditors for labours amounting to Rs. 40,68,460/-, I may like to inform you that this includes large number of persons those were migrated from other places of their livelihood and worked in the company for a certain period. After completion particular assignment they migrated to other place for searching livelihood/work. They are individuals labour having no particular address and also not contractor, Hence their present address not known to the company but if you allow* the *assessee will produce individual labour wise list with address available with assessee. They were working at the site and only taking money for their basic need and major amount normally taking while they are returning to village or monthly/bimonthly/quarterly."*

Thereafter the AO completed the assessment making addition of Rs.40,68,460/- after observing as under :-

> *From the above submission it is found that the reply of the assessee is suspicious. At one time the assessee says that the individual labours have no particular address and at the other says diat it will produce individual labour wise list with address available with it if the assessing*

> *officer allows. But, if the individual labours have no particular address how the assessee could produce them. In such circumstances it is not possible to verify the genuineness of liability claimed towards labour. Moreover, if the assessee wants to prove the genuineness of the claim it could have produced the actual payment of above liabilities as on date as in all probabilities these liabilities for labour would not exist for a longer period.*
>
> *For each and every claim made by the assessee the onus lies on it to substantiate it with documentary evidence. Considering the failure on the part of the assessee to substantiate the claim made in the return, I hereby disallow Rs. 40,68,460/- u/s 68 of the Act and add back to the total income.*
>
> ***Addition: Rs. 40,68,460/-***

3. Aggrieved by the order of AO, the assessee has filed appeal before the CIT(A) and the CIT(A) considering the submissions of the assessee and findings of AO confirmed the order of AO holding that the assessee could not furnish the details of the sundry creditors like name & address, PAN and date & mode of payment. The CIT(A) also observed that in one hand the assessee has contended that the migratory labourers have no fixed address and on the other hand, it has contended that it can produce the individual labour wise list along with the address available with the assessee. Further the CIT(A) found that the above statements of the assessee are contradictory to each other.

4. Further aggrieved from the order of CIT(A), the assessee is in appeal before the Income Tax Appellate Tribunal.

5. At the outset, ld. AR submitted that the assessee had not been granted proper opportunity of being heard. Therefore, this matter should go back to the file of AO for giving reasonable opportunity of being heard to the assessee. Ld. AR further reiterated the submissions

as were made before the lower authorities that the labourers are migrated from one place to other and it has been paid in subsequent years to the concerning labourers.

6. Ld. DR relied on the orders of lower authorities and submitted that ample opportunity was given by both the lower authorities for completing the case before him. It is clear from the order of AO that notice u/s.142(1) was issued on 21.09.2017, 25.10.2017, 06.11.2017 and 01.12.2017 by the AO. Therefore, the submissions of the AR that no proper opportunity has been given by the AO should not be accepted. Ld. CIT(A) has also mentioned in his order that the date of hearing was taken place on 12.02.2019 and 22.02.2019, in spite of that the assessee could not substantiate the genuineness of the payments of the creditors for labour charges shown by him in the balance sheet. Even the ld. AR of the assessee could not produce the same before the Tribunal also. Therefore, orders of both the authorities below deserve to be upheld.

7. After hearing the submissions of both the sides and perusing the entire material available on record, we find that the ld. AR of the assessee has taken ground No.1 that no proper opportunity of hearing has been provided to the assessee, however, on perusal of the orders of authorities below, this argument of the ld.AR of the assessee cannot be accepted as ample opportunity of hearing has given by both the authorities to the assessee to substantiate the sundry creditors of

labourers as shown in the balance sheet. Accordingly, we reject the ground No.1 of the assessee.

8. With regard to ground No.2, which relates to payment of sundry creditors to labourers of Rs.40,68,460/-. The ld. AR of the assessee further submitted that the assessee has produced bills and vouchers before both the authorities below which is also not correct. The assessee should have been fulfilled the requirement of the AO as envisaged by him, which has not been discharged by the assessee. The ld. AR of the assessee also could not be able to substantiate that the payment has been made in the next years to the individual labourers which were required to be paid for their services rendered upto the end of the financial year on 31.03.2015, in respect of which provision has been made. As raised by the assessee before the authorities below as well as before us in the grounds of appeal that these creditors for labourers were daily wages labourers. They cannot wait for a long time for the payment of which was required to be paid. It is true that the labourers are not permanent employees, they move from hither to thither on the instruction of the contractor. Now-a-days the Government is very strict with regard to labourers and the contractor who are taking the work of the labourers, are keeping their records which helps to the employer for discharging their other statutory liabilities also. The assessee could have provided information as sought

by the AO during the course of assessment proceedings. He had opportunity to produce the same before the CIT(A), which could not be done. Considering the totality of facts and circumstances of the case and findings recorded by the both the authorities below, we are of the considered opinion that the CIT(A) has rightly dismiss the appeal of the assessee. Accordingly, we concur with the findings recorded by the CIT(A) in this regard and dismiss the ground No.2 raised by the assessee. Thus, the appeal of the assessee is dismissed.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 16/03/2020.

Sd/-	**Sd/-**
(C.M.GARG)	**(L.P.SAHU)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

कटक Cuttack; दिनांक Dated 16/03/2020

Prakash Kumar Mishra, Sr.P.S.

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant-
   Omkar Technical Services Pvt Ltd
   Plot No.1407/9200, DGM Residency, Satya Vihar,
   NH-16, Rasulgarh, Bhubaneswar
2. प्रत्यर्थी / The Respondent-
   DCIT, Corporate Circle-1(2), Bhubaneswar
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**)
ITAT Cuttack Bench, Cuttack