

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

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No.11/CTK/2015
Assessment Year : 2008-2009

Shri Manoj Kumar Dash, At: Kalpana, Police Line road, Opp: Police Garange, Puri.	Vs.	ITO, Puri.
PAN/GIR No.AAOPD 1331 P		
(Appellant)	..	(Respondent)

Assessee by : None

Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 18 /01/ 2017

Date of Pronouncement : 18/01/ 2017

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-Berhampur, Camp: Bhubaneswar , dated 30.10.2014, for the assessment year 2008-09.

2. The assessee has raised the following grounds of appeal:

"1. For that the orders of both the Forums below are wrong, illegal & contrary to Law.

2. For that the case of the appellant having selected for scrutiny & service of Notice U/s 143(2) on the basis of Commuter added selection system, it appears that the Ld. A.O, has exceeded his jurisdiction in making enquiries & variation to income beyond the scope of scrutiny based upon information gathered through computer module, without even disclosing or making any queries on the specific point covered under AIR.

3. For that all the variations, additions made by the Ld.A.O, to the returned income, while assessing the appellant, subsequently conformed by First Appellate authority appears to be illegal & without jurisdiction as none of such variations made in the assessed income, enquiry of which is to be restricted to in persuasion of information obtained through AIR, the case being selected for scrutiny under A.I.R.

4. For that the order of assessment & procedure adopted by the Ld.A.O, is not in conformity with Boards Press release dated 26.10.2006, Instruction "F.No-225/26/2006-ITA.II (pt) dated 08.08.2010 & instruction number Even dated 23.05. 2007 as to scope of assessment of cases selected under A.I.R., thus the orders of both the forums below contradicts Sec 119 of IT. Act.

5 For that C.B.D.T. from time to time issued guide lines /instructions to assume jurisdiction for selection of cases for scrutiny as well as the procedure of assessment ,the same should be followed on a letter of spmt by the Ld.A.O.The burden lies with the authorities assuming jurisdiction to show & establish such instructions/guide lines /press notes have duly been complied with & satisfied in letter of spirit in absence of which any order arising out of such notice invalidate the proceeding.

6. For that the Ld.A.O. having restricted scope of scrutiny in case selected through A.I.R in the A.S.T. Module, should have disclose the particulars of information gathered for its rebuttal ,in absence of which the order is none -est. in Law & as such not maintainable.

7. For that in absence of approval from J.C.I.T for broader scrutiny of the case, is against the intents & spirit of the Boards Guide line supra, hence not tenable.

8. For that the principles of Law decided by their Lord ship of Honorable Apex Court of India being "Statutory authorities can not deviate from the statutory provisions and any deviation, if so made is required to be enforced by legal sanction of declaration by the Courts, invalidating such action in violation of any statutory rules & regulations". In view of above proposition of Law, the actions of forums below made in contravene to Sec 119 of I. T. Act is not within the statutory provisions of Law & therefore invalid.

9. For that Law is well settled that "When statute requires to do certain things in certain way, the thing must be done in that way or not at all. Other methods or modes of performances are impliedly & necessarily forbidden, following the legal maxim" Expressounious east exclusion alteris.' Therefore, act done by the authorities below in contravention to guide lines issued by C.B.D.T ,read with Sec 119 of the I.T.Act. warrants no legal sanction & required to be squashed.

10. For that both forums below are erred in Law by not entertaining claim of the appellant, U/s 10(10) €, U/s 10 (13 A) & rebate U/s 80 C of the Act, in spite of production of materials evidence in support of his claim before Ld.A.O., seems to be illegal & irregular exercise of the powers not vested with the taxing authority.

11. For that no sufficient opportunity having afforded before confirming the Appeal, the order of the First appellate authority hits the principles of natural justice & equity.

12. For That the Appellant reserves the rights to urge further grounds if any at the time of hearing of appeal.

3. Notice of hearing was sent to the assessee on dt. 7.1.2016, 23.8.2016, 27.10.2016 , 22.11.2016 and 4.1.2017, when none appeared on behalf of the assessee and, therefore, the appeal was adjourned to 18.1.2016 as a final opportunity. Notice dated 4.1.2017 fixing the date of hearing of the appeal on 18.1.2016 was sent through RPAD, which has been served on the assessee on 9.1.2017 as evidenced from the track consignment record of India Post, placed on record. However, when on 18.1.2017, when the matter was called for hearing, none appeared on behalf of the assessee and neither any application for adjournment was filed. Therefore, the appeal was heard *ex parte* qua the assessee and disposed of the same after considering the submission of Id D.R. and on the basis of materials available on record.

4. Ld D.R. relied on the order of Id CIT(A).

5. I find that the Id CIT(A) has adjudicated and decided the grounds of appeal as under:

"5.1 The appellant individual derives income from salary from M/s. Fulford India Ltd. He filed his return of income for the impugned assessment on 19.07.2008 disclosing total income of Rs.1,29,667/- and claiming refund

of Rs.1,65,647/-. During the scrutiny proceeding, the AO noticed that against a gross salary of Rs.9,67,052/-, the appellant has made various claims to reduce the taxable income. Despite opportunities, no evidence was furnished before the AO in support of the claims made. The AO, accordingly, went ahead with the assessment as per Form No.16 issued by the DDO. He, thus, allowed deduction of Rs.2,47,408/- u/s.10 and computed the gross total income at Rs.7,19,664/- (Rs.9,67,052/- - Rs.2,47,408/-). Thereafter, the AO allowed deposit of provident fund amounting to Rs.24,805/- u/s.80C and computed the total income at Rs. 6,94,839/-.

5.2 As has been mentioned already, the appellant submitted in response to hearing notices that the appeal may be disposed of on the basis of written submissions made to the department as a whole. However, during the appeal proceeding, no written submission were filed nor copies of any written submission filed before the AO if any were furnished in support of the grounds of appeal.

5.3 I have carefully considered the matter. In the absence of any explanation or evidence in support of the grounds of appeal, I do not find any reason to interfere with the action of the AO, who has computed the income based on Form No.16 issued by the DDO. The action of the AO in determining the total income at Rs. 6,94,839/- is, accordingly, confirmed and the grounds are, accordingly, dismissed."

6. I am fully satisfied and in agreement with the order of the Id CIT(A) quoted above and do not find any good and justifiable reason to interfere with the order of Id CIT(A). Hence, I confirm the order of the Id CIT(A) and dismiss the grounds of appeal of the assessee.

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

Order pronounced in the open court on 18/01/2017.

Sd/-

(N.S.Saini)

ACCOUNTANT MEMBER

Cuttack; Dated 18/01 /2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Shri Manoj Kumar Dash,
At: Kalpana, Police Line road, Opp: Police
Garange, Puri
2. The respondent : ITO, Puri
3. The CIT(A), Bhubaneswar.
4. CIT, Bhubaneswar.
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

ASST.REGISTRAR,
ITAT, Cuttack