

**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.37/CTK/2017
Assessment Year : 2010-2011

Susanta Kumar Mohapatra, C/O AASA & Associates, Plot No.1149, Govind Prasad Bomikhal, Bhubaneswar.	Vs.	DCIT, (Intl.Taxation), Bhubaneswar.
PAN/GIR No. AJZPM 4833 F		
(Appellant)	..	(Respondent)

Assessee by : Shri P.R.Mohanty, AR
Revenue by : Shri B.N.Das, DR

Date of Hearing : 30/05/ 2017
Date of Pronouncement : 31 /05/ 2017

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the assessee against the order of CIT(A)-3, Bhubaneswar, dated 2.8.2016, for the assessment year 2010-2011.

2. The appeal filed by the assessee is barred by limitation by 13 days. The assessee has filed condonation petition explaining that due to lapse of A.R. of the assessee, the appeal could not be filed within time and prayed to condone the delay. We find the contention of the assessee is a plausible

one and accordingly, condone the delay of 13 days in filing the appeal and admit the appeal for hearing.

3. The substantive ground raised by the assessee in the appeal that the CIT(A) is not correct in rejecting the claim of the assessee to rectify the mistake u/s.154 of the Act.

4. Brief facts of the case are that the assessee filed return of income for the assessment year 2010-2011 on 21.5.2010 declaring total income of Rs.20,57,677/- and the Return of Income was processed u/s. 143(1) of the Act and demand raised Rs.6,26,610/-. The assessee filed rectification petition u/s.154 of the Act explaining that the assessee is a Non-Resident Indian (NRI) and by mistake disclosed salary income from abroad under the head " income from salary". Whereas the Assessing Officer observed that since the assessee himself declared income of Rs.20,57,677/- and as per the Board's circular No.549 dated 31.10.1989, the assessee income cannot be less than the Returned income and, therefore, changing of income from Rs.20,57,677/- to Nil income cannot be considered as mistake apparent from record and, finally rejected the petition and Assessed the total income at Rs.20,57,677/- and passed order u/s.154(3)/154 on 3.7.2015.

5. Aggrieved by the order, the assessee has filed appeal with the CIT(A). The Id CIT(A) confirmed the action of the Assessing Officer, Hence, the assessee has filed appeal before the Tribunal.

6. Before us, Ld A.R. of the assessee argued that non-resident is staying abroad and by mistake disclosed the salary income from abroad under the head "income from salary" which is not taxable and filed copy of acknowledgement of return of income for assessment year 2010-2011, wherein, it was mention as " exempt income tax due to NRI" and prayed for allowing the appeal. On the other hand, Id D.R. relied on orders of lower authorities.

7. We heard the rival submissions and perused the orders of lower authorities and materials available on record. Prima facie, we find the assessee as per the statement of facts, is a non-resident and income is received from outside India and there is no scrutiny assessment u/s.143(3) of the Act. Further, the assessee has filed rectification u/s.154 of the Act, which was dismissed by the Assessing officer ignoring the facts of accrual of income out side India. We find that the assessee should not be denied the benefit as the facts are clear and genuine. Further, we relying on the CBDT Circular No.14(XL-35) dated 11.4. 1955 and remit the disputed issue to the file of the Assessing officer to adjudicate afresh considering the status of the assessee as NRI and the source of income from abroad and further the assessee should be provided adequate opportunity of hearing, and shall submit relevant documents and supporting evidences in respect of his claim and co-operate with the Assessing Officer in completing the assessment. Accordingly, we remit the disputed issue to the file of the

Assessing Officer and allow the ground of appeal of the assessee for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 31 /05/2017

Sd/-

sd/-

(N.S Saini)
ACCOUNTANT MEMBER

(Pavan Kumar Gadale)
JUDICIALMEMBER

Cuttack; Dated 31 /05/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Susanta Kumar Mohapatra,
C/O AASA & Associates, Plot No.1149,
Govind Prasad Bomikhal, Bhubaneswar
2. The Respondent. DCIT, (Intl.Taxation),
Bhubaneswar.
3. The CIT(A)-3, Bhubaneswar
4. Pr.CIT-3, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack