



**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. 74/CTK/2016
Assessment Year : 2011-2012

Rajdeep Mohapatra, Gorakabar Road, Tulsipur, Cuttack	Vs.	ACIT, Circle 2(2), Cuttack
PAN/GIR No.aaypm 6200 e		
(Appellant)	..	(Respondent)

Assessee by : Shri P.R.Mohanty/D.S.Jethi,, AR
Revenue by : Shri A.K.Mohapatra,, CIT DR

Date of Hearing : 19/09/ 2017
Date of Pronouncement : 22 /09/ 2017

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the CIT, Cuttack u/s.263 of the Act dated 7.1.2016 for the assessment year 2010-2011.

2. The assessee has raised the following grounds:

"1. For that, the order of the forum below is arbitrary, illegal, unjustified and erroneous and has been passed on improper application of mind, being devoid of merit, as such deserves to be quashed in limine.

2. For that, the order passed U/s 263 of the I.T. Act, 1961 deserves to be quashed on the ground that, Section 263 has no application in absence of the cumulative condition necessary for invocation of Section 263 i.e., neither the order is erroneous nor it is prejudicial to the interest of revenue.



3. For that, the Learned Commissioner of Income Tax failed to appreciate Relief U/S 90 of the Income Tax Act 1961, which were verified by the Learned AO vide notice dt. 2nd Jan 2014 as well as CIT during the revision proceedings, hence the order of the Learned CIT is vitiated and bad in law. Without considering the evidences filed before the Learned CIT the order passed by him is liable to be quashed in the facts and circumstances of the case.

4. For that, the order the Learned Commissioner of Income Tax, fails to ensure the confirmations from the employer, hence the order so passed by the Commissioner is bad in law should be quashed in the facts and circumstances of the case.

5. For that, the appellant craves leave to add/amend/alter further grounds if any at the time of hearing of appeal."

3. The brief facts of the case are that the CIT observed that the Assessing Officer completed assessment u/s.143(3) of the act by passing order on 17.1.2014 determining the total income of the assessee at Rs.18,42,590/-. The assessment records for the assessment year 2011-12 was called and examined and it was observed that the Assessing Officer has allowed relief of Rs.1,69,476/- u/s.90/91 of the I.T.Act, 1961 at the time of completion of regular assessment without the assessee furnishing any documentary proof for the same. Therefore, the assessment order dated 17.1.2014 is prejudicial to the interest of the Revenue as relief of Rs.1,69,476/- u/s. 90/91 of the I.T.Act, 1961 was allowed without any documentary proof. Hence, he set aside the order of the Assessing Officer and restored the matter back to the file of the Assessing Officer for adjudication of the issue afresh after allowing adequate opportunity of hearing to the assessee.



4. Ld A.R. of the assessee submitted that the Assessing Officer during the course of assessment proceedings has written to the employer of the assessee M/s. Keane India Limited, vide letter dated 2nd January, 2014. He received the reply from the said company and after being satisfied had passed order u/s.143(3) of the Act allowing relief of Rs.1,69,476/- u/s.90/91 of the Act to the assessee, hence, the order of the CIT setting aside the order of the Assessing Officer on the ground that while completing the assessment, no documentary proof was examined by the Assessing Officer for granting relief to the assessee, is not justified. Therefore, the order of the CIT should be quashed. He further relied on the decision of Hon'ble Delhi High Court in the case of Yoshio Kubo and others vs CIT in ITA No.441/2003 and others, dated 31.7.2013, wherein, Hon'ble High Court at page 43 para 42 of the order held that the amounts paid by employers to pension, or social security funds, or for medical benefits, are not perquisites within the meaning of expression, under section 17(1)(v) and, therefore, the amounts paid by the employer in that regard are not taxable in the hands of the employee-assessee.

5. On the other hand, Id D.R. supported the order of the CIT.

6. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts are that in the assessment framed u/s.143(3) of the Act on 17.1.2014, the Assessing Officer allowed relief of Rs.1,69,476/-



u/s.90/91 of the Act being medicare contribution and social security contribution paid by the employer of the assessee in US\$ 1623.20 equivalent to Rs.1,69,476/-. Thereafter, the CIT passed order u/s.263 of the Act on 7.1.2016 setting aside the order of the Assessing Officer on the ground that while allowing relief u/s.90/91 of the Act of Rs.1,69,476/-, the Assessing Officer has not examined any documentary proof for the same.

7. Before us, Id A.R. of the assessee has filed a letter dated 2nd January, 2014 written by the Assessing Officer to M/s. Keane India Ltd., and submitted that the Assessing Officer during the course of assessment proceedings sought information on the same and after being satisfied has allowed the relief of Rs.1,69,476/- u/s.90/91 of the Act. He further relied on the decision of Hon'ble Delhi High Court in the case of Yoshio Kubo and others(supra), wherein, it was held that the amounts paid by employers to pension, or social security funds, or for medical benefits, are not perquisites within the meaning of expression, under section 17(1)(v) and, therefore, the amounts paid by the employer in that regard are not taxable in the hands of the employee-assessee.

8. Ld D.R. relied on the order of the Id CIT but could not controvert the above submission of Id A.R. of the assessee. Therefore, in our considered view, the CIT was not justified in passing order u/s.263 of the Act dated 7.1.2016 setting aside the order of the Assessing Officer and



directing him for adjudication of the issue afresh. Hence, we set aside the order of the CIT u/s.263 of the Act and allow the appeal of the assessee.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 22 /09/2017.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 22 /09/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Rajdeep Mohapatra,
Gorakabar Road, Tulsipur, Cuttack
2. The respondent: ACIT, Circle 2(2), Cuttack
3. The CIT(A)-
4. Pr.CIT- Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack