

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**  
**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**  
**BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM**

आयकर अपील सं./ITA No.91/CTK/2016

(निर्धारण वर्ष / Assessment Year :2010-2011)

Sri Prabhuranjan Satpathy, S/o.Lae Gobind Ch. Satpathy, At-Juruli, P.O.Jajang, Joda, District : Keonjhar, PIN-758052	Vs.	ITO, Keonjhar Ward, Keonjhar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>ATXPS 7437 H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri B.R.Panda, AR  
राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, CITDR

सुनवाई की तारीख / Date of Hearing : **02/08/2017**  
घोषणा की तारीख/Date of Pronouncement **03/08/2017**

**आदेश / ORDER**

**Per Shri Pavan Kumar Gadale, JM:**

The assessee has filed an appeal against the order of CIT(A), Cuttack, passed in ITAppeal No.471/2013-14, dated 08.12.2015, u/s.271(1)(c) & 250 of the Income Tax Act.

2. The assessee has raised the grounds on the levy of penalty u/s.271(1)(c) of the Act irrespective of the fact that the AO has made addition on estimation basis.

3. Brief facts of the case are that the assessee is engaged in the business of iron ore raising contract works and filed the return of income on 16.10.2010 with total income of Rs.12,10,000/-. Subsequently the assessment was completed u/s.143(3) of the Act with additions on 15.03.2013 and the Id. AO assessed total income at Rs.32,01,220/-, further the AO issued notice u/s.271(1)(c) of the Act and initiated the penalty proceedings and discussed with reasons for levy of penalty for

difference in the income offered by the assessee and income assessed and dealt at page 2 & 3 of the order and further Id. AO is of the opinion that the assessee has concealed income particulars and furnished the inaccurate particulars of income as discussed in his order and levied the penalty of Rs.6,20,000/- and passed the order u/s.271(1)(c) of the Act dated 25.09.2013.

4. Aggrieved by the order of the AO, the assessee has filed an appeal before the CIT(A). Ld. AR of the assessee has relied on the decision of Hon'ble Apex Court and submitted that the assessee has not suppressed any turnover and also the reconciliation of the turnover as per Form 26AS has been complied, but the Id. CIT(A) concord with the findings of AO and dismissed the appeal of the assessee.

5. Aggrieved with the order of CIT(A), the assessee is in further appeal before the Tribunal.

6. Before us, Id. AR of the assessee submitted that the CIT(A) has erred in confirming the penalty levied u/s.271(1)(c) of the Act and the fact that the AO has made addition based on the Form No.26AS and TDS was deducted on the income, since the income is estimated by the AO, the penalty u/s.271(1)(c) of the Act cannot be levied and prayed for deletion of penalty. Ld. AR further submitted that the assessee's quantum appeal was restored to the file of CIT(A) by the Tribunal and is pending for disposal. Contra, Id. DR relied on the orders of the CIT(A).

7. We heard the submissions and perused the material on record. *Prima facie*, the sole substantive ground raised by the assessee

challenging the levy of penalty u/s.271(1)(c) of the Act. On the query of the bench the Id. AR submitted that the quantum appeal has been restored back to the file of CIT(A) for adjudication by the coordinate bench of the Tribunal. We perused the order of the Tribunal passed in ITA No.50/CTK/2016, dated 28.10.2016, where the Tribunal has condoned the delay and restored the matter to the file of CIT(A) and observed at page 3 para 5 which reads as under :-

*"I have heard the rival submissions and perused the materials available on record. I am of the considered view that the assessee was under bonafide belief that till disposal of application nu/s.,154 of the Act by the Assessing Officer, the appeal before the Id. CIT(A) could not filed, hence, there was delay of 6 months and 24 days. This explanation of the assessee has not been found to be false by the Id. CIT(A). I am therefore, of the considered view that the assessee had bonafide and reasonable cause for delay in filing the appeal before the Id. CIT(A) by 6 months and 24 days. I therefore, set aside the order of the Id. CIT(A) and condone the delay of 6 months 24 days and direct him to decide the appeal of the assessee on merits after allowing reasonable and proper opportunity of hearing to both the parties.*

Since the quantum appeal is restored and pending for disposal before the CIT(A), we are of the substantive view that the penalty appeal shall also be restored to the file of CIT(A) for adjudication and accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on this 03/08/2017.

**Sd/-**

**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 03/08/2017

प्र. कु. मि/PKM, Senior Private Secretary

**Sd/-**

**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant-  
Sri Prabhuranjan Satpathy,  
S/o.Lae Gobind Ch. Satpathy,  
At-Juruli, P.O.Jajang, Joda,  
District : Keonjhar, PIN-758052
2. प्रत्यर्थी / The Respondent-  
ITO, Keonjhar Ward, Keonjhar
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