

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.128/CTK/2018

(निर्धारण वर्ष / Assessment Year :2014-2015)

Ramesh Chandra Tibrewal, AT:Boinda, PO:Kishoreganj Dist: Angul, Odisha-759127	Vs.	The Income Tax Officer, Angul Ward, Angul, Odisha
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AANPT 1412 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri P.R.Mohanty, AR

राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, DR

सुनवाई की तारीख / Date of Hearing : **29/08/2018**

घोषणा की तारीख/Date of Pronouncement **29/08/2018**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

This is an appeal filed by the assessee against the order of CIT(A)-2, Bhubaneswar, dated 25.12.2017 passed in I.T.Appeal No.0201/2016-17 for the assessment year 2014-2015.

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

1. *That the Ld. CIT (Appeals) has erred in law by dismissing the appeal ex-parte without providing adequate opportunity and presuming the assessee is not interested in the appeal violates the principle of natural justice. Hence the order passed by the Ld. CIT appeal needs to be annulled.*
2. *That the Ld. CIT (Appeals) has erred in law and on facts in confirming the disallowances of RS. 10,82,835/- in an ex-parte order even without examining the merits of the case is not sustainable in the eye of law and hence the order of the Ld. CIT appeal needs to be annulled.*
3. *That based on the facts and circumstances of the case, the ld. CIT appeal has erred in confirming the addition made by AO simply because of non submission of related papers is not sustainable in the eye of law and hence the claim of the assessee as exempted long term capital gain u/s 10(38)*

amounting to Rs.10,82,835/-from sale of equity shares needs to be allowed in full.

4. *For that the Ld. CIT appeal has grossly erred in confirming the disallowance of Rs.1,10,316/- made by AO alleging excess evaporation loss claimed by the assessee is not correct on the facts and circumstances of the case and hence the claim of the assessee needs to be allowed in full.*
5. *That the order of the Ld. CIT(A) being not based on the facts of the case of the appellant and being contrary to law, should hence be quashed and the appellant be given such relief or reliefs as prayed for.*
6. *That the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.*

3. Brief facts of the case are that the assessee is engaged in the business of retail outlet of IOCL and filed the return of income electronically on 13.03.2015 for the A.Y.2014-2015 declaring total income of Rs.10,92,140/-. The return of income was processed u/s.143(1) of the Act. Subsequently the case was selected under scrutiny under CASS and notices u/s.143(2) & 142(1) of the Act were issued. In compliance of the same, Id. AR appeared before the AO and case was discussed. Thereafter the AO completed the assessment assessing total income at Rs.23,13,800/- and passed order u/s.143(3), dated 28.12.2016 making various disallowances.

4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). In the appellate proceedings none appeared on behalf of the assessee and, therefore, the CIT(A) after considering the findings of the AO, dismissed the appeal of the assessee.

5. Aggrieved by the order of the CIT(A) the assessee has filed an appeal before the Tribunal.

6. Before us, at the time of hearing Id. AR of the assessee submitted that the order passed by the CIT(A) is an ex-parte order and, therefore prayed for opportunity to represent the case before the AO.

7. Contra, Id.DR vehemently objected to the submissions of the assessee and prayed that the assessee has not complied the hearing notice and again praying for opportunity without explaining the reasonable cause.

8. We have heard rival submissions and perused the materials available on record. We found that the Id. CIT(A) has referred to the hearing dates posted on 22.08.2017, 12.12.2017 & 21.12.2017. Prima facie it shows that the assessee has not made a vigilant attempt to appear before the appellate authorities. Therefore, we considering the apparent facts and also the conduct of the assessee in non-compliance with the date of hearing and keeping in view the above back ground of the case and also the prayer of the assessee, in the interest of rendering substantial justice, one more opportunity should be granted to the assessee, we are of the considered view that no loss will be caused to the revenue if one more opportunity is allowed to the assessee to present its appeal before the AO. But, keeping in view the conduct of the assessee before the CIT(A), we direct the assessee to deposit **Rs.5000/-(Rupees Five Thousand Only)** by way of cost to the department within a period of one month from the date of this order and the assessee shall produce a copy of receipt of payment of cost as evidence before the AO.

9. Further Id.AR has filed some documents in the course of hearing proceedings for the first time and these documents were not available to the Assessing Authority, therefore, in the interest of substantial justice, we remit the entire disputed issue to the file of AO to consider afresh after verifying the above documents. Ld.AR further undertook that he will submit the documents before the AO positively and will not take any adjournment before the AO. We order accordingly.

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

Order pronounced in the open court on 29/08/2018.

Sd/-
(N.S.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 29/08/2018

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
Ramesh Chandra Tibrewal,
AT:Boinda, PO:Kishoreganj
Dist: Angul, Odisha-759127
2. प्रत्यर्थी / The Respondent-
The Income Tax Officer,
Angul Ward, Angul, Odisha
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.

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक /
ITAT, Cuttack

सत्यापित प्रति //True Copy//