



**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.322/CTK/2017

Assessment Year : 2007-2008

Sri Ramesh Chandra Rath, Plot No.1257, 2670, Maa Santoshi Nagar, Bomikhal, Bhubaneswar.	Vs.	DCIT, Circle 3(1), Bhubaneswar.
PAN/GIR No.ACCPR 7332 Q		
(Appellant)	..	(Respondent)

Assessee by : Shri Prasanna kumar Patnaik, AR
Revenue by : Shri Subhendu Datta, DR

Date of Hearing : 30/08/ 2018
Date of Pronouncement : 31/08/ 2018

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the CIT(A)-2, Bhubaneswar dated 31.5.2017 for the assessment year 2007-08.

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

" 1. That, the order of the Learned Commissioner of Income Tax (Appeals) II, Bhubaneswar is not just and fair on the facts and in the circumstances of the case.

2. That on the facts and in the circumstances of the case the Learned C.I.T(A)II, Bhubaneswar is not justified in confirming the

assessment order passed by the Learned D.C.I.T- Circle- 3(1), Bhubaneswar for the above year u/s. 147 of the I.T. Act 1961.

3. That, the assessment as has been completed u/s. 147 of the I.T. Act 1961 is illegal and arbitrary on the facts and in the circumstances of the case.

4. That, the learned D.C.I.T. is not justified in adding a sum of Rs. 95,99,000.00 only with the returned income of the appellant for the above year treating the said amount as deemed income under the head income from other sources u/s. 69 of the I.T. Act 1961.

5. That, inspite of the appellant's clear denial that he has not paid any amount in cash to M/s. Crescendo Associate, Mumbai, the learned D.C.I.T. has arbitrarily treated a sum of Rs. 95,99,000.00 only as his income from other sources and taxed the said amount in the hands of the appellant.

6. That, any information gathered by the Department from any third party with whom the appellant has no relation should not be used against the appellant as the appellant has only made transaction with the partnership firm M/s. Crescendo Associates, Mumbai through bank cheques and drafts against the purchase of Flat at Mumbai and no cash transaction has been made with the said firm by the appellant.

7. That in the interest of natural justice the learned D.C.I.T. should have confronted the appellant to Mr. Niranjana Hiranandan and Mr. Surendra Hiranandani in connection with the statement given by them.

8. That, the learned C.I.T(A)11, Bhubaneswar is not justified in confirming the imposition of interest u/s. 234A and 234B of the I.T. Act 1961 without considering the explanations submitted by the appellant in that regard.

9. That, the penalty proceeding u/s. 271[1)(c) of the I.T. Act 1961 as has been initiated by the learned DCIT is illegal and arbitrary on the facts and in the circumstances of the case.

10. That, the grounds, if any, shall be urged at the time of hearing."

3. At the outset, Id A.R. of the assessee submitted that the assessee had challenged before the CIT(A) the legality of

reopening of assessment u/s.148 of the Act. He submitted that the CIT(A) has not adjudicated this ground of appeal of the assessee. Therefore, the matter may be restored back to the file of the CIT(A) for adjudicating the issue of reopening of assessment.

4. Ld D.R. had no objection to the above submission of Id A.R. of the assessee.

5. Hence, we set aside the order of the CIT(A) and remand this issue back to his file for adjudicating the same after allowing reasonable and proper opportunity hearing to the assessee.

6. As we have restored the issue of reopening of assessment challenged before us in Ground Nos.1 to 3 of appeal, other grounds of appeal on merits of addition are also restored back to the file of the CIT(A) for adjudicating the same afresh as per law.

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

Order pronounced on 31 /08/2018.

Sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Cuttack; Dated 31/08/2018
B.K.Parida, SPS

sd/-

(N.S Saini)
ACCOUNTANT MEMBER



Copy of the Order forwarded to :

1. The Appellant : Sri Ramesh Chandra Rath,
Plot No.1257, 2670, Maa Santoshi Nagar,
Bomikhal, Bhubaneswar.
2. The Respondent. DCIT, Circle 3(1),
Bhubaneswar
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

**Sr. Pvt. Secretary,
ITAT, Cuttack**