

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.266, 162&217/CTK/2014

(निर्धारण वर्ष / Assessment Year :2006-07&2005-06)

Kalinga Institute of Industrial Technology (KIIT), Plot No.383, 384, KIIT Campus-1, Patia, Bhubaneswar-751024, Odisha	Vs.	ACIT, Circle-2(2), Bhubaneswar, Odisha
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATK 3103 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.108&294/CTK/2014

(निर्धारण वर्ष / Assessment Year : 2004-05&2006-07)

ACIT, Circle-2(2), Bhubaneswar, Odisha	Vs.	Kalinga Institute of Industrial Technology (KIIT), Plot No.383, 384, KIIT Campus-1, Patia, Bhubaneswar-751024, Odisha
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATK 3103 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

Cross Objection No.27&42/CTK/2014

(निर्धारण वर्ष / Assessment Year :2004-05 & 2006-07)

Kalinga Institute of Industrial Technology (KIIT), Plot No.383, 384, KIIT Campus-1, Patia, Bhubaneswar-751024, Odisha	Vs.	ACIT, Circle-2(2), Bhubaneswar, Odisha
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATK 3103 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri S.K.Agrawalla, AR

राजस्व की ओर से /Revenue by : Shri Kunal Singh, CITDR

सुनवाई की तारीख / Date of Hearing : 29/08/2017

घोषणा की तारीख/Date of Pronouncement 31/08/2017

आदेश / ORDER

Per Shri Pavan Kumar Gadale, JM:

These are the cross appeals filed by the assessee and the revenue and assessee has filed two cross objections against the order of CIT(A)-II, Bhubaneswar, dated 25.04.2014, passed in I.T.Appeal No.0313/2011-12, passed u/s.147 of the Income Tax Act, 1961.

2. Since the issue involved in all the appeals are connected and common, hence, all the appeals are heard together and disposed off by this consolidated order. We shall take up appeal i.e. ITA No.266/CTK/2014 (A : 2006-07) and the facts narrated therein. The assessee has raised the following grounds :-

Without prejudice to the right of submission of additional ground of cross objections at the time of hearing the respondent submits submitted as under:-

1. *That the Ld. Assessing Officer is not correct in reopening of the assessment proceedings u/s 147 of the Act and the Ld. Commissioner of Income Tax (Appeals) is not correct in endorsing the action of the Ld. Assessing Officer on the following grounds;*
 - a. *That, the provisions u/s 153A of the Act has the overriding effect on the provisions of section 147 of the Act and therefore the Ld. Assessing Officer has no jurisdiction to reassess the same income which was completed u/s 153A of the Act for the self same period.*
 - b. *That, the reopening of the assessment proceedings without having fresh materials on record is nothing but change of opinion and therefore the reopening of the assessment proceedings basing on the seized materials are illegal and liable to be quashed.*
 - c. *That, the Ld. Assessing officer supplied the reason for reopening of the case on 14th November 2011 (i.e. after the 31st March 2011) which is not in accordance with the provisions of the Act and therefore the entire proceedings are illegal and liable to be quashed.*
 - d. *That, the issuance of notice u/s 143(2) immediately on the very same day after filing of return of income is illegal and therefore the entire proceedings are liable to be quashed.*
 - e. *That, without disposing off the objections raised to the*

reopening of the case, the Ld. Assessing officer passed the assessment order u/s 147 which is illegal and liable to be quashed.

- f. That, the Ld. Assessing Officer is not permitted to reopen the concluded proceedings u/s 254/251/153A(b) and therefore the entire reassessment proceedings are void ab-initio.*
 - g. That, the reassessment proceedings are not sustainable in view of the fact that, the reason for reopening of the assessment does not survive after deletion of the addition for which the reopening was made and therefore no other additions can be made in view of the explanation 3 of the section 147 of the Act.*
 - h. That, during the pendency of assessment proceedings the Ld. Assessing Officer is not permitted to reopen the case u/s 147 and issue notice u/s 148, therefore the reassessment proceedings are illegal and void ab-initio.*
- 2. That, the Commissioner of Income Tax (Appeals) has committed an error law in endorsing the action of the Ld. Assessing Officer that, the issuance the notice u/s 142(1) on 13th December 2011 requisitioning certain documents, clarifications etc. before issuing of notice u/s 143(2) of the Act (i.e. notice u/s 143(2) was issued on 15th December 2011) and even before the expiry of the period of filing of return of income u/s 148. Thus the action of the Ld. Authorities below are not in accordance with the provisions of the law and the entire reassessment proceedings are void ab-initio and liable to be quashed.*
 - 3. That, the Ld. Commissioner of Income Tax (Appeals) has erred in law in dismissing the ground no.7 of the appellant, i.e. while passing the reassessment order u/s 147 the Ld. Assessing Officer reproduced the assessment order passed u/s 153B(b)/143(3) of the Act even without issuing of show cause in any of the points of addition, therefore the said action of the Ld. Assessing Officer is illegal and liable to be quashed.*
 - 4. That, the Ld. Commissioner of Income Tax (Appeals) has committed an error of law in confirming the additions of ? 15,00,000 as unexplained cash merely basing on the finding of her predecessor (i.e. previous CIT (A)) in view of the fact that, the same was explained during the course of assessment/ reassessment proceeding and also appellate proceedings, therefore the additions of ? 15,00,000 is liable to be deleted.*
 - 5. That the Ld. Authorities below failed to appreciate the basic principle of accounting and made additions of ? 6,53,640 as unexplained cash credit which is highly arbitrary, contrary to the evidence on record, bad in law and liable to be deleted.*

6. *That, forums bellow had committed an error of law in disallowing the expenditure of ? 24,15,644 & ? 73,21,600 incurred under the head D. Khatei (Const.) in view of the fact that, Sri Harekrushna Panigrahi had clearly admitted that, the transaction in question D. Khatei (Const.) had been duly accounted for in the books of accounts of the appellant in the statement recorded on 20.12.2010, therefore the additions of? 24,15,644 & ? 73,21,600 are liable to be deleted.*
7. *That, the appellant craves to alter, amend or add any other ground that may be considered necessary in the course of appeal proceeding.*

3. Brief facts of the case are that the assessee is a charitable trust registered vide certificate No.4268-191 dated 30.06.1992 under the Society Registration Act, 1860 and carrying on educational activities and professional studies. There was a search and seizure operation on the assessee's premises on 9.8.2005 and the assessment order was passed u/s.153B(b)/143(3) of the Act on 31.12.2007 with total income of Rs.17,76,69,520/- where the exemption u/s.11 was denied and the assessment was annulled by the ITAT in IT(SS)A No.85/CTK/2009, dated 4.12.2009. Aggrieved by the order of ITAT, the revenue has preferred appeal to the Hon'ble High Court and the assessment was reopened by the AO by issuing notice u/s.148 of the Act dated 22.12.2010.

4. Before going into the merits of the case, Id. AR submitted that the objection on the reasons for reopening of the case was not disposed off by the Assessing Officer and hence the order of the AO is bad in law. Accordingly, we consider it appropriate to deal legal ground of validity of reassessment proceedings.

5. Ld. AR submitted that the reasons were provided by the AO to the assessee vide letter dated 14.11.2011 on the representation of the assessee dated 20.1.2011, and the assessee has filed objections on 21.11.2011 and explained in his submissions at para 8 of the letter referred at page 117 of the paper book which reads as under :-

"8. That, without prejudice to the submission made herein above regarding the jurisdiction issue, the assessee further submits that the notice issued u/s.148 of the Act is contract to the provisions of section 147 of the Act as there was no fresh materials available on record and all the seized materials have been considered in the assessment proceedings u/s.153A. Therefore, your honour had not applied your judicious mind before recording of the reasons for reopening of the case for reassessment. Hence, the issuance of notice is not sustainable in law."

6. Ld.DR of the revenue has opposed that the order dated 30.11.2011 was passed considering the objections of the assessee to the reasons for reopening of the assessment for the assessment year 2006-07 referred at page 112 of the paper book, where the revenue has treated the notice u/s.148 of the Act is valid and requested the assessee to comply the conditions. Further, the assessee filed submissions on 7.12.2011 referred to the order passed by ACIT, Cirlce-2(1) BBSR/11-12, dtd,30.11.2011 in the A.Y.2006-07, wherein it was emphasised at para 8 which is as under :-

9. That, in your letter your honour had not considered the submission made by the assessee in para no.8 of it's objection dated 21st November 2011 which is also a vital issue in deciding the jurisdiction on you.

7. Ld. AR filed letter dated 20.1.2011 in compliance to notice u/s.148 of the Act dated 22.12.2010 to treat the revised return filed on 5.3.2007 as a due compliance of return filed in response to notice u/s.148 of the Act

and placed a copy of letter endorsed by the department. Further, Id.AR's contention that though reasons were provided to the assessee and objections were filed but the objections of the assessee in respect of para 8 in the objections on the same set of facts was not considered and there is no finding or judicial applicability as no fresh material were available on record and the seized material were already considered in the assessment proceedings u/s.153A whereas Id. DR has vehemently objected to the submissions.

8. We are of the considered view that there is strength in the arguments of Id. AR and duly supported with evidence and submissions and relying on the provisions of law. Prima facie the objections raised by the assessee as referred above at para 8 in letter dtd.21.11.2011 was not disposed off by the AO though the revenue has passed an order on the validity of reassessment proceedings u/s.148 of the Act in letter dtd.30.11.2011. Accordingly, we are of the view that reassessment proceedings has to be complied in full and the objections of the assessee on same set of facts and the material was already available has to dispose off with findings and speaking order. Accordingly, without going into merits of the case, we remit the disputed issue to the file of AO to consider the submissions on reassessment and pass the order accordingly and also shall provide adequate opportunity of hearing to the assessee and the assessee shall also cooperate in submitting the information at the earliest. Accordingly, the assessee's appeal is restored to the file of AO.

9. Similar issue has been raised in assessee's appeal i.e. ITA No.162&2017/CTK/2014 and the appeals filed by the revenue in ITA Nos.217, 108 & 294/CTK/2014 (AY:2005-06, 2004-05 & 2006-07). Since, we have restored the disputed issue to the file of AO for considering the objection not disposed off in reassessment proceedings after providing adequate opportunity of hearing to the assessee while considering the appeal of the assessee in ITA No.266/CTK/2014 (AY 2006-07), therefore, the issue raised in the above appeals are restored to the file of AO as per our earlier observations.

10. The assessee has filed cross objections in CO No.42&27/CTK/2014 for the assessment year 2006-07 & 2004-05. Since we have remitted the appeals filed by the assessee as well as appeal of the revenue on the disputed issue, therefore, the cross objection filed by the assessee have become infructuous and they are dismissed.

11. In the result, appeals of the assessee i.e. ITA No.162&217/CTK/2014 and the appeals filed by the revenue in ITA Nos. 108 & 294/CTK/2014 (2004-05 & 2006-07) are allowed for statistical purposes, whereas the cross objection of the assessee i.e. CO No.27&42/CTK/2014 are dismissed.

Order pronounced in the open court on this 31/08/2017.

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 31/08/2017

प्र.कु.मि/PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-

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