



**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.155/CTK/2018

Assessment Year : 2013-2014

Shailesh Kumar Gandhi, Prop. Gandhi Agencies, Mahatab Road, Cuttack	Vs.	ITO, Ward 2(4), Cuttack
PAN/GIR No.AAZPG 8268 R		
(Appellant)	..	(Respondent)

Assessee by : None (written submission)
Revenue by : Shri Piyush Kolhe, CIT DR

Date of Hearing : 27/09/ 2018
Date of Pronouncement : 28/09/ 2018

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the Pr. Commissioner of Income Tax, Cuttack dated 30.3.2018 for the assessment year 2013-14.

2. The sole issue involved in this appeal is that the Pr. Commissioner of Income Tax, Cuttack was not was not justified in holding the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue.

3. The brief facts of the case are that the Pr. Commissioner of Income Tax, Cuttack observed that on examination of the balance

sheet as at 31.3.2012 of the assessee, it is found that the assessee has claimed liability under the head "sundry creditors" of Rs.2,79,699/- in respect of M/s. Lupin Ltd. In response to notice u/s.133(6) of the IT Act issued by the Assessing Officer during assessment proceedings, M/s Lupin Ltd replied with a copy of ledger account confirming the outstanding amount of Rs.2,44,142/-. Thus, there is excess claim of liability of Rs.35,557/- by the assessee. On a query to the assessee by the Assessing Officer, the assessee replied without any supporting documentary evidence that the difference was continuing from past years, but failed to explain exactly to which year the difference was related. In the absence of any satisfactory explanation for excess claim of liability of Rs.35,557/- in the case of M/s Lupin Ltd, the Assessing Officer should have added the same to the total income.

4. He also observed that the assessee had introduced Rs. 15,00,000/-to his Capital Account during the year under consideration. During assessment proceedings, it was submitted that the source of the said capital introduction was Rs.11,00,000/- out of withdrawals from Savings Account maintained with Bank of India and balance of Rs.4,00,000/- out of cash available with him.

The assessee failed to furnish any details with regard to source of deposits made in Savings Bank Account and source of cash available with assessee. In absence of any verifiable documentary evidence, the addition of capital of Rs.15,00,000/-remained unexplained and unverified and the same ought to have been added to the total income. Therefore, the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Accordingly, he set aside the order framed u/s.143(3) of the Act dated 24.2.2016 by the Assessing Officer for the assessment year 2013-14 to his file for making fresh assessment after enquiring into the excess liability of Rs.35,556/- in the case of M/s. Lupin Ltd., and fresh introduction of capital of Rs.15 lakhs.

5. Being aggrieved by the said order, the assessee is in appeal before us.

6. The only argument of Id A.R. is that although in the order passed u/s.143(3) of the Act on 24.2.2016 there is no discussion about two issues regarding excess liability in the name of M/s. Lupin Ltd., of Rs.35,556/- and introduction of capital of Rs.15 lakhs in the assessment order but the Assessing Officer after making enquiries and being fully satisfied after the examination of

the issues, has not made addition to the income of the assessee. In these circumstances, the order of the Pr. Commissioner of Income Tax setting aside the order of the Assessing Officer is bad in law.

7. On the other hand, Id D.R. supported the order of the Id Pr. Commissioner of Income Tax.

8. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts of the case are that the Pr. Commissioner of Income Tax, Cuttack observed that the assessee has shown excess liability of Rs.35,556/- in respect of M/s. Lupin Ltd., as verified from the confirmation of account by Lupin Ltd. Further, there was fresh capital introduction of Rs.15 lakhs by the assessee, the source of which, was Rs.11 lakhs out of withdrawal from Saving account with Bank of India and Rs.4 lakhs out of cash available with him. He observed that in respect of confirmation by Lupin Ltd., at a lower figure by Rs.35,557/-, of amount payable to it by the assessee, the Assessing Officer has not made addition of Rs.35,557/- to the income of the assessee as excess liability shown in the balance sheet. He further observed that the

Assessing Officer has not verified the source of deposit of Rs.11 lakhs in the Saving Account with Bank of India of the assessee and availability of Rs.4 lakhs and without verifying the same, has accepted introduction of capital of Rs.15 lakhs.

9. The contention of Id A.R. is that although there is no discussion in the assessment order by the Assessing Officer on these two issues, the Assessing Officer after verification and being satisfied with the explanation of the assessee and evidence filed before him, has not made any addition to the income of the assessee and, therefore, the order of the Pr. Commissioner of Income Tax passed u/s.263 setting aside the order of the Assessing Officer and restoring the matter back to the file of the Assessing Officer for fresh adjudication as bad in law.

10. We find that in the paper book filed before us, Id A.R. has not filed questionnaire issued by the Assessing Officer u/s.143(2) and section 142(1) of the Act and what was the reply of the assessee to the same. Thus, in absence of these evidences, we are unable to adjudicate the issue completely. Therefore, we find no good reason to interfere with the order of the Pr. Commissioner of Income Tax setting aside the order of the Assessing Officer



passed u/s.143(3) of the Act dated 24.2.2016 and restoring the matter back to the file of the Assessing Officer for adjudicating the issues afresh. Thus, the ground of appeal of the assessee is dismissed.

11. In the result, appeal filed by the assessee is dismissed.

Order pronounced on 28/09/2018.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 28/09/2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The appellant : Shailesh Kumar Gandhi,
Prop. Gandhi Agencies, Mahatab Road,
Cuttack
2. The Respondent. ITO, Ward 2(4), Cuttack
3. The CIT(A)-
4. Pr.CIT- Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

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