



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No146/CTK/2017

Assessment Year : 1998-1999

M/s Kuldeep Pratap De, C.O. N. Mohanty382, Bhoi Nagar, Bhubaneswar.	Vs.	ITO Ward 2(1), Bhubaneswar.
PAN/GIR No.AAGFK 7804 E		
(Appellant)	..	(Respondent)

Assessee by : Shri P.R.Mohanty, AR
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 04/12/ 2018
Date of Pronouncement : 05/12/ 2018

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax(Appeals),2, Bhubaneswar dated 2.12.2016 for the assessment year 1998-1999.

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

"1. For that the orders of the Forums below are illegal, arbitrary, unjust and excessive in the facts and circumstances of the case.

2. For that the Books of Accounts of the appellant was impounded U/s. 131 (6) of the I.T.Act'61 and was lying under the custody of the Department since 31.03.2001 and the same were released only on 11.12.2006. Without affording reasonable opportunity to the appellant to explain

his case the assessment order was passed on 28.12.2006 in order to save the limitation as per Board's Circular, hence the matter is liable to be set aside for fresh adjudication.

3. For that the LAO had taken a lot of pain to gather information from the State Excise Authority as well as the Dealers with whom the appellant was dealing with but failed to confront the same and allow sufficient time to explain the discrepancies, hence the matter is liable to be set aside.

4. For that the purchase and sell suppression as calculated by the LAO and determination of the alleged Net Profit figure at Rs.2,59,990.00 is nothing but based on presumptions and surmises and the calculation is of his own method and lacks with clarity, hence the determination of net profit is baseless and liable to be deleted.

5. For that further addition of Rs. 1,79,270.00 under the head "income from other sources" is also baseless in view of the findings of the LAO. Assuming but not admitting the fact that there is purchase and sell suppression, the question of peak investment at Rs. 1,79,270.00 does not arise. There being no basis of such addition the same is liable to be deleted in toto.

6. For that the present LAO has just endorsed the views of the previous Assessing Officer without application of his judicial mind, hence the assessment order passed is liable to be set aside.

7. For that the Learned CIT(A) also passed the order exparte determining Gross Sales at Rs.1,04,75,889/- and calculated G.P @ 3.71% without any basis and thus allowed relief of Rs.3,710/-, hence the order passed without application of mind is liable to be set-aside.

8. For that the determination of Total Income by the Learned A.O. at Rs.2,27.490.00 is baseless, arbitrary, unjust and excessive, hence the returned income of the appellant is liable to be accepted."

3. Before us, Id A.R. of the assessee submitted that the CIT(A) has dismissed the appeal of the assessee as the assessee failed to

appear on the dates fixed for hearing. He submitted that due to serious illness, the assessee could not appear before the CIT(A). Therefore, he prayed that one more last opportunity should be granted to the assessee to present his case before the CIT(A).

4. Ld D.R. vehemently opposed to the granting of another opportunity to the assessee before the CIT(A).

5. After considering the rival submissions and perusing the orders of lower authorities, we find that the CIT(A) has dismissed the appeals of the assessee as the assessee failed to appear before him on 9.2.2016, 4.4.2016, 27.6.016, 2.8.2016 and 8.11.2016. Before us, Id A.R. submitted that due to serious illness of the assessee, there was non-appearance before the CIT(A) on the dates of hearing. He submitted that if one more opportunity is given to the assessee, he undertakes to appear before the CIT(A) for disposal of the assessee. Therefore, in order to render substantial justice to the assessee, we set aside the order of the CIT(A) and restore the matter back to his file for adjudication of the appeal of the assessee afresh after allowing reasonable opportunity of hearing to the assessee.

5. In the result, appeals of the assessee are allowed for statistical purposes.



Order pronounced on 5 /12/2018.

Sd/

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 05/12/2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : M/s Kuldeep Pratap De,
C.O. N. Mohanty382, Bhoi Nagar,
Bhubaneswar
2. The Respondent. ITO Ward 2(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**