

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH, CUTTACK

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य एवं श्री एल.पी.साहु, लेखा सदस्य के समक्ष ।

**BEFORE SHRI CHANDRA MOHAN GARG, JM
AND**

SHRI L.P. SAHU, AM

आयकर अपील सं./ITA No.120/CTK/2016

(निर्धारण वर्ष / Assessment Year :2011-2012)

JCIT (OSD), Circle-4(1), Bhubaneswar.	Vs.	M/s Orissa State Handloom Weavers Cooperative Society Ltd., Jawaharlal Nehru Marg, Bhubaneswar-751001
स्थायी लेखा सं./PAN No. : AAAAO 0474 F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

प्रत्याक्षेप सं./ Cross Objection No.04/CTK/2016

(निर्धारण वर्ष / Assessment Year :2011-2012)

M/s Orissa State Handloom Weavers Cooperative Society Ltd., Jawaharlal Nehru Marg, Bhubaneswar-751001	Vs.	ITO-Ward-1(2), Bhubaneswar
स्थायी लेखा सं./PAN No. : AAAAO 0474 F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by	:	Shri S.M.Keshakamat, CITDR
निर्धारिती की ओर से /Assessee by	:	Shri B.K.Mahapatra, Advocate
सुनवाई की तारीख / Date of Hearing	:	23/07/2019
घोषणा की तारीख/Date of Pronouncement	:	24/07/2019

आदेश / O R D E R

Per L.P.Sahu, AM:

The Revenue has filed appeal against the order passed by learned CIT(A)-3, Bhubaneswar for the assessment year 2011-2012, whereas the assessee has filed cross objection supporting the order of the CIT(A).

2. Heard both the parties and perused the record.
3. During the course of hearing, the Ld. DR submitted that there is no doubt that tax effect involved in the appeal is less than Rs.20 lakhs, thus, bound by the departmental instruction, the appeal has to be withdrawn. However, attention was invited to para 10 of the Circular No. 3/2018, dated 11th July, 2018, which has been modified by Circular dated 20th August, 2018 and in terms of the said modification the Departmental Representatives made a prayer that permission to pray for recall of the order may be granted in case any of the conditions in the reports made available by the A.O. subsequently, show that the issues were required to be contested. The modified para is extracted hereunder:

“10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

- (a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or*
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or*
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or*
- (d) Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/ undisclosed foreign bank account.*
- (e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/ Directorate General of GST Intelligence (DGGI).*
- (f) Cases where prosecution has been filed by the Department and is pending in the Court. ”*

4. Going by the prescription of Circular No. 3/2018, dated 11th July, 2018, we are of the view that the Revenue should have either not filed the instant appeal before the Tribunal or withdrawn the same as the tax effect in the appeal is admittedly less than the prescribed limit, i.e., Rs. 20,00,000/- for not filing the appeals. Accordingly, we dismiss the appeal filed by the Revenue without going into merits of the case. However, it is made clear that the Department is at liberty to file Miscellaneous Application, if the tax effect is found to be more than the prescribed limit of Rs.20,00,000/- or any of the conditions etc., as available in the amendment carried out in para 10 of Circular No. 3/2018, dated 20.08.2018, is made out. Accordingly, the appeal of the Revenue deserves to be dismissed.
5. Since, we have dismissed the appeal of revenue holding that the appeal of the revenue is below tax limit, therefore, the cross objection filed by the assessee supporting the order of CIT(A), has become infructuous and the same is dismissed.
6. In the result, the appeal of the Revenue and cross objection of the assessee are dismissed.

Order pronounced in the open court on 24/07/2019.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 24/07/2019

प्र.कु.मि/PKM, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/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