

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM
आयकर अपील सं./ITA No.08/CTK/2018
AND

रोक आवेदन सं./Stay Application No.12/CTK/2018
(Arising out of ITA No.08/CTK/2018)
(निर्धारण वर्ष / Assessment Year : 2014-2015)

State Pollution Control Board, Plot No.A-118,Paribesh Bhawan, Nilakantha Nagar, Unit-VIII, Nayapalli, Bhubaneswar-751012	Vs.	ITO, Ward-5(2), Bhubaneswar- 751007
स्थायी लेखा सं./PANNo. : AAALS 2490 J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri S.K.Agrawalla, AR
राजस्व की ओर से /Revenue by	:	Shri Subhendu Dutta, DR
सुनवाई की तारीख / Date of Hearing	:	25/09/2019
घोषणा की तारीख/Date of Pronouncement	:	30/10/2019

आदेश / ORDER

Per L.P.Sahu, AM:

This is an appeal filed by the assessee against the order of CIT(A)-2, Bhubaneswar, dated 31.10.2017 for the assessment year 2014-2015. The assessee has also filed stay petition seeking stay of outstanding demand of Rs.20,74,92,600/-.

2. Ld. AR, at the outset, submitted that appeal may be heard and decided along with the stay petition. On the other hand, ld. DR has no objection to the above contention of ld. AR. Accordingly, with the consent of both the parties appeal is heard finally.

3. The assessee in its appeal has raised the following grounds :-

1. *That, the assessment order passed u/s 143(3) is not sustainable in view of the fact that the notice u/s 143(2) was not issued by the Ld. Assessing Officer who holds the jurisdiction over the appellant. Therefore the assessment order is liable to be quashed.*
2. *That, the Ld. Authorities Below are not correct in taxing the amount of Rs.49,84,95,459 in view of the fact that the appellant enjoys the tax benefits u/s 10(46) of the Act, moreover the total receipts of Rs.49,84,95,459 does not relates to the impugned assessment year.*
3. *That, the Ld. Forums Below has committed an error of law in making additions of Rs.2,00,00,000 u/s 40(a)(ia) of the Act in view of the fact that the advances of Rs.2,00,00,000 given to IDCO for capital expenditure, therefore the additions of Rs.2,00,00,000 is liable to be deleted.*
4. *That, the appellant craves to alter, amend, modify or add any other ground that may be considered necessary in the course of appeal proceeding.*

4. Brief facts of the case are that the assessee, Odisha State Prevention and Control of Pollution Board was constituted in pursuance of Sub-section(l) of Section-4 of the Water (Prevention and Control of Pollution) (Amendment) Act, 1974 vide notification No.1481-VII-HI-11/83(Vol.II)-S.T.E dtd. 15.07.1983 issued by Department of Science, Technology and Environment, Government of Orissa. Thereafter, the Board was re-designated as State Pollution Control Board, Odisha vide notification No.Env-E(F)/8/89/1882.F&E dtd. 16.07.1999. The filed the return of income on 27.03.2016 for the assessment year 2014-2015 with total income at Rs.Nil. Subsequently, the case was selected for scrutiny under CASS and notices u/s.143(2) and 142(1) of the Act were issued to the assessee. In compliance the AR of the assessee appeared from time to time and the case was discussed.

On perusal of the return of income, it was seen by the AO that the assessee at Col. 5 (c) of Schedule-BP (computation of income from Business or Profession) has claimed exemption u/s.10(2) of the I. T. Act, 1961 amounting to Rs.49,84,95,459/- considering it as a local authority. The AO asked the assessee to furnish the evidence in support of claim of exemption u/s.10(2) of the I. T. Act, 1961. The assessee vide reply dtd. 07.12.2016 stated that exemption application filed before the CIT, Bhubaneswar u/s.10(46) of the Act which was pending and the assessee-State Pollution Control Board is a State Government Organization, which is not liable for Union Taxation. The AO did not accept the explanation of the assessee and completed the assessment u/s.143(3) of the Act after making various additions and passed order dated 15.12.2016.

5. Feeling aggrieved by the order of AO, the assessee appealed before the CT(A) and the CIT(A) considering the submissions of the assessee and findings of AO has dismissed the appeal of the assessee.

6. Further feeling aggrieved by the order of CIT(A), the assessee is in appeal before the Income Tax Appellate Tribunal.

7. Ld. AR submitted on the ground No.1 that the concerned Assessing Officer has not issued notice u/s.143(2) and does not hold jurisdiction on the assessee before him as the assessee-State Pollution Control Board is in Bhubaneswar. Therefore, the order passed by the

AO is not tenable and prayed for quashing the assessment order. In support of the same, ld. AR relied on the following decisions :-

- i. *Sh. Ram Kumar Vs. ITO, ITA No.785/Del/2016, order dated 17.02.2017(Delh Tribunal); and*
- ii. *Kalinga Institute of Industrial Technology(KIT) Vs. DCIT, W.P.(C)No.898/2017, dated 06.03.2019 (Odisha High Court)*

In respect of ground No.2, ld. AR submitted that the assessee company enjoys the benefit of exemption u/s.10(46) of the Act in respect of receipts of the institution and also in the present case the receipt does not relate to impugned assessment year. Ld. AR also argued that the Assessing Authority has made addition of Rs.2,00,00,000/- in respect of advances given to IDCO towards capital expenditure and was disclosed and also filed an application with a prayer for admission of additional evidences filed before us.

8. On the other hand, ld. DR vehemently opposed to the admission of additional evidences as they are being filed for the first time before the Tribunal and the AO was deprived to verify the same. Ld. DR further submitted that the case of the assessee was selected for scrutiny under CASS on 19.09.2016 for the assessment year 2014-2015 and the jurisdictional Assessing Officer at that time as per data base of the Income Tax Department was Shri Niranjana Behera, ITO Ward-Bhadrak, Bhadrak. Thereafter the assessee himself made application bearing No.14620/I/Accts/38/2015-16, dated 28.09.2016 for

transferring the case stating therein that the assessee-State Pollution Control Board, Odisha, which is located at Paribesh Bhawan, A/118, Nilakantha Nagar, Unit-VII, Bhubaneswar-751012 having PANAAALS2490J is under the category of Local Authority, which was received by the Income Tax Department on 29.09.2016. Thereafter the case was been transferred to ITO, Ward-5(2), Bhubaneswar vide transfer order No.200000213847, dated 25.10.2016. In this regard, ld.DR placed on record a system generated jurisdiction history details. Ld. DR also submitted that the assessee participated in the assessment proceedings and did not raise any question regarding jurisdiction for issuing notice u/s.143(2) of the Act, even in the appellate proceedings no grievance was also sought on this ground, therefore, the assessee is not entitled to raise this issue before the Tribunal. In support of this, ld. DR relied on the decision of Hon'ble Supreme Court in the case of CIT Vs. Jai Prakash Singh [1996] 219 ITR 737 (SC) and in the case of CR Foods (India) (P.) Ltd. Vs. ITO [2012] 26 taxmann.com 241 (All). Ld. DR also submitted that the case laws relied on by the ld. AR of the assessee is not applicable in the present case because there was jurisdiction of ITO, Bhadrak Ward at the time of issuance of notice u/s.143(2) of the Act as is evident from the system data base of the Income Tax Department. Even in respect of exemption u/s.10(46) the assessee has made an application before the CIT(A), Bhubaneswar, which relates to

subsequent years, therefore, the assessee's case does not have any merit and liable to be dismissed.

9. After hearing both the sides and carefully perusing the entire materials available on record and the orders of authorities below, *prima facie*, on the ground of non-issuance of notice u/s.143(2) of the Act, who holds the jurisdiction over the assessee as argued by Id. AR, we find that the assessee is a Government of Odisha Undertaking namely State Pollution Control Board bearing PAN No.AAALS2490J, wherein the address is given as State Pollution Control Board, Plot No.A-118, Paribesh Bhawan, Nilakantha Nagar, Unit-VIII, Nayapalli, Bhubaneswar-751012 and filed return of income for A.Y.2014-2015 electronically showing total income as Nil. From the PAN details, it is clear that the jurisdictional AO of the assessee is ITO, Bhubaneswar. However, when the case of the assessee was selected for scrutiny, the ITO, Bhadrak Ward, Bhadrak issued notices u/s.143(2) & 142(1) of the Act, dated 19.09.2016. Thereafter on request of the assessee that the ITO Bhadrak Ward Bhadrak is not the jurisdictional AO of the assessee, therefore, the ITO Bhadrak vide letter dated 17.10.2016 transferred the case stating that the jurisdiction of the assessee lies with the ITO Ward-5(2), Bhubaneswar. During the course of hearing, we asked the Id.DR for filing basic data of the assessee at the time of filing of the PAN. In

reply, the Id. DR produced CBN PAN data, which is placed on record and the same is reproduced as under :-


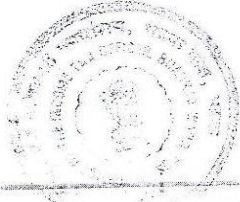

CBNPANQY:General PAN query

CBN PAN based query - ITD


PAN	144632401	AO	EEN	C	50	8	ACIT, CIRCLE 5(1), BHUBAN
Status	L	Sub Status		Title	M/S	Gender	
Full Name	STATEPOLLUTIONCONTROLEBOARD OD/SHA						
Name On Card							
Father's Name							
Other's Title		Other's Name					
Date of Birth	14/09/1983	Date PAN Gen	27/04/2011	Indian Citizen	Y		
UID				UID Verification Flag			
Country Citizen					Country Citizen ISD Code		
Profession				KYC Compliant			
Office Name	STATEPOLLUTIONCONTRO_BOARD						
Address	A 118	State	ORISSA	PIN	751012		
	PARIBESHBHAWAN	Country					
	NAYAPALLI	ZIP Code					
	NILAKANTHA NAGAR						
	BHUBANESWAR						
Deleted/Deactivated							
Status	Compare Details of Deleted/Deactivated - Retained PANs						

10. From the above scanned data, it is clear that while applying for PAN, the assessee had mentioned clearly his address as noted above of Bhubaneswar, therefore, the Income Tax Department has also noted

this address in the data base and allotted PAN accordingly. We also observe that the Id. DR also filed data summary generated from the Income Tax Website in which the jurisdiction of the assessee has been mentioned as Income Tax officer, Bhadrak and the notice u/s.143(2) of the Act has been issued by the ITO Bhadrak at the address given in the PAN data. The notice issued by the ITO Bhadrak reads as under :-

		GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER WARD BHADRAK	
To, STATE POLLUTION CONTROL BOARD ODISHA PARIBESH BHAWAN, UNIT-VIII NILAKANTHA NAGAR 751012, Orissa India			
PAN: AAALS2490J	AY: 2014-15	Notice No : ITBA/AST/S/143(2)/2016-17/1000331944(1)	Dated: 19/09/2016
Notice under section 143(2) of the Income Tax Act, 1961 Limited Scrutiny			
Sir/ Madam/ M/s, This is for your kind information that the return of income for Assessment Year 2014-15 filed vide ack. no. 116105830270316 on 27/03/2016 has been selected for Scrutiny. Following issues have been identified for examination:			
i. Interest expenses ii. Low income and high loans/advances/investments iii. Tax Credit Mismatch iv. Increase in Capital			
2. In view of the above, we would like to give you an opportunity to produce, or cause to be produced, any evidence which you feel is necessary in support of the said return of income on 28/09/2016 at 10:15 AM in the office of the undersigned.			
3. Sending a communication to the undersigned in this regard shall also be treated as sufficient compliance in case no evidence is sought to be produced as required in Para 2 above.			
4. Specific questionnaire/ show-cause notice shall be sent giving you another opportunity in case any adverse view is contemplated.			
5. (#) The assessment proceeding in your case is proposed to be conducted through email based communication. The email provided in the said return of income shall be used for communication for this purpose. In case you wish to communicate through any other alternate email, the same may kindly be informed. A brief note regarding benefits of this facility and procedure is enclosed overleaf. In case you do not wish to participate in this taxpayer friendly initiative, you may convey your refusal to the undersigned by the above mentioned date. In case, you wish to opt out from this scheme at any subsequent stage due to any technical difficulties faced by you, the same can be done with prior intimation to the undersigned.			
(#) applicable only in case of taxpayers whose Income-tax jurisdiction falls in the cities of Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata or Mumbai			
		Yours faithfully,  NIRANJAN BEHERA WARD BHADRAK N. Behera Income Tax Officer BHADRAK, ODISHA	
INCOME TAX OFFICE, Incometax Office, Charampa, BHADRAK, Orissa, 756101 Email: BHADRAK.ITO@INCOMETAX.GOV.IN, Office Phone:06784231900			

Further we noticed that when the assessee asked the ITO Bhadrak Ward Bhadrak for transferring the case to concerned ITO Bhubaneswar, then the ITO Bhadrak has transferred the case of the assessee, copy of which is placed at pager book at page 23, stating as under :-


 GOVERNMENT OF INDIA
 OFFICE OF THE INCOME TAX OFFICER
 BHADRAK WARD, BHADRAK(ODISHA)
 [Phone No.06784-231900/Fdx No:06784-231900]

No.ITO/BDK/Transfer of File /2016-17/
Dated, Bhadrak, the 17th Oct,2016.

To
The Income Tax Officer,
Ward-5(2), Room No-417,
4th Floor, Aayakar Bhawan,
RajaswaVihar,
Bhubaneswar-751007.

Sir,
Sub: Transfer of scrutiny cases selected under CASS for the A/Y-2014-15 and 2015-16 in the case of State Pollution Control Board, Odisha, Paribesh Bhawan, A/118, Unit-8, Nilakanth Nagar, Bhubaneswar-751012 - Matter regarding.

Please refer to the above.

2. The present jurisdiction of this case lies with you. It is therefore held to be relevant at this end to transfer this case to you for embarking on further follow up proceedings soon.

3. Special attention needs to be drawn on the following actions pending for disposal.

- (i) Pending scrutiny assessment for the A/Y-2014-15 will be barred by limitations by **31.12.2016**.
- (ii) Pending scrutiny assessment for the A/Y-2015-16 gets barred by limitation by **31.12.2017**.

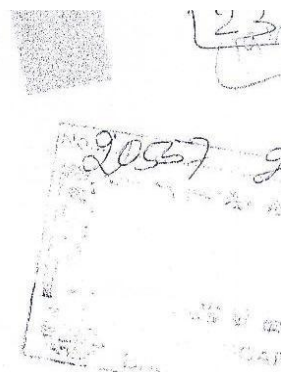
4. By the by, the following things may please be noted:

- (i) It is also requested to acquire PAN of the assessee to complete the assessment.
- (ii) The statutory notices wherever and whenever necessary have already been issued by the concerned A.Os at this end.
- (iii) You will please proceed ahead further with Scrutiny assessment proceedings U/s 129 soon.

5. The assessment records in 2(Two) Volumes for the A/Ys 2014-15 & 2015-16 are transferred herewith for doing with the same further as observed above. If this case does not fall under your jurisdiction kindly transfer the same to the concerned jurisdictional officer with an intimation to this office.

11/10/16


officer
24/10/16



Thanking you,

Yours faithfully,


Encl: As stated above.


(N. Behera)
Income Tax Officer,
Bhadrak Ward, Bhadrak

File No.ITO/BDK/Transfer of file/2016-17/ 1013-17
Dated, Bhadrak, the 17th Oct,2016.

Copy to :

- (i) The Pr. Commissioner of Income Tax, Cuttack Charge, Cuttack for kind information.
- (ii) The Pr. Commissioner of Income Tax-2, 3rd Floor, Aayakar Bhawan, Bhubaneswar.
- (iii) The Joint Commissioner of Income Tax, Balasore Range, Balasore for kind information.
- (iv) The Joint Commissioner of Income Tax, Range-5, 5th Floor, Aayakar Bhawan, Bhubaneswar.
- (v) The assessee, State Pollution Control Board, Odisha, Paribesh Bhawan, A/118, Unit-8, Nilakanth Nagar, Bhubaneswar-751012 Odisha for kind information.


(N. Behera)
Income Tax Officer,
Bhadrak Ward, Bhadrak

11. From the above it is clear that the ITO, Bhadrak when issued notice to the assessee u/s.143(2) of the Act on 19.09.2016, the assessee he should have taken in his cognizance that if the address mentioned at Bhubaneswar which is not the jurisdiction of the ITO Bhadrak, he should have immediately informed to the jurisdictional AO of the assessee rather issuing notice u/s.143(2) & 142(1) of the Act to the assessee.

12. In the totality of facts and circumstances of the case, we are of the opinion that, the Income Tax data base is showing the jurisdictional AO of the assessee at Bhadrak, however, from the PAN data base shown by

the department, the jurisdictional AO of the assessee is at Bhubaneswar in the PAN data base which is primary interaction with the Income Tax Department. Therefore, why the assessee should suffer the mistake occurred on the part of the Income Tax Department in spite of giving full and true information to the Department. Considering the above and as per the data of the Income Tax Department notice must be issued by the jurisdictional AO but not by the ITO Bhadrak. In the peculiar facts and circumstances of the case the case law relied on by the ld.DR is not applicable in the case in hand. Therefore, the notice issued u/s.143(2) of the Act is beyond jurisdiction of the AO, which is not sustainable in law and, consequently, the assessment order passed by the AO is hereby quashed. Accordingly, we set aside the impugned order passed by the CIT(A) and quashed the assessment order dated 15.12.2016. Thus, the legal ground of appeal of the assessee is allowed.

13. As we have decided the legal ground raised by the assessee holding that the notice u/s.143(2) of the Act issued by the AO, who does not hold the jurisdiction over the assessee is not sustainable and consequently quashed the assessment order passed by the AO, therefore, other grounds raised by the assessee on merits are not required to be adjudicated upon by us.

14. The assessee has filed stay petition for stay of demand. As we have heard and decided the appeal of the assessee, the stay petition of the assessee has become infructuous and accordingly it is dismissed.

15. In the result, appeal of the assessee is allowed and stay petition of the assessee is dismissed.

Order pronounced in the open court on this 30/10/2019.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 30/10/2019

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
State Pollution Control Board,
Plot No.A-118,Paribesh Bhawan
Nilakantha Nagar, Unit-VIII,
Nayapalli, Bhubaneswar-751012
2. प्रत्यर्थी / The Respondent-
ITO, Ward-5(2), Bhubaneswar-751007
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