

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.186/CTK/2017

(निर्धारण वर्ष / Assessment Year :2012-2013)

Abhaya Kumar Dash, Bidhyadharpur, Naya Bazar, Cuttack-753004	Vs.	Pr. CIT, Cuttack
स्थायी लेखा सं./PANNo. : ACHPD 4475 H		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri P.C.Sethi, Advocate
राजस्व की ओर से /Revenue by	:	Shri S.M.Keshkamat, CITDR

सुनवाई की तारीख / Date of Hearing	:	14/11/2019
घोषणा की तारीख/Date of Pronouncement	:	19/11/2019

आदेश / ORDER

Per L.P.Sahu, AM:

This is an appeal filed by the assessee against the order of Pr. CIT, Cuttack dated 14.03.2017 for the assessment year 2011-2012, on the following grounds of appeal :-

1. *That, the order under section 263 of the Income-tax Act, 1961 [Hereinafter referred as "the Act"] is per se illegal, unjust, without jurisdiction, arbitrary and contrary to the provisions of the Act and has been passed in gross violation to the principles of natural justice ignoring and the written submission and argument placed before the learned Principal Commissioner of Income-tax, Cuttack [Hereinafter referred as "the learned Pr.CIT"] and for which the order passed by the learned Pr.CIT is liable to be quashed and/or annulled.*
2. *That, the learned Assessing Officer has passed the order u/s 143(3) of the Act after taking into consideration of the confirmation letter submitted by the appellant as obtained from the customer to the satisfaction of the learned Assessing Officer and for which the order passed by the learned Assessing Officer cannot be said to be prejudicial to the interest of revenue without having any contrary evidence on record and for which the order passed by the learned Pr.CIT by set asiding the assessment order*

is illegal and contrary to the facts and circumstances of the case and is liable to be quashed and/or annulled.

3. *That, the order passed by the learned Pr.CIT without having any information whatsoever that the advance money received from the customers disclosed under the head current liabilities held to be bogus as no enquiry has been done by the learned Pr. Cit before set aside the order of the learned Assessing Officer and for which the order passed by the learned Pr.CIT is liable to be quashed and/or annulled.*
4. *That, the learned Pr.CIT has passed the order ignoring the submission made by the appellant so far as the cost of litigation is concerned and for which the cost of litigation is to be borne by the Income-tax Department as the negligence if any on the part of the Assessing Officer the appellant should not be made to suffer.*
5. *That, the cost of litigation of appeal made before this Hon'ble Tribunal is to be borne by the Income-tax Department.*
6. *That, the appellant may add, alter, delete, withdraw or modify any of the grounds at the time of hearing of the matter with the leave of the Hon'ble ITAT.*

2. Brief facts of the case are that the assessee derives income from manufacturing of fly-ash bricks machine & job works and filed his return of income on 26.09.2012 for the assessment year 2012-2013 disclosing total income of Rs.7,88,270/-, which was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS. Thereafter the AO framed the assessment u/s.143(3) of the Act making addition of Rs.3,96,143/- on account of differential amount, vide order dated 27.02.2015.

3. Subsequently, the Pr. CIT, Cuttack exercising his power u/s.263 of the Act, set aside the assessment order of AO for fresh adjudication. Against which the assessee has filed this appeal before the Income Tax Appellate Tribunal.

4. Ld. AR before us submitted that the AO has passed the order u/s 143(3) of the Act after taking into consideration of the confirmation letter submitted by the assessee as obtained from the customer to the satisfaction of the AO and for which the order passed by the AO cannot be said to be prejudicial to the interest of revenue without having any contrary evidence on record and for which the order passed by the Pr.CIT by setting aside the assessment order is illegal and contrary to the facts and circumstances of the case and is liable to be quashed and/or annulled.

5. On the other hand, ld. DR relied on the order of lower authorities.

6. After hearing the submissions of both the sides and perusing the entire material available on record, we find that the Pr. CIT in the revision proceeding found that the AO has failed to examine the genuineness of the advances received from the alleged customers and accordingly, he directed the AO to reframe the assessment after proper appreciation of facts. Thereafter on the direction of the Pr. CIT, Cuttack in the revisionary order passed u/s.263 of the Act, the AO completed the assessment u/s.143(3)/263 of the Act vide order dated 22.12.2017, a copy of which is placed on record, wherein the AO called for the information u/s.133(6) of the Act from all the parties and the same were received by post in which he has disallowed a sum of Rs.2,79,040/- on the impugned issue. On perusal of the same, it is clear

that in the earlier assessment proceeding, the AO had not made enquiries properly with regard to the genuineness of the advances received from the alleged customers. Therefore, in our opinion, the Pr. CIT was just and proper to set aside the assessment holding that the order passed by the AO is prejudicial to the interest of Revenue in absence of any proper appreciation of facts as well as proper enquiry on the part of the AO. We have also gone through the observations made by the Pr. CIT and found that there is no necessity to interfere in the findings recorded by the Pr.CIT in directing the AO to reframe the assessment. Accordingly, uphold the same and dismiss the grounds of appeal of the assessee.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 19/11/2019.

**Sd/-
(C.M.GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(L.P.SAHU)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 19/11/2019

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Abhaya Kumar Dash,
Bidhyadharpur, Naya Bazar, Cuttack-753004
2. प्रत्यर्थी / The Respondent-
Principal CIT, Cuttack
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