

**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.77/CTK/2005**

(निर्धारण वर्ष / Assessment Year :2001-2002)

Smt. Renubala Panda, Prop. M/s Jageswari Traders, Plot No.1656, Sastri Nagar, Bhubaneswar	Vs.	ITO, Ward-1(1), Bhubaneswar
स्थायी लेखा सं./PAN No. : AASPP 6362 Q		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri Aditya Rath, Advocate
राजस्व की ओर से /Revenue by	:	Shri Subhendu Dutta, DR

सुनवाई की तारीख / Date of Hearing	:	28/01/2020
घोषणा की तारीख/Date of Pronouncement	:	18/03/2020

**आदेश / ORDER**

**Per L.P.Sahu, AM:**

This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 05.11.2004.

2. Facts in brief are that the assessee was engaged during the relevant time in the business of wholesale grocery and also deriving income from house property and filed her return of income on 29.01.2001 showing total income at Rs.97,670/-, which was processed u/s.143(1) of the Act. Upon selection of the case of assessee for scrutiny under CASS, statutory notices were issued to the assessee. Finally, the AO completed the assessment determining total income of

the assessee at Rs.22,32,230/- making various additions as mentioned in the assessment order.

3. Against the order of AO, the assessee preferred appeal before the CIT(A) and the CIT(A) deleted certain additions and partly allowed the appeal of the assessee. Further aggrieved, the assessee went before the Income Tax Appellate Tribunal and the Tribunal vide order dated 01.07.2005 after considering the submissions of the assessee and findings of authorities below, remit the matter back to the file of AO after having following observations :-

*"4. We have considered the submissions and have perused the order of the CIT(A) carefully. Before the learned CIT(A) this issue was also raised. The learned CIT(A) has held that all the letters issued by the Addl. CIT were containing simply the lines on which investigations were to be done by the AO. Therefore, this ground taken before the CIT(a) was rejected. We have gone through the relevant provisions of section 144A which is reproduced below :*

*"144A. A Joint Commissioner may, on his own motion or on a reference being made to him by the (Assessing) Officer or on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the (Assessing) Officer to enable him to complete the assessment and such directions shall be binding on the (Assessing) Officer.*

*Provided that no directions, which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.*

*Explanation- For the purposes of this Section, no direction as to the lines on which an investigation connected with the assessment should be made, shall be deemed to be direction prejudicial to the assessee."*

*From the above provisions it is clear that the learned counsel for the assessee is correct in his submission that it is only the Jt. Commissioner who has been empowered by the Statute to issue direction to the AO. So far as the denial of reasonable opportunity by the Addl. CIT is*

*concerned, we do not find from the orders of the authorities below that the Addl. CIT has given a specific direction to make addition in the computation of total income. Therefore, the finding of the CIT(A) is correct to that extent. However, the main objection raised by the learned counsel for the assessee that Addl. CIT is not empowered to issue directions to the AO is valid. But the failure on the part of the AO to take direction from the Addl.CIT instead of Jt. Commissioner will not nullify the assessment order. It is simply a procedural lapse on the part of the AO which can be cured. Therefore, in the interest of natural justice, we consider it proper to restore the case to the file of AO to pass a fresh order after following the prescribed procedure for completion of assessment.*

*5. In the result, the assessee's appeal is treated as allowed for statistical purposes."*

4. Thereafter on miscellaneous application filed by the Revenue, the Tribunal accepting the contention of Revenue found that there is an apparent mistake crept in the order dated 01.07.2005 and restored the appeal to its original number vide order dated 27.07.2009 passed in M.A.No.63/CTK/2005 (Arising out of ITA No.77/CTK/2005) after having the following observations :-

*"3. After hearing the rival submissions and on careful perusal of the material available on record, we are of the considered view that as per section 2(28c) of the Income Tax Act, Joint Commissioner means a person appointed to be a Jt. Commissioner or an Addl. Commissioner under Sub-section (1) of section 117. In view of this, the finding of the Tribunal in its order dated 1.7.2005 that the Addl. Commissioner of Income-tax was not empowered to give direction to the A.O. u/s. 145 A, only the Joint Commissioner of Income-tax is empowered to give direction to the A.O. u/s. 144A, is an apparent mistake crept in the order of the Tribunal dated 1.7.2005. Therefore, we recall our order dated 1.7.2005. The registry is directed to fix the appeal in due course. We order accordingly."*

5. Aggrieved further, the assessee carried the matter before the Hon'ble High Court and the Hon'ble jurisdictional High Court vide order dated 21.12.2016 in I.T.A.No.86 of 2009 disposed of the appeal

directing the assessee to raise all such questions before the Tribunal after having following observations :-

*"21.12.2016 Heard Mr. Rath, learned counsel for the appellant and Mr. Acharya, learned counsel for the Income Tax Department.*

*The appellant in this Appeal challenges the order dated 27.07.2009 passed by the Income Tax appellate Tribunal in M.A.No.63/CTK/2005 (Arising out of ITA No.77/CTK/2005) in recalling the order dated 01.07.2005 passed by the Tribunal in ITA No.77/CTK/2005 and directing for fresh hearing.*

*Learned counsel for the appellant submits that the Tribunal has no jurisdiction and authority to recall its own order and as such the same is liable to be dismissed. The appellant has filed a misc. case enclosing a notice wherein it has been indicated that the appeal has been adjourned for next hearing at Cuttack on 22.12.2016.*

*Considering the submissions made by the learned counsel for the parties and keeping in view the fact that the appeal has been fixed to tomorrow for hearing, we are not inclined to interfere with the impugned order. It is open to the appellant to raise all such questions before the Appellate tribunal at the time of hearing.*

*The ITA is accordingly disposed of.*

6. On perusal of the memo of appeal filed before the Hon'ble Jurisdictional High Court, we find that the assessee has raised legal issue with regard to the sustainability of the order of the Tribunal in recalling of its own order and the Hon'ble High Court restored the appeal of the assessee to the Tribunal with the observations as incorporated above, thereby directing the assessee to raise all such questions before the Tribunal during the course of hearing. Now, the appeal is again listed before us and heard finally on the legal issue as stated above.

7. The issue raised by the assessee before the Tribunal in earlier round that the Additional Commissioner is not empowered by the Statute to issue direction to the AO, which was accepted by the Tribunal. However, in miscellaneous application filed by the Revenue, considering the provisions of Section 2(28C) of the Act, it was held that mentioning the Jt. Commissioner is only empowered to issue direction to the AO u/s.144A of the Act, is not acceptable. Though the provisions of Section 2(28C) of the Act, 1961 provides that "Joint commissioner" means a person appointed to be a Joint commissioner of Income-tax or an Additional Commissioner of Income-tax under sub-section (1) of section 117 of the Act, however, on perusal of the provisions of Section 144A of the Act, we find that there is no mention about the direction can be issued by the Additional Commissioner and the provisions of Section 144A of the Act only provides the power of Joint Commissioner to issue directions in certain cases. It is also transparent that when the Statute has provided in Section 2(28C) of the Act for both the Jt. Commissioner or Additional Commissioner, it would have been repeated the same in Section 144A of the Act, however, only the power of Joint Commissioner has been provided. This provision has been incorporated by the Tribunal in its earlier order as reproduced somewhere above in the order, therefore, to avoid the repetition, we do not repeat the same. In view of the above, we accept the findings given

by the Tribunal in its order dated 01.07.2005. In the said order, the Tribunal considering the submissions of the assessee has restored the issue to the file of the AO to pass a fresh order after providing reasonable opportunity of hearing to the assessee. Accordingly, we respectfully comply with the direction given by the Hon'ble Jurisdictional High Court vide order dated 21.12.2016 and we are also concurrence with the earlier directions given by the Tribunal and appeal of the assessee is allowed for statistical purposes as per our observations mentioned above.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18/03/2020.

**Sd/-**

**(C.M.GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**

**(L.P.SAHU)**

लेखा सदस्य / ACCOUNTANT MEMBER

**कटक** Cuttack; दिनांक Dated 18/03/2020

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-  
Smt. Renubala Panda,  
Prop. M/s Jageswari Traders,  
Plot No.1656, Sastri Nagar,  
Bhubaneswar
2. प्रत्यर्थी / The Respondent-  
ITO, Ward-1(1), Bhubaneswar
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)**  
ITAT Cuttack Bench, Cuttack