



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

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.151/CTK/2019
Assessment Year : 2014-15

Mirza Adil Iquabal Baig, S/O. Mirza Abdul Ahad Baig, Mirzapur, Panikoili, Dist: Jajpur	Vs.	Pr. CIT, Cuttack
PAN/GIR No. AIWPB 2224 M		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K.Mishra, AR
Revenue by : Shri M.K.Goutam, CIT, DR

Date of Hearing : 18 /03/ 2020
Date of Pronouncement : 12 /06/2020

ORDER

Per C.M.Garg, JM

This is an appeal filed by the assessee against the order of the Ld P.r CIT, Cuttack dated 29.3.2019 under section 263 of the Act for the assessment year 2014-15.

2. Although the assessee has filed main grounds of appeal but later on filed revised grounds of appeal, which read as under:

"1. For that, the impugned order passed U/s.263 of the I.T. Act, 1961 by the learned Principal Commissioner of Income Tax, Cuttack is without jurisdiction and without the authority of law, as such, the same being not sustainable in the eye of law is liable to be quashed in the interest of justice.

2.For that, learned Principal Commissioner of Income Tax has committed gross error of fact as well as of law in ignoring the facts available on Assessment record and submission and evidences produced by the Appellant and in modifying the Assessment order by making addition of Rs.11,43,670.00. Therefore, the order passed U/s.263 is liable to be

quashed and the Assessment order needs to be restored back in the interest of justice.

3. For that, when the learned A.O. himself has examined the purchases worth of R.s. 11,43,670.00 and has accepted the facts that, it was wrongly mentioned as pesticides instead of fertilizer and the Appellant produced the detail evidences before the learned Pr. Commissioner, the learned Pr. C.I.T. should not have ignored it and should not have made addition of Rs. 11,43,670.00 by modifying the Assessment order.

4. For that, the findings given by the learned Pr. C.I.T are wrong, illegal and contrary to the facts on record, as such, the impugned order passed U/s.263 of the Act being not sustainable is liable to be quashed in the interest of justice.

5. For that, the judgments relied upon by the learned Pr. C.I.T. has no application under the facts and in the circumstances of the case, as such, the impugned order passed U/s.263, being not sustainable in the eye of law is liable to be quashed in the interest of justice.

6. For that, the penalty proceeding so initiated by the learned Pr. C.I.T. being illegal and not sustainable in the eye of law, is liable to be quashed in the interest of justice."

3. Apopos Ground Nos.1 & 2, Id counsel for the assessee submitted that Id. Pr. CIT, Cuttack is without jurisdiction and without the authority of law has invoked provisions of section 263 of the Act as same being not sustainable in the eye of law is liable to be quashed in the interest of justice. Ld counsel further submitted that the Pr. CIT has committed gross error on fact as well as in law in ignoring the facts available on assessment record and submissions of the assessee in response to notice 263 of the Act for setting aside the order and directing the AO to make addition. Ld counsel vehemently pointed out that the AO after due diligence and verification passed the assessment order u/s.143(3) of the Act determining the total assessed income at Rs. 9,22,090/- as against the returned income of Rs.6,64,250/- by making addition to the returned income of the assessee. Therefore, Id counsel submitted that during assessment proceedings, the assessee

filed cash book and other relevant documents, therefore, the assessment order cannot be held as erroneous and prejudicial to the interest of the revenue.

4. Ld CIT DR strongly supported the revisional order u/s.263 of the Act dated 29.3.2019 and submitted that the Id Pr. CIT noticed from the trading and profit and loss account that the assessee has disclosed Rs.11,43,670/- under the head "purchase of pesticides" but there was no opening stock sale and closing stock was disclosed in the said trading and profit & loss account. Ld Ld CIT drew our attention to paras 3 & 4 of the impugned order and submitted that as the purchase was shown without any sales and closing stock, therefore, the amount of purchase should have been added as closing stock of pesticides to the credit side of the assessee and thus, the Id Pr. CIT was right in directing the AO to make addition after holding the assessment order as erroneous and prejudicial to the interest of the revenue.

5. On careful consideration of the rival submission, from the copy of the assessment order passed u/s.143(3) of the Act dated 28.11.2016, we clearly observe that during assessment proceedings, the assessee only furnished cash book maintained by him for the financial year 2013-14 relevant to assessment year 2014-15 and accepted the cash book but no other books of account or documents were submitted by the assessee nor called by the AO for verification and examination. Therefore, we safely presume that the AO has not any enquiry regarding the impugned amount of purchase of pesticides especially when the assessee had not shown the corresponding sales of pesticides and corresponding closing stock in case where there were no sales of pesticides. Therefore, Id Pr. CIT

was correct in holding the assessment order as erroneous and prejudicial to the interest of the revenue. Hence, Ground Nos.1 & 2 of assessee are dismissed.

6. Apropos Ground No.3 of appeal, Ld counsel for the assessee submitted that the Assessing Officer has examined the purchases worth of Rs.11,43,670/- and has accepted the fact. He further submitted that the assessee has wrongly mentioned the purchases as pesticides instead of fertilizer and the details of the evidences were produced before the Ld. Pr. CIT.

7. After hearing the rival submissions, we remit this issue to the file of the Assessing Officer to verify the genuineness of the grievance of the assessee that the purchase is with regard to fertilizer and not pesticides and if found correct, the AO is directed to examine the issue and pass assessment order limited to this issue only afresh after allowing reasonable opportunity of hearing to the assessee. The assessee is directed to produce necessary documents and evidence in support of the fact that the purchase is with regard to fertilizer and not pesticides. Hence, Ground No.3 is allowed for statistical purposes.

8. Ground Nos.4 to 6 are general in nature and hence, requires no separation adjudication.

9. In the result, appeal is partly allowed for statistical purposes.

Order pronounced on 12 /06/2020.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER
Cuttack; Dated 12 /06/2020
B.K.Parida, SPS

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant : Mirza Adil Iquabal Baig, S/O. Mirza Abdul Ahad Baig, Mirzapur, Panikoili, Dist: Jajpur
2. The Respondent. Pr. CIT, Cuttack
3. The CIT(A)-, Cuttack
4. DR, ITAT, Cuttack
5. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack