

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.344/CTK/2016

(निर्धारण वर्ष / Assessment Year :2011-2012)

Shri Baladeb Mohapatra, Pahana, Pankapal, Jagatsinghpur	Vs.	ITO, Ward-1, Paradeep
PAN No. : AKHPM 1731 F		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri Sunil Mishra, Advocate
राजस्व की ओर से /Revenue by	:	Shri J.K.Lenka,DR

सुनवाई की तारीख / Date of Hearing	:	17/07/2020
घोषणा की तारीख/ Date of Pronouncement	:	31/07/2020

आदेश / ORDER

Per L.P.Sahu, AM:

The assessee has filed this appeal against the order of CIT(A), Cuttack, dated 20.06.2016 for the A.Y.2011-2012.

2. This appeal was already disposed off by this Tribunal vide order dated 31.08.2017. Thereafter the assessee preferred an appeal before the Hon'ble jurisdictional High Court, which was registered as Income Tax Appeal No.51/2017 and the Hon'ble High Court vide order dated 06.02.2019 has directed the Tribunal to decide the review petition to be filed by the assessee as expeditiously as possible, preferably within a period of four months from the date of filing of such review petition. Accordingly, the assessee filed a miscellaneous application before the Tribunal and the Tribunal accepting the contention of the assessee and

with a compliance to the order of the Hon'ble High Court, stated supra, restored the appeal to its original number. Hence, this appeal listed for hearing and the same was heard finally with the consent of both the parties.

3. Ld. AR before us submitted that the Tribunal has not considered the submissions of the assessee while disposing off the appeal of the assessee vide order dated 31.08.2017. Therefore, ld. AR submitted that the submissions of the assessee may kindly be considered and the appeal of the assessee may be disposed off accordingly.

4. On the other hand, ld. DR relied on the orders of authorities below as well as order of the Tribunal and submitted that during the assessment proceedings and remand proceedings, the assessee could not explain the sources of balance of cash deposits except in certain cases. Therefore, the Tribunal has rightly upheld the action of both the authorities below. Accordingly, ld. DR submitted that the appeal of the assessee deserves to be dismissed.

5. After considering the submissions of both the parties and considering the orders of both the authorities below as well as the order of the Tribunal dated 31.08.2017 along with the order of Hon'ble High Court placed on record, we find that the appeal of the assessee in ITA No.344/CTK/2016 was dismissed by the Tribunal vide order dated 31.08.2017. Thereafter, without availing the remedy available to the

assessee, the assessee filed an appeal before the Hon'ble High Court in Income Tax Appeal No.51/2017, however, the Hon'ble High Court vide order dated 06.02.2019 has observed that proper remedy for the assessee is to file a review petition before the Income Tax Appellate Tribunal and thereby directed to do so. The observations of the Hon'ble High Court in this regard are as under :-

"06.02.2019 Heard Mr. S.Mishra, learned counsel for the appellant and learned Standing Counsel for the Income Tax Department.

- 2. By way of this Income Tax Appeal, the appellant has challenged the order dated 31.08.2017 passed by the learned Income Tax Appellate Tribunal, Cuttack Bench, Cuttack in I.T.A No.344/CTK/2016 for the assessment year 2011-2012.*
- 3. The argument canvassed by learned counsel for the assessee-appellant do not find favour with the judgment of the learned Tribunal. However, learned counsel for the appellant says that they had argued the said points before the learned Tribunal. If it is so, the proper remedy for the appellant is to file a review petition before the learned Tribunal.*
- 4. If such a review petition is filed within a month from today along with a certified copy of this order, learned Tribunal shall deal with the contentions raised by the appellant and dispose of such review petition in accordance with law as expeditiously as possible, preferably within a period of four months from the date of filing of such review petition.*
- 5. It is made clear that we have not expressed any opinion on the merits of the case. However, the period from 13.10.2017 till today taken by the appellant, in pursuing this appeal will be taken into consideration for condonation of delay while considering the review by the Tribunal.*
- 6. Original copy of the impugned order may be returned to the appellant substituting attested photocopies thereof.*
- 7. With the above observation/direction, the appeal stands disposed of. All connected Misc. Cases/I.As. are disposed of accordingly.*

Urgent certified copy of this order be granted on proper application."

6. On the direction of the Hon'ble jurisdictional High Court, the assessee preferred miscellaneous application and on compliance with the direction of the Hon'ble High Court, the Tribunal restored the appeal of the assessee to its original number. However, the Tribunal relying on the order of Hon'ble Jurisdictional High Court in the case of CIT Vs. Jagabandhu Roul, [1983] 12 Taxman 156 (Ori.), has already taken a view that it cannot review its own decisions within limited scope of Section 254(2) of the Act unless there is a mistake apparent from records.

7. Now, the ld. AR agitated that the submissions of the assessee has not been taken into consideration in the order decided by the Tribunal on 31.08.2017. On perusal of the earlier order of the Tribunal, we find that the Tribunal while disposing off the appeal in para 9 has held as under :-

"9. We find that ld A.R. could not point out any specific error in the order of the CIT(A). Ld A.R. also could not controvert the findings of the CIT(A) that the assessee failed to satisfactorily explain regarding the source of such cash deposits in the bank with IDBI Bank. Further, the findings of the CIT(A) that during the remand proceedings, the assessee submitted deposit receipt issued to investors by M/s. Artha Tatwa Infra India Ltd., in 31 cases and for the balance cash deposit, the assessee had no explanation regarding their sources except for a list of names provided by the assessee, could not be controverted by ld A.R. of the assessee. Therefore, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and grounds of appeal of the assessee are dismissed."

8. Before us, ld. AR drew our attention to the paper book containing pages 1 to 59. He further drew our attention on the bank statements

filed in the paper books and detailed mentioned in Annexure-1 containing page Nos.9 to 15. From the above details, the Id.AR tried to justify the name of the depositors on behalf of the assessee who have made payments through banking channels to ATIL Ltd. Ld.AR also submitted that the assessee collects money from the persons and thereafter cash amount is deposited in the bank. Thereafter it is transferred to the ATIL Ltd. by way of DD. Accordingly, Id. AR submitted that the authorities below were not justified to make addition in the hands of the assessee on the entire deposits in his bank accounts.

9. From the above observations of the Tribunal, it is clear that the assessee at any stage was unable to explain the source of cash deposits in the bank with IDBI Bank and sources except for the balance cash deposit. In the remand report, the AO mentioned that information was sought from the IDBI Bank u/s.133(6) to ascertain the destinations of the withdrawals in the shape of DDs made in the said bank accounts and found that all the DO payouts have been made to the AT group as claimed by the assessee. This remand report was also forwarded to the assessee, which could not be controverted by the assessee. The CIT(A) has rightly directed the AO to make addition to the total income of the assessee of cash deposits as unexplained cash credit u/s.68 of the Act excluding the cash deposits to have been made for 31 cases for which

deposits certificates were submitted by the assessee. Under these circumstances, we stand by our earlier decision taken in the order dated 31.08.2017. The Tribunal has already considered the submissions of the assessee while disposing off the appeal on earlier round on 31.08.2017. This time also we have considered the submissions of the assessee, however, when the assessee could not explain the claim as made by him either before the lower authorities or before the Tribunal, then only taking the remedy of not consideration of submission of the assessee, is, truly, not a ground to interfere the firmed decision already taken by the Tribunal in this regard. It is the primary duty of the assessee to discharge the onus casted upon him as per the provisions of Income Tax Act, which has not been done so by the assessee in the present case in hand. There is no evidence produced by the assessee before us as to whether any effort has been taken by the assessee for taking information from the ATIIL Ltd. before us.

10. Further, we noted from the records submitted before us as well as from the submissions of the assessee, if the assessee was unable to substantiate the deposits in the account on whose behalf transaction was made through DD to the ATIIL. For this reason, the assessee would have called for information from the company or if he was helpless from both the sides i.e. the investors as well as from the company (ATIIL Ltd), then in such circumstances, he could have approached to

the revenue authorities for obtaining support because the revenue authorities have huge powers to call for the information as provided in the Income Tax Act. Had the complete address of the investors/creditors/depositors been provided by the assessee, the revenue authorities could have taken effort for investigation on *suo motu*, however, the assessee has simply mentioned the name of the creditors in the list. Thus, we upheld the action of both the authorities below and after considering the submissions of both the sides, we sustain our earlier decision taken vide order dated 31.08.2017. Accordingly, we dismiss the appeal of the assessee.

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

Order pronounced in the open court on 31/07/2020.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 31/07/2020

Prakash Kumar Mishra, 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