

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

**BEFORE SHRI CHANDRA MOHAN GARG,  
JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
  
(THROUGH VIRTUAL CONFERENCE)**

S.No.	ITA No.	AY	Appellant	Respondent
1	187/CTK/2017	2012-13	Sri Soubhagya Kumar Dash, Cuttack, PAN-AGNPD1510B	Pr. Commissioner of Income-tax, Cuttack.

For Assessee : Shri P.C. Sethi  
For Revenue : Shri M.K. Goutam

Date of Hearing : 11-12-2020  
Date of Pronouncement : 27-01-2021

**ORDER**

**PER LAXMI PRASAD SAHU, A.M. :**

This appeal filed by the assessee is directed against the order of Pr. CIT, Cuttack Charge, Cuttack, dated 14/03/2017 for AY 2011-12 wherein the assessee has raised 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 engineering goods and job works, filed his return of income on 26/09/2012 showing a total income of Rs. 7,92,300/-. The assessment was completed by the AO on 27/02/2015 determining the total income at Rs. 8,43,310/-.

3. Thereafter, the Pr. CIT exercising his powers vested u/s 263 of the IT Act, called the assessment records of the assessee. On verification of the balance sheet as on 31/03/2012, placed in the assessment record, the Pr. CIT noticed that the assessee had shown advance money received from customers of Rs. 1,54,23,694/- under the head current liabilities. According to Pr. CIT, the AO had not

examined or cause to make necessary enquiry to ascertain the genuineness of transactions with regard to the alleged advances received from customers. He opined that the AO did not apply his mind to call for necessary details, viz., name and address of such customers, date, mode of transactions and relevant and support evidences etc. He was, therefore, of the view that such failure on the part of the assessee rendered the assessment order erroneous and prejudicial to the interests of revenue. In view of the above observations, the Pr. CIT issued a show cause letter on 05/01/2016 to the assessee to explain as to why the assessment order passed u/s 143(3) of the Act for the year under consideration should not be modified/cancelled to that extent u/s 263 of the Act.

3.1 In response to the show cause letter, the AR of the assessee filed written submission dated 28/02/2017, which was extracted by the Pr. CIT in his order at page of his order, the gist of which was that the assessee had submitted that during the course of assessment

proceedings, the assessee had submitted the confirmation letter obtained from the customers along with the mode of payment to the satisfaction of the ld. AO and being satisfied with the same, the ld. AO did not make any addition on advance from the customers of Rs. 1,54,23,694/-.

3.2 After considering the written submissions filed by the assessee, the Pr. CIT following the Hon'ble Supreme Court decision as well as High Court decisions, held that it is apparent from the assessment record that the AO has failed to examine this aspect or to cause necessary enquiry to prove the genuineness of advances received from the alleged customers and he, therefore, set aside the assessment order to the file of AO for necessary examination of the issue.

3.5 Accordingly, the AO passed assessment order u/s 143(3)/263 of the Act on 22/12/2017 determining the total income of the assessee at Rs. 8,93,310/- by making an

addition of Rs. 50,000/- on account unexplained advance from customer.

3.6 Against the said order of the AO, the assessee has not appealed before any forum.

4. However, the assessee is in appeal before the Tribunal against the order of Pr. CIT.

5. Before us, the ld. AR of the assessee submitted that the order passed by the ld. 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 setting 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. He submitted 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 assessee 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, therefore, the order of Pr. CIT is to be quashed.

6. The Id. DR, on the other hand, relied upon the order of Pr. CIT and submitted that the assessee failed to establish that the advance money received from the customers are genuine, therefore, the order of the Pr. CIT may be confirmed.

7. We have heard both the parties and perused the material on record as well as gone through the orders of the revenue authorities. We are of the view that the Pr. CIT has rightly invoked the provisions of section 263 of the Act and directed the AO to redo the assessment as per law, vide his order dated 14/03/2017 by holding that the AO did not apply his mind to call for necessary details and supporting evidence with regard to the advance money received by the assessee from the customers. Even, when the Pr. CIT issued a show cause notice to the assessee to prove that the advance money received from the customers is genuine, the

assessee failed to establish that the transaction is genuine by way of any corroborative evidence. Therefore, even on merits also the assessee does not have any case to argue. Moreover, the assessee has not appealed against any forum, against the order passed by the AO u/s 143(3)/263 of the Act dated 22/12/2017, which can be presumed that the assessee has accepted the order passed by the Pr. CIT. Therefore, we uphold the order of Pr. CIT and dismiss the grounds raised by the assessee in this regard.

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

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

**Sd/-**  
**( LAXMI PRASAD SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 27<sup>th</sup> January, 2021

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*copy to :*

<i>1</i>	<i>Sri Soubhagya Kumar Dash, Bidyadharpur, Naya Bazar, Cuttack - 753004</i>
<i>2</i>	<i>Pr. CIT, Aayakar Bhavan, Shelter Square, Cuttack.</i>
<i>3</i>	<i>ITO, Ward - 1(1), Cuttack</i>
<i>4</i>	<i>JCIT, Range - 1, Cuttack</i>
<i>5</i>	<i>ITAT, DR, Cuttack</i>
<i>6</i>	<i>Guard File</i>