



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

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

ITA No.200/CTK/2019
Assessment Year : 2015-16

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| M/s. Maa Jagadhatri Roadlines, Jagannath Market Complex, PWD Road, Keonjhar. | Vs. | Pr. CIT, Cuttack |
| PAN/GIR No.AAGFJ 1599 P | | |
| (Appellant) | .. | (Respondent) |

Assessee by : Shri B.Panda, Sr. Adv/B.R.Panda, ARs
Revenue by : Shri M.K.Gautam, CIT DR

Date of Hearing : 10 /3/ 2021
Date of Pronouncement : 11 /3/2021

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Pr. CIT, Cuttack dated 29.3.2019 u/s.263 of the Act for the assessment year 2015-16.

2. In this case, the assessment u/s.143(3) was completed by the Assessing Officer on 30.3.2017 determining the total assessed income at Rs.10,68,750/-. Later on, the Pr. CIT on perusal of assessment record that on verification of the details of 26AS, the assessee had either received or its account had been credited by commission/brokerage of Rs.47,05,753/- with corresponding TDS credit of Rs.4,70,578/- u/s.194H of the Act from M/s.

SMC Power Generation Ltd., of Rs.22,10,915/-, M/s. Bhaskar Steel & Ferro Alloy Ltd., of Rs.5,46,416/- and M/s. Action Ispat & Power Pvt Ltd., of Rs.19,48,422/-. Further, it was seen from the profit and loss account, the assessee had duly disclosed commission income in respect of SMC Power Generation Ltd. and M/s. Bhaskar Steel & Ferro Alloy L:td., but in the case of M/s. Action Ispat & Power Pvt Ltd., commission of Rs.4,96,738/- only had been disclosed and the assessee had claimed corresponding TDS credit of Rs.49,675/-. Hence, the assessee had suppressed commission income to the extent of Rs.14,51,684/- (Rs.19,48,422 – Rs.4,96,738). Thus, he observed that the undisclosed commission of Rs.14,51,684/- ought to have been brought to tax without allowing any expenditure as the assessee had already claimed the entire expenses in the audited profit and loss account. However, the AO failed to tax the above undisclosed commission income in the assessment order. Hence, the assessment order is erroneous and prejudicial to the interest of the revenue as the same has been made without enquiry and verification. In view of above, Pr. CIT set aside assessment order and direct the AO to modify his assessment order dated 30.3.2017 by making addition of Rs.14,51,684/- on account of undisclosed commission income.

3. Ld A.R. of the assessee submitted that the Pr. CIT, in the impugned order passed u/s.263 of the Act, directed the AO to modify the assessment order dated 30.3.2017 by making addition of Rs.14,51,684/- on account of

undisclosed income but this income could not be offered to tax in the relevant assessment year 2015-16 and same was offered for taxation in the succeeding assessment year 2016-17. The assessee has paid tax thereon without claiming any TDS pertaining to the impugned amount of Rs.14,51,684/-. Therefore, since the Pr. CIT has directed to modify the assessment order, the contention of the assessee has to be considered and The AO should be directed to verify as to whether the assessee has offered this amount of Rs.14,51,684/- for taxation in the return of income filed for succeeding assessment year 2016-17 and credit of TDS may also be given in this regard.

4. Replying to above, Id CIT DR submitted that since there was mismatch between the 26AS and no reconciliation was filed by the assessee, which resulted into suppression of commission of Rs.14,51,684/-. Therefore, the Pr. CIT was right in directing the AO to modify the assessment order by treating the same undisclosed commission income. Ld CIT DR submitted that the onus is on the assessee to show that he has offered the impugned amount to tax in the succeeding assessment year as when he received the amount and has not claimed any TDS credit pertaining this amount. However, he submitted that the department has no serious objection if this issue is restored to the file of the AO for verification and examination of fact as to whether the assessee has offered the amount

to tax in the succeeding assessment year 2016-17 and has not claimed any TDS credit in this regard.

5. We have heard the rival submissions and perused the record of the case. It is an admitted fact that on verification of the details of 26AS, the assessee had received commission/brokerage of Rs.47,05,753/- with corresponding TDS credit of Rs.4,70,578/- u/s.194H of the Act from M/s. SMC Power Generation Ltd., of Rs.22,10,915/-, M/s. Bhaskar Steel & Ferro Alloy Ltd., of Rs.5,46,416/- and M/s. Action Ispat & Power Pvt Ltd., of Rs.19,48,422/-. The assessee had duly disclosed commission income in respect of SMC Power Generation Ltd. and M/s. Bhaskar Steel & Ferro Alloy L:td., but in the case of M/s. Action Ispat & Power Pvt Ltd., commission of Rs.4,96,738/- only had been disclosed and the assessee had claimed corresponding TDS credit of Rs.49,675/-. Hence, the Pr. CIT was of the view that the assessee had suppressed commission income to the extent of Rs.14,51,684/- (Rs.19,48,422 – Rs.4,96,738) and directed the AO to modify the assessment order by making addition of Rs.14,51,684/- . Ld A.R. of the assessee submitted before us that the said amount has been received in the succeeding assessment year 2016-16 and offered to tax. If this is the case, then the AO is directed to verify the return of income for the assessment year 2016-17 and if the assessee has offered the impugned amount for taxation without claiming TDS credit, the disallowance deserves

to be deleted. The AO is directed accordingly. With these directions, we uphold the revisionary order u./s.263 of the Act passed by the pr. CIT.

6. In the result, appeal of the assessee is dismissed with the directions as noted above.

Order pronounced on 11 /3/2021.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 11/3/2021
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The appellant: M/s. Maa Jagadhatri Roadlines,
Jagannath Market Complex, PWD Road, Keonjhar.
2. The Respondent. Pr. CIT, Cuttack
3. The CIT(A)-, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack