



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

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

ITA No.29/CTK/2019

Assessment Year : 2013-2014

Purna Chandra Sahoo, Plot No.451/455, Behera Sahi, Rasulgarh, Bhubaneswar.	Vs.	ITO, Ward 5(2), Bhubaneswar.
PAN/GIR No.FAXPS 3732 K		
(Appellant)	..	(Respondent)

Assessee by : Shri Santosh Kumar Dash, AR
Revenue by : Shri J.K.Lenka, DR

Date of Hearing : 15 /11/ 2019
Date of Pronouncement : 15 /11/ 2019

ORDER

Per C.M.Garg,JM

This is an appeal filed by the assessee against the order of the CIT(A)-2, Bhubaneswar dated 29.11.2018 for the assessment year 2013-14.

2. Grounds of appeal raised by the assessee are as under:

" 1. For that the order of Assessment is against the settled principle of law and against the materials available on record.

2. For that the order of assessment is in contravention to the return submitted by the Assessee and therefore is not tenable in the eye of law.

3. For that the order of Assessment is highly arbitrary, exorbitant and the same being made without any reasonable cause and the

material at hand, the same should be have been set aside by the learned Appellate Court.

4. For that both the forums below are wrong in holding the income of the Appellant as the appellant is the Power of Attorney holder of the Property.

5. For that as the Power of Attorney holder the Appellant thus, being neither owner nor a deemed owner of the said capital Assets. The said capital asset can not be taken as property of the Appellant.

6. For that the addition of entire sales consideration in the hand of the Assessee is bad in law and not maintainable.

7. For that in view of the present facts and circumstances of the case, the impugned order of assessment is liable to deleted and liberty may be given to the appellant to explain the facts, so that the ends of the justice can be best served.

8. For That the Appellant craves leave to submit details and press any other ground at the time of hearing of appeal. The appeal may be allowed and justice rendered.”

3. At the time of hearing, Id counsel for the assessee submitted that during the first appellate proceedings, the assessee had filed two affidavits dated 8.8.2018 from Smt. Kuni Sahoo and Smt. Manju Sahoo were filed, wherein, it was stated that they had not paid any consideration for purchase of land as it was a transfer within the family members and payment of consideration has been wrongly mentioned in the sale deed. He submitted that the CIT(A) did not accept the affidavits on the ground that same were not filed before the Assessing Officer. Ld counsel submitted that the assessee is a power attorney holder of the property, therefore, it is not settled principle of law to treat the assessee as the owner of the property and the entire sales consideration cannot be treated as income of

the assessee. He submitted that the CIT(A) has not given proper opportunity to the assessee to present its case and therefore, prayed that the matter be restored to the file of the CIT(A) to consider the relevant materials to be placed by the assessee for deciding the appeal afresh.

4. Replying to above, Id DR submitted that at the later stage the affidavits have been filed by the assessee, which cannot be admitted. He therefore, prayed for confirming the order of the CIT(A).

5. On careful consideration of the rival submissions, we observe that the assessee has filed two affidavits by Smt. Kuni Sahoo and Smt. Manju Sahoo before the CIT(A) stating therein that they had not paid any consideration for purchase of land as it was a transfer within the family members and payment of consideration has been wrongly mentioned in the sale deed. However, the CIT(A) distinguished the registration and affidavits and did not accept the affidavits as according to him, the registration of sale deed has to be given more credence than those of the affidavits. We also observe that the property in dispute belongs to joint holder. The CIT(A) also did not the accept the affidavits considering the same as additional evidence. It may so happen that during registration of the property, the sale consideration has been mentioned as per the guidelines of the valuation authority. Be that it may, we are of the considered view that since the property belongs to several persons, as is mentioned by the CIT(A) in his order at page 4, the amount of consideration cannot be taken as income to

a single person. From the above foregoing discussion, we are of the view that proper opportunity has not been provided to the assessee to present its case. Hence, in order to render substantial justice and fair play, we set aside the order of the CIT(A) and restore the same to his file for fresh adjudication in accordance with law after giving due opportunity of hearing to the assessee and considering the materials to be filed before him.

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

Order pronounced on 15/11/2019.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 15/11/2019
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The appellant: Purna Chandra Sahoo, Plot No.451/455, Behera Sahi, Rasulgarh, Bhubaneswar.
2. The Respondent. ITO, Ward 5(2), Bhubaneswar
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2 , Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack