



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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA Nos.115 & 116/CTK/2019

Assessment Year : 2015-2016

Sabitarani Senapati, Plot No.1467/2390, Lane-5, New Forest Park, Bhubaneswar.	Vs.	ITO, Ward 3(5), Bhubaneswar.
PAN/GIR No.BDZPS 4857 G		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K.Mishra, AR
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 14/01/ 2020
Date of Pronouncement : 16 /01/2020

ORDER

ITA No.115/CTK/2019 is filed by the assessee against the order of the CIT(A),2, Bhubaneswar dated 4.12.2018 for the assessment year 2015-16 in the matter of assessment under section 143(3) of the Act .

2. ITA No.116/CTK/2019 is filed by the assessee against the order of the Id CIT(A), Bhubaneswar dated 4,.12.2018 for the assessment year 2015-16 in the matter of penalty under section 271(1)(c) of the Act.

3. The appeals filed by the assessee are barred by limitation by 36 days. The assessee has filed condonation petitions supported by affidavits, wherein, it is stated that the order was received by the counsel of the assessee on 2.2.2019 and by that time, his father was suffering from blood cancer and his mother was suffering from paralysis, and, therefore, he was busy in medical treatment of his parents. It was in this backdrop that he could not file the appeals in time. After

considering the condonation petitions and hearing the parties, we are satisfied about the cause stating in the petition regarding delay in filing the appeals. Therefore, we condone the delay of 36 days in filing the appeals and decide the appeals on merits.

4. I have heard the rival submissions and perused the relevant materials placed on the record of the Tribunal. On perusal of orders of the lower authorities, I observe that the Assessing Officer without giving proper opportunities to the assessee to provide documentary evidence has passed the order u/s.143(3) of the Act. Before the Id. CIT(A), the assessee had provided additional evidences without enclosing any application for acceptance of the same. Therefore, the Id CIT(A) did not accept the additional evidences filed by the assessee and upheld the additions made by the Assessing officer.

5. Now before us, Id A.R. of the assessee submitted a paper book containing necessary evidences in respect of various additions made by the AO with an application for accepting and considering the same on merits as the relevant documents and evidences were not filed before the AO and Id CIT(A) and request to admit the same in the interest of justice as the assessee was prevented in filing these paper. Hence, I admit the same under rule 29 of ITAT Rules 1963.

6. Considering the materials aspects and documents and the details filed by the assessee, I find it justifiable and proper to restore the issues under assessment denovo to the file of the Assessing Officer with the direction to the assessee to file all the documentary evidences now filed before the Tribunal and the AO is

directed to accept the same and redo the assessment denovo after providing opportunities to the assessee. Hence, this appeal is allowed for statistical purposes.

7. Since, I have restored the issues under assessment to the file of the AO for fresh consideration, the penalty levied u/s 271(1)(c) of the Act is also restored to the file of the AO with the liberty that if after passing assessment proceedings, if he finds that the penalty proceedings has to be initiated then he shall be at liberty to initiate penalty proceedings and to pass order as per provisions of the Act.

8. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced on 16/01/2020.

Sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 16/01/2020
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Sabitarani Senapati, Plot No.1467/2390, Lane-5, New Forest Park, Bhubaneswar.
2. The Respondent. ITO, Ward 3(5), 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