



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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.236/CTK/2019
Assessment Year : 2016-2017

Mr Rabin Kumar Patnaik, 77, Kharavela Nagar, Janapath, Bhubaneswar.	Vs.	ITO, Ward 4(3), Bhubaneswar.
PAN/GIR No.AASPP 6317 M		
(Appellant)	..	(Respondent)

Assessee by : Shri Bibek Mohanty, AR
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 13/11/ 2019
Date of Pronouncement : 13/11/ 2019

ORDER

This is an appeal filed by the assessee against the order of the CIT(A)-2, Bhubaneswar dated 28.6.2019 for the assessment year 2016-17.

2. The assessee has raised the following grounds of appeal:

“ 1. The assessment order under section 143(3) of the Income Tax Act is against law. weight of evidences and probabilities of the case and so also the appellate order.

2. The learned assessing officer as well the Honourable CIT (Appeal)failed to understand the entries in the Bank Statement, and made additions of Rs. 10,20,600.00 being withdrawal from partnership firm, without affording adequate opportunity, for which the order is liable to be quashed. So also the Honourable CIT (Appeals) who confirmed the addition.

3. The learned assessing officer as well the Honourable CIT (Appeals) failed to understand the entries in the Bank Statement,

and made additions of Rs.1,00,000.00 being the capital subsidy received from government authorities, without affording adequate opportunity, for which the order is liable to be quashed. So also the Honourable CIT (Appeals) who confirmed the addition.

4. The learned assessing officer as well the Honourable CIT (Appeals) failed to understand the entries in the Bank Statement, and made additions of Rs.2,77,600.00 being cash deposits made out of withdrawal from Bank and partnership firm, without affording adequate opportunity, for which the order is liable to be quashed. So also the action of the Honourable CIT (Appeals), who acted arbitrarily.

5. For these and among other grounds that may emerge at the time of hearing, the order of assessment be set aside to the file of the Assessing Officer for proper verification.”

3. The brief facts of the case are that the assessee is an individual and earns income mainly partnership firm out of profit and rental income. During assessment proceedings the AO while completing the assessment, made additions on account of credit in Bank Account amounting to Rs. 10,20,600.00 being the amount of withdrawal from Partnership firm, Rs.1,00,000.00 being the Capital Subsidy received from the Government Authorities and Rs.2,77,600.00 being cash deposits made out of withdrawals from Bank and partnership firm. The AO accordingly made additions to total income and raised a demand of Rs.4,30,314.00.

4. On appeal, the CIT(A) confirmed the action of the Assessing Officer. Hence, the assessee is in appeal before the tribunal.

5. At the time of hearing, Id counsel for the assessee submitted that the additions have been made for non-compliance to notices, the details of which were as follows :

Particular	Issue Date	Compliance Date
U/s.142(1)	03.12.2018	05.12.2018
Show Cause Notice	06.12.2018	10.12.2018

He submitted that the assessee was not regular to view his account in the Income Tax Portal and for this reason could not be updated about the same. He submitted that the Assessing Officer has passed the order on 11.12.2018 i.e. after the show cause notice issued on 10.12.2018. Ld counsel for the assessee submitted that since the Assessing Officer has not provided adequate opportunity to the assessee, the assessee was not unable to produce the required details before the Assessing Officer in support of its claim. Hence, ld counsel prayed that one more opportunity be provided to the assessee to present its case before the Assessing Officer.

6. On the other hand, ld D.R. could not controvert the above request of ld A.R. of the assessee.

7. After considering the submissions of both the parties, I find that the Assessing officer has not provided adequate opportunity of hearing to the assessee. It is a fact that the show cause notice was sent to the assessee on 12.10.2018 giving the compliance dated on 23.10.2018 but the Assessing Officer on the next date i.e. 11.12.2018 has passed the assessment order. From the above, it is clear that the Assessing Officer has passed the order horridly without waiting the compliance from the assessee. Hence, considering the principle of natural, I consider it justifiable to give one more opportunity to the assessee to present its case before the

Assessing Officer. Therefore, I set aside the orders of lower authorities and restore the issue back to the file of the Assessing Officer to make the assessment denovo after providing adequate opportunity the assessee. The assessee is directed to co-operate with the Assessing Officer by complying the requires details as called for to complete the assessment. Consequently, the appeal is restored to the file of the Assessing officer.

5. In the result, appeal filed by the assessee is allowed for statistical purposees.

Order pronounced on 13 /11/2019.

Sd/-

(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 13 /11/2019
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Mr Rabin Kumar Patnaik, 77,
Kharavela Nagar, Janapath, Bhubaneswar
2. The respondent: ITO, Ward 4(3), 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