

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
श्री पी.एम. जगताप, उपाध्यक्ष एवं श्री सी.एम. गर्ग, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI P.M.JAGTAP, VICE PRESIDENT
AND
SHRI C.M.GARG, JUDICIAL MEMBER**

(Through : Video Conferencing)

ITA No.389/CTK/2004

(निर्धारण वर्ष / Assessment Year : 1993-1994)

P.Rama Rao, Prop. of M/s Om Traders, At-Pathana Street, PO-Nawarangpur, Dist-Nawarangpur-764059	Vs	CIT, Bhubaneswar
PAN No. :		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Shri Jagamohan Pattanaik, Adv.
राजस्व की ओर से / Revenue by	:	Shri M.K.Gautam, CITDR

सुनवाई की तारीख / Date of Hearing	:	04/01/2022
घोषणा की तारीख / Date of Pronouncement	:	02/02/2022

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order passed by the CIT, Bhubaneswar u/s.263 of the Act, dated 31.03.2004.

2. We have heard the arguments of both the sides and perused the relevant record of the Tribunal including the Paper Book filed by the assessee spread over 77 pages along with the written submissions filed on 03.01.2022.

3. Replying to the above, Id. CIT-DR also filed written submissions and copies of the case laws/judgments/orders in support of the stand of the revenue.

4. The written submissions filed by the Id. Counsel of the assessee are as follows :-

The Appellant is, in effect, at the evening days of life, being aged about 68 years having various old age ailments. In this appeal the disputes relate to 26 years back i.e. of the AY 1993-1994 which has come for decision in compliance of the order of the Hon 'ble High Court of Orissa dated 23.11.2021 in W.P (C) No. 18381 of 2009 quashing of the order of this Hon'ble Tribunal dated 20.08.2004 in I.T.A. No.389/CTK/2004 and consequential order passed by this Hon'ble Tribunal in MA filed u/s. 254 (2) of the LT. Act, 1961.

In the peculiar facts and circumstances, it is humbly and respectfully prayed that this Hon'ble Tribunal may kindly set the matter at rest for all time to come in deciding the matter on merit. In this connection, the decision of the Hon'ble Gujarat High Court in the case of CIT (Exceptions) vs Shree Nirman Foundation Charitable Trust in R/Tax Appeal NO.1335 of 2018 order dated 30.7.2019 in paras 16 & 17 of the said judgment is referred to as under:

"16. There is one another valid reason for us to say that ordinarily the matter should not be remitted by the Appellate Tribunal to the Id CIT(A) if the Appellate Tribunal is in a position to decide the appeal on its own merits having regard to the evidence on record. Such remand orders lead to unnecessary delays and cause prejudice to the revenue. The Supreme Court in the case of Ashwinkumar K Patel vs Upendra J.Patel, reported in (1999) 3 SCC 161, in context with an order of remand passed by the High Court under order 41 Rule 23 of the CPC, observed as under:

"The High Court should not ordinarily remand a case under "order 41 Rule 23 CPC to the Lower Court merely because it considers that the reasoning of the lower court, in some respects, was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have, itself, decided the appeal one way or the other,. It could have considered the various aspects of the case mentioned in the order of the Trial Court and considered whether the order of the Trial court ought to be confirmed or reversed or modified.

17. In such circumstances, referred to above, the impugned order "passed by the Appellate Tribunal is not sustainable in law. We are of the view that we should quash the order passed by the Appellate Tribunal and direct the Appellate Tribunal to hear the appeal filed by the assessee afresh and decide it on its own merits."

Based on the aforesaid decision, this Hon'ble Tribunal In ITA No.232/CTK/2020 (Assessment Year: 2013-14) disposed of on 14.06.2021 (Sri Sukhmayra Das DCIT, Circle, 3(l),BBSR) decided the matter on merit and is referred to.

2. That the pitch and corner of controversy that arises for just decision as to how far the Learned CIT (Admn.), BBSR is justified in exercising the power u/s. 263 of the I. T. Act when Learned AO passed order in accordance with the mode of operandi fixed by the Learned CIT (A), BBSR in the appeal preferred by the Appellant u/s. 246 of the I. T. Act, 1961 and on exp the Learned CIT (A), BBSR in exercise of power conferred u/s. 251 of the LT. Act, 1961 while setting aside the original order of assessment and remitting the matter back to the Learned AO to reassess on the face of the ratio decidendi of the decision rendered by the Hon'ble High Court of Orissa after place reliance in the case of S.S.Rathore v State of Madhya Pradesh, AIR 1990 SC in the case of Commissioner of Income Tax v Orissa Oil Industries Ltd, reported in 1992 (193) ITR page-183 (Copy enclosed). Thus, the exercise of power by the Learned CIT (Admn.) u/s. 263 of the IT. Act is not in accordance with law.

3. That Appellant filed the instant Appeal before this Hon'ble Tribunal which was disposed of on 20.08.2004 and has come up for final decision in compliance of the order of the Hon'ble High Court of Orissa, referred to above.

4. That in sub paragraph 3 (page-3), this Hon'ble Tribunal had held that "from the bare reading of the provision, it appears that the subject matter an appeal which has been considered and decided by the Appellate Authority cannot be revised by the Commissioner by passing under section 263 of the Act."

But travelled further ahead on the pretext that exercise of power under section 263 of the LT. Act is justified as learned CIT (A) has not decided any issue, which is not correct.

That in view of the above, the fact that the subject matter an appeal which has been considered and decided by the Appellate Authority cannot be revised by the Commissioner by passing under section 263 of the Act cannot be controverted and/or set at rest. Now it is to be decided as to whether on the face of the specific order of the learned CIT (Admn.), can it be said that the learned CIT (Appeal) did not decide the issue. In this regard the relevant portion of the order of the Learned CIT (Appeal) is re produced below:

"In my opinion the assessment on this point deserves to be set aside as there appears to be some confusion with regard to the nature of liability in so far as the claim and counter claim of the AO and the appellant is concerned. As the Appellant is willing to cooperate in examination of the cultivators in respect of whom liabilities have been claimed, as stated above, the cultivators deserve to be examined by the AO, if necessary, by deputing an Inspector. If the AO comes to an adverse report after examination of cultivators by the inspector (or by him), he shall confront the applicant with the findings to such report and, thereafter a suitable decision shall be taken and for this purpose assessment is set aside with a direction to be completed afresh in accordance with the law."

6. That in compliance of the order of the learned CIT (Appeal) referred to above, the learned AO examined the matter in its entirety and with due application of mind passed the order. Relevant portion of the said order is quoted below:

"That keeping in view of the above observations of the Ld. CIT (A) notice U/s 142 (I) dtd 19.09.2001 was issued but there was no compliance to the said notice. Fresh notice dated 14.1.2002 was issued and on noncompliance another notice dated 05.02.2002 was issued by fixing compliance on 14.02.2002. In response to said notice, authorized representative of the assessee Sri C.R.K. Pattnaik, ITP appeared on 08.02.2002 and filled confirmation letters of creditors which are placed on record. The AIR had stated that it is not possible on the part of the assessee to produce all the cultivators before the undersigned at Jeypore on the ground that they are remaining far away from Jeypore and most of them are illiterate. As suggested by the Ld. CIT(A) he has requested to depute the IIT TO record the statement of the cultivators at Nowrangpur. Accordingly, the IIT of this office was directed to record statement at Nowrangpur. On 11th 12 the February 2002 the IIT of this office was deputed to Nowrangpur and recorded the individual statements of 42 number of cultivators. Again on 21 St & 22 March 2002, the IIT of this Office had further recorded 40 numbers of individual statements of cultivators. The total number of cultivators were 95 out of which, assessee was not able to produce 13 cultivators on the ground that where about of the above 13 persons are not known as some are no more alive and some have left the villages to other places for their livelihood."

7. That the learned CIT (Admn.) exercised the revisional power under section 263 of the I. T. Act on the pretext that the learned AO has failed to examine the 13 numbers of paddy creditors to whom the assessee claims to have not paid a sum of Rs.1,21,770/- have not been examined at all and therefore, the order regarding deletion of Rs.8,85,600/- is prejudicial to the interest of revenue.

However, the cultivators are Tribal people of remote area of Koraput District is not in dispute. If conceding for a moment but not admitting, AO has failed to examine the 13 numbers of paddy creditors to whom the assessee claims to have not paid a sum of Rs.1,21,770/-, the authority concerned ought to have remitted the matter back to the AO for examination in so far as 13 creditors are concerned in exercise of power under section 263 of the IT. Act. The Assessee furnished all details of the paddy creditors and, therefore, onus was with the Learned AO to verify details but non examination cannot be faulted with the Assessee. However, time consumed by the time AO caused the enquiry was a ground for non-examination of 13 creditors which factum has not been taken into consideration by the CIT (Admn.). But certainly the said authority has no power, authority and jurisdiction to disallow the entire amount of Rs.8,85,600/- and sent the matter back to AO for re computation of tax with interest thereby upholding the previous

order of the Learned AO which was set aside in Appeal by the CIT (Appeal), Bhubaneswar which is unknown to law.

In view of the facts and law stated above, the appeal may kindly be allowed and addition of Rs. 8,85,600/- be deleted.

5. Ld. Counsel of the assessee besides briefly reiterating above written submissions, submitted that in this appeal the dispute relates to A.Y.1993-1994, which has come for decision in compliance of the order of Hon'ble High Court of Orissa dated 23.11.2021 passed in W.P.(C) No.18381/2009, thereby quashing the order of the Tribunal dated 20.08.2004 and consequential order passed by the Tribunal dated 02.09.2008 passed in M.A.28/CTK/2007 after a lapse of 26 years. Ld. Counsel submitted that the subject matter of appeal, which has been considered and decided by the appellate authority/Tribunal cannot be revived by the Commissioner by passing the order u/s.263 of the Act. Ld. Counsel also drew our attention towards the order of CIT(A) and consequential order passed by the AO in pursuance thereto and submitted that in pursuance to the direction of the first appellate authority i.e. CIT(A), the AO deputed Inspector of Income Tax to record statements at Nawarangpur and on 11th & 12th February, 2002, individual statements of 42 number of cultivators was recorded and again on 21st & 22nd March, 2002 the Inspector of Income Tax further recorded statements of 40 number of individual cultivators, thus, out of 95 number of cultivators, 82 were examined and their statements were recorded by the Inspector and assessee was not able to produce 13 number of cultivators on the ground that whereabouts of these 13 persons are not known as the same are no more alive and some have left villages to other places for their livelihood.

6. Ld. Counsel submitted that the Id. CIT(Admn.) has exercised the revisionary powers u/s.263 of the Act on the pretext that the Id. AO has failed to examine 13 number of paddy creditors to whom the assessee claims to have not paid a sum of Rs.1,21,770/- have not been examined at all and, therefore, the order regarding allowability of claim of creditors amounting to Rs.8,85,600/- is erroneous and prejudicial to the interest of revenue. Ld. Counsel submitted that the transaction is pertaining to F.Y.1992-1993 relevant to A.Y.1993-1994 and the Inspector of Income Tax proceeded to record statements after a lapse of near about 10 years in February and March, 2002 and in this situation if 13 individual cultivators could not produced then the statements of 82 cultivators supporting the stand of assessee should be applied to these 13 cultivators or alternatively amount shown in their names by the assessee in the balance sheet can be taxed as unexplained creditors. The Id. Counsel did not press legal ground of assessee challenging the validity of the action taken by the Id. CIT(Admn.) u/s.263 of the Act.

7. Replying to the above, Id. CITDR drew our attention towards paragraphs 4, 5, 6 & 7 of the order of CIT(Admn.) passed u/s.263 of the Act and submitted that the Id. revisional authority, in addition to 13 cultivators, has also pointed out that other six (6) cultivators did not show anything about paddy sale to the assessee by way of cash or credit, the other more six cultivators have received the sale proceed of paddy from assessee before the end of relevant financial year 1992-93 and another five (5) paddy creditors did not say that certain sum is due to them from

the assessee till the end of the accounting year ended on 31.03.1993. Therefore, the total amount of credit shown in their name i.e. in the name of other 17 creditors should also be taxed in the hands of the assessee, thus, the Id. CIT(Admn.) was right in alleging the assessment order as erroneous and prejudicial to the interest of revenue.

8. Placing rejoinder to the above, Id. Counsel of the assessee submitted that after a lapse of near about 10 years the assessee made efforts to call 82 cultivators and to produce before the Inspector of Income Tax and their statements supported the fact that they sold paddy to the assessee and these illiterate tribal farmers, after a lapse of near about 10 years, could not narrate the exact time or date on which they actually received the credit amount from the assessee, then it is not just and reasonable to raise any doubt regarding their statements and disputing the amount shown as credits in their names in the financial statements/balance sheet of the assessee merely on the basis of minor discrepancies. Id. Counsel submitted that the assessee is now 75 years of old and at that point of time he had attained the age of 64-65 and he made herculean job to call 82 creditors and to produce before the Inspector of Income Tax, therefore, keeping in view the observations of the AO in the assessment order dated 22.03.1996 and the query made by him, the assessment order cannot be alleged as erroneous and prejudicial to the interest of revenue and, therefore, the appeal of the assessee may kindly be allowed.

9. On careful consideration of the rival submissions, we are of the considered view that the case is pertaining to F.Y.1992-93 relevant to A.Y.1993-94 and on the directions of the Id. First appellate authority i.e. CIT(A), the AO again conducted an enquiry and deputed Inspector of Income Tax (IIT) to record the statements of all 95 creditors at Nawarangpur. In pursuance to the direction of the CIT(A), the AO, Inspector of Income Tax, recorded statements of 82 paddy creditors and the assessee could not produce 13 paddy creditors before the Inspector against whom an amount of Rs.1,21,770/- was shown as credit balance on 31.03.1993 at the end of the financial year in the balance sheet of assessee. We also note that the other six (6) creditors, mentioned in para 6 of the impugned order, did not say anything before the IIT about the sale of paddy on cash or credit, against whom an amount of Rs.67,500/- was shown as credit balance on 31.03.1993 at the end of Financial Year in the balance sheet of assessee.

10. From paras 6 & 7, we also observe that the Id. CIT(Admn.) has also picked up 11 more cultivators/creditors doubting the stand taken by the assessee. Out of these 11 creditors, out of which 6 (six) creditors did not state that the sale proceeds were received after 31.03.1993 and other 5 creditors did not support that certain sum is due to them from the assessee till the end of the accounting year ended on 31.03.1993.

11. Regarding other two sets of creditors, mentioned in the paras 6 & 7, we are of the view that the observations made by the Id. CIT(Admn.) are based on the statements of the cultivators, which are neither self proven

nor a reliable piece of evidence. However, for creating any tax liability in the hands of the assessee, the revenue authorities are required to take a solid, justified and reasonable conclusive view based on plausible/positive adverse material against the assessee to establish that these creditors are not only doubtful but unreliable and there was no transaction of sale of paddy between these eleven (11) cultivators/creditors and the assessee. No such findings are there in the impugned order passed u/s.263 of the Act.

12. Keeping in view the entire factual matrix of the issue, we are of the opinion that while extracting any conclusion on the basis of statements of illiterate tribes doing cultivation of paddy in the remote areas/villages which have been recorded after a lapse of near about 10 years, one should have a reasonable, sensible, plausible and justified view point for taking a reasonable and pragmatic approach. In absence of such exercise, merely on the basis of any doubt, surmises and conjectures, the statements of such persons recorded after a lapse of near about 10 years cannot be doubted on a standalone basis without any other corroborative and positive evidence or adverse material against the assessee. In our considered view the observations made by the Id. CIT(Admn.) in paras 6 & 7 does not falls within the four corners of a plausible view based on pragmatic approach and these are based merely on suspicion and doubts.

13. However, we are in full agreement with the contention of the Id. CIT-DR that the paddy of 13 cultivators/creditors, which could not be

produce before the Inspector of Income Tax (IIT) against whom an amount of Rs.1,21,770/- had been shown by the assessee in the balance sheet cannot be accepted in absence of their supporting statement and other reliable evidence. Furthermore, regarding observations of Id. CIT in para 6 of impugned order, we are of the considered opinion that the contentions of Id. CIT-DR are tenable as these six (6) creditors did not say anything about the sale of paddy to the assessee whether in cash or credit. Thus, the amount shown by the assessee in the balance sheet against these six (6) creditors amounting to Rs.67,500/- is also not allowable. Therefore, the grievance of the assessee in this regard, is not allowable and the AO is directed to calculate tax liability regarding credit amount of Rs.1,21,770/- pertaining to 13 absent and amount of Rs.67,500/- regarding six (6) other said cultivators/creditors in the hands of the assessee for A.Y.1993-94.

14. Since, the Id. Counsel of the assessee has not vehemently challenged the revisionary action exercised u/s.263 of the Act by the CIT(Admn.), therefore, we hold that the Id. CIT(Admn.) was correct in taking the revisionary action u/s.263 of the Act. However, keeping in view a pragmatic approach and considering the arguments of both the sides on merits, we have restricted the amount of addition to the extent of Rs.1,21,770/- due to 13 absent and six (6) other creditors to the extent of Rs. 67,500/- due to these cultivators/creditors totalling to Rs.1,89,270/-. Consequently, the legal grounds raised by the assessee is dismissed as

not pressed, however, we partly allow the appeal of the assessee on merits in the manner as mentioned hereinabove.

15. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 02/02/ 2022.

Sd/-
(पी.एम. जगताप)
(P.M.JAGTAP)

उपाध्यक्ष/Vice President

Sd/-
(सी.एम. गर्ग)
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 02/02/2022

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
P.Rama Rao,
Prop. of M/s Om Traders, At-Pathana Street,
PO-Nawarangpur, Dist-Nawarangpur-764059
2. प्रत्यर्थी / The Respondent-
CIT, Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack