



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

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.117/CTK/2021
Assessment Year : 2015-16

M/s. Sahoo & Sahoo Transport, Gopanandhu Nagar, Chauliaganj, Cuttack	Vs.	Pr. CIT, Cuttack
PAN/GIR No.ABWFS 9955 P		
(Appellant)	..	(Respondent)

Assessee by : Shri Lalatendu Sahu, AR
Revenue by : Shri S.K.Mohapatra, CIT (DR)

Date of Hearing : 17 /5/ 2022
Date of Pronouncement : 17 /5/2022

ORDER

Per Bench

This is an appeal filed by the assessee against the order u/s.263 of the Act of the Ld Pr.CIT, Cuttack dated 19.3.2020 for the assessment year 2015-16.

2. The appeal is time barred by 519 days. The assessee has filed condonation petition dated 6.12.2021, which reads as follows:

"I.That appeal against the order u/s. 263 of the I.T. Act, 1961 was passed by the Pr. CIT, Cuttack vide order dated. 19.03.2020 and the

appeal has been filed on 25/10/2021 but there has been delay of 519 days.

2. That the said delay was not intentional but beyond the control of the assessee.

3. That this was the period of Covid-19, Pandemic. The appellant partner's mother and brother Dipak Ranjan Sahoo suffered from Covid-19 and died inspite of expensive treatment and best efforts to save their lives.

4. That then after, other family members and children also suffered, creating a lot of tension in the mind of the assessee.

5. That the 'appellant's Authorized Representative Sri Lalatendu Sahu, F.C.A was also suffering from Covid-19 and then after he suffered from severe back pain (Sciatica) for which he was bed ridden for a long period advised bed rest by doctor and was unable to move and attend his office work.

6. Therefore the said delay occasioned not deliberately or on account of culpable negligence or on account of malafides. 6. That Hon'ble Supreme Court of India and or High Court of Orissa (jurisdictional Court) have held that any lapses or delay on the point of limitation should be condoned liberally during the Covid-19 pandemic period until further orders passed by Hon'ble Supreme Court of India and no other order has since been passed by Hon'ble Supreme Court of India.

7. That it has been decided by various Courts including the Supreme Court of India to condone the delay in filling appeal in the interest of justice and fair play.

8. That the delay did not occasion deliberately or on account of culpable negligence or on account of malafides. (M/s. Hirkud Industry Works Ltd Page 32, Land Mark Judgments of Orissa High Court)

9 That the matter involves **substantial implication of tax effect** and therefore the matter should be liberally considered in the interest of equity and justice.

10. That due to Covid-19 pandemic, Hon'ble Supreme Court vide Writ No.-3 of 2020 and Hon'ble Jurisdictional Orissa High Court vide Writ

petition No.-15941 of 2021 have passed order with regard to limitation are enclosed herewith which may kindly be perused.”

3. Ld A.R. of the assessee reiterated the submissions stated in the condonation petition and requested to condone the delay. Ld CIT DR opposed the condonation petition.

4. After going through the condonation petition, we find that the assessee had reasonable cause for not filing the appeal within the stipulated time. We, therefore, condone the delay of 519 days in filing the appeal before the Tribunal and admit the appeal for hearing.

5. Shri Lalatendu, Id AR appeared on behalf of the assessee and Shri S.K.Mohapatra, Id CIT DR appeared on behalf of the revenue.

6. It was the submission of Id AR that two issues are involved in the order of Id Pr. CIT. It was the submission that the assessee is in the business of transportation and was holding the contract with Orissa State Civil Supply Corporation for transportation of grains. The return filed by the assessee came to be processed u/s.143(3) of the Act on 27.12.2017. It was the submission that the Pr. CIT initiated revisionary proceedings u/s.263 of the Act in respect of the said assessment order on the ground (i) that the PF & ESIC in respect of employees contribution has not been paid within the due date under the prescribed Act and the same had not been disallowed by the AO. It was further submitted that the second issue raised was in respect of addition of Rs.99,000/-, which had been disallowed by the

AO in the assessment order but addition in respect of same had not been made in computing the taxable income in the assessment. Ld A.R. placed before us the decision passed by the Co-ordinate Bench of this Tribunal in the case of Purusottama Estates and Resorts Pvt Ltd in ITA Nos.95 & 99/2021 for the assessment years 2018-19 and 2019-2020 and others order dated 6.4.2022, wherein, the Tribunal following the decision of the Co-ordinate Bench in the case of Rukmani Infra Projects Ltd in ITA No.358/CTK/2017 order dated 30.3.2022 had held that if the PF and ESIC had been paid within the due date under the Income tax Act, 1961, the same was allowable. Ld A.R. also relied upon the decision of Hon'ble Hon'ble Supreme court in the case of CIT v Vinay Cement Ltd. (2007) 313 St (1), wherein, the SLP from the decision of Hon'ble Delhi High Court had been dismissed. He also placed reliance on the decision of Hon'ble Supreme Court in the case of Hon'ble Supreme Court in the case of *CIT Vs. Alom Extrusions Ltd. [(2009) 319 ITR 306 (SC)]* to submit that the operation of the amendment made to section 43B by the Finance Act, 2003 was retrospective. It was the submission that as the assessee has paid the PF and ESIC in respect of employees' contribution before the due date of filing the return of income under the Income tax Act, same was liable to be allowed.

7. In reply, Id CIT DR submitted that consequential order has been passed and the AO has considered the decision of the Hon'ble Kerala High

Court in the case of CIT vs Merchem Limited (2015) 378 ITR 443(Ker) to hold that the employees contribution having not been paid within the due date prescribed under the relevant Statute, the same was not liable to be allowed. It was the submission that the order of Pr. CIT on this issue is liable to be upheld. It was the further submission that in regard to issue of amount of Rs.99,000/-, the AO had made the disallowance but erroneously not included the same in computing the taxable income. It was the submission that the order of the Pr. CIT was liable to be upheld on both the issues.

8. We have considered the rival submissions. At the outset, the issue as to whether the payment of PF and ESIC in respect of employees contribution is allowable u/s.43B of the Act, when the same is paid beyond the due date under the prescribed relevant statute but within the due date as prescribed for the purpose of filing the return under the Income tax Act, is allowable or not, is highly controversial issue. The Hon'ble Delhi High Court in the case of Vinaya Cement (2007) 213 CTR (SC) 268 has held that EPF etc deposited before filing the return u/s. 139 of the Act, cannot be disallowed u/s. 43B and the SLP against the same has been rejected by the Hon'ble Supreme Court. Similar issue has been held against the assessee by the Hon'ble Kerala High Court in the case of Merchem Limited (supra), thus this issue is clearly a debatable issue. We are alive to the fact that the decision of Hon'ble Supreme Court in the case of CIT vs Vegetable Products,

88 ITR 192 (SC), is available to say that if two views are possible, the view which is in favour of the assessee should be adopted. However, we are not going into the merits of the additions and only on the ground that the issue is debatable, it is held that the same cannot be done u/s.263 of the Act. Consequently, the addition as proposed by Pr. CIT in respect of PF and ESIC contribution paid after the due date prescribed under the relevant Statute but before the due date of filing the return of income under the Income tax Act, stands allowed.

9. In respect of addition of Rs.99,000/-, admittedly, same has already been made by the AO but the effective addition has not been made in computing the total income while passing the assessment order. Correction of this error is fully permissible though it would have been more appropriate for rectification u/s.154 of the Act. In these circumstances, the direction of the Id Pr. CIT in respect of addition of Rs.99,000/- stands upheld.

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

Order dictated and pronounced in the open court on 17 /5/2022.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 17 /05/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : M/s. Sahoo & Sahoo Transport,
Gopanandhu Nagar, Chauliaganj, Cuttack
2. The Respondent. Pr. CIT, Cuttack
3. DR, ITAT, Cuttack
4. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack