

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**  
श्री जार्ज माथन, न्यायिक सदस्य एवं श्री अरुण खोड़पिया लेखा सदस्य के समक्ष ।

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

**ITA Nos.02 - 04/CTK/2021**

(निर्धारण वर्ष / Assessment Years :2007-08, 2008-09 & 2010-11)

Debashish Pattanaik,  
1787, Mahatab Road,  
Bhubaneswar-751002  
**PAN No.AHAPP0990 M**

..... Assessee

Versus

ACIT (International Taxation),  
Bhubaneswar

.....Revenue

Shri A. Prabhakar Rao, AR for the assessee

Shri S.C.Mohanty, Sr.DR for the Revenue

**Date of Hearing : 18/05/2022**

**Date of Pronouncement : 18/05/2022**

**आदेश / O R D E R**

**Per Bench :**

These are the appeals filed by the assessee against the separate orders of the Id. CIT(A)-2, Bhubaneswar, all dated 13.03.2020 for the assessment years 2007-2008, 2008-2009 and 2010-2011.

2. At the outset, we found that all the three appeals filed by the assessee are barred by 190 days each. In this regard, the assessee has filed application for condonation of delay along with affidavit stating the reasons for delay in filing the appeals. Ld. Sr.DR did not have any

objection to condone the delay occurred in filing the instant appeals. Accordingly, we condone the delay of 190 days each in filing all the three appeals and the appeals are heard finally.

3. It was the submission of the Id. AR of the assessee that the assessee is a seafarer and filed his return of income for the relevant assessment year and the same came to be processed u/s.143(1) of the Act on 10.02.2010 for the assessment years 2007-08, 10.02.2010 for A.Y. 2008-09 & on 07.06.2011 for A.Y.2010-11. The said intimations were not served on the assessee. It was the submission that when a demand note was noticed in the assessee's e-portal, the assessee filed a rectification application u/s.154 of the Act on 17.07.2017 for all the three assessment years. In the intimation u/s.143(1) of the Act, though the assessee had shown his income as not taxable, the intimation had been processed by treating his income from salary received by him as a seafarer and NRI as taxable income. It was the submission that the application u/s.154 of the Act filed by the assessee came to be dismissed by the Id. AO on 26.03.2018 on the ground that the applications u/s.154 of the Act were beyond the four years period from the end of the financial year, in which the intimation u/s.143(1) of the Act was passed. It was the submission that the assessee has been served with the intimation u/s.143(1) of the Act in the form of certified true copy on 20.01.2021. It was the prayer of the Id. AR that as the assessee has already filed an appeal before the Tribunal against the order passed by the Id. CIT(A) rejecting the appeal against rejection of the application u/s.154 of the Act, the assessee had

not filed an appeal against the intimation, now served on him in the form of certified copy on 20.01.2021. It was also the prayer of the Id. AR of the assessee that the assessee may be granted opportunity to file an appeal against the intimations u/s.143(1) for the assessment years 2007-08, 2008-09 & 2010-2011, respectively, which has been received by the assessee on 20.01.2021.

4. Alternatively, it was the submission of the Id. AR of the assessee that what is taxable is only real income and the assessee's income from salary from his profession as a seafarer was not taxable at all insofar as the assessee was a non-resident of Indian. It was the further submission that the intimation u/s.143(1) of the Act had not been served on the assessee and the issue of treating the income shown by the assessee as his NRI income, which is not taxable in India as part of the total income for the purpose of the taxable could not have been done by an intimation u/s.143(1) of the Act. It was also the prayer that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. It was the prayer that the assessee's salary income, which is an exempt income as the assessee was an NRI at that point of time may kindly be directed to be deleted from the total income as computed by the AO in the intimation u/s.143(1) of the Act in the interest of natural justice.

5. In reply, the Id. DR vehemently supported the order of the AO and CIT(A). It was the submission that though the Id. DR was sympathetic to the case of the assessee, however, a rectification application u/s.154 of

the Act could be made only within the time prescribed in Section 154 (7) of the Act, which was four years from the end of the financial year in which the order sought to have been amended is passed. It was also submitted that the word mentioned in Section 154(7) of the Act as “passed” not “served”. This technicality of the time limit stands abated in the case of the assessee for getting justice that is prayed for.

6. We have considered the rival submissions.

7. Admittedly, a perusal of the return filed by the assessee shows that the assessee has disclosed his income from salary as a seafarer and has claimed exemption of the same u/s.195 of the Act when he has filed the return. In fact, the same is specifically mentioned in his return and in his computation of total income. A perusal of the intimation u/s.143(1) of the Act shows that the exemption which has been claimed by the assessee has not been granted to the assessee but has been ignored in its entirety. This is not something that can be done by an intimation u/s.143(1) of the Act. True that the assessee has filed his application u/s.154 of the Act much after the four years period of the end of the financial year in which the order was passed. However, the assessee has claimed and the revenue has not been able to disprove that the intimation u/s.143(1) of the Act was not served on him until 20.01.2021 when the certified true copy was given to the assessee. Thus, clearly the assessee was prevented by sufficient cause in not being able to file any appeal against the order or file a rectification within a time prescribed. The assessee admittedly is entitled to the relieve insofar as the income offered by him is salary

income as seafarer and the records also clearly shows that he is an NRI during that period. Copy of his Passport details are also available on the record. Thus, in the interest of natural justice, nay, substantial justice, it is directed that the exempt income of the assessee representing his salary income as a seafarer be deleted from the income computed u/s.143(1) of the Act and the total income of the assessee to be computed thereafter. Thus, the appeal of the assessee for A.Y.2007-2008 is allowed.

8. Since the issues involved in other two appeals filed by the assessee for A.Y.2008-2009 & 2010-2011 are similar to the appeal decided by us for A.Y.2007-2008, therefore, the observations made therein shall apply *mutatis mutandis* to these appeals also.

9. In the result, all the three appeals filed by the assessee are allowed.

Order dictated and pronounced in the open court on 18/05/2022.

Sd/-

(अरुण खोड़पिया)

(ARUN KHODPIA)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 18/05/2022

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
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,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack