



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

**BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.14 /CTK/2018**

Assessment Year : 2009-10

|  |     |                                |
|--|-----|--------------------------------|
| Rajdhani Systems & Estates Pvt Ltd.,Plot No.A-103, Sahid Nagar, Bhubaneswar. | Vs. | ACIT, Circle-2(2), Bhubaneswar |
| PAN/GIR No.AABCR 8271 L  |     |                                |
| <b>(Appellant)</b>   | ..  | <b>( Respondent)</b>           |

**ITA No.42 /CTK/2022**

Assessment Year : 2009-10

|                                |     |   |
|--------------------------------|-----|---|
| ACIT, Circle-2(2), Bhubaneswar | Vs. | Rajdhani Systems & Estates Pvt Ltd.,Plot No.A-103, Sahid Nagar, Bhubaneswar |
| PAN/GIR No.AABCR 8271 L        |     |   |
| <b>(Appellant)</b>             | ..  | <b>( Respondent)</b>  |

Assessee by : Shri B.D.Ojha, AR  
Revenue by : Shri Abhay Kumar Rout (DR)

**Date of Hearing : 26/5/ 2022**  
**Date of Pronouncement : 26 /5/2022**

**ORDER**

**Per C.M.Garg, JM**

These are cross appeals filed by the assessee and revenue against the order of the Id CIT(A) Berhampur dated 15.9.2014 for the assessment year 2009-10.

2. ITA No.14/CTK/2018 is filed by the assessee against the order of the Id CIT(A) dated 15.9.2014 for the assessment year 2009-10. The appeal is delayed by 1126 days. The assessee has filed condonation petition, stating as under:

"1. The appeal against the Assessment Order passed U/s 143(3) of The I.T.Act,1961 on 23.12.2011 was filed by the appellant on 23.01.2012 before The Commissioner of Income Tax (Appeal)-II, Bhubaneswar.

2. During the course of hearing of the subject appeal, the Ld. Assessing Officer had issued Notice U/s 148 of The I.T. Act for impugned assessment year to reassess the income of the appellant. The matter was brought to the notice of the Ld. CIT(A)-II and the appellant was advised that the grounds of appeal raised in the subject appeal against the order U/s 143(3) dated 23.12.2011 be raised in the appeal against the order to be passed U/s 147 of The I.T.Act,1961 and treated the appeal as infructuous and dismissed the same vide order dated 15.09.2014.

3. As the appeal was treated as infructuous and accordingly dismissed by Ld. Commissioner of Income Tax (Appeals), the appellant did not file appeal against the subject appellate order before The Income Tax Appellate Tribunal, Cuttack Bench with a bonafide belief that the issues raised in the appeal shall be taken up in the appeal to be filed against the order to be passed U/s 147 of The I.T.Act,1961.

4. The Assessment Order U/s 143(3)/147 pursuant to Notice issued U/s 148 was passed on 28.08.2014 which was received by the appellant on 11.09.2014 and the appellant filed the appeal against such order on 25.09.2014 raising the grounds of appeals as were raised in the appeal against order dated 23,12.2011 as well as grounds of appeal arising out of order U/s 143(3)/147 dated 28.08.2014.

5. The appellate order against the Order U/s 143(3)/147 was passed on 30.09.2016 by The Commissioner of Income Tax(Appeals)-3 which was received by the Appellant on 11.11.2016 and the appellant filed the appeal against the said order before the

Honorable Income Tax Appellate Tribunal, Cuttack Bench on 26.12.2016 raising the grounds of appeals for the issues decided against the appellant arising out of Assessment Order U/s 143(3) which in the bonafide belief of the appellant was merged in the order U/s 143(3)/147 dated 28.08.2014.”

6. The Asst. Commissioner Income Tax, Corporate Circle-1(2) had filled the appeal before the Honorable Income Tax Appellate Tribunal, Cuttack Bench on 20.12.2016 against the appellate order passed by The Commissioner of Income Tax (Appeals)-3 on 30.09.2016 raising the grounds of appeals for the issues decided against the Department arising out of Assessment Order U/s 143(3).

7. The Honorable Bench in it's Order dated 03.01.2018 in ITA No.444 & 448/CTK/2016 has dismissed both appeals of the Appellant and Department without adjudicating the grounds of appeals observing that the grounds raised by the appellant as well as the Department are not arising out of the Assessment Order Passed U/s 143(3)/147 dated 28.08.2014 being not maintainable.(copy of order of Honorable ITAT dated 03.01.2018 enclosed)

8. Now being advised, the appellant is filling the appeal against the Appellate order dated 15.09.2014 arising out of Assessment Order U/s 143(3) dated 23.11.2011.

9. A affidavit duly Notarised by the director of the appellant for condonation of delay is enclosed.”

3. Considering the contents of the petition and after hearing both the sides, we are satisfied that the assessee had reasonable cause in filing the appeal delay by 1126 days and, therefore, we condone the delay of 1126 days in filing the appeal of the assessee and admit for adjudication.

4. The revenue has filed appeal in ITA No.42/CTK/2022 for same assessment year i.e. 2009-10 as per the direction of this Bench dated 8.3.2022, wherein, liberty has been granted to the revenue to file appeal

against the order of Id CIT(A) deleting three additions and partly allowing the appeal of the assessee by order dated 30.9.2016. Ld AR of the assessee did not controvert and oppose to the condonation of delay in filing the appeal filed by the revenue. Therefore, the delay of 1956 days in filing the appeal is condoned and the appeal is admitted for adjudication.

5. We have heard argument of both the sides and carefully perused the record of the Tribunal. Ld representatives of parties have agreed to the factual situation that the Id CIT(A) has granted part relief to the assessee on three issues i.e. disallowance of incentives, disallowance of misc. expenses and sales promotion expenses. Against the said part deletion, the revenue has filed the present appeal in ITA No.42/CTK./2022 for A.Y. 2009-10. It is also not in dispute that the Id CIT(A) dismissed the grounds of the assessee on other six issues, for which the assessee has filed appeal in ITA No.14/CTK/2018 for the assessment year 2009-10 and therefore, both the cross appeals have been heard together and are being disposed off by this consolidated order for the sake of convenience. It is pertinent to mention that three grounds raised by the revenue and six grounds raised by the assessee have been raised from the original assessment order dated 23.12.2011 u/s.143(3) of the Act and the assessee has not raised any grounds pertaining to one issue for which the addition has been made by the AO and reassessment order dated 28.8.2014 u/s.143(3)/147 of the Act on account of interest free advance made to the trust. However, from the

copy of order of Id CIT(A)-3, Bhubaneswar dated 30.9.2016, it is clearly discernible that the Id CIT(A) has not only decided the sole ground arose from the reassessment order dated 28.8.2014 u/s.143(3)/147 of the Act pertaining to addition of Rs.3,92,382/- on account of interest free advance made to the trust but also adjudicated other grounds of the assessee pertaining to earlier original assessment order dated 23.12.2011 u/s.143(3) of the Act. The Id CIT(A) while adjudicating these grounds has allowed part relief to the assessee and he confirmed part addition made by the AO.

6. Present cross appeals are against the order of Id CIT(A), Berhampur dated 15.9.2014, which was filed against the original assessment order dated 23.12.2011 u/s.143(3) of the Act.

7. Therefore, in our humble and considered view and as agreed by the Id representatives of parties, the appeal of the assessee as well as revenue have not been decided and adjudicated by the Tribunal against the first appellate order dated 15.9.2014 in absence of any findings recorded by the Id CIT(A) in the said order. From para 5 of the said CIT(A) order, we clearly observe that the appeal of the assessee has been dismissed by the Id CIT(A), Berhampur by observing that the grounds taken in the present appeal shall be taken up by the assessee in fresh appeal to be filed by it against the reassessment order dated 28.8.2014 u/s.143(3)/147 of the Act. The assessee did raise all the grounds before the Id CIT(A)-3, Bhubaneswar emanating from both the assessment orders i.e. original assessment order

u/s.143(3) of the Act dated 23.12.2011 and reassessment order u/s.143(3)/147 of the Act dated 28.8.2014 and Id CIT(A) by his order dated 30.9.2016 has adjudicated all the grounds agitated by the assessee arise out of both the said assessment orders. But unfortunately, due to technical reasons, the grievance of the assessee as well as by the revenue cannot be addressed and adjudicated by the Tribunal in the order dated 3.1.2018 in ITA Nos.444/CTK/2016 & ITA No.448/CTK/2016.

8. Now, as agreed by both the sides, we deem it just, proper and appropriate to restore both the cross appeals to the file of the Id CIT(A) to decide and adjudicate the grievance of the assessee arise out of original assessment order dated 23.12.2011 u/s.143(3) of the Act because while passing the reassessment order u/s.143(3)/147 of the Act dated 28.8.2014, the AO had picked up the assessed income as per original assessment order dated 23.12.2011 u/s.143(3) of the Act at Rs.2,81,29,100/- which includes all the additions made by the AO in the original assessment order dated 23.12.2011.

9. To meet the ends of justice and in view of foregoing discussion, the matter is restored to the file of the Id CIT(A) to adjudicate the grounds of the assessee agitated in Form No.35 and keeping in view the order of his predecessor dated 30.9.2016 to bring harmony in the proper adjudication of all the issues/grounds.

10. In the result, both the appeals filed by the assessee and revenue are allowed for statistical purposes.

Order pronounced on 26 /5/2022.

Sd/-  
**(Arun Khodpia)**  
**ACCOUNTANT MEMBER**

sd/-  
**(Chandra Mohan Garg)**  
**JUDICIAL MEMBER**

Cuttack; Dated 26 /05/2022  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The appellant-assessee :Rajdhani Systems & Estates Pvt Ltd., Plot No.A-103, Sahid Nagar, Bhubaneswar.
2. The Respondent. ACIT, Circle-2(2), Bhubaneswar
3. The CIT(A)-, concerned
4. Pr.CIT-, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**