



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

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

ITA No. 59 /CTK/2021

Assessment Year : 2016-17

Orissa Forest Development Corporation Limited, A/84, Kharvela Nagar, Bhubaneswar.	Vs.	Pr. CIT, Bhubaneswar-1
PAN/GIR No.AACO 2573 M		
(Appellant)	..	(Respondent)

Assessee by : Shri B.K.Mahapatra, AR
Revenue by : Shri M.K.Gautam, CIT (DR)

Date of Hearing : 07/6/ 2022
Date of Pronouncement : 07 /6/2022

ORDER

Per Bench

This is an appeal filed by the assessee against the passed Pr. CIT, Bhubaneswar-1 dated 11.3.2021 passed u/s.263 of the Act for the assessment year 2016-17.

2. Shri B.K.Mahapatra, Id AR appeared for the assessee and Shri M.K.Gautam, Id CIT DR appeared for the revenue.

3. It was submitted by Id A.R. of the assessed that the Pr. CIT, Bhubaneswar-1 has made adjustment to the prior period expenses, which had already been considered by the Assessing Officer and which was also

the subject matter of appeal before the Id CIT(A). It was the submission that the Assessing Officer, in the course of original assessment proceedings, had made addition of Rs.3,12,09,792/- in the form of disallowance of prior period expenses. It was the submission that the Pr. CIT had proposed to enhance the same to Rs.6,29,79,923/- by including accumulated depreciation in respect of earlier assessment years. It was the submission that the issue of prior period expenses itself was already in appeal before the Tribunal and the Pr. CIT after proposing this addition, further goes on to say in para 7.4 that " since the issue is already in appeal, he does not propose to go into the merit of the disallowance, which constitute a matter to be adjudicated by the appellate authority". It was the submission that it has been admitted by the Pr. CIT that the issue constitutes the matter to be adjudicated by the appellate authority. It was the submission that thus it is a clear admission that the issue is a debatable issue. It was the submission that the Co-ordinate Bench of this Tribunal in assessee's own case in ITA No.49/CTK/2008 for the A.Y. 1991-92 order dated 12.6.2009 had following the decision of the Co-ordinate Bench in assessee's own case for the assessment years 1988-89 & 1989-90, deleted the disallowance made under the head "prior period expenses" after giving specific direction. It was the submission that as the issue itself a debatable issue, the provisions of section 263 for the purpose of revision do not apply in the case of the assessee, of the issues for which the Pr. CIT has sought to revise.

4. In reply, Id CIT DR vehemently supported the order of the Pr. CIT. It was the submission that the each assessment year is separate assessment year and that just because the issue has been decided in earlier year in favour of the assessee, it cannot be said that it is a law precedent for every year. It was the submission that the facts need to be verified. It was the submission that the issue was pending before the Id CIT(A) and the powers of the Pr. CIT for revision u/s.263 of the Act would be curtailed on the issue only if the Id CIT(A) had passed an order. During the pendency of the appeal before the Id CIT(A), the powers of the Pr. CIT to invoke the revision would not curtail. Ld CIT DR relied on the decision of the Co-ordinate Benches of the Kolkata Tribunal in the case of J.K.Tyre & Industries Ltd vs CIT (2012) 19 TAXMANN.COM 277 (Kol).

5. We have considered the rival submissions. At the outset, it is admitted by Pr. CIT that he is not going into the merits of the addition as the issue constitute a matter to be adjudicated by the appellate authority. Thus, it is clearly shows that the issue is a debatable issue and it is recognized by the Pr. CIT. On a debatable issue, admittedly, revision u/s.263 of the Act is not permissible. This being so, as the issue, as proposed by the pr. CIT, is a debatable issue, and as admitted by Pr. CIT in the impugned order, the order passed u/s.263 stands quashed.

6. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 7 /6/2022.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 7 /06/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Orissa Forest Development Corporation Limited, A/84, Kharvela Nagar, Bhubaneswar
2. The Respondent. Pr. CIT, Bhubaneswar-1
3. The CIT(A)-, Bhubaneswar
4. DR, ITAT, Cuttack
5. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack

		Date	Initial	
1.	Draft dictated on			Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			AM
4.	Draft discussed/approved by Second Member.			AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/P S
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the OS			
9.	Date on which file goes to the SPS			
10.	Date of dispatch of Order.			

