

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**

आयकर अपील सं./ITA Nos.156 &157/CTK/2016
(निर्धारण वर्ष / Assessment Year :2012-2013 & 2013-2014)

Mr. Raj Kumar Shukla,
At-Rajmahal, Similapada,
Panchamukhi Chowk,
Angul
PAN No.AIVPS 8324 E

..... Assessee

Versus

ITO, Angul Ward, Angul

.....Revenue

Shri Sabyasachi Panda/Aman Shukla, ARs for the assessee
Shri M.K.Gautam, CIT-DR for the Revenue

Date of Hearing : 16/06/2022
Date of Pronouncement : 16/06/2022

आदेश / O R D E R

Per Bench:

These two appeals filed by the assessee against the orders of the CIT(A)-2, Bhubaneswar in I.T.Appeal No.0031/2015-16, both dated 03.03.2016 for the assessment years 2012-2013 & 2013-2014.

2. It was submitted by the Id. AR that there was a survey on the premises of the assessee and in the course of survey substantial number of documents had been found and impounded. Ld.AR drew our attention to page 52 of order of the CIT(A) wherein the Id. CIT(A) has attached the

order passed u/s.133A(3)(ia) of the Act, dated 29.10.2013 for the assessment year 2012-2013. There are four sets of orders – first one using identification mark as AE-1 to AE-12, second one is list/inventory of A/c Books etc. found/seized consisting of AE-1 to AE-12, third one is identified as AGC-01 to AGC-20 and fourth one is identified as AGC-01 to AGC-20. It was the submission that right from the beginning the assessee has been submitting that all the impounded material have not been given to the assessee and the assessee is unable to provide answers to the question raised by the AO on account of copies of the documents which have been impounded not being given to the assessee. It was the submission that he had no objection if the issue be restored to the file of the AO for readjudication after providing the assessee copies of the documents impounded which have mentioned in the Annexure, enclosed with the order of CIT(A) being pages 50 to 56.

3. In reply, Id. CIT-DR submitted that no books of accounts were found in the course of survey, no ledger nor cash book and journal found during the course of survey. It was the submission that the assessee's claim for the documents should also not be acceded to insofar as copies of the documents have also been given to the assessee. To support his contentions, Id.CIT-DR filed his written submission as follows :-

In this case, the Id. AR of the assessee has requested to remand the matter to the file of the Assessing Officer to verify the cash book and other evidences since these are quite voluminous. In this case, the assessment u/s.143(3) was passed ex-parte u/s, 144 of the Act on 31.03.2015 due to non-compliance by the assessee. At the appellate stage, the matter was remanded to the A.O. for verification of fresh/additional evidences. In response, the A.O.

submitted first remand report dated 31.12.2015 which was also confronted to the Id. AR of the assessee. The reply of the assessee dated 08.01.2016 raising various objections against the remand report was again forwarded to the A.O. Subsequently the A.O. after considering the reply of the assessee submitted a second report dated 20.01.2016 to the Id. CIT (Appeals) which was then confronted to the Id. AR of the assessee. The reply of assessee dated 03.02.2016 was duly considered by the CIT(Appeals) while adjudicating the various grounds of appeal.

a) At the outset, it needs to be appreciated here that regular books of account such as cash book, ledger, journal etc. were not found maintained by the assessee during the survey operations on 29.10.2013. This fact was admitted by Shri Raj Kumar Shukla in his statement recorded on 29.10.2.013 while replying to question no.11.

b) Kindly refer to para-2.18 on page-49 of the appellate order, wherein the Id. CIT (Appeals) has given a categorical finding that in spite of the fact that no cash book was found at the time of survey, the AR of the assessee continued to plead before him that he could not explain certain transactions for want of cash book which was impounded by the department. To reject this explanation of the AR of the assessee, the Id. CIT (Appeals) had to enclose the inventory of documents found and impounded at the time of survey. Thus falsity in the stand of the assessee was proved by the Id. CIT(Appeals).

c) Coming to various additions, the main addition of Rs.1,30,76,328/- on account of sundry creditors (M/s. Phillips Carbon Black Ltd. and other creditors for expenses) would hardly require verification of cash book/ledger. The self- made vouchers are in respect of outstanding liabilities (expenses) of Rs.8,95,060/-. These evidences have been duly verified by the A.O. and Id. CIT(A).

d) Ad-hoc disallowance of Rs.52,50,627/- is again based on non-submission of bills/vouchers for various expenses. The remand of this issue will not serve any purpose as the assessee has only self-made vouchers without supporting bills/documents.

e) Similarly the addition of Rs.40,00,000/- on account of unexplained investment in land has been made after considering the ledger account and bank statement submitted by the AR of the assessee. The remand of this issue will not serve any purpose.

f) The addition of Rs.17,00,000/- on account of investment in the partnership firm in cash will require verification of cash book. It is a moot question as to what kind of sanctity can be attached to cash book prepared after survey operations.

g) *The purchase of BMW car in the name of daughter of the assessee will hardly require verification of cash book or other evidences since the sources of the same were never explained.*

h) *The addition of Rs.52,00,000/- on account of undisclosed investment has been confirmed by the Id. CIT(Appeals) after appreciation of evidences submitted by the AR of the assessee.*

i) *The assessee cannot be allowed second innings -as these are actually time delaying tactics. It is one thing to say that the documents were not there before the A.O. or CIT(Appeals), yet, the Officer did not bestow their attention and arrived at a wrong conclusion, which may warrant, at times a remand. However, when materials, which were considered by the A.O. and CIT(Appeals) are there before the Tribunal on the issue raised, remand would not be necessary.*

Reliance is placed on the decision of Hon'ble Madras High Court in the case of Cholamandalam MS General Insurance Co. vs. ACIT (41 taxmann.com 29) wherein it was observed in para-17 as under:

"17. In the background of the jurisdiction of the Tribunal as a fact finding authority, we feel that the Tribunal should have acted with greater circumspection to order a remand, particularly when the Revenue itself does not dispute that the materials were all those that were considered by the Assessing Officer. Remand is not a power to be exercised in a routine manner and should be used sparingly as an exception only when the facts warranted such course of action. We feel that the Tribunal should have arrived at its own conclusion on facts after due consideration of the materials before it which were no different from which was placed before the authorities below. Hence, we have no hesitation in setting aside the order passed by the Tribunal in remanding the matter back to the Income Tax Appellate Tribunal on the admitted fact that no fresh materials were placed before the Tribunal necessitating remand".

In view of above facts, it is requested that the matter in question should not be restored to the A.O.

4. In reply, Id. AR drew our attention to page 55 of the order of the Id. CIT(A) and submitted that item No.13 containing loose sheets of 106 pages, identified as AGC-13 was, in fact, the cash book. Id. AR also drew our attention to page 62 of the paper book filed by the assessee for A.Y.2013-2014, which is the copy of a letter dated 30.03.2015 from the

DCIT, Circle-4(1), Bhubaneswar issued to the assessee, wherein the Id. DCIT has mentioned that all documents which have been impounded, the copies have been provided. Ld. AR drew our attention to the noting on the side of the said letter wherein it is mentioned that, “*stock statement, attendance register of Anu Rebk Store, Anu Gitanjali Creations and Anu Enterprises received on 30.03.2015 at 2.10 PM, not received books of accounts other related documents, tax papers and statement of bank papers.*” It was the submission that the issue may be restored to the file of AO for readjudication.

5. It was also the submission of the Id. AR that the coordinate bench of the Tribunal in the case of the assessee’s wife, i.e. Kalpana Shukla, in ITA Nos.158&159/CTK/2016, vide order dated 04.04.2022, has restored the issue to the file of AO for readjudication.

6. We have considered rival submissions.

7. As it is noticed that primary argument of the assessee is that the impounded material have not been given to the assessee in its entirety and to such extent it has been noted by the assessee in the letter issued by the DCIT on 30.03.2015, in the interest of justice, the issues in this appeal are restored to the file of AO for readjudication after providing the assessee copies of all impounded material as mentioned in Annexure enclosed with the order of CIT(A) at pages 50 to 56. After providing such details to the assessee, the AO is directed to do *de novo* assessment. The assessee should be provided adequate opportunity of being heard.

Thus, the appeal of the assessee for A.Y.2012-2013 in ITA No.156/CTK/2016 is allowed for statistical purposes.

8. In ITA No.157/CTK/2016 the assessee has raised the similar grounds to the grounds raised for A.Y.2012-2013, therefore our observations made in ITA No.156/CTK/2016 shall apply *mutatis mutandis* to the appeal filed for A.Y.2013-2014 in ITA No.157/CTK/2016. Accordingly, We allow the appeal of the assessee in ITA No.157/CTK/2016 for statistical purposes.

9. In the result, both appeals filed by the assessee are allowed for statistical purposes..

Order dictated and pronounced in the open court on 16/06/2022.

Sd/-

(अरुण खोड़पिया)

(ARUN KHODPIA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 16/06/2022

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Mr. Raj Kumar Shukla,
At-Rajmahal, Similapada,
Panchamukhi Chowk, Angul
2. प्रत्यर्थी / The Respondent-
ITO, Angul Ward, Angul
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