

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 No.31/CTK/2022

(निर्धारण वर्ष / Assessment Year : 2017-2018)

Saroj Kumar Mishra,
Khuntuni, Athagarh,
Dist : Cuttack-754029
PAN No.ABKPM 8302 N

.....Assessee

Versus

Pr.CIT, Bhubaneswar-1

.....Revenue

Shri S.K.Sarangi, Advocate for the assessee

Shri M.K.Gautam, CIT-DR for the Revenue

Date of Hearing : 24/08/2022

Date of Pronouncement : 24/08/2022

आदेश / O R D E R

Per Bench:

This is an appeal filed by the assessee against the order of the Id. Pr.CIT, Bhubaneswar-1, passed in ITBA/REV/F/REV5/2021-22/1040199648(1), dated 28.02.2022 for the assessment year 2017-2018.

2. It was submitted by the Id.AR of the assessee that the assessee is a dealer in IMFL. During the demonetization period between 09.11.2016 & 31.12.2016, on the basis of information available with the Income Tax Department, the assessee's case was taken for scrutiny and the

assessment came to be completed u/s.143(3) of the Act, wherein the AO had considered the deposit of the specified bank notes deposited in Urban Cooperative Bank Ltd., Choudwar and UCO Bank, Oranda, Khuntuni. It was the submission that after examination of the details and considering the evidence produced by the assessee, no addition had been made by the AO. It was the submission that the Id. Pr.CIT on the basis of the information received u/s.133(6) of the Act by the AO from Urban Cooperative Bank Ltd., Choudwar that the assessee had deposited specified bank notes to an amount of Rs.20,71,500/- and from UCO Bank, Oranda that the assessee had deposited specified bank notes to an amount of Rs.2,07,000/-, initiated proceedings u/s.263 of the Act to revise the assessment order on the ground that as per the original information available with the AO the assessee had deposited a total of Rs.18,37,000/- and as per the evidence obtained u/s.133(6) of the Act by the AO the deposited was Rs.22,78,000/-. Thus, resulting into a difference of Rs.4,91,500/-. Therefore, the Id. Pr.CIT proposed the revision of the assessment order passed u/s.143(3) of the Act. It was the submission that the assessee had replied to the Id. Pr.CIT that the deposit of the specified bank notes was out of the business transaction of the assessee as recorded in the books of accounts of the assessee. It was the submission that the cash book of the assessee have already been produced before the AO, who had examined the same and had not made any additions. It was the submission by the Id. AR that the deposits in the bank account did not vary with the entries in the cash book. The variation was only on

account of information provided u/s.133(6) of the Act by the Urban Cooperative Bank, Choudwar, wherein the deposit of specified bank notes has been shown at Rs.20,71,500/- as against Rs.16,30,000/- being the information available with the AO at the time of original assessment. It was the submission that the AO had verified the details of the cash book and found that the assessee had more than Rs.23 lakhs as on 8.11.2016 and it was sufficient to explain the cash deposit. It was the submission that in the reply to the show cause notice the assessee had categorically explained the deposit in cash in the bank account from the cash book of the assessee. It was also shown that there was no increase in the turnover of the assessee during the relevant period. However, the Id. Pr.CIT without considering the explanation of the assessee proceeded to hold that the AO did not examine the opening balance as on 08.11.2016 and passed an order u/s.263 of the Act directing the AO to examine the issues of the cash deposit of the specified bank notes again. It was the submission that the issue having already examined by the AO, no question arises for revision of the assessment order passed u/s.143(3) of the Act. The Id. AR of the assessee submitted that the order passed u/s.263 of the Act is liable to be quashed.

3. In reply, Id.CIT-DR submitted that this is a case of lack of enquiry by the Id.AO. It was the submission that two bank accounts were considered. In respect of one bank account no deficiency was found being the bank account maintained with UCO Bank, Oranda for the amount of Rs.2,07,000/-, however, with regard to deposits made in the Urban

Cooperative Bank at Choudwar, a variation of the specified bank notes as deposited by the assessee and as examined by the AO was to an extent of Rs.4,91,500/-. It was the submission that the arguments of the assessee was that the deposits of the bank account were from the cash book maintained by the assessee. It was the submission that as verified by the Id. Pr.CIT from the assessment records only one page of the cash book, more specifically for the period from 08.11.2016 to 31.12.2016 was before the AO. It was the submission that even in the submission of the assessee the assessee has categorically admitted that only page 1016 of the cash book was before the AO and that the closing cash balance as on 08.11.2016 itself was Rs.23,39,183.70. It was the submission that the AO never examined this closing cash balance and in fact, should have examined the entire cash book. It was the submission that the cash book itself having not been verified. It could not be said that the AO has done a proper enquiry. It was the submission that the order of the Id. Pr.CIT passed u/s.263 of the Act was liable to be upheld. To support his arguments, Id.CIT-DR placed reliance on the decision of the Hon'ble Bombay High Court in the case of Jeevan Investment & Finance (P.) Ltd., reported in [2017] 88 taxmann.com 552 (Bombay), wherein in para 10 of the order, the Hon'ble High Court has categorically held that, "*in fact, merely asking a question which goes to the root of the matter and not carrying it further is a case of non-enquiry, if the query is not otherwise satisfied while responding to another query*". It was the submission that the non-examination of the cash book in its entirety, more specifically the

closing cash as on 08.11.2016 has rendered the enquiry done by the AO or enquiry commenced by the AO to be act in futility. He also relied on the decision of the Hon'ble Bombay High Court in the case of Sesa Starlite Ltd., reported in [2021] 123 taxmann.com 217 (Bombay) to support his argument that when information has been provided by the assessee, if the AO has not applied his mind properly, then it is a case of lack of enquiry, more specifically inadequate enquiry and the Id. Pr.CIT is right in invoking his power u/s.263 of the Act. He also relied upon the decision of the Hon'ble Madhya Pradesh High Court in the case of Deepak Kumar Garg, reported in [2008] 299 ITR 435 (Madhya Pradesh) to submit that it was clear that the AO had only done a semblance of enquiry and, that too, in a very slipshod manner and Assessing Officer had accepted version of assessee without proper enquiry. It was the submission that in such case also the Pr. Commissioner was right in invoking his powers u/s.263 of the Act as the order has become erroneous and prejudicial to the interest of revenue. To the similar effect, Id.CIT-DR relied on the decision of Rajasthan High Court in the case of Renu Gupta, reported in 301 ITR 45 (Rajasthan). It was the submission that on account of non-application of mind, lack of enquiry on the part of the AO, the order passed u/s.263 of the Act by the Id. Pr.CIT, is liable to be upheld.

4. In reply to the above submission of the Id. CIT-DR, the Id. AR placed before the decision of the Hon'ble Jurisdictional High Court of Orissa in the case of Orissa State Police Housing & Welfare Corporation

Ltd., reported in [2022] 139 taxmann.com 207 (Orissa), wherein the Hon'ble High Court in para 14 has held as under :-

14. Section 263 of the Act requires the CIT, after hearing the Assessee, to pass an order by making "such enquiry as he deems necessary". The purpose of such an enquiry would be to arrive at a subjective view that the order of the AO was erroneous in so far as it is prejudicial to the interest of Revenue. Even if such enquiry may not be mandatory, there has to be some basis on which the CIT can form such a view. In the present case, the basis for forming a view that the profit element in the WIP was not accounted for by the Assessee is absent in the order of the CIT.

5. Ld.CIT-DR, further submitted that the decision of the Hon'ble Jurisdictional High Court in the case of Orissa State Police Housing & Welfare Corporation Ltd. (supra), is not application in the case of the assessee as in the said case the profit element in Work-in-Progress(WIP) was directed to be added especially when the profit from such WIP had already been included in the income of the assessee. Under these circumstances, the Hon'ble Jurisdictional High Court had taken a view that the order u/s.263 of the Act was not sustainable. In the present case clearly the AO has done nothing to reconcile the deposit of the specified bank notes in the two bank accounts with the cash as available in the cash book of the assessee. Thus, the decision in the case of Orissa State Police Housing & Welfare Corporation Ltd. (supra) was on totally different facts.

6. It was also submitted by the Id. AR that the Id.Pr.CIT has done no enquiry himself but has rejected the explanation given by the assessee without doing any verification and has directed the AO to reexamine the

issue which has already been examined by the AO. It was the submission that the order of the Id. Pr.CIT is liable to be quashed.

7. We have considered rival submissions.

8. The facts in the present case clearly show that after the assessment order u/s.143(3) of the Act passed on 04.12.2019, the AO has received information u/s.133(6) of the Act regarding the deposit of specified bank notes in two different bank accounts of the assessee. The Id. Pr.CIT has invoked powers u/s.263 of the Act to revise the assessment order passed u/s.143(3) of the Act on the basis of said information received by the AO u/s.133(6) of the Act. When the assessment was done u/s.143(3) of the Act the AO had examined the issue of the Specified Bank Notes on the basis of the information available at that point. Fresh information in the form of Section 133(6) of the Act was received by the AO from the Banks. A perusal of the order of the AO passed u/s.143(3) of the Act shows that in the assessment order there is no discussion of the deposit of the specified bank accounts in two bank accounts. However, a perusal of the order of the Id.Pr.CIT passed u/s.263 of the Act shows that he recognized that the AO had examined the issue of deposit of specified bank notes in the two bank accounts. He also recognized that the AO has called for the details from the assessee and has examined the issue. He also accepts that the cash book for the period from 08.11.2016 to 31.12.2016 was before the AO. This being so, it would be the interesting to read para 6.3 of the order of the Id. Pr.CIT wherein he has rejected the explanation of the assessee by simply saying that the cash book extract

on record contains transaction for the period from 8.11.2016 to 31.12.2016 and not for the whole year i.e. from 01.04.2016 to 31.03.2017. He further goes on to hold that it is not ascertained whether the bank accounts where cash deposits were made were the ones disclosed in books of account or included the cash book, the cash balance of which is said to be the source of the SBN deposited in banks. With this in mind, a perusal of the decision of the Hon'ble Bombay High Court as referred to by the Id. CIT-DR would show that the Id. Pr.CIT has raised the query regarding the issue of the deposit of specified bank notes and after raising the issue has gone on to make only allegations of no enquiry of any form preceding or succeeding the said allegations. Similarly, applying the principle of law laid down by the Hon'ble Madhya Pradesh High Court in the case of Deepak Kumar Garg (supra) would show that the Id. Pr.CIT has only done a semblance of enquiry by examining the assessment records and has rejected the explanation of the assessee without any proper enquiry. With this in mind, applying the principle of law laid down by the Hon'ble Jurisdictional High Court in the case of Orissa State Police Housing & Welfare Corporation Ltd. (supra), one comes to the clear conclusion that the Id. Pr.CIT did not have any basis on which he could have come to a view that the specified bank notes deposited by the assessee in the bank accounts had not been examined by the AO to its logical conclusion. A perusal of the order of the Id. Pr.CIT would clearly show that no enquiry has been done nor caused to be done as required u/s.263(1) of the Act by the Id. Pr.CIT before setting aside the assessment

order passed u/s.143(3) of the Act and directing the AO to examine the issue. In fact, the direction of the Id. Pr.CIT, directing the AO to examine the issue of the deposit of the specified bank notes, is nothing but a direction for re-examination of an already examined issue. This is not permissible under the provisions of Section 263 of the Act.

9. The arguments of the Id. CIT-DR is not acceptable, insofar as it is a principle as laid down by the Hon'ble Jurisdictional High Court, which is available. The facts in each case are different. The facts of no two cases are identical. There could be similarities. The principle of law laid down by the jurisdictional higher forum is what applies. In case of Orissa State Police Housing & Welfare Corporation Ltd. (supra), the principle was that there should be further enquiry by the Id. Pr.CIT before passing the order u/s.263 of the Act. In the present case, there is no enquiry by the Id. Pr.CIT before passing the order u/s.263 of the Act. In the case of Orissa State Police Housing & Welfare Corporation Ltd. (supra), the issue was as to whether the profit on the WIP should be considered as 8.5% especially when the assessee has shown the profit in its accounts. In the instant case, the assessee has categorically shown and proved that the specified bank notes have been deposited and is out of its cash book. This has not been refuted by the Id. Pr.CIT but only an allegation has been made that the cash balance as on 08.11.2016 has not been verified. This being so, we are of the view that the principle of law laid down by the Hon'ble Jurisdictional High Court in the case of Orissa State Police Housing & Welfare Corporation Ltd. (supra), applies squarely to the facts of the

present case and, therefore, the order passed u/s.263 of the Act by the Id. Pr.CIT stands quashed.

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

Order dictated and pronounced in the open court on 24/08/2022.

Sd/-

(अरुण खोड़पिया)
(ARUN KHODPIA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)
(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 24/08/2022

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Saroj Kumar Mishra,
Khuntuni, Athagarh,
Dist : Cuttack-754029
2. प्रत्यर्थी / The Respondent-
Pr.CIT, Bhubaneswar-1
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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack