



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

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

ITA Nos.573 & 574/CTK/2013
Assessment Years : 2008-09 & 2009-10

Gobardhan Matia, At/PO: Balda, Joda, Keonjhar	Vs.	ACIT, Circle -1(2), Bhubaneswar.
PAN/GIR No.AAWPM 1358 H		
(Appellant)	..	(Respondent)

Assessee by : Shri Sunil Mishra, AR
Revenue by : Shri M.K.Gautam, CIT DR

Date of Hearing : 22 /9/2022
Date of Pronouncement : 22/9/2022

ORDER

Per Bench

These are appeals filed by the assessee against the orders of the Id CIT(A)-1, Bhubaneswar both dated 30.10.2013 in Appeal Nos.243/11-12 & 244/11-12 against confirmation of levy of penalty u/s.271F of the Act for the assessment years 2008-09 & 2009-10 .

2. It was submitted by Id AR that the assessee was in the process of collecting the copy of the seized documents. It was submitted that consequently, the assessee had not filed the return of income. It was the prayer that the penalty as levied by the AO and confirmed by the Id CIT(A) may be deleted.

3. In reply, Id CIT DR submitted that the issue was covered against the assessee by the decision of this Co-ordinate bench in the case of Seerajudin & Co. in ITA Nos.575 & 576/CTK/2013 order dated 25.10.2019, wherein, the penalty u/s.271F of the Act has been confirmed by the Tribunal. It was further submitted that in para 4 of the order of the Id CIT(A), the Id CIT(A) has categorically given a finding that there has been no deficiency in service of notices and the AO has proper jurisdiction for issue of notice u/s.153A of the Act. He also submitted that the Id CIT(A) has given categorical finding that Xerox copies of the seized documents have been given to the assessee within 2-3 months. It was the submission that the order of the Id CIT(A) was liable to be upheld.

4. We have considered the rival submissions. The levy/confirmation of penalty is based on the facts of each case. There is no presumption that the assessee is willfully violating the law. It is an admitted fact that notice u/s.153A has been served on the assessee and the assessee is required to file the return within 30 days. It is also an admitted fact that for obtaining of the Xerox copies of the seized document, it took more than 2-3 months. Just by obtaining of xerox copies of seized documents, the return cannot be filed. It has to be co-related, verified, examined and reconciled before the return is filed. The filing of return beyond the due date is admittedly invalid return as there is no provision for filing the return belatedly once notice u/s. 153A has been issued. This being so, we are of the view that

the assessee had a valid ground for non-filing of return. Accordingly, penalty levied by the AO and confirmed by the Id CIT(A) is deleted.

5. In the result, both the appeals of the assessee are allowed.

Order dictated and pronounced in the open court on 22/9/2022.

Sd/-`
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 22/9/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Gobardhan Matia, At/PO:
Balda, Joda, Keonjhar
2. The Respondent: ACIT, Circle -1(2),
Bhubaneswar.
3. The CIT(A)-1,. Bhubaneswar
4. Pr.CIT-1, Bhubaenswar
5. DR, ITAT, Cuttack
6. Guard file.
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By order

Sr.Pvt.secretary
ITAT, Cuttack