

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, 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 No.11/CTK/2022

(निर्धारण वर्ष / Assessment Year :2017-2018)

Shailesh Bhayani HUF Alamchand Bazar, Cuttack-753002	Vs	Pr.CIT-1, Bhubaneswar
PAN No. :AATHS 1877 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri Mohit Sheth, Advocate
राजस्व की ओर से /Revenue by	:	Shri M.K.Gautam, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	19/12/2022
घोषणा की तारीख/Date of Pronouncement	:	19/12/2022

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, dated 01.02.2022 passed in DIN & Order No.ITBA/REV/F/REV5/2021-22/1039267059(1) for the assessment year 2017-2018.

2. It was submitted by the Id. AR that the assessee is an HUF deriving income from business of small type of money lending and other activities. It was the submission that the assessee's business is cash basis. It was the submission that the assessee during the period of demonetization has deposited Rs.26,50,000/- in his bank account. It was the submission that the AO had called for the details from the assessee and examined the same and passed an order u/s.143(3) of the Act on 26.12.2019, wherein the opening cash balance of Rs.16,69,474/- had been examined and the gross income received by the assessee till 08.11.2016 to an extent of

Rs.12,34,470/- had also been examined. The AO after examination of all these details had accepted the return filed by the assessee. It was the submission that the Id. Pr.CIT-1 had invoked his powers u/s.263 of the Act to hold that the AO had neither called for the cash book nor the cash book had been produced by the assessee. It was further submitted that the Id. Pr.CIT took the stand that the opening cash balance had not been examined nor was cash in hand as on 08.11.2016 examined. Consequently, the Id. Pr.CIT took the stand that considering the deposits of cash by the assessee in its bank account; the assessee could not have had the requisite cash in hand to deposit to an extent of Rs.9 lakhs. To arrive at this figure, the Id. Pr.CIT adopted the total cash deposit at Rs.26,00,000/- and reduced the total sale proceeds at Rs.17,01,700/- to arrive at a figure of Rs.9 lakhs and treated the same as unexplained investment and directed the AO to redo the assessment *de novo*. Ld. AR has also filed his written submission which reads as under :-

That the assessee is an HUF , derives income from short term business during the F. Year - 2016-17. The assessee has duly reflected the gross receipts from the business and has deducted expenses incurred towards the business to acquired the income. The said income has also been duly deposited in the bank alongwith the past year savings. During the course of assessment the same was duly verified by the AO. All the bank statement, proof of deduction u/s.80C , Computation of Total Income, Financial statement for the F.Year - 2016-17, Balance Sheet of F.Y - 2015-16 and 2016-17 were all furnished before the AO during the course of assessment proceedings and were duly verified by AO and the AO passed the assessment order.

Nothing adverse was found by the AO .

In view of the above facts there is no unexplained income which has not been verified by the AO during the course of assessment proceedings and neither the AO has passed any erroneous order which is pre-judicial to the interest of revenue.

3. It was also submitted by the Id. AR that the AO in the course of original assessment had examined the opening cash balance and he has also mentioned in his assessment order. It was the submission that the amount of opening cash balance of Rs.16,69,474/ is an undisputed amount. It was further submitted that the AO has also examined the gross income received by the assessee till 08.11.2016 at Rs.12,34,470/- as per the cash flow statement submitted by the assessee. It was the submission that the total of both figures is more than Rs.29 lakhs. It was the submission that it is out of this amount the assessee has deposited the amount of Rs.26,50,000/-. It was the submission that the Id. Pr.CIT is now attempting to place his opinion over that of the AO to direct the AO to examine the total cash received by the assessee during the relevant assessment year and to make addition of Rs.9 lakhs. It was the submission that in fact the Id. Pr.CIT himself accepted that the gross total turnover of the assessee during the relevant assessment year is at Rs.17,01,700/-. Even if this figure is considered along with the opening cash balance of Rs.16,69,474/-, the total would be more than Rs.33 lakhs and even this would cover of cash deposit of Rs.26,00,000/-. It was further the submission that the assessee has filed his return adopting the provisions of Section 44AD of the Act. It was submitted that the order passed u/s.263 of the Act is liable to be cancelled.

4. In reply, Id. CIT-DR submitted that a perusal of the assessment order shows that the AO has raised seven questions. The AO has not broken the façade of money lending business claimed by the assessee. It

was the submission that the money lending business is not supported by any documentary evidence or any evidence that such money lending business was done in earlier or subsequent years. The details of the money lending business have also not been examined by the AO. The Id. CIT-DR admitted that the return of the assessee has been filed u/s.44AD of the Act and no cash book has been submitted. It was the submission that the amount of Rs.9 lakhs, which has been proposed by the Id. Pr.CIT is the minimum liable to be brought to tax, which the AO has failed to consider. It was the submission that the order of the Id. Pr.CIT is liable to be upheld.

5. We have considered the rival submissions. A perusal of the order of the Id. Pr.CIT shows that in para 3 of his order he mentions that the assessee has deposited Rs.26,50,000/- in cash during the demonetization period. In para 3 paragraph further the Id. Pr.CIT goes on to hold that the source of the cash deposits as explained by the assessee was without any details and no examination was done. The Id. Pr.CIT further goes on to hold that the opening cash balance was not properly explained. Consequently the Id. Pr.CIT drew the conclusion that the amount of Rs.9 lakhs representing Rs.26 lakhs less Rs.17,01,700/- was unexplained. Thus, a perusal of para 3 of the Id. Pr.CIT's order shows that he has accepted the total turnover of the assessee at Rs.17,01,700/-. He has accepted the deposit in the bank during the demonetization period of Rs.26 lakhs, though the correct figure is Rs.26,50,000/-. When this is examined along with the assessment order passed u/s.143(3) of the Act

on 26.12.2019, it shows that in page 3 of the assessment order in the second last paragraph the opening cash balance of Rs.16,69,474/- has been examined in total by the AO by verifying the returns of the earlier years. Thus, clearly the issues as has been proposed by the Id. Pr.CIT, has already been examined by the AO and the Id. Pr.CIT under the guise of revision u/s.263 of the Act is only proposing to force his opinion over that as arrived at by the Id. AO. This is not permissible in the revisionary proceedings u/s.263 of the Act. Consequently, the order passed u/s.263 of the Act by the Id. Pr.CIT stands unsubstantiated and the same is hereby quashed.

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

Order dictated and pronounced in the open court on 19/12/2022.

Sd/-

(अरुण खोड़पिया)

(ARUN KHODPIA)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 19/12/2022

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Shailesh Bhayani HUF
Alamchand Bazar, Cuttack-753002
2. प्रत्यर्थी / The Respondent-
Pr.CIT-1, Bhubaneswar
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