

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.27/CTK/2022

(निर्धारण वर्ष / Assessment Year :2017-2018)

Radhanath Mohanty, Govind Complex, Plot No.264, 2 nd Floor, Bapuji Nagar, Bhubaneswar	Vs	Pr.CIT, Bhubaneswar-1
PAN No. : AGFPM 7934 G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri Purnendu Bhusan Mohanty, CA
राजस्व की ओर से /Revenue by	:	Shri M.K.Gautam, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	16/01/2023
घोषणा की तारीख/ Date of Pronouncement	:	16/01/2023

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 05.01.2022, passed in DIN & Order No.ITBA/REV/F/REV5/2021-22/1038434821(1) for the assessment year 2017-2018.

2. It was submitted by the Id. AR that the assessee is an individual, who is running a proprietorship concern dealing sanitary and electrical fittings. The assessee is also a partner in two partnership firms doing similar business. The return filed by the assessee came to be processed and the assessment came to be completed u/s.143(3) of the Act on 10.12.2019, wherein certain disallowances have been made. It was submitted that this assessment order was the subject matter of revision by

the Id. Pr.CIT, Bhubaneswar-1 u/s.263 of the Act. In the revisionary proceedings Id. Pr.CIT had proposed the following the issues:-

- i) the interest on the TDS was alleged to have not been disallowed;*
- ii) the details of liability for expenses and the provision for salary had not been examined by the AO;*
- iii) the net profit from the business of the assessee appears to be low but was not examined by the AO;*
- iv) the software expenses, whether was capital or revenue in nature, had not been examined by the AO;*
- v) puja expenses did not relate to business of the assessee and the same need to be disallowed;*
- vi) the propriety of the claim of interest under the house property had not been examined by the AO; and*
- vii) the nature of the business of the partnership firm and the relation to the assessee's business had not been examined by the AO.*

3. It was the submission that in para 4.1, the Id. Pr.CIT has mentioned that the assessee has not replied to the show cause notice issued. It was the submission that the detailed reply had been filed on 14.12.2021 through online portal on 15.12.2021 and the partial reply had already been filed on 25.11.2021. The Id AR drew our attention to pages 11 & 12 of the paper book, which are the copies of the acknowledgement of the replies filed by the assessee through online portal of the income tax department. Ld. AR also drew our attention to pages 13 to 23 of the paper book which are the copies of detailed reply along with annexure to the show cause notice. It was the submission that in regard to the issue of interest on the TDS the same had already been added back. Ld. AR also drew our attention to page 25 of the paper book, which is a copy of the

computation of total income wherein the amount of Rs.47,230/- has been shown as being added back. It was submitted that consequently, the said proposal by the Id. Pr.CIT is liable to be quashed.

4. In reply, Id. CIT-DR vehemently supported the order of the Id. Pr.CIT.

5. We have considered the rival submissions. As it is noticed that the interest of the TDS has already been added back by the assessee in its computation of total income, the revision proceedings in respect of this issue stands quashed.

6. Coming to the next issue being the details of liability for expenses and the provision for salary had not been examined by the AO, Id. AR submitted that the said expenses were in the nature of VAT payable interest on VAT and the entry tax payable and such other professional charge expenses. It was the submission that the AO had issued notice u/s.142(1) of the Act and in question No.12 details had been called for in the form of financial charges, administrative overheads, direct expenses and selling expenses. It was the submission that these issues are already been considered by the AO in the course of original assessment. Id. AR further drew our attention to Annexure-3 of the Tax Audit Report filed before us wherein the auditors have satisfied that the amounts have been paid before the due date of filing of the return and consequently it was allowed.

7. In reply, Id. CIT-DR vehemently supported the order of the Id. Pr.CIT.

8. We have considered the rival submissions. As it is noticed that the issue has already been examined by the AO in the course of original assessment and as it is noticed that the amount has already been paid before the due date of filing of return, we are of the view that the revisionary proceedings on this issue is unsubstantiated and consequently the same is annulled.

9. The next issue being revision on provision for salary, it was submitted by the Id. AR that this is not a provision for salary but the provision for income tax which was carried forward from the earlier year. Id. AR drew our attention to page 31 of the paper book, which is a copy of the balance sheet of the assessee, wherein this provision is shown in the Schedule-5. It was the submission that consequently this issue was also not one which was liable for revision u/s.263 of the Act.

10. In reply, Id. CIT-DR vehemently supported the order of the Id. Pr.CIT.

11. We have considered the rival submissions. As it is noticed that the said provision is not in respect of the salary but it is in respect of the income tax and it is carried forward from the earlier years, admittedly, this issue is not one which can fall within the purview of revision u/s.263 of the Act and consequently the revisionary proceedings on this issue stands quashed.

12. In regard to the next issue of net profit from the electrical and sanitary business, which appeared to be low, it was submitted by the Id. AR that in the questionnaire issued by the AO in question No.12, the

purchase, sales expenses had all been looked into. It was found that the said expenses were reasonable. Once the details of purchases & sales expenses have been produced during the course of assessment proceedings and books of accounts have also not been rejected by the AO, the question of treating net profit of the assessee to be low, does not arise. It was the prayer that the proposed revision on this issue is liable to be quashed.

13. In reply, Id. CIT-DR submitted that no specific query on the issue of low net profit had been raised by the AO and there is no evidence of the assessee having replied or discussed this issue of net profit. It was the prayer that the revisionary proceedings on this issue may be upheld.

14. We have considered the rival submissions. A perusal of the query raised by the AO in the course of original assessment clearly shows that he has looked into the purchases, sales and the expenses thereto. The same have not been disturbed except for an addition in respect of telephone expenses. Thus, once the expenses have been accepted and the purchases and sales figures have already been accepted, the result in net profit cannot be tinkered with. This being so, we are of the view that the issue has already been considered by the AO and the revisionary proceeding on this issue is unsubstantiated and consequently the same is quashed.

15. Coming to the next issue of software expense, it was submitted by the Id. AR that though the Id. Pr.CIT has proposed a figure of Rs.6,86,817/-, the actual expenses is only Rs.23,750/-. The Id. AR drew

our attention to page 33 of the paper book, which is a copy of the profit and loss account wherein the software expenses have been shown at Rs.23,750/-. It was the submission that these expenses were in relation to renewal fees for the tally software. It was the submission that this is revenue in nature and this has also been looked into by the AO in reply to the question No.12 of the query.

16. In reply, Id. CIT-DR vehemently supported the order of the Id. Pr.CIT.

17. We have considered the rival submissions. As it is noticed that the issue has already been considered by the AO in reply to the query No.12 and also as it is noticed that the expenses in relation to the renewal of the tally software license, the same is purely revenue in nature also. The figure is only Rs.23,750/- and not Rs.6,86,817/- as proposed by the Id. Pr.CIT. Consequently, the revisionary proceeding on this issue stands quashed.

18. In respect of the next issue of puja expenses not being related to the business of the assessee, it was submitted by the Id. AR that the assessee is running a trading showroom. It was submitted that the turnover of the assessee was nearly Rs.3.3 crores and the puja expenses was to an extent of Rs.8.523/-. It was the submission that this has also been considered by the AO when he has looked into the details in respect of the query No.12 as this expense is shown in the salary, distribution and administrative over heads. It was the submission that invocation of God is

the primary requirement before starting a day. This is a very small expenditure which has been incurred in the form of puja articles.

19. In reply, Id. CIT-DR submitted that no query in respect of this expenditure has been raised specifically by the AO and consequently it cannot be considered as having been examined. It was submitted that the same is liable to be disallowed and the order of the Id. Pr.CIT is liable to be upheld.

20. We have considered the rival submissions. The facts in the present case clearly show that the issue was part of the reply to the query No.12 raised by the AO in the course of original assessment. When the said query has been addressed and answered, it is to be presumed that this issue has also been looked into by the AO in the course of assessment. Just because there is no specific finding of the AO in respect of each of the issues, does not mean that the issue has not been examined by the AO. In fact the disallowance under the head telephone & Internet charges, are the expenses under selling, distribution and administration overheads. Thus, it must be presumed that the AO has examined each of the expenses mentioned therein. This being so, we are of the view that the revision proceedings on this issue is unsubstantiated and consequently the same is quashed.

21. The next issue is in regard to the propriety of claim of interest under house property, it was submitted by the Id. AR that this amount was specifically shown in the computation of total income at page 25 of the paper book under the head house property. Id. AR also drew our

attention to page 51 & 52 of the paper book which is the copy of the return of income filed wherein this amount has also been specifically shown. It was the submission that this expenditure is in respect of housing loan taken by the assessee. It was the submission that these details have also been produced in the course of assessment proceedings.

22. In reply, Id. CIT-DR submitted that no enquiry on this issue has been raised by the AO.

23. We have considered the rival submissions. A perusal of the facts of the present case clearly shows that this amount has been specifically shown in the computation of the total income and is also supported by the return of income filed by the assessee. Admittedly this issue has not been examined by the AO nor any specific query has been raised by the AO in the assessment proceedings. This being so, we are of the view that the Id. Pr.CIT is right in invoking his powers u/s.263 of the Act on this issue. Consequently, the revisionary proceeding on this issue stands upheld.

24. Coming to the next issue of income from partnership shown and the income of business of such firm and relation to the proprietary business, it was submitted by the Id. AR that the assessee is a partner in two firms and this has also been mentioned in the computation of the total income in which the interest on the capital is also shown in the said computation, the remuneration of the firm is also shown, profit of the partnership is also shown. It was submitted that all these have been considered by the AO when he passed the assessment order u/s.143(3) of the Act. It was submitted that all the details being available before the AO and being part

of the income of the assessee, therefore, Id.AR submitted that the revisionary proceedings on this issue is liable to be quashed.

25. In reply, Id. CIT-DR vehemently supported the order of the Id. Pr.CIT(A).

26. We have considered the rival submissions. It is noticed that when passing the assessment order u/s.143(3) of the Act, the AO has adopted the total income as per the return of income. This is supported by the computation of total income wherein the interest on the capital, remuneration from the firm and profit of the firm in respect of the two partnership firm are also included. This being so, we are of the view that this issue has also been considered by the AO and the revisionary proceeding on this issue is unsubstantiated and consequently, the same stands quashed.

27. Here we may also mention that though the Id. Pr.CIT mentions that no reply has been filed by the assessee, the facts evident that replies have been filed to the shows cause notice. Though clearly on this ground itself the revisionary proceedings would have been quashed, still as we noticed that one of the issues have not been examined by the AO, the revisionary proceedings is to be upheld only to in respect of that single issue being the propriety of the claim of the interest under house property not examined by the AO.

28. In the result, appeal of the assessee stands partly allowed.

Order dictated and pronounced in the open court on 16/01/2023.

Sd/-

(अरुण खोड़पिया)
(ARUN KHODPIA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)
(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 16/01/2023

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
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