

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 Nos.174-177/CTK/2022

(निर्धारण वर्ष / Assessment Years :2009-2010 to 2012-2013)

M/s Raghunath Jew School of Management Studies, At: Tigiria, Punjibag, Sunhat (Chandipur Road) Balasore-756002	Vs	ITO (Exemption), Cuttack
PAN No. :AABTR 2600 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारित की ओर से /Assessee by	:	Shri B.Panda, Senior Advocate with Shri B.R.Panda, Advocate
राजस्व की ओर से /Revenue by	:	Shri M.K.Gautam, CIT-DR and Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	24/01/2023
घोषणा की तारीख/Date of Pronouncement	:	24/01/2023

आदेश / O R D E R

Per Bench :

These are the appeals filed by the assessee against the separate orders of the Id.CIT(A), National Faceless Appeal Centre (NFAC), Delhi, all dated 30.09.2022, passed in DIN & Order No.ITBA/NFAC/S/250/2022-23/1046137372(1), ITBA/NFAC/S/250/2022-23/1046137753(1), ITBA/NFAC/S/250/2022-23/1046138161(1) & ITBA/NFAC/S/250/2022-23/1046137557 (1) for the assessment years 2009-2010, 2010-2011, 2011-2012 & 2012-2013, respectively.

2. Shri Basudev Panda, Senior Advocate with Shri B.R.Panda, Advocate appeared on behalf of the assessee and Shri M.K.Gautam, CIT-DR with Shri S.C.Mohanty, Sr. DR appeared on behalf of the revenue.

3. It was submitted by the Id. AR that the assessee is a society registered under the Societies Registration Act. It was submitted that the Chairman of the assessee-society had appeared before the AO and his statement had also been recorded but subsequently due to his ill-health, he could not cooperate in the assessment proceedings. It was submitted that the assessment came to be completed on 23.03.2016. The assessee filed an appeal against the assessment orders on 29.04.2016. It was submitted that the appeals were filed manually. It was the submission that physical hearing notice had also been issued on the assessee on 06.02.2019. It was submitted that in the meantime the migration of the appeals from the physical hearing to the faceless hearing was initiated. Consequently, e-filing of the appeals had been directed from 01.03.2016 and the said date was extended to 15.06.2016. It was the submission that as the assessee was unaware that the appeals already manually filed were also to be filed electronically, there was failure on the part of the assessee to do so. It was submitted that, however, it seems that the revenue records itself had been electronically converted and the CIT(A), NFAC had issued notice of hearing on 07.01.2022. It was the submission that on the ground that the appeals of the assessee had not been filed electronically, the Id.CIT(A), NFAC dismissed the assessee's appeal. It was the submission that this was only a technical breach. It was the submission that the fact that the assessee has filed appeals in the physical form within time itself showed the intention of the assessee that he disputed the assessment. It was the submission that restoring the

appeals to the file of the Id. CIT(A) NFAC would also be of no help insofar as the assessments are ex-parte assessments and all details had not been produced before the AO. It was the prayer that the issues in the appeals may be restored to the file of the AO in the interest of justice.

4. In reply, Id. CIT-DR and Id. Sr. DR supported the orders of the Id. AO & CIT(A), NFAC and they both jointly submitted that a punitive cost of Rs.25,000/- must be levied for each of the assessment year under consideration insofar as the assessee has not cooperated in the assessment proceedings.

5. In reply, Id. Senior Advocate submitted that the cost of Rs.25,000/- per appeal is excessive and the assessee is running an engineering college in a remote place of Balasore District. It was the submission that no cost should be levied on the assessee.

6. We have considered the rival submissions. The facts in the present appeals clearly show that the assessments have been done ex-parte on account of the fact that the books of accounts and bills & vouchers were not produced before the AO. It is also an admitted fact that the assessee has not filed the appeal electronically but the appeals have been filed manually within time. Admittedly, this is a period where the migration from the physical hearing to the faceless hearing took place, for which mistakes must be expected. Under normal circumstances, the issues in the appeals would have to be restored to the file of the Id.CIT(A), NFAC to grant the assessee adequate opportunity to file the appeal electronically. However, by doing so and restoring the issues back to the file of the Id.

CIT(A), NFAC would not serve any purpose insofar as the evidences have not been produced before the AO and it would be practically very difficult for the assessee to produce any fresh evidence before the Id. CIT(A), NFAC. This being so, in the interest of justice and to reduce the possible round of litigation, the issues on merits in these appeals are restored to the file of the Id. AO for readjudication after granting the assessee adequate opportunity of being heard. As the assessments have been done ex-parte, the assessee shall pay cost of Rs.25,000/- (Rupees Twentyfive Thousand only) per assessment year under consideration to the Income Tax Department and copy of the challan may be produced before the AO. It is hereby clarified that the cost of Rs.25,000/- per assessment year under consideration is not adjustable against any tax liabilities or dues for any of the assessment years.

7. In the result, all the appeals of the assessee are partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 24/01/2023.

Sd/-

(अरुण खोड़पिया)

(ARUN KHODPIA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 24/01/2023

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
M/s Raghunath Jew School of Management
Studies, At: Tigiria, Punjibag, Sunhat
(Chandipur Road) Balasore-756002
2. प्रत्यर्थी / The Respondent-
ITO (Exemption), Cuttack
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