

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 (तलाशियां और अभिग्रहण) सं/IT(SS)A Nos.25 to 30/CTK/2022

AND

आयकर अपील (तलाशियां और अभिग्रहण) सं/IT(SS)A No.108/CTK/2022

(निर्धारण वर्ष / Assessment Years :2011-2012 to 2016-2017 & 2017-2018)

| | | |
|---|----|-------------------------------|
| Tikeswar Bag, At-Tengra, Badasaimara, Bolangir-767037 | Vs | DCIT, Circle-2(1), Sambalpur |
| PAN No. :DARPB 1978 Q | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| निर्धारिती की ओर से /Assessee by | : | None |
| राजस्व की ओर से /Revenue by | : | Shri Arun Kanti Sinha, CIT-DR |
| सुनवाई की तारीख / Date of Hearing | : | 15/02/2023 |
| घोषणा की तारीख/Date of Pronouncement | : | 15/02/2023 |

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)-2, Bhubaneswar, all dated 30.03.2022 for the assessment years 2011-2012 to 2016-2017 & 2017-2018, respectively.

2. None represented on behalf of the assessee. However, an adjournment application has been filed by Shri Jag Mohan Pattnaik, Advocate claiming that he is suffering from severe cold and fever and consequently the adjournment is being sought. The counsel has also attached a medical certificate which mentions that he is having fever of high grade. The medical certificate is issued from a doctor with Apollo Heart Institute. It does not even contain the patient ID of the said hospital. Thus, the ground taken for adjournment, in our opinion, is not a plausible one and, therefore, the same is not accepted.

3. The appeal of the assessee has been filed on 17.06.2022. The appeal was posted on 19.10.2022 on which date the Id. AR on behalf of the assessee has sought adjournment on the ground that he needed time as additional paper was required. The appeal was adjourned to 21.12.2022. On 21.12.2022 the assessee has again sought adjournment on the ground that he is suffering from high fever and dental problems. The appeal was adjourned to today. Today, another adjournment application has been filed.

4. The facts in the present case show that there was a search by the police department on the assessee's house on 20.11.2016. Rs.12,79,900/- was found and seized from his residence. The same was requisitioned by the Income Tax Department and notice u/s.153A of the Act had been issued on 19.01.2018. When the case was posted for hearing for assessment, the assessee did not cooperate in the assessment proceedings. The assessee has neither filed his return u/s.139(1) of the Act for any of the financial years previously nor did he have a PAN Number. When the assessee was asked to explain the cash, which was seized, the assessee has submitted a capital account drawn up showing availability of the cash. As the assessee has never filed its return before, nor obtained a PAN number, the AO has disbelieved the capital account which was drawn up and produced before him and has made addition of the seized amount. The AO had also assessed the income of the assessee on the basis of the return filed in response to the notice issued u/s.153A of the Act. Here it must be mentioned that when

filing the return u/s.153A of the Act, the assessee has filed its return showing its total income below the taxable limit, for the assessment years 2011-2012 and for the assessment year 2016-2017, and the AO has completed the assessment u/s.153A r.w.s.143(3) of the Act accepting the returned income, thus, there being no taxable income. For the other assessment years, the AO has examined the bank pass book and has made additions of the amounts deposited in the bank account of the assessee in respect of which the assessee was unable to give any explanation. For the assessment year 2017-2018, being the year of search, the AO has added the entire cash found and seized as the assessee was unable to explain the source for the same. Here it would be worthwhile to mention that the assessee claims to be a licensed labour contractor and copy of his license is filed in the paper book. As per the licence, he is permitted to employ a hundred workmen on any day. The original license granted to him on 06.10.2017 and in the subsequent license granted to him, the number of labourers have been reduced to 50. As per the said license, he is to maintain the register of the workmen, employment card, service certificate, muster roll, register of wages, so on and so forth. The assessee claims to be doing contract work as also manufacturing of bricks as per the license dated 06.12.2017. As the assessee is employing more than 50 workers on any given day, obviously the provision of PF & ESI would also apply. The fact that the assessee has not produced any of such evidence, which were the requirements to be maintained as per his license, it shows that the AO has extremely

reasonable in making the additions on the basis of the bank statements and the deposits which the assessee has been unable to explain. A perusal of the order of the Id. CIT(A) shows that even before the Id. CIT(A) the assessee has not produced any documents to support his claim. The assessee having not produced evidence before the AO nor before the Id. CIT(A), obviously the assessee will not be able to produce any evidence before the Tribunal as this would amount to fresh evidence. The Hon'ble Supreme Court in the case of Ashokji Chanduji Thakor, reported in [2021] 130 taxmann.com 131 (SC) has held that the assessee despite having been given several opportunity had failed to file any reply and consequently the addition made by the AO was justified. The Hon'ble Gujarat High Court had held that the Tribunal had set aside the order passed by the CIT(A) without any cogent reasons and consequently had reversed the order of the Tribunal holding the same as arbitrary and the Hon'ble Supreme Court had dismissed the SLP against the order of the Hon'ble High Court holding the order of the Tribunal arbitrary and unacceptable, insofar as the Tribunal has set aside the order of the Id. CIT(A) without giving any cogent reasons. In the present appeals, the assessee admittedly has not produced any evidence before the Id. AO nor before the CIT(A) nor before the Tribunal. Though initially, we are of the opinion that the assessee should be granted another opportunity to go back before the Id. AO so that he can explain all the details before the Id. AO, however, the Id. CIT-DR has vehemently prayed for the application of the principle laid down by the Hon'ble Supreme Court in the case of

Ashokji Chanduji Thakor (supra). Admittedly, this Tribunal does not have any cogent reason to restore the issues of the appeals back to the file of AO. The assessee has also not produced any evidence before the lower authorities. This being so, we are left with no other alternative but to confirm the order of the Id. CIT(A) in all the present appeals of the assessee and we do so.

5. In regard to the legal issues raised by the assessee that there is no incriminating material found in the course of search, it must be mentioned here that only when the assessee has filed his return and the assessment has been completed can the same be reopened u/s.153A of the Act in the presence of incriminating material. In the present case, clearly the assessee has never filed its return before, has also not even obtained PAN Number and, therefore, there is no question of an assessment having been done in the case of the assessee. Therefore, the provisions of Section 153A of the Act can validly be applied as these are nothing but reopening of the assessment on the basis of evidence found as a consequence to the search. In these circumstances, the legal grounds raised by the assessee in all the appeals also failed.

6. In the result, all the appeals of the assessee are dismissed.

Order dictated and pronounced in the open court on 15/02/2023.

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(अरुण खोड़पिया)

(ARUN KHODPIA)

लेखा सदस्य/ ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 15/02/2023

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Tikeswar Bag,
At-Tengra, Badasaimara,
Bolangir-767037
2. प्रत्यर्थी / The Respondent-
DCIT, Circle-2(1), Sambalpur
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