

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
(THROUGH VIRTUAL HEARING)**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

आयकर अपील सं/ITA No.18/CTK/2022

(निर्धारण वर्ष / Assessment Year : 2017-2018)

Utkal Marine Primary Fish Production And marketing Co. Op. Society Ltd., Sector-21, New Fishing Harbour, Paradeep Port, Jagatsinghpur	Vs	Pr.CIT-1, Bhubaneswar
PAN No. : AAAAU 3800 F		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri Mohit Sheth, Advocate
राजस्व की ओर से / Revenue by	:	Shri Saroj Kumar Mahapatra, Pr.CIT-DR
सुनवाई की तारीख / Date of Hearing	:	20/07/2023
घोषणा की तारीख/Date of Pronouncement	:	20/07/2023

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 04.02.2022, passed in ITBA/REV/F/REV5/2021-22/1039391202(1) for the assessment year 2017-2018.

2. It was submitted by the Id. AR of the assessee that the assessee is an AOP being a cooperative society consisting of fishing boat owners as its members and engaged in trading in HSD and lubricants and running of a diesel pump for facilitation of fishing activities only among its members who are fishermen. It was the submission that the assessment came to be completed u/s.143(3) of the Act on 30.12.2019, wherein the AO had assessed the income of the assessee at Rs.1,18,55,800/-. It was the

submission that the Id. Pr.CIT had invoked his powers u/s.263 of the Act and had issued a show cause notice holding that the AO had added undisclosed profit of Rs.29,18,346/- and consequently the gross profit as per the audited account was to be taken at Rs.56,88,898/- and after reducing the various expenses the net profit was to be determined at Rs.43,91,739/-. Thus, resulting in an under-assessment of Rs.14,73,393/- It was further submitted that the Id. Pr.CIT has also taken a stand that from the profit and loss account, the picnic expenses, entertainment expenses and pooja expenses were not liable to be allowed as it did not have any relation to the business activity of the assessee. The assessee has also claimed Rs.66,837/- in respect of other liabilities in Annexure-V. Ld. Pr.CIT has in para 3.3 raised further issues in respect of which he has alleged that there was violation on the part of the AO to examine various details. It was the submission that the Id. Pr.CIT after raising these issues, which have been mentioned by him in paras 3.1, 3.2 & 3.3 of his order, has given no direction specifically as to his view on the issues. It was the submission that the Id. Pr.CIT has not done any examination much less verification in respect of the said issues but proceed to hold the assessment order to be erroneous insofar as it is prejudicial to the interest of revenue and set aside the assessment on the limited issues as discussed in the notice keeping in mind, *inter alia*, the observations made hereinabove and the submissions of the assessee during the assessment and that may be furnished during the course of assessment to be done afresh. It was the submission that this was a classic case where there is

no application of mind, there is no enquiry and only on the ground that the assessee had not responded to the show cause notice directed to revise the assessment. It was the submission that the accounts of the assessee being cooperative society are audited by the Accountant General (Cooperative Society). It was the submission that the AO has adopted the profit as audited and approved by the office of the AG(CS). It was the submission that when the AO has done the assessment, he has verified the accounts which have been audited and in respect of which no adverse comments have also been drawn by the office of the AG(CS). It was the submission that as no examination has been done much less an enquiry on the issues raised by the Id. Pr.CIT before passing his order u/s.263 of the Act, in view of the decision of the coordinate bench of this Tribunal in the case of M/s Earth Minerals Co. Ltd., passed in ITA No.223/CTK/2019, order dated 29.08.2022, which has also been upheld by the Hon'ble Jurisdictional High Court in ITA No.24 of 2023 vide order dated 06.03.2023 as also the decision of the Hon'ble Jurisdictional High Court in the case of Orissa State Police Housing & Welfare Corporation Ltd., reported in [2022] 139 taxmann.com 207 (Orissa) as also the proposition of law laid down by the Hon'ble Delhi High Court in the case of D.G.Housing Projects Ltd., reported in [2012] 20 taxmann.com 587 (Delhi), the order passed u/s.263 of the Act is liable to be quashed.

3. In reply, Id. CIT-DR submitted that the assessee has not cooperated in the revisionary proceedings though notices have been issued to the assessee. It was the submission that had the assessee

cooperated in the revisionary proceedings, possibly the Id. Pr.CIT would have been able to do further enquiry. It was the submission that the order passed u/s.263 of the Act is liable to be upheld.

4. We have considered the rival submissions. A perusal of the order of the Id. Pr.CIT passed u/s.263 of the Act shows that no enquiry has been done by the Id. Pr.CIT in respect of issues raised by him in the show cause notice u/s.263 of the Act. Even if the assessee did not cooperate nor responded to the show cause notice, nothing stopped the Id. Pr.CIT from examining the records and draw his conclusions on the basis of evidence available on the record. A perusal of para 3.3 of the order of the Id. Pr.CIT clearly shows that it is fishing and roving enquiry which has been proposed by the Id. Pr.CIT. A perusal of para 7 of the order of the Id. Pr.CIT, setting aside the original assessment order does not talk of how the order of the Id. AO passed u/s.143(3) of the Act after examining the books and records of the assessee, is erroneous and prejudicial to the interest of revenue. This being the fact, respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of Orissa State Police Housing & Welfare Corporation Ltd. (supra) as also the decision of the coordinate bench of the Tribunal in the case of M/s Earth Minerals Co. Ltd. and the principle laid down by the Hon'ble Delhi High Court in the case of D.G.Housing Projects Ltd.(supra), the order passed u/s.263 of the Act is unsustainable and consequently the same is quashed.

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

Order dictated and pronounced in the open court on 20/07/2023.

**Sd/-
(GIRISH AGRAWAL)**

लेखा सदस्य/ **ACCOUNTANT MEMBER**

**Sd/-
(GEORGE MATHAN)**

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 20/07/2023

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Utkal Marine Primary Fish Production And
marketing Co. Op. Society Ltd.,
Sector-21, New Fishing Harbour, Paradeep Port,
Jagatsinghpur
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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack