

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, 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.34/CTK/2022

(निर्धारण वर्ष / Assessment Year : 2017-2018)

Manoranjan Lenka, At/Po: Balanga, Dist : Puri, Odisha-752105	Vs	Pr.CIT-1, Bhubaneswar
PAN No. : ADDPL 7206 M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri Chitrasen Parida, 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 31.12.2021, passed in ITBA/REV/F/REV5/2021-22/1038323205(1) for the assessment year 2017-2018.

2. The appeal of the assessee is barred by 27 days. In this regard, the assessee has filed an application for condonation of delay along with affidavit stating sufficient reasons for delay therein. Ld. CIT-DR did not object to condone the delay. In view of the above and considering the facts and circumstances of the case, the delay of 27 days in filing the present appeal is condoned and the appeal is heard finally.

3. It was the submission by the Id. AR that the original assessment came to be completed u/s.143(3) of the Act on 13.08.2019 and it was a case of limited scrutiny in respect of large cash deposits in the bank

account during the year. It was the submission that the AO had after examining the issues treated the differential bank deposit as suppressed sales turnover of the assessee and had estimated the income at 8% thereof. It was the submission that the Id. Pr.CIT has invoked his powers u/s.263 of the Act to hold that the estimation of the income at 8% was wrong by the AO and that the entire cash deposit in the bank account was liable to be brought to tax. It was the submission that as this was a case of limited scrutiny in view of the decision of the coordinate bench of the Tribunal in the case of M/s Shark Mines and Minerals Pvt. Ltd., passed in ITA No.128/CTK/2019, order dated 18.08.2022, which has been upheld by the Hon'ble Jurisdictional High Court vide order dated 02.03.2023, passed in ITA No.1 of 2023, the Id. Pr.CIT could consider only such issues which were raised in the limited scrutiny. It was the submission that as the Id. Pr.CIT has gone beyond the issues on which the limited scrutiny was done, the order passed u/s.263 of the Act is liable to be cancelled.

4. In reply, Id. CIT-DR submitted that the issue in the limited scrutiny was in respect of examination of large cash deposit in the bank account. It was the submission that the Id. Pr.CIT has looked into only that issue of the limited scrutiny being deposit of large cash in the bank account. It was the submission that the view taken by the AO that the excess cash deposit in the bank account compared to the gross sales was in excess of Rs.32,10,196/-, he ought to have added the entire amount as undisclosed income of the assessee, against which the AO has only adopted 8% by holding the said excess as undisclosed turnover of the assessee. It was

the submission that it is this view of the Id. AO which was found to be erroneous. It was the submission that the decision of the Hon'ble Jurisdictional High Court in the case of M/s Shark Mines and Minerals Pvt. Ltd. does not apply. 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 facts of the present case clearly shows that the issue revolves around the excess of bank deposit of Rs.32,10,196/-. In the scrutiny assessment also, the AO has determined the excess of the bank deposit at Rs.32,10,196/-. How the amount of Rs.32,10,196/- is to be treated is the dispute which has been raked up by the Id. Pr.CIT in his revisionary proceedings u/s.263 of the Act. Thus, clearly the issue on which the Id. Pr.CIT has invoked his powers u/s.263 of the Act, is in respect of the issue of the limited scrutiny. Consequently, the decision in the case of M/s Shark Mines and Minerals Pvt. Ltd. (supra) would not come to the rescue of the assessee.

6. However, a perusal of the assessment order as also the order of the Id. Pr.CIT shows that the AO has taken a view that Rs.32,10,196/- is to be treated as the suppressed turnover of the assessee. The AO has estimated the income on the said turnover at 8%. This is a view which has been taken by the AO when he has done the assessment u/s.143(3) of the Act. This is very much a permissible view. The view adopted by the Id. Pr.CIT that the entire suppressed turnover is to be treated as income of the assessee is also another plausible view. When the AO has taken one

possible view which is not an illegal view but is very much a possible view, then just because the Id. Pr.CIT has is of another view, the powers u/s.263 of the Act cannot be invoked for placing the Pr.CIT's view over that of the AO. The powers u/s.263 of the Act is to be applied when the order passed by the AO is erroneous insofar as it is prejudicial to the interest of revenue. The error in the order of the AO has to be pointed out. A possible different view will not make an otherwise plausible view taken by the AO to be erroneous. This being so, we are of the view that the Id. Pr.CIT has vide his order u/s.263 of the Act attempted to impress his opinion over the possible view as taken by the AO and this being impermissible u/s.263 of the Act, the order impugned passed u/s.263 of the Act stands quashed.

7. 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-

Manoranjan Lenka,
At/Po: Balanga,
Dist : Puri, Odisha-752105

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,

6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण,

कटक/ITAT, Cuttack

सत्यापित प्रति //True Copy//