



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK
(Through virtual hearing)**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA No.140/CTK/2023
Assessment Year : 2012-13

M/s Maa Tarani Logistics Ltd., Unchabali, Bamabri, Keonjhar	Via- Joda, PO:	Vs.	ACIT, Circle-1(1), Cuttack
PAN/GIR No.AAECM 7549 R			
(Appellant)		..	(Respondent)

Assessee by : S/Shri Soumitra Choudhury & Jaydeep Chakraborty,
Advocates
Revenue by : Shri M.K.Gautam, Pr. CIT (OSD)

Date of Hearing : 21/08/2023
Date of Pronouncement : 21/08/2023

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi, dated 27.3.2023 in Appeal No.ITBA/NFAC/S/250/2022-23/1051397448(1) for the assessment year 2012-13.

2. S/Shri Soumitra Choudhury & Jaydeep Chakraborty, Advocates appeared for the assessee and Shri M.K.Gautam, Ld. Pr.CIT (OSD) appeared for the revenue.

3. The assessee has raised the following grounds:

"1. For that on the facts of the case, the order passed by the Ld. C.I.T.[A] on 27.03.2023 which is completely arbitrary, unjustified and illegal.

2. For that the assessment order was passed u/s. 143(3) of the I.T. Act by the ACIT Cir.-1(1), Cuttack without service of any valid notice u/s. 143(2) of the I.T. Act, 1951 and therefore, the assessment order passed is bad in law and should be quashed.

3. For that the issue of a legally valid notice u/s. 143(2) is mandatory for usurping jurisdiction to frame scrutiny assessment u/s. L43(3) of the Act and in the absence of a valid notice u/s L43(2) the scrutiny assessment u/s 1a3(3) cannot be framed covered by Apex Court judgment.

4. For that on the facts of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs.6,01,86,900/- made by the A.O. on account of unexplained paid up share capital by wrongly treating the same as unexplained cash credit u/s 68 which is completely arbitrary, unjustified and illegal.

5. For that on the facts of the case, the Ld. CIT(A) ought to have considered that the assessee company had discharged its onus by furnishing all the relevant documents in connection with the paid up share capital receipt and also proved the identity, creditworthiness of the shareholders and genuineness of transactions, thus his action is completely arbitrary, unjustified and illegal.

6. For that on the facts of the case, the charging interest u/s. 234B & 234C amounting to Rs.2,08,76,904/- & 5,53,289/- respectively which are mechanically wrong and illegal.

7. For that the appellant reserves the right to adduce any further ground or grounds, if necessary at or before the hearing of the appeal."

4. The assessee has also filed additional ground, as follows:

"1. For that the competent authority has not passed any transferred order u/s.127 of transferring the assessee's file from ITO, Keonjhar to DCIT, Circle-191), Sambalpur and the DCIT, Circle-1(1),

Sambalpur to ACIT, Circle-1(1), Cuttack. As such, without transferred order u/s.127, the ACIT, Circle-1(1), Cuttack cannot assume the jurisdiction over the assessee. Hence, the assessment order passed u/s.144 r.w.s 143(3) dated 25.3.2015 by the ACIT, Circle-1(1), Cuttack without jurisdiction over the assessee is invalid, bad in law and abinitio-void and liable to be quashed.

2. For that on the facts of the case that ACIT, Circle-1(1) Cuttack should not automatically assume jurisdiction over the case, the inter charge change of jurisdiction between two regions of requires concurrence of the concerned both the Commissioners, in exercise of powers under sub-section(2) of Section 127 of the Income Tax Act needs to passed specific order u/s.127 of the Income tax Act, therefore, the assessment order passed is bad in law and should be quashed.

3. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”

5. It was the submission by Id AR that the assessee has challenged the transfer of the files from Sambalpur to Cuttack in view of the order passed u/s.127(2) of the Act. It was the submission that the assessee has challenged the non-issuance of notice u/s.143(2) of the Act by the competent authority in the regular grounds and has also challenged the merits of the additions in respect of share capital received by the assessee from 608 employees of M/s. Triveni Earthmovers Pvt Ltd., which was treated as unexplained cash credit in the course of assessment and confirmed by the Id CIT(A). It was the submission that the assessee is a mining contractor. The assessee had filed its return of income for the relevant assessment year on 30.9.2012 disclosing an income of Rs.8,94,34,320/-. It was the submission that the notice u/s.143(2) of the

Act had been issued by the ITO, Keonjhar Ward on 30.8.2013. Ld AR drew our attention to page 529 of PB, which was a copy of notice u/s.143(2) of the Act. It was the submission that the notice issued u/s.143(2) by the Income Tax Officer, Keonjhar Ward was invalid insofar as the income of the assessee was in excess of Rs.15 lakhs and notice u/s.143(2) of the Act, if at all, was to be issued by an Officer in the rank of DCIT or above. It was the submission that subsequently, the order u/s.127(2) of the Act came to be passed on 14.1.2015 transferring the assessee's file from DCIT, Circle-1(1), Sambalpur to DCIT, Circle-1(1), Cuttack. Ld AR has placed before us the copy of the order passed u/s.127(2) of the Act dated 14.1.2015 by the Commissioner of Income Tax, Sambalpur. It was the submission that this order u/s.127(2) of the Act was passed without giving an opportunity of hearing to the assessee. Ld AR drew our attention to the provisions of section 127(2) of the Act to submit that the said provision specifically provides that the assessee should be heard wherever it is possible to do so. It was the submission that in view of the order of the Hon'ble High Court of Bombay in the case of Shikshana Prasaraka Mandali vs CIT (2013) 352 ITR 53 (Bom), wherein, the Hon'ble High Court has categorically held that before passing an order of transfer of a case u/s.127(2) of the Act, an opportunity of personal hearing is mandatory. It was the submission that as the assessee has not been heard in respect of the transfer of the case, the assessment order passed by the ACIT, Circle-1(1), Cuttack dated

25.3.2015 u/s.144 of the Act was bad in law. Ld AR drew our attention to the decision of Hon'ble High Court of Bombay in the case of Sahara Hospitality Ltd vs CIT, (2013) 352 ITR 38(Bom) to submit that as per the provisions of section 127(1) and (2), the requirement of granting the assessee a reasonable opportunity of being heard, wherever it is possible to do so is mandatory. It was the submission that the assessment order being passed by an officer other than the assessee's original Assessing Officer, especially when the file has been transferred without granting the assessee an opportunity of being heard, makes the assessment order invalid. It was the further submission that in respect of notice issued u/s.143(2) of the Act, a perusal of the assessment order clearly showed that the only notice u/s.143(2) referred to by the AO is the notice issued on 13.8.2013. It was the submission that the said notice dated 13.8.2013 was issued by the Income tax Officer, Keonjhar, who did not have the authority to issue such notice in view of the monetary limit. It was the further submission that after the issuance of invalid notice u/s 143(2), notice u/s.142(1) had been issued by the ACIT, Circle-1(1), Sambalpur on 12.11.2013 and various details had been called for and the assessee had also submitted the details. The main issue was in regard to the share capital raised by the assessee to an extent of Rs.10,01,86,900/-. It was the submission that out of the said amount of Rs.10,01,86,900/-, an amount of Rs.4,00,00,000/- was the share application received from M/s.Triveni Earthmovers Pvt Ltd, a sister concern

of the assessee and share capital of Rs.6,01,86,900/- representing the share application money received from 608 employees of M/s. Triveni Earthmovers Pvt Ltd. Ld AR drew our attention to pages 578 to 608 of the paper book, which was the list of the share allotment, which specified the name of the individuals, their locations, their addresses, No. of shares allotted, amount paid being the face value in Rupees, date of allotment, PAN No. , PAN availability, date of appointment in Triveni Earthmovers Pvt Ltd., date of resignation if any, last salary drawn and the mode of receipt and payment. Ld AR further drew our attention to pages 610 to 645 of paper book, which was the salary certificates for the assessment year 2012-13 in respect of employees, who had invested the amount in the shares of the assessee company. Further attention was drawn to pages 646 to 975 of PB, which was the copy of Form-16 Part-A & Part-B of each of the employee, who had invested in the shares of the assessee company. It was the submission that all these details had been filed before the ACIT, Circle-1(1), Sambalpur. Ld AR further drew our attention to page 1 to 10 of PB, which was the copy of written submission filed before the Id CIT(A). It was the submission that in the written submission, Annexure A & B referred to the said details. It was the submission that these evidences were before the lower authorities. It was the submission that after transfer of the file of the assessee u/s.127(2) from the ACIT/DCIT, Circle-1(1), Sambalpur to ACIT/DCTI, Circle-1(1), Cuttack, notices have been issued by the Assessing

Officer on various dates in 2015 and as the assessee did not respond to the said notices, the Assessing Officer took a stand that the assessee is unable to provide any information or particulars of the paid up share holders and other connected details during the year for an amount of Rs.10,01,86,900/- and consequently, treated the same as unexplained cash credit u/s.68 of the Act and added the same. It was the submission that on appeal, the Id CIT(A) after considering the evidences and details filed held that the addition of Rs.4,00,00,000/- representing the share application money received from M/s. Triveni Earthmovers Pvt Ltd., was substantiated and explained and deleted the addition. However, in respect of 608 employees of M/s. Triveni Earthmovers Pvt Ltd., the Id CIT(A) took a stand that the assessee has merely submitted the names and PAN numbers and signature sheet confirming balances from the employees of M/s. Triveni Earthmover Pvt Ltd., and the assessee has failed to establish the creditworthiness of the employees. It was the submission that as early as in 2013, when the notice u/s.143(1) of the Act had been issued by the ACIT, Circle-1(1), Sambalpur, the assessee had already provided all the details to its Assessing Officer. Even assuming the order u/s.127(2) was validly passed, still these details would have been transferred to the Assessing Officer being ACIT, Circle-1(1), Cuttack and nothing stopped the Assessing Officer from examining the evidences produced. It was the submission that from 2013, these evidences were before the Assessing Officer and till 2015, no

verification has been done as to whether the evidences provided were unsubstantiated. It was the submission that the ACIT, Circle-1(1), Cuttack has also not issued notice u/s.143(2) of the Act, neither the ACIT, Circle-1(1), Sambalpur and consequently, in view of the decision of the Hon'ble Calcutta High Court in the case of Pr. CIT vs Cosmat Traders Pvt Ltd., 146 taxmann.com 207 (2023)(Kol), as the Assessing Officer has passed an assessment order without issuing notice u/s.143(2) and in pursuance to the notice u/s.143(2) by an authority who had no jurisdiction over assessee at the relevant time, such assessment order was rightly set aside by the Tribunal. It was the submission that at the outset, the only notice u/s.143(2) was issued by the ITO, Keonjhar ward, who did not have the jurisdiction to issue the notice and neither the ACIT, Circle-1(1), Sambalpur nor the ACIT, Circle-1(1), Cuttack has issued the notice u/s.143(2) and consequently, the assessment order is liable to be struck down on this ground.

6. On merits, the assessee having provided all the details as early as in 2013 and the revenue having not shown any evidence to the contrary, the addition as made by the Assessing Officer and as confirmed by the Id CIT(A) is liable to be deleted. It was the further submission that in respect of addition of Rs.4 crores deleted by the Id CIT(A) in respect of share application money from Triveni Earthmover pvt Ltd., the revenue is not in appeal.

7. On this point, a specific query was raised to Id AR as to what happened to the shares allotted to various employees, to which, Id AR placed before us the details of dividend paid by the assessee for the assessment year 2013-14 @ 35% in the form of a chart which showed the name of the shareholders, No. of shares, value of shares, dividend, bank account No. and the name of the bank. It was the submission that these details were available with the Income tax Department even during F.Y. 2022, where TDS has been deducted on the dividend and he placed before us the copy of the details downloaded from the department TDS side for the F..Y. 2022. For better understanding, one page of the dividend details for the assessment year 2012-13 is extracted as follows:

F.No.	Name of shareholders	No.of shares	Total amount of shares(Rs.)	Dividend @ 35% (12-13)	Bank account No.	Name of bank
01	Balsubramanian Prabhakaran	8900	890,000.00	311,500.00		
02	Balsubramanian Karthikeyan	8900	890,000.00	311,500.00		
03	Karri Satya Rao	4000	400,000.00	140,000.00	30805288740	SBI
04	J Balakrishan	4500	450,000.00	157,500.00	0116340581001	Indusind Bank
05	Makadam Biswal	15000	1,500,000.00	525,000.00	11291696251	SBI
06	M Vijayan	1500	150,000.00	52,500.00	31574618875	SBI
08	Ganeswar Nayak	7500	750,000.00	262,500.00	11291701206	SBI
010.	S.Sankar	750	75,000.00	26,250.00	11291691741	SBI
011	Vinod Vaman Kadwadkar	3200	320,000.00	112,000.00	11291691071	SBI
012	Bidesh Ranas	1700	170,000.00	59,500.00	11291701910	SBI
013	Braja Kishore Rana	2900	290,000.00	101,500.00	11291701386	SBI
016	K Perumal	1550	155,000.00	54,250.00	0116J40525001	Indusind Bank
017	R Devdass	25000	2,500,000.00	875,000.00	0191K72593001	-do-
018	SPR Venkatacham	8750	875,000.00	306,250.00	0116J40542001	-do-

019	M.Arumugam	2800	280,000.00	98,000.00	0116J40519001	-do-
020	K.S.Selvan	1600	160,000.00	56,000.00	0116J40536001	-do-
021	G.Dhayalan	100	10,000.00	2,500.00	0116J\$2032001	-do-
023	P.Raja	6400	640,000.00	224,000.00	30878541573	SBI
024	S.Ranasundaram	250	25,000.00	8,750.00	30949890897	SBI
025	K.Palanisamy	3750	375,000.00	131,250.00	11291699070	SBI
026	K.Manikandan	7500	750,000.00	262,500.00	11291698996	SBI
027	O.Sylvester Arokiaraj	7000	700,000.00	245,000.00	11291706464	SBI
029	S.Venkateswqran	13000	1,300,000.00	455,000.0	11291691785	SBI
030	G.Balasubrananian	2755	275,000.00	96,425.00	0116J42336001	Indusind bank
032	M.Shannugavadivel	11496	1,149,600.00	402,360.00	30912039789	SBI
033	R.Sekar	2800	280,000.00	98,000.00	0116J40530001	Indusind bank
034	V.Ravindran	2500	250,000.00	87,500.00	30859874559	SBI
035	S.Vasantha Kumar	1500	150,000.00	52,500.00	11291693691	SBI
036	M.K.Palanik Swamy	1000	100,000.00	35,000.00	11291701863	SBI
037	R.R.Mondal	200	20,000.00	7,000.00	11291692428	SBI
038	G.Kumaran	5000	500,000.00	175,000.00	11291694301	SBI
039	Ramachandra Rout	1050	105,000.00	36,750.00	11291700994	SBI
041	R.Ravanan	550	55,000.00	19,250.00	30969786066	SBI
042	C.Kumarsan	9000	900,000.00	315000.00	819010110003181	Bank of India
044	N.Eswaran (NEasunathan)	50	5,000.00	1,750.00	0218U63018001	Indusind bank
046	S.Sakkapan	50	5,000.00	1,750.00	31008703607	SBI
047	A.S.Tata	2000	200,000.00	70,000.00	31141339167	SBI
048	A.Murugan	900	90,000.00	31,500.00	11291701319	SBI
049	K.S.Periyasami	2000	200,000.00	70,000.00	11291701262	SBI
050	N.Anabalagan	900	90,000.00	31,500.00	11291699069	SBI
051	I.Natarajan	1500	150,000.00	52,500.00	11291698985	SBI
052	Babaji Dash	1000	100,000.00	35,000.00	11291643163	SBI
054	Bipin Bhoi	100	10,000.00	3,500.00	11291699412	SBI
056	M.Premkumar	4000	400,000.00	140,000.00	11291707661	SBI
057	M.Sasikumar	853	85,300.00	29,855.00	0116J42071001	Indusind bank
058	R.Gowthaman	700	70,000.00	24,500.00	0116J42524001	-do-
060	T.Moorthy	1200	120,000.00	42,000.00	0116J42524-	-do-

For the F.Y. 2022, the dividend paid is as under:

1	2	3	4	5	6	7	8	9	10
RSN	FY	Name	PAN	Aadhaar	Address	Pincode	Mobile	Email	Dividend
1	2022	BALASUBRAMANIAN PRABHAKARAN	AFFPP5795L		22/110, G	636005			311,500.00
2	2022	BALASUBRAMANIAN KARTHIKEYAN	ADWPK0920A		22/110, G	636005			311,500.00
3	2022	KARRI SATYA RAO	ACJPR8828G		22/110, G	636005			140,000.00
4	2022	J. BALAKRISHNAN	CDQPB6933E		22/110, G	636005			157,500.00
5	2022	MAKADAM BISWAL	AMZPP5945N		22/110, G	636005			525,000.00
6	2022	GANESWAR NAYAK	AAMPN9082H		22/110, G	636005			262,500.00
7	2022	B. SANKAR	BRWPP6513C		22/110, G	636005			26,250.00
8	2022	VINOD VAMAN KADWADKAR	BBTKK2545K		22/110, G	636005			112,000.00
9	2022	BIDESHI RANA	ALZPR2602P		22/110, G	636005			59,500.00
10	2022	K. PERUMAL	AVWPP4497P		22/110, G	636005			54,250.00
11	2022	R. DEVADASS	AETPD6430Q		22/110, G	636005			875,000.00
12	2022	SPR. VENKATACHALAM	ADGPPV7595N		22/110, G	636005			306,250.00
13	2022	M. ARUMUGAM	ATFPA7596K		22/110, G	636005			115,500.00
14	2022	K.S. SELVAM	BLEPS2582P		22/110, G	636005			56,000.00
15	2022	P. RAJA	BPSPP2847C		22/110, G	636005			224,000.00
16	2022	S. RAMASUNDARAM	BDBRP0950D		22/110, G	636005			8,750.00
17	2022	K. MANIKANDAN	AYTPK1671M		22/110, G	636005			262,500.00
18	2022	S. VENKATESWARAN	AENPV6124M		22/110, G	636005			647,500.00
19	2022	G. BALASUBRAMANIAM	AVGPR7084E		22/110, G	636005			96,425.00
20	2022	M. SHANMUGAVADIVEL	BKSP58186C		22/110, G	636005			402,360.00
21	2022	R. SEKAR	GKDP51626B		22/110, G	636005			98,000.00
22	2022	V. RAVINDRAN	ACOPR5461J		22/110, G	636005			87,500.00
23	2022	S. VASANTHA KUMAR	BPEPS9400N		22/110, G	636005			52,500.00
24	2022	M.K. PALANI SWAMY	AVTRK1672J		22/110, G	636005			35,000.00
25	2022	R.R. MONDAL	ASJPM2721R		22/110, G	636005			7,000.00
26	2022	G. KUMARAN	ANJPG5195N		22/110, G	636005			175,000.00
27	2022	RAMACHANDRA ROUT	ALHPR2026H		22/110, G	636005			36,750.00
28	2022	S. SAKKAPPAN	CZMPS0446P		22/110, G	636005			1,750.00
29	2022	A.S. TATA	AGOPT971P		22/110, G	636005			70,000.00
30	2022	A. MURUGAN	AKNPA2835N		22/110, G	636005			31,500.00
31	2022	K.S. PERIYASAMI	AUKPP2523M		22/110, G	636005			70,000.00
32	2022	M. ANABALAGAN	ALFPA9591G		22/110, G	636005			31,500.00
33	2022	I. NATARAJAN	AQYPN4797P		22/110, G	636005			52,500.00
34	2022	BABAJI DASH	ARSPD4078Q		22/110, G	636005			35,000.00
35	2022	M. PREMKUMAR	ATFPM4415M		22/110, G	636005			140,000.00

For MAA TARANI LOGISTICS LTD.
Authorised Signatories

It was the submission that the assessment order is liable to be quashed and in the alternative the addition made by the AO and confirmed by the Id CIT(A) is liable to be deleted.

8. In reply, Id Pr. CIT(OSD) has filed the written submission as follows:

"a) This is an appeal filed by the assessee company. In the additional grounds of appeal filed on 15.06.2023, the assessee company had challenged that the competent authority had not passed any order u/s.127 of the Income Tax Act for transfer of its case from ITO, Keonjhar to DCIT, Circle-I(I), Sambalpur and subsequently to ACIT, Circle-I(I), Cuttack. Thus the assessee company had challenged the jurisdiction of the ACIT, Circle-1(1) to pass the assessment order u/s. 144 of the Act for A.Y. 2012-13 on 25.03.2015.

b) During the course of hearing on 26.06.2023, the Id. AR of the assessee company filed copy of transfer order dated 14.01.2015 u/s.127(2) of the Act passed by CIT, Sambalpur. In view of same, these additional grounds of appeal are in-fructuous and need to be dismissed as such.

c) The Id. AR of the assessee company has raised a feeble argument that the assessee company was never supplied with the copy of transfer order u/s.127(2) of the Act. The Hon'ble Orissa High Court has held in the case of Dr. Monu Pattanayak (HUF) vs. PR. CCIT (77 taxmann.com 321) that where cases of assessee were transferred to another place due to restructuring of department, merely because an opportunity of being heard was not provided, transfer order could not become illegal unless assessee shows it to be prejudicial. The observations of the Hon'ble High Court are reproduced as under:

"7. So far as the first ground that opportunity has not been provided to the assessee, there is no denial about the fact that if any decision is taken, which is detrimental to the interest of the parties, a notice is required to be given on the principle that no man can be condemned without hearing him. The earlier concept was that in case of violation of principles of natural justice, the order will be said to be illegal' but subsequently the view has come that merely on the ground of not providing any opportunity of being heard, the decision taken by the authority cannot be said to be illegal, unless and until the party shows as to how he has been prejudiced by not

providing an opportunity of being heard and further even if the opportunity of hearing would have been provided, then would there any possibility in the change of the situation and if there is no chance in change of situation, merely for the purpose of following the principles of natural justice, no order is required to be passed on the ground of principle of futile exercise and empty formality.

8. Further it is not that the cases of the assesseees - petitioners herein have only been transferred, rather by virtue of the policy decision, the Cases of other assessee have also been transferred. Furthermore' there is no mala fide alleged against the authorities. The petitioners when came to know about the transfer of their cases from Rourkela to Sambalpur, they made representations before the authority that copy of the order be provided since decision has been taken without providing an opportunity of being heard. The authorities have taken into consideration this aspect of the matter and passed a well reasoned order showing the reason that due to the policy decision of re-structuring of the Income Tax Department in the area concerned, the decision has been taken to transfer the cases from Rourkela to Sambalpur and by this the petitioners - assesseees are not going to be prejudiced in any way.

We gathered from the record that the underlying object of the decision is equitable distribution of work and as such the order passed by the authorities is for administrative convenience.

9. We further find that the authorities have taken into consideration the grievance of the assesseees that if they will feel any inconvenience' they may make request before the authority to hear their matter at Camp Court, Rourkela in this way also the interest of the petitioners – assesseees have been Protected."

d) The Hon'ble Madras High Court has held in the case of Advantage Strategic Consulting (P.) Ltd. vs. Pr. CIT, Chennai (t24 talonann.com 511) that transfer order passed under section 127 is more in nature of an administrative order rather than quasi-judicial order and assessee cannot have any right to choose his assessing authority, as no prejudice can be said to have been caused to assessee depending upon which authority of Department passes assessment order. The

observations of the Hon'ble Madras High Court in para-9 are reproduced as under:

9. Having heard the learned counsel for the parties, we are of the opinion that the writ Appeal has become infructuous in view of the Assessment Order having been passed by the Assessing Authority in pursuance of the impugned transfer order under section 127 of the Income-tax Act, 1961, dated 24-6-2016. We are further of the opinion that the Transfer Order passed under section 127 of the Income-tax Act, 1961, is more in the nature of an administrative order rather than quasi-judicial order and the Assessee cannot have any right to choose his Assessing Authority, as no prejudice can be said to have been caused to the Assessee depending upon which Authority of the Department passes the Assessment Order. The Assessee can only be concerned with getting an opportunity of hearing before the concerned Assessing Authority and adduce his evidence and make his submissions before the concerned Assessing Authority. The Income tax Department has recently introduced a Scheme of Faceless Assessments which will avoid personal hearing and physical interaction of Assessee and Assessing Authority altogether' The Assessee need not even know the name of the Assessing Authority who will deal with his case. The process of hearing appears to have been undertaken by the Assessing Authority who passed the order on 30-12-2016 during the pendency of the writ petition with the permission of the Court, and the Assessment Order to be kept in sealed cover and which was served on the Assessee after the dismissal of the Writ Petition on 5-12-2017."

e) The Hon'ble Mumbai ITAT in the case of DGP Hinoday Inds' Ltd. vs. DCIT (13 SOT 733) held in para-14 that as no appeal is provided against a transfer order made under section 127 of the Income-tax Act, the Tribunal cannot therefore hold that the transfer of records from ACIT, Pune to ACIT, Mumbai is invalid. The remedy in the matter lies under the writ jurisdiction before the respective High Courts and/or Supreme Court. As no appeal is provided under the Income-tax Act against an order by CIT under section 127 of the Income-tax Act, the Tribunal cannot entertain the issue of vesting of jurisdiction in ACIT' Mumbai pursuant to the order of transfer under section 127 of the Income-tax Act. Accordingly said ground of appeal raised by the assessee was dismissed'

f) Even otherwise the provisions of section 124(3) of the Act will come into play and reliance is placed on the following decisions:

i.) Hon'ble Kolkata High Court in the case of Elite Pharmaceuticals vs. ITO (73 taxmann.com 69) (Para-16 & 17)

ii.) Hon'ble Chennai ITAT in the case of Karandhai Tamil Sangam vs. JCIT (97 tilanann.com 50) (Para-5)

iii.) Hon'ble Chandigarh ITAT in the case of ACIT vs. Punjab urban Development Authority (42 tuorrann.com 160) (para-21-)

iv.) Hon'ble Jodhpur ITAT in the case of Vaishali Builders & Colonizers vs. Addl. CIT (25 tuo:rann.com 464) (para-5.1 to 5.4)

In view of above facts, the additional grounds of appeal are required to be dismissed."

9. It was further submitted by Pr. CIT (OSD) that an order u/s.127 is not an appellable order. For this proposition, he placed before us the decision of the Co-ordinate Benches of Mumbai Tribunal in the case of DGP Hinoday Inds Ltd (supra). Ld Pr. CIT (OSD) drew our attention to the decision of Hon'ble Jurisdictional High Court of Orissa in the case of Dr. Monu Pattanayak (HUF) (supra), wherein, the Hon'ble High Court has held that the order u/s.127 having been passed without providing an opportunity to the assessee but while passing an order, the authority has taken into consideration the assessee's grievance and provided reasons for transfer as restructuring of department and it was found that even if an opportunity of being heard was provided, there would not be any possibility of change of situation and the decision of transfer could not become illegal unless and until the assessee showed as to how the assessee was prejudiced by not

giving an opportunity of being heard. Ld Pr. CIT(OSD) further drew our attention to the decision of the Hon'ble High Court of Madras in the case of Advantage Strategic Consulting Pvt Ltd (supra), wherein, it has been held that transfer order passed under section 127 is more in nature of an administrative order rather than quasi-judicial order and the assessee cannot have any right to choose his assessing authority, as no prejudice can be said to have been caused to assessee depending upon which authority of department passes assessment order. It was the further submission that if the reasons for the transfer was required by the Tribunal then he could be given time to bring the records of the Ld. CIT, Sambalpur. It was also the submission that in the additional ground raised, the assessee has challenged that there was no transfer order u/s.127(2) but the assessee is challenging in his arguments that no opportunity has been granted. It was the submission that the assessee should not be permitted to change his stand. At this point, Ld Pr. CIT(OSD) was informed that the Bench has not asked for the reasons recorded by the CIT, Sambalpur.

10. Ld AR further submitted that the order u/s.127(2) of the Act was provided to the assessee only recently in a reply to RTI filed by the assessee. It was the submission that the additional ground had been raised much before the reply to RTI had been given.

11. It was further submitted by Ld CIT(OSD) that in regard to notice u/s.143(2), the assessee had filed the return before the AO being the

Income Tax Officer, Keonjhar Ward and as the time limit for the issuance of notice u/s.143(2) was expiring, the ITO, Keonjhar Ward issued notice u/s.143(2) of the Act. It was the submission that however, no prejudice has been caused to the assessee insofar as the notice u/s.142(1) and questionnaire have been issued by the ACIT, Circle-1(1), Sambalpur, who admittedly had the jurisdiction at that point of time before the transfer of case u/s.127(2) of the Act. It was the further submission that after the transfer of files from Sambalpur to Cuttack, the assessee has been completely non-compliant, although multiple opportunities have been granted to the assessee. It was submitted that the filing of the details before the ACIT, Circle-1(1), Sambalpur by itself did not mean compliance in the assessment proceedings. The query raised by the AO being the ACIT, Circle-1(1), Cuttack has not been complied with. It was the submission that the addition made by the AO and confirmed by the Id CIT(A) is liable to be upheld.

12. We have considered the rival submissions. A perusal of the facts in the present case on merits clearly shows that the assessee has produced substantial evidences before the ACIT, Circle-1(1), Sambalpur when the notice u/s.142(1) has been issued. It is an admitted fact that the case records of the assessee had been transferred from Sambalpur to Cuttack for the purpose of assessment. Obviously, all the evidences produced by the assessee before the ACIT, Circle-1(1), Sambalpur would also get

automatically transferred to ACIT, Circle-1(1), Cuttack on account of transfer of the assessment process. Thus, clearly, the names and details were available before the ACIT, Circle -1(1), Cuttack. The addresses of the share applicants, PAN, even Form 16-A were very much available before the ACIT, Circle-1(1), Cuttack. These evidences produced by the assessee have not been dislodged much less even discussed. All that the AO mentions that the assessee has not produced the details. The Assessing Officer further held that the assessee was required to produce the complete postal address of the shareholders, their income tax particulars, PAN for verification with supporting documentary evidences. These evidences admittedly were before the Assessing Officer. These were the evidences on the basis of which, the Id CIT(A) has deleted the addition of Rs.4 crores in respect of M/s. Triveni Earthmovers Pvt Ltd., and the revenue has accepted the same and no appeal has also been filed till date. In fact, Form-16A could be generated only after entries of necessary details being made available to the Income tax Department. In fact, Form 16, Part-A & B are the tallying point with 26AS and TIS generated by the department system itself. The Assessing Officer sitting in his chair itself would have access to all the information, if at all, he wanted to verify the veracity of the evidences produced by the assessee. The fact that the shareholders have also received the dividend for the assessment year 2013-14 would also have been available online. Even this has not been examined. In fact, the

CIT(A) in para 6.7 in respect of Triveni Earthmovers Pvt Ltd., confirmed that the PAN, ITR, confirmation from shareholder, bank statements, audited financial statement, etc showed that the identity, genuineness and creditworthiness of the shareholder being Triveni Earthmovers Pvt Ltd., was established and consequently deleted the addition. Same evidences being PAN, Form -16A and the name and addresses and salary certificates of 608 employees of Triveni Earthmovers Pvt Ltd., were also very much available. Thus, it cannot be said that the assessee has not provided the evidences to substantiate its claim of share application money received from the 608 employees. This being so, on merits, we are of the view that the assessee has proved the identity, genuineness and creditworthiness of the shareholders being 608 employees of Triveni Earthmovers Pvt Ltd. This view of our finds further support from the fact that the dividend has been issued and paid to the shareholders from the assessment year 2013-14 and same is also available online for the financial year 2022. Also in respect of 562 shareholders, the dividends have been paid and the data is also available in the file of the department. The assessee has categorically submitted that as and when the employee has resigned or left the company, the shares have been purchased back or taken back and sold to new employees on account of which the no. of shareholders representing the employees of Triveni Earthmovers Pvt Ltd., has reduced to 562 during the Financial year 2022. This being so, the addition as made by the AO and

confirmed by the Id CIT(A) to the extent of Rs.6,01,86,900/- stands deleted on merits.

13. As we have deleted the addition on merits, we are not going into the legal issue in respect of granting an opportunity of being heard in respect of transfer of assessee's case from Sambalpur to Cuttack, nor the issue of non-issuance of notice u/s.143(2) by the competent assessing authority.

14. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 21/08/2023.

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 21/08/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : M/s Maa Tarani Logistics Ltd., Unchabali, PO: Bamabri, Via- Joda, Keonjhar
2. The Respondent: ACIT, Circle-1(1), Cuttack
3. The CIT(A)-, NFAC, Delhi
4. Pr.CIT-, Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack