

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

(THROUGH VIRTUAL HEARING)

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.62/CTK/2023

(निर्धारण वर्ष / Assessment Year : 2017-2018)

Shasank Sekhar Nayak, Keshari Bhawan, Bindusagar Road Old Town, Bhubaneswar-751002	Vs	Pr.CIT-1, Bhubaneswar
PAN No. : ABYN 8766 H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri Nihar Ranjan Biswal, CA
राजस्व की ओर से / Revenue by	:	Shri Dr. Abani Kanta Nayak, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	10/10/2023
घोषणा की तारीख / Date of Pronouncement	:	10/10/2023

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 DIN & Order No.ITBA/REV/F/REV5/2021-22/1038327224(1), for the assessment year 2017-2018.

2. This appeal of the assessee is barred by 370 days. In this regard, Id. AR of the assessee has filed an application along with affidavit of the assessee for condonation of the delay, to which the Id. CIT-DR has not raised any serious objection to condone the delay. On perusal of the application and the affidavit of the assessee, we found that the delay occurred due to bonafide reasons. Accordingly, we condone the delay of 370 days in filing the appeal and appeal is disposed off finally.

3. It was submitted by the Id. AR that the original assessment in the case of the assessee came to be completed u/s.143(3) of the Act on 17.12.2019. It was the submission that the assessee is an individual, who derives income from contract business. It was the submission that the assessee's case has been taken for scrutiny under the limited scrutiny for the reasons of substantial cash deposits in the bank account during the year. The assessment came to be completed and the returned income of Rs.27,01,410/- came to be accepted. It was submitted that the Id. Pr.CIT invoked powers u/s.263 of the Act in respect of the said assessment year on the ground that there was a discrepancy insofar as the assessee had incurred expenditure in excess of Rs.20,000/- and the same was incurred otherwise than by account payee cheque or account payee bank draft. It was the further submission that opportunities have been granted to the assessee to respond and the assessee had also responded on 26.11.2021 explaining the reasons for cash payment as the assessee was a contractor and was doing job work in remote areas dealing with labour and daily wages people and the payments have been made to different supervisors on the site for expenses. The assessee had also submitted the details of the same. It was the submission that the Id. Pr.CIT in para 4.1 of his order held that the assessee had not responded and proceeded to hold the assessee had nothing to show in the proposed revision. It was the further submission that without doing any further enquiry the Id. Pr.CIT invoked his powers u/s.263 of the Act and set aside the original assessment order passed u/s.143(3) of the Act by holding the same as

erroneous and prejudicial to the interest of revenue. It was the submission that at the outset the reply filed by the assessee has not been considered. On the second ground, it was the submission that the issue was squarely covered by the decision of the Hon'ble Jurisdictional High Court in the case of M/s Shark Mines and Minerals Pvt. Ltd., passed in ITA No.1 of 2023, dated 02.03.2023, wherein the Hon'ble High Court has categorically held that, if the AO has to go beyond the scope of the issues for which 'limited scrutiny' has to be undertaken by him, he has to seek prior permission of the superior officer in terms of the CBDT Instruction No.7/14 dated 26th September, 2014 and Instruction No.20/15 dated 19th December, 2015 and consequently, it was not open to the Pr.CIT while exercising *suo motu* revisional power under Section 263 of the Act to find fault with the assessment order of the AO on the ground that it is erroneous on an issue not covered by the 'limited scrutiny', when the AO could not have possibly examined such issue. The Hon'ble High Court clearly upheld the order of the Tribunal in the case of M/s Shark Mines and Minerals Pvt. Ltd. passed in ITA No.128/CTK/2019, dated 18.08.2022. It was the submission that as the assessment was a limited scrutiny assessment and the issue as raised by the Id. Pr.CIT was beyond the scope of limited scrutiny, for which the assessment has been done, the order u/s.263 of the Act, requires to be quashed.

4. In reply, Id. CIT-DR vehemently supported the order of the Id. Pr.CIT passed u/s.263 of the Act.

5. We have considered the rival submissions. As it is noticed that the original assessment u/s.143(3) of the Act, dated 17.12.2019 was a limited scrutiny in respect of “substantial cash deposits in the bank accounts during the year”, the issue raised by the Id. Pr.CIT in respect of excess payment of Rs.20,000/-may otherwise than by account payee cheque or by account payee bank draft, cannot be considered as making the order passed by the Id. AO u/s.143(3) of the Act, erroneous and prejudicial to the interest of revenue. This view of ours finds support from the decision of the Hon’ble Jurisdictional High Court in the case of M/s Shark Mines and Minerals Pvt. Ltd., referred to supra, wherein the Hon’ble Jurisdictional High Court in para 10 has held as follows :-

10. What persuades this Court to reach this conclusion is the requirement in law that if the AO has to go beyond the scope of the issues for which ‘limited scrutiny’ has to be undertaken by him, he has to seek prior permission of the superior officer in terms of the CBDT Instruction No.7/14 dated 26th September, 2014 and Instruction No.20/15 dated 19th December, 2015. Consequently, it was not open to the Pr. CIT while exercising suo motu revisional power under Section 263 of the Act to find fault with the assessment order of the AO on the ground of its being erroneous on an issue not covered by the ‘limited scrutiny’ when the AO could not have possibly examined such issue. To reiterate, in the present case, the limited scrutiny was in respect of excess disallowance under Section 40A(3) of the Act whereas the SCN under Section 263 was regarding the FIFO method of valuation of closing stock adopted by the Assessee. These were, as rightly noted by the ITAT, unconnected issues and the assessment order could not have been held to be “erroneous and prejudicial to the interest of Revenue” when the AO could not have travelled beyond the issues forming subject matter of the ‘limited scrutiny.’

6. In view of the above observations of the Hon'ble Jurisdictional High Court, we quash the order passed by the Id. Pr.CIT u./s.263 of the Act.

7. Further, it is also noticed that the assessee has responded to the show-cause notice issued by the Id. Pr.CIT and the Id. Pr.CIT has not found anything wrong much less referred to the submissions filed by the assessee. As no enquiry itself has been done by the Id. Pr.CIT before passing the order u/s.263 of the Act, setting aside the original assessment order passed u/s.143(3) of the Act, on this ground also, the order passed u/s.263 of the Act is unsustainable and the same stands quashed.

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

Order dictated and pronounced in the open court on 10/10/2023.

Sd/-

(राजेश कुमार)

(RAJESH KUMAR)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 10/10/2023

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Shasank Sekhar Nayak,
Keshari Bhawan, Bindusagar Road
Old Town, Bhubaneswar-751002
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