



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK**

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.317/CTK/2023

Assessment Year : 2017-2018

Pawan Kumar Agarwalla, Main Road, near Ambika Mandir, Karanjia, Mayurbhanj-757037	Vs.	Income Tax Officer, Ward— 2, Baripada
PAN/GIR No.AAUPA 3263 D		
(Appellant)	..	(Respondent)

Assessee by : Shri Chitrasen Parida, Adv

Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 03/01/2024

Date of Pronouncement : 03 /01/2024

ORDER

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 16.08.2023 in Appeal No.CIT(A), Cuttack/10572/2019-2020 for the assessment year 2017-2018.

2. Shri Chitrasen Parida, Id AR appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is in the business of agro based industries and wholesale. It was the submission that the assessee

had filed his return of income declaring an income of Rs.7,20,590/- and the accounts of the assessee are also audited. It was the submission that as there was deposit of specified bank notes during the Demonetisation period to an extent of Rs.27,78,000/-, the Assessing Officer had issued notice u/s.142(1) of the Act. It was the submission that admittedly, the assessee had not responded to the notice issued by the Assessing Officer and the AO had consequently issued a show cause notice to the assessee on 3.1.2019. In response to the show cause notice, the assessee had provided the bank accounts, details of cash deposits and audit report. It was the submission that the Assessing Officer completed the assessment by rejecting the books of account of the assessee, admittedly, as the same had not been produced before him. The AO had treated the cash deposits of S.B. notes of Rs.27,80,000/- as unexplained money of the assessee, reduced the same from the total turnover and estimated the income of the assessee @ 8% of the turnover. It was the submission that on appeal, the Id CIT(A) had confirmed the assessment on account of non-cooperation on the part of the assessee. It was the submission that the assessee may be granted another opportunity to produce all the evidences before the AO.

4. In reply, Id Sr DR drew my attention to page 13 of the assessment order para 5, the response of the assessee dated 9.12.2019 has been extracted, wherein, the assessee has mentioned that the account of the assessee was voluminous and, therefore, it was not possible to furnish the

required documents within four days. It was the submission that he had no serious objection the issue being restored to the file of the AO but then it was incumbent on the assessee to produce the details called for before the Assessing Officer and failure on the part of the assessee has led to the protraction of litigation.

5. I have considered the rival submissions. Admittedly, the assessee has not produced the books of account before the Assessing Officer and this has resulted in the rejection of books of account by the Assessing Officer. The paper book filed by the assessee before me contains substantial number of documents of nearly 138 pages. Admittedly, most of these documents are not before the Assessing Officer. This being so, in the interest of justice, the issues in this appeal are restored to the file of the Assessing Officer for re-adjudication subject to the assessee paying a cost of Rs.10,000/- under the head "others" before the Assessing Officer. The same is not to be considered as adjustment to any of the taxes but is to be adjusted towards the cost of the protraction of litigation. In the event, the assessee does not pay the cost within such time as the AO shall direct, the assessment order as passed by the AO and as confirmed by the Id CIT(A) shall stand confirmed.

6. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 03/01/2024.

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 03 /01/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Pawan Kumar Agarwalla,
Main Road, near Ambika Mandir, Karanjia,
Mayurbhanj-757037
2. The Respondent: The ITO, Ward-2, Baripada
3. The CIT(A)-, NFAC, Delhi
4. Pr.CIT, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack