

आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ,कटक

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK

श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं/ITA No.311/CTK/2023

(निर्धारण वर्ष / Assessment Year :2017-2018)

Satyanarayan Prusty, C/o- Raj Ranapur, Nayagarh	Vs	ITO, Khurda
PAN No. :ADWPP 5099 F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Dulal Narayan Jethi & Shri Natabar Panda, Advocates
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	02/01/2024
घोषणा की तारीख/Date of Pronouncement	:	02/01/2024

आदेश / O R D E R

This is an appeal filed by the assessee against the order of the Id CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 24.11.2022, passed in DIN & Order No.ITBA/NFAC/S/250/2022-23/1047613346(1) for the assessment year 2017-2018.

2. It was the submission of the Id. AR that the appeal filed by the assessee is delayed by 260 days for which the assessee has filed necessary condonation petition along with affidavit. The Id. AR submitted that the delay was on account of non-submission of the original hard copy of the orders. It was the submission that as there was confusion in regard to filing of the appeal electronically and physically, this issue had come up and immediately when the defect was brought to attention, the assessee has rectified the same and it was the prayer that the delay may be condoned.

3. The reasons given by the assessee are found to be reasonable. This being so, the delay in filing the appeal of 260 days stands condoned and the appeal is disposed on merits.

4. It was submitted by the Id. AR that the assessee is in the business of dealing in spare parts for auto rickshaw and motorcycles. It was the submission that the turnover of the assessee was in the range of above Rs.50 lakhs. The assessee has not filed his return of income. As the assessee has deposited specified bank notes to an extent of Rs.11,61,500/-, the AO had issued notice to the assessee. As the assessee was under the impression that he did not have taxable income, therefore, he had not represented himself before the AO. It was the submission that this has resulted into ex-parte assessment u/s.144 of the Act. It was the submission that on appeal the assessee had produced the books of accounts before the Id. CIT(A), who had called for a remand report from the AO. It was the submission that on the basis of remand report, the Id. CIT(A) had taken a stand that there was no necessity for the assessee to maintain books of accounts and consequently the books of account produced by the assessee was fabricated. The Id. CIT(A) further upheld the action of the AO in holding that the cash deposit of Rs.11,61,500/- was the unexplained cash of the assessee. It was the prayer that the issues in this appeal may be restored to the file of AO and that the assessee would cooperate in the set aside proceedings.

5. In reply, Id. Sr. DR did not raise any serious objection to the issue being restored to the file of AO for readjudication.

6. I have considered the rival submissions. Considering the fact that the assessee has not represented himself before the AO and all the evidences in support of his claim has not been examined by the AO, in the interest of justice, issues in this appeal are restored to the file of AO for readjudication after granting the assessee adequate opportunity of being heard.

7. It would also be worthwhile to mention here that the stand taken by the Id. CIT(A) that the books of accounts need not be maintained by the assessee, does not stand to reason, insofar as, as per the provisions of Section 44AA of the Act, if the assessee proposes to disclose an income lower than the estimated income as provided under the Act, then it is required that the assessee should maintain books of accounts. It may also be mentioned here that even as per the provisions of Section 44A(2)(i) of the Act, if the turnover of the assessee is more than Rs.10 lakhs for any of the preceding three years then also the assessee is expected to maintain its books of accounts. The AO shall examine the books of accounts and readjudicate the issue in accordance with law after granting the assessee adequate opportunity of being heard.

8. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 02/01/2024.

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 02/01/2024

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Cop.y of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Satyanarayan Prusty,
C/o- Raj Ranapur,
Nayagarh
2. प्रत्यर्थी / The Respondent-
ITO, Khurda
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