

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, 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.302/CTK/2023

(निर्धारण वर्ष / Assessment Year : 2020-2021)

Public School, Narayani Road, Phulbani-762001	Vs	ITO (Exemption), Berhampur/ ADIT(CPC), Bangalore
PAN No. : AACAP 2422 Q		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	None
राजस्व की ओर से / Revenue by	:	Shri Charan Dass, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	28/11/2023
घोषणा की तारीख / Date of Pronouncement	:	28/11/2023

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 31.07.2023, passed in ITBA/NFAC/S/250/2023-24/1054749083(1), for the assessment year 2020-2021.

2. Shri Abani Kanta Nayak, CIT-DR appeared on behalf of the revenue and none appeared on behalf of the assessee, even the case was called for second round of hearing. Therefore, the Bench proceeded to dispose off the appeal after considering the submissions of the Id. CIT-DR and the facts available on record.

3. Ld. CIT-DR submitted that the audit report having not been filed within the time prescribed in view of the decision of the Hon'ble Supreme Court in the case of Pr.CIT Vs. Wipro Ltd. (supra), the intimation has

rightly been issued denying the assessee exemption. It was the submission that the order of the Id. CIT(A) is liable to be upheld.

4. On this point, a specific query was raised as to whether the show cause notice has been issued to the assessee in line with the proviso to Section 143(1) of the Act. To this, the reply was negative.

5. We have considered the rival submissions. On perusal of the assessment order, it was found that the return filed by the assessee, which is a society came to be processed u/s.143(1) of the Act, wherein the entire revenue expenditure and the capital expenditure has been disallowed. Further, the entire annual receipts have been treated as income. The Id. CIT(A) rejected the appeal of the assessee following the decision of the Hon'ble Supreme Court in the case of Pr.CIT Vs. Wipro Ltd., reported in [2022] 140 taxmann.com 223 (SC), wherein it has been held that while interpreting the provisions of section 10B(8) requiring a declaration to be filed before the due date for furnishing the return of income u/s.139(1) of the Act is mandatory and that the taxing statute the provisions are to be treated as mandatory and they are to be literally construed. Admittedly, the return of the assessee was filed on 29.01.2021 for the impugned assessment year and the press release in the respect of the due date of filing of the return for the assessment year 2020-2021 was 15.02.2021 and the return was filed on 29.01.2021. However, the audit report was filed in Form No.10BB on 29.01.2021, though as per the press release the extended due date for filing of the audit report was 15.01.2021. As the audit report having been filed along with the return at

the time of assessment proceedings, the audit report was available and consequently the AO should not have denied the assessee the benefit of the exemption as claimed. Even otherwise, as the show cause notice required under the proviso (1) to Section 143 of the Act has not been issued in this case before issuance of the intimation u/s.143(1) of the Act, admittedly, the intimation issued is bad in law and consequently the same stands quashed. We are not going into the merits of the additions made in the intimation u/s.143(1) of the Act as to whether the same are debatable or not. In these circumstances, the appeal of the assessee is allowed.

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

Order dictated and pronounced in the open court on 28/11/2023.

Sd/-
(GIRISH AGRAWAL)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 28/11/2023

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Public School,
Narayani Road, Phulbani-762001
2. प्रत्यर्थी / The Respondent-
ITO (Exemption), Berhampur/
ADIT(CPC), Bangalore
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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack