

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.133/CTK/2023

(निर्धारण वर्ष / Assessment Year : 2018-2019)

Anand Kumar, B-20, Kuberpuri, Aiginia, Bhubaneswar-19	Vs	Pr.CIT, Bhubaneswar
PAN No. :ABZPK 7558 D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri P.K.Mishra, Advocate
राजस्व की ओर से /Revenue by	:	Dr. Abani Kanta Nayak, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	29/11/2023
घोषणा की तारीख/Date of Pronouncement	:	29/11/2023

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 29.03.2023, passed u/s.263 of the Act in DIN & Order No.ITBA/REV/F/REV5/2022-23/1051581672(1), for the assessment year 2018-2019.

2. It was submitted by the Id. AR that the assessee is an individual engaged in the wholesale and retail trade of potato, onion and other agricultural products. It was the submission that the return of the assessee came to be processed and the assessment came to be framed u/s.143(3) of the Act on 17.12.2020, wherein the return submitted by the assessee was accepted. It was the submission that the assessment in the case of the assessee was on limited scrutiny assessment and the same was also been recognized by the Id. Pr.CIT in his order passed u/s.263 of

the Act. The reason for the limited scrutiny was on the large cash deposit in the bank account. The AO had examined the deposit in the bank account and had accepted the transaction of the assessee. It was the submission that the Id. Pr.CIT had issued a show cause notice u/s.263 of the Act on 25.11.2022, wherein he has raised the following issues in para 3, 3.1, 3.2 & 4 of his order :-

3. On verification of assessment record revealed from the notice u/s.142(1) that Rs.8,42,23,350/- was deposited in six bank accounts and assessee was asked to furnish source of cash deposit with documentary evidence. But no compliance was furnished in this regard. In spite of no compliance, scrutiny assessment was completed by accepting the returned income.

3.1. Further verification of assessment record, it is revealed from the computation of income and tax that gross business receipt shown by the assessee is Rs.44,75,747/- and it has computed income from the said business receipt u/s. 44AD of the I T Act @ 12% which comes to Rs. 5,41,059/-.

3.2. When assessee has not offered any explanation in respect of huge cash deposit of Rs. 8,42,23,350/-, the said cash deposit was required to be treated as business receipt of the assessee for the P. Y. 2017-18 relevant to A. Y. 2018-19.

4. Going through the Profit & Loss account for the year ending 31st March, 2018 submitted by the assessee, it is seen that assessee has shown Net Profit of Rs.17,27,424/- but had filed return of income showing total income at Rs. 6,99,690/-. During assessment proceedings u/s.143(3) of the Act, AO had accepted the returned income and completed the assessment as the assessee had not submitted the reply of notice u/s.142(1) of the Act. Hence Rs.10,27,734/-(Rs.17,27,424 - Rs.6,99,690/-) should have been added to the total income of the assessee.

3. It was the submission that after considering the reply filed by the assessee, Id. Pr.CIT had in para 6.1.3.5 had accepted the contention of the assessee in regard to the cash deposit in the bank account of the assessee.

4. It was the submission that the Id. Pr.CIT went on to further set aside the assessment order with the direction to consider the other issues also which were not part of the limited scrutiny assessment. It was the submission that in view of the decision of the Hon'ble Jurisdictional High Court in the case of Shark Mines and Minerals (P.) Ltd., reported in [2023] 151 taxamnn.com 71 (Orissa) as the AO has examined the issue on which the limited scrutiny was made and the same has also been accepted by the Id. Pr.CIT in his order u/s.263 of the Act, the Id. Pr.CIT could not go into the issues which was not in the limited scrutiny to hold the order passed by the AO to be erroneous and prejudicial to the interest of revenue.

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

6. We have considered the rival submissions. A perusal of the order of the Id. Pr.CIT clearly shows that it is an accepted fact that the original assessment order was a limited scrutiny assessment. It is also noticed that the Id. Pr.CIT has accepted the fact that the AO has considered the issues on which the limited scrutiny has been done and the proposed revision on the said issue which was the subject matter of the limited scrutiny has also been dropped by the Id. Pr.CIT. This being so, it is not open to the Id. Pr.CIT while exercising the power u/s.263 of the Act to find fault with the assessment order on the ground of it being the erroneous of an issue nor covered by the limited scrutiny when the AO could not possibly examine such an issue. This being so, respectfully following the principle laid down by the Hon'ble Orissa High Court in the case of Shark

Mines and Minerals (P.) Ltd., referred to supra, the order passed u/s.263 of the Act is held to be unsustainable and consequently the same is hereby quashed.

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

Order dictated and pronounced in the open court on 29/11/2023.

**Sd/-
(GIRISH AGRAWAL)**

लेखा सदस्य/ **ACCOUNTANT MEMBER**

**Sd/-
(GEORGE MATHAN)**

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 29/11/2023

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Anand Kumar,
B-20, Kuberpuri,
Aiginia, Bhubaneswar-19
2. प्रत्यर्थी / The Respondent-
Pr.CIT, 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