



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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA Nos.251 & 252/CTK/2023
Assessment Years : 2015-16 & 2014-15

Laxmi Goenka, C/O. Krish Coal Movers, At/PO: Gomadera, Belpahar, Dist: Jharsuguda	Vs.	DCIT, Sambalpur
PAN/GIR No.AIAPG 1924 F		
(Appellant)	..	(Respondent)

Assessee by : Shri Mahendra Kumar Kedia, CA
Revenue by : Shri S.C.Mohanty, Id Sr DR

Date of Hearing : 23/04/2024
Date of Pronouncement : 23/04/2024

ORDER

Per Bench

These are appeals filed by the assessee against the separate order of the Id CIT(A)-2, Bhubaneswar both dated 29.3.2023 in Appeal No.Sambalpur/10195/2017-18 and No.Sambalpur/10381/2016-17 for the assessment years 2015-16 & 2014-15, respectively.

2. Shri Mahendra Kumar Kedia, Id AR appeared for the assessee and Shri S.C.Mohanty, Ld Sr. DR appeared for the revenue.

3. It was submitted by Id AR that there was delay of 28 days in filing of the appeals, which was on account medical reasons, for which, necessary affidavit and the medical reports had been submitted. As the reasons given for the delay have not been found to be false and adequately supported by affidavit, the delay in filing of the appeals are condoned and the appeals disposed off on merits.

4. It was submitted by Id AR that the assessee is in the business of transport contract and also purchase and sale of coal. It was the submission that there was survey on the premises of the assessee on 28.9.2016 and in the course of survey; no books of account were found. It was the submission that consequently, the returns filed by the assessee for the assessment years 2014-15 & 2015-16 were processed u/s.143(3) of the Act and on account of non-availability of books of account, the book results shown by the assessee were rejected and the income of the assessee was estimated. It was the submission that the turnover as disclosed by the assessee for both transport business and trading business were accepted by the Assessing Officer and the Assessing Officer had estimated the net profit from the transport business at 5% and trading activity at 4%. It was the submission that on appeal, the Id CIT(A) enhanced the net profit on the trading activity from 4% to 12.81% for the assessment year 2015-16 and for the assessment year 2014-15, the Id CIT(A) enhanced it to 4.4%. The net profit in regard to transportation business was admittedly reduced from

5% to 2.5%. It was the submission by Id AR that when the enhancement was done, no notice of enhancement was given to the assessee. It was the submission that the apportionment of the expenses as done by the Assessing Officer was erroneous and the enhancement as made by the Id CIT(A) was also on higher side and liable to be reduced.

5. In reply, Id Sr DR submitted that the net profit in respect of trading activity as has been fixed by the Id CIT(A) was not an enhancement but restoration of the net profit as determined by the assessee from its own profit and loss account. It was the submission that this was in fact not an enhancement. Id Sr DR was also unable to point out from the order of the Id CIT(A) as to whether enhancement notice has been issued to the assessee. In regard to net profit in respect of transportation activity, it was the submission that the Id CIT(A) has been reasonable in fixing the same at 2.5%. It was the submission that overall there was no enhancement of income insofar as the turnover in respect of transportation business was much higher than the trading business. It was the submission that the order of the Id CIT(A) was liable to be upheld.

6. We have considered the rival submissions. Admittedly, when over all consideration is done in regard to income assessed, there is no enhancement on account of the consolidated computation of the income fixed by the Id CIT(A). But on perusal of the assessment order clearly shows that the Assessing Officer has fixed the percentage for the

transportation business separately and the trading activity separately. These are two separate streams of income. The income stream in respect of trading activity has been enhanced by the Id CIT(A). When such enhancement is being done, then compulsorily show cause notice has to be issued to the assessee. This is as per the provisions of section 251(2) of the Act, which specifies that the Id CIT(A) shall not enhance an assessment unless the appellant has been given a reasonable opportunity of showing cause against such enhancement or reduction. The term 'assessment' though wide also has implication of each stream of income. This being so, in the interest of justice, the issues in these appeals are restored to the file of the Id CIT(A) for readjudication after granting the assessee adequate opportunity of being heard.

7. Should the Id CIT(A) consider it necessary for making any enhancement in regard to either of the stream of income, enhancement notice must compulsorily be issued to the assessee to obtain his objection.

8. In the result, appeals of the assessee stand partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 23/04/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 23/04/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Laxmi Goenka, C/O. Krish Coal Movers, At/PO: Gomadera, Belpahar, Dist: Jharsuguda
2. The Respondent: DCIT, Sambalpur
3. The CIT(A)- 2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack