

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.64/CTK/2024

(निर्धारण वर्ष / Assessment Year :2017-2018)

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|--|----|---------------------------|
| Lakshmi Nayak, C/o: Prabhakar Nayak, Near Police Station, Similiguda, Koraput | Vs | ITO, Jeypore |
| PAN No. : ARYPN 5496 J | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| निर्धारिती की ओर से /Assessee by | : | Shri S.K.Sarangi, CA |
| राजस्व की ओर से /Revenue by | : | Shri S.C.Mohanty, Sr. DR |
| सुनवाई की तारीख / Date of Hearing | : | 23/04/2024 |
| घोषणा की तारीख/ Date of Pronouncement | : | 23/04/2024 |

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 09.02.2024, passed in DIN & Order No.ITBA/NFAC/S/250/2023-24/1060729562(1) for the assessment year 2017-2018.

2. It was submitted by the Id. AR that the assessee is an individual doing business in the purchase and sale of vegetable and fruits. It was the submission that the assessee had deposited Rs.11,07,538/- in her bank account during the demonetization period. It was the submission that as the assessee did not have any income liable for taxing, the assessee had not filed her return of income. It was the submission that the AO on the ground that the assessee has deposited Rs.11,05,000/- in her bank account during the demonetisation period, initiated assessment proceedings against the assessee and completed the assessment ex-parte treating the amount of Rs.11,05,000/- as the unexplained income of

the assessee. On appeal, the Id. CIT(A) dismissed the appeal of the assessee vide order dated 09.02.2024 holding that as per provisions of Section 249(4)(b) of the Act, the appeal is not to be admitted unless the assessee has paid an amount equal to the amount of advance tax which was payable by him, if no return of income has been filed. Ld. AR placed before us the Form 26AS/Annual tax statement for the assessment year 2017-2018, wherein it shows that an amount of Rs.11,39,440/- has already been paid as on 21st March, 2020 much before the filing of the appeal before the Id. CIT(A). It was the submission that the order of the Id. CIT(A) is erroneous and is liable to be set aside. It was the submission that in the interest of justice, the issues may be restored to the file of AO so that the assessee can explain the deposit of Rs.11,05,000/-.

3. In reply, Id. Sr. DR vehemently supported the order of the Id. CIT(A). It was the submission that the amount of Rs.11,39,440/- were the recoveries and not the advance tax. It was the submission that the appeal of the assessee is liable to be dismissed.

4. I have considered the rival submissions. Admittedly, in the present case, before filing of the appeal itself, the taxes to an extent of Rs.11,39,440/- has already been recovered. The said amount is shown in the credit of the assessee in the Form 26AS. Once the amount is recovered from the assessee, it forms part of the taxes paid by the assessee and the same is far in excess of the amount of advance tax which was payable. The assessee admittedly has not filed the return of income and has claimed that she does not have any income chargeable to tax under the head income from profit and gains and business or

profession. Further a perusal of the provisions of Section 249(4) of the Act shows that the CIT has power to condone such default subject to an application being filed by the assessee in its behalf. However, the Id. CIT(A) has decided the issue ex-parte and the Id. CIT(A)'s proceedings are nothing but extended proceedings of assessment before him and Form 26AS details were very much available before the Id. CIT(A) to examine. This has not been done by the Id. CIT(A). This being so, in the interest of justice, the order of the Id. CIT(A) is set aside and the issues in this appeal are restored to the file of AO for readjudication after granting the assessee adequate opportunity to substantiate her claim.

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

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

Sd/-
(जार्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 23/04/2024

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Lakshmi Nayak,
C/o: Prabhakar Nayak,
Near Police Station, Similiguda, Koraput
2. प्रत्यर्थी / The Respondent-
ITO, Jeypore
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