



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

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

ITA No.103/CTK/2023
Assessment Year : 2015-16

Ramesh Chandra Nayak, Prop. Sarada Enterprises, Nabakrushna Nagar, Rourkela	Vs.	Pr. CIT, Sambalpur
PAN/GIR No.ABFPN 5693 L		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Shri Sanjay Kumar, CIT DR

Date of Hearing : 24/04/2024
Date of Pronouncement : 24/04/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order dated 31.3.2020 passed u/s.263 of the Act by the Id Pr. CIT, Sambalpur in Appeal No. ITBA/COM/F/17/2019-20/1026904780(1) for the assessment year 2015-16.

2. None appeared for the assessee and no adjournment petition is filed. Shri Sanjay Kumar, Id CIT DR appeared for the revenue.

3. The appeal is time barred by 1035 days. The assessee has filed condonation petition dated 5.4.2023 supported by affidavit, stating that the appellant had filed a writ petition before the Hon'ble Jurisdictional High Court challenging the assessment order dated 29.12.2017 and the Hon'ble High Court has dismissed the writ petition as withdrawn on 5.9.2018 and again the assessee had filed an Interlocutory application for modification of the order dated 5.9.2018 of the Hon'ble High Court praying for giving liberty to the appellant to file the appeal and the Hon'ble High Court disposed the petition on 24.10.2019 giving the appellant to file the appeal at the appropriate forum. It was stated that in the meantime, the assessment record was called by the Pr. CIT, Sambalpur and order u/s.263 of the Act was passed on 31.3.2020 and the said order was served on the appellant on 12.4.2020. It was also stated that the appeal could not be filed within the stipulated time because the advocate conducting the case was suffering from COVID-19 for a long period and expired on 24.10.2021. It was in this backdrop that the appeal could not be filed within the stipulated period and for which, there was delay of 1035 days in filing the appeal before the Tribunal. It was the prayer that the delay of 1035 days may be condoned and the appeal disposed off.

4. After hearing Id CIT DR and perusing the condition petition supported by affidavit, we are convinced that there was sufficient cause in not filing the appeal before the Tribunal within the time specified.

Therefore, we condone the delay of 1035 days in filing the appeal before the Tribunal and admit the appeal for adjudication.

5. At the outset, Id CIT DR submitted that in this case consequential order dated 27.7.2021 to the order passed u/s.263 of the Act has been made and in the order u/s.263, three issues had been raised i.e. regarding interest on saving account and interest on fixed deposit, expenditure towards repairs and maintenance and non-deposit of PF and ESI within the stipulated period. In the consequential order, the Assessing Officer has considered the issues and has added the interest on saving account and interest on fixed deposit and other issues were accepted by the Assessing Officer. It was the submission that as the consequential order has been passed considering the evidence produced, the appeal filed by the assessee against the order u/s.263 is liable to be dismissed.

6. We have considered the submission and perused the facts on record as also the consequential assessment order. It is noticed that what has been stated by Id CIT DR is supported by the consequential assessment order passed and only the addition in respect of saving account and fixed deposit has been made by the Assessing Officer and no other addition has been made though suggested by the Id CIT(A) u/s.263 of the Act. As the consequential order has already been passed and the assessee has effectively alternate remedy in respect of such assessment order, the appeal

filed by the assessee against the order u/s.263 of the Act has become infructuous and same stands dismissed.

7. In the result, appeal of the assessee stands dismissed.

Order dictated and pronounced in the open court on 24/04/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER
Cuttack; Dated 24/04/2024
B.K.Parida, SPS (OS)

sd/-
(George Mathan)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant : Ramesh Chandra Nayak,
Prop. Sarada Enterprises, Nabakrushna
Nagar, Rourkela
2. The Respondent: Pr. CIT, Sambalpur
3. DR, ITAT,
4. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack