



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

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

**ITA No.318/CTK/2023**  
Assessment Year : 2016-2017

SKD Rice Industries Pvt Ltd., At-Radhadamodarpur, Khuntuni, Cuttack	Vs.	Pr. CIT, Bhubaneswar-1
PAN/GIR No.AAUCS 4368 J		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri S.K.Sarangji, CA  
Revenue by : Shri Sanjay Kumar, CIT DR

**Date of Hearing : 25/04/2024**  
**Date of Pronouncement : 25/04/2024**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order passed u/s.263 of the Act by the Id Pr. CIT, Bhubaneswar-1 dated 17.3.2021 in Appeal No.Pr. CIT, Bhubaneswar-1/Revision-263/100000188542/20231 for the assessment year 2016-17

2. Shri S.K.Sarangji, Id AR appeared for the assessee and Shri Sanjay Kumar, Id CIT DR appeared for the revenue.

3. At the time of hearing, it was submitted by Id AR that the appeal filed by the assessee is delayed by 881 days, for which, the assessee has filed condonation petition and necessary affidavit. The reason given in the petition is that the earlier counsel of the assessee namely, Shri B.Behera, FCS lost his wife on 29.6.2020 and only son on 12.5.2021 during the Covid period. This had put the said A.R. into depression and the consequences were the delay in filing of the appeal as also in regard to responding to the 263 show cause notice. When Id A.R. was directed to prove the claim, Shri B.Behera, FCA, earlier Id AR was produced in the Court and he has confirmed the fact of the demise of his wife and son during the said period. The present Id A.R. submitted that the papers were received in his office in October, 2023 and immediately within 15 days, the appeal has been filed. It was the prayer that the delay in filing the appeal may be condoned.

4. In reply, Id CIT DR submitted that though he sympathizes with the mishap with the previous Id AR, extra ordinary delay of 881 days should normally not be condoned.

5. We have considered the rival submissions. Carona Period has been time period in the country. Many have lost their lives. A person whose loses his own son and wife within a period of less than a year would normally be broken. It is also not in dispute that the delay has occurred on account of the difficulties faced by the counsel of the assessee. The assessee should not be put to detriment on account of certain difficulties

faced by the counsel in filing of the appeal. This being so, considering the explanation and that the explanation has been shown to be true, the delay in filing of the appeal is condoned and the appeal disposed off on merits.

6. On this point, Id CIT DR submitted that the consequential order to the order passed u/s. 263 has also been passed. It was then informed to Id AR that unless it can be shown that there is any apparent error in the order of the Pr. CIT u/s.263 , the order would normally be sustained. Ld AR drew our attention to the original assessment order passed on 21.12.2018, which was a limited scrutiny assessment for verification of sundry creditors and share application money. It was the submission that the examination had been done and the addition had also been made in the original assessment order. Ld AR drew our attention to show cause notice issued u/s.263 of the Act, where also, the Pr. CIT has invoked his powers u/s.263 for issues in respect of verification of sundry creditors and share application money. Further, he drew our attention to attention to the order u/s.263 of the act at para 8, where, it reads as follows:

“8. In that view of the matter and in absence of any explanation from assessee thus far and in view of the foregoing discussion , I hold that the order made without requisite enquiry and due application of mind by the AO, is erroneous & prejudicial to interest of revenue & therefore, remit the issues of cash deposit in the bank account to the AO with the direction that the AO may in the light of discussion supra, call for destination of payments by transfer to further probe into the nature of transaction with the parties, examine the issue and pass a speaking order on disallowance to be made on such cash payments etc. in the light of the facts and evidence to be provided by the assessee and also relevant provisions of the Act.

Needless to say, the Assessee may be given reasonable opportunity of being heard in the matter.”

7. It was the submission that after initiating the proceedings for verification of sundry creditors and share application money, the Id Pr. CIT has shifted the direction to cash deposits in the bank account and call for destination of payments by transfer. It was the submission that this was not the issue in the show cause notice and consequently, the order passed u/s.263 of the Act is liable to be quashed.

8. Ld CIT DR submitted that it was a typographical error in the order of the Id Pr. CIT and the issues in the appeal should be restored to the file of the Pr. CIT for proper direction.

9. We have considered the rival submissions. Admittedly, *prima facie*, the error in the order passed u/s.263 of the Act has been shown by Id AR. The issues on which the Pr. CIT has invoked his powers u/s.263 of the Act are the issues on which the directions have been issued by Pr. CIT in his order in para 8. The claim of Id CIT DR that it is a typographical error and issues should be restored to the file of the Pr. CIT would not hold water insofar as the Income Tax Appellate Tribunal is the appellate authority and the appellate authority does not have the powers to extend the limitation in respect of passing of an order and the limitation in respect of an order u/s.263 of the Act is controlled by the date of issuance of the show cause notice. This being so, the only option available to the Tribunal is either to

uphold the order of the Pr. CIT or to quash the same. In the present case, the order u/s.263 is clearly unsupported by the facts and consequently, the order is unsustainable and is thus quashed.

10. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 25/04/2024.

Sd/-  
**(Manish Agarwal)**  
ACCOUNTANT MEMBER  
Cuttack; Dated 25/04/2024  
B.K.Parida, SPS (OS)

sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant : SKD Rice Industries Pvt Ltd., At-Radhadamodarpur, Khuntuni, Cuttack
2. The respondent: Pr. CIT, Bhubaneswar-1
3. DR, ITAT,
4. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**