



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

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

ITA No.332/CTK/2023

Assessment Year : 2011-12

Mohammed Javed Sultan, Mastan Road, Buxi Bazar, Cuttack	Vs.	ITO, Ward-2(3), Cuttack
PAN/GIR No.AGVPS 4005 Q		
(Appellant)	..	(Respondent)

Assessee by : Shri K.K.Bal, Adv
Revenue by : Shri S.C.Mohanty, Id Sr DR

Date of Hearing : 30/04/2024
Date of Pronouncement : 30/04/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 31.8.2023 in Appeal No.CIT(A), Cuttack/10392/2018-19 for the assessment year 2011-12.

2. Shri K.K.Bal, Id AR appeared for the assessee and Shri S.C.Mohanty, Id Sr. DR appeared for the revenue.

3. It was submitted by Id AR that the appeal has been dismissed by Id CIT(A) exparte. It was the submission that at the outset, the assessee has sought for the reasons recorded for the purpose of reopening of assessment. The assessee has also filed copy of the email sent to ITO, Ward-2(3), Cuttack dated 29.11.2018, wherein, he has referred to the decision of the Hon'ble Supreme Court in the case of GKN Drive Shafts India Ltd., vs ITO (2003) 259 ITR 19 (SC). He has also requested the reasons for issuance of notice u/s.148 to be made available to him and then he would respond to that. It was the submission that the reasons recorded have not been provided to the assessee and the assessment has been completed. It was submitted that the reasons recorded were finally supplied to the assessee after completion of assessment proceedings vide letter dated 14.3.2019, copy of the reasons and other information/documents supplied are placed in paper book. Ld CIT(A) without deciding this issue has dismissed the appeal for want of prosecution. It was the prayer that the issue may be restored to the file of the Id CIT(A) for fresh adjudication after getting the objections to the reasons recorded.

4. In reply, Id Sr DR submitted that as per the decision of the Hon'ble Supreme Court in the case of GKN Drive Shafts India Ltd (supra), the reasons were to be provided to the assessee only after the assessee files the return u/s.148 of the Act. It was the submission that the assessee has not filed the return in response to notice u/s.148 of the Act electronically.

Ld Sr DR agreed that the original return u/s.148 of the Act had been filed by the assessee. It was the submission that once the assessee failed to file return in response to section 148 of the Act electronically, the reasons recorded cannot be provided to the assessee. It was the submission that the return u/s.148 has to be filed electronically by filing check test as required in the electronic form for the different section in the proper format.

5 We have considered the rival submissions. The submission as made by Id Sr DR is nothing but hassle. After the decision of Hon'ble Supreme Court in the case of GKN Drive Shafts India Ltd (supra), the law in respect of reopening has now been amended and it has been made compulsory for the reasons recorded to be provided and after receiving the objection to the reasons recorded, the Assessing Officer will proceed to make the assessment. Once the Assessing officer issues notice u/s.148 of the Act, if the assessee chooses to file his return in response to said notice, the liberty is available with the assessee. If the assessee does not file his return in response to said notice, obviously, it would be treated the case of no return but that cannot be a ground for the purpose of providing the reasons recorded for the purpose of issuance of notice u/s.148 of the Act . A perusal of the paper book also shows that the assessee has been provided for the reasons recorded on 14.3.2019 after passing of the assessment order Before Id CIT(A) , assessee has challenged the issue of jurisdiction as reasons were not provided till the

completion of assessment proceedings though as per the assessee, he has duly complied with the notice issued u/s 148 by stating that return filed u/s.139(1) be treated as return filed in response to notice u/s.148. Ld CIT(A) dismissed the appeal of the assessee for non-prosecution. Assessee is an individual and not conversant with the faceless appellate system. Therefore, the assessee could not follow the appellate proceedings and failed to comply on the opportunity given by Id CIT(A). Since the reasons have been supplied to assessee, therefore, in the interest of justice, the matter is restored to the file of Id CIT(A) for readjudication after providing assessee an opportunity of being heard and also after disposed-off the objections raised by the assessee against the reopening of assessment.

6. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 30/04/2024.

Sd/-
(George Mathan)
JUDICIAL MEMBER

sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

Cuttack; Dated 30/04/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Mohammed Javed Sultan,
Mastan Road, Buxi Bazar, Cuttack
2. The Respondent: ITO, Ward-2(3),
Cuttack
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Cuttack
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack