



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

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.67/CTK/2024

Assessment Year : 2021-2022

Saroj Kanta Mohanty, Plot No.18/08, Mohanty Building, Lathia Guda, Near Block Colony, Malkangiri.	Vs.	Asst. Director of Income tax, CPC, Bengaluru.
PAN/GIR No.AFMPM 8480 K		
(Appellant)	..	(Respondent)

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

Date of Hearing : 01/05/2024
Date of Pronouncement : 01/05/2024

ORDER

This is an appeal filed by the assessee against the order of the Id Addl.JCIT(A)-1, Jaipur dated 10.1.2024 in Appeal No.Addl/JCIT(A)-1 Jaipur/10002/2020-21 for the assessment year 2021-22. .

2. Shri P.K.Mishra, Id AR appeared for the assessee and Shri S.C.Mohanty, Id Sr DR represented on behalf of the revenue.

3. It was submitted by Id AR that the return filed by the assessee came to be processed and an intimation came to be issued u/s.143(1) of the Act to the assessee on 5.7.2022. Against the said intimation, the assessee had filed rectification petition u/s.154 of the Act on 18.7.2022. The assessee

had also filed grievance petition against the said order on 18.11.2022. It was the submission that as the said rectification petition and the grievance petition have not been disposed of, the assessee had filed appeal before the Id CIT(A) on 11.11.2023. It was the submission that the appeal was filed belatedly before the Id CIT(A) as the assessee was awaiting response in respect of the rectification petition and the grievance petition filed. It was the submission that the Id Addl/JCIT(A) dismissed the assessee's appeal on account of the delay without appreciating the fact that the assessee had sought for an alternate remedy in respect of filing of rectification petition u/s.154 and that the petition was not disposed of within the reasonable time and therefore, he had no option but to file the appeal. It was the submission that even till date neither the rectification petition nor the grievance petition has been disposed of much less considered for adjudication. It was the prayer that the delay in filing the appeal before the Id CIT(A) be condoned and Id CIT(A) be directed to dispose of the appeal on merits.

4. In reply, Id Sr DR submitted that the order passed by the Id Addl/JCIT(A) was not an order u/s.250 of the Act but was u/s.249 of the Act though wrongly mentioned as u/s.250 of the Act. It was the submission that the appeal of the assessee has not been admitted by the Id Addl/JCIT(A) and, therefore, it was not an appealable order. On merits, Id Sr DR vehemently supported the order of the Id Addl/JCIT(A).

5. I have considered the rival submissions. An appeal once filed by the assessee before the Id CIT(A) is to be disposed of. There is no procedure prescribed in the Income Tax Act for the purpose of admission of an appeal or for passing the interim order. Any order passed by the Id CIT(A) on appeal filed by the assessee before the Id CIT(A) would be an order passed u/s.250 of the Act. Therefore, I am not in agreement with the submissions of Id Sr DR that the order of the Id Addl/JCIT(A) is not an appealable order.

6. Coming to the facts on merits in the present case clearly shows that the assessee has filed rectification against the order u/s.143(1) of the Act. There is legitimate expectation by the assessee that when he files rectification application, same would be disposed off. It was this legitimate expectation in respect of the disposal of the rectification petition u/s.154 was not met. Considering the fact and for further remedial action, the assessee filed appeal before the Id CIT(A). Thus, it is not that the assessee was not taking care of its tax matters but because he had followed a remedy prescribed under the Act and that remedy was not adjudicated by the revenue that the assessee sought for redressal of grievance before the Id CIT(A). A perusal of section 154(8) of the Act shows that the rectification petition should have been disposed of within six months from the end of the month in which the application was received. Admittedly, this has also not been done. This being so, I find that the delay in filing appeal before the Id CIT(A) was not on account of any fault on the part of the assessee and the

reasons given by the assessee stands substantiated by the fact that he has produced evidences in respect of filing rectification petition u/s.154 and grievance petition. This being so, the delay in filing the appeal before the Id CIT(A) stands condoned and the issues in this appeal are restored to the file of the Id Addl/JCIT(A) for adjudication of the appeal of assessee on merits.

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

Order dictated and pronounced in the open court on 01/05/2024.

(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 01/05/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The appellant :Saroj Kanta Mohanty, Plot No.18/08, Mohanty Building, Lathia Guda, Near Block Colony, Malkangiri.
2. The respondent :Asst. Director of Income tax, CPC, Bengaluru.
3. The Addl/JKCIT(A)-1, Jaipur
4. Pr.CIT,
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack