

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.361/CTK/2023

(निर्धारण वर्ष / Assessment Year : 2010-2011)

ACIT, Central Circle, Sambalpur	Vs	Ditpi Ranjan Patnaik, A/6, Commercial Estate, Civil Township, Rourkela
PAN No. :AIJPP 6748 D		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri S.C.Bhadra, CA
राजस्व की ओर से /Revenue by	:	Shri Sanjay Kumar, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	02/05/2024
घोषणा की तारीख/ Date of Pronouncement	:	02/05/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the revenue against the order dated 19.10.2023, passed by the CIT(A)-2, Bhubaneswar in I.T.Appeal No.Sambalpur/10025/2019-20 for the assessment year 2010-2011.

2. The solitary issue raised by the revenue in the present appeal is with regard to deletion of penalty levied u/s.271(1)(c) of the Act of Rs.7,14,45,818/- by the Id. CIT(A).

3. Before us, during the course of hearing, the Id. CIT-DR fairly admitted that the issue involved in the quantum appeal on which present penalty is levied, has already been deleted by the Id. CIT(A) and such order has been confirmed by this Bench in ITA No.229/CTK/2023 vide order dated 17.10.2023 whereby dismissing the appeal of the revenue, the Tribunal has observed as under :-

10. A perusal of the facts in the present case clearly shows that the Id. CIT(A) has taken into consideration the fact that the production of the Iron Ore as disclosed by the assessee in Form 3CD Report and as per the H-1 Form and as per the report submitted to the Central Empowered Committee in the case of Common Cause 9supra) before the Hon'ble Supreme Court were identical and there is no mention of any illegal mining by the assessee. Admittedly, in the demand notice issued by the Deputy Director of Mines in his reported dated 02.09.2017, there is a quantification of excess production but this is not illegal mining. Excess production has also been disclosed by the assessee in its report and in the Form H-1 and as per the demand notice issued by the Director of Mines, the assessee has been asked to pay compensation for the said excess mining as quantified in the report submitted to the Central Empowered Committee (CEC). A perusal of the assessment order also shows that the AO has quantified the mining as done by the assessee at 2,04,834 MT. This figure is adopted out of the Justice M.B.Shah Commission Report. This figure has not been determined by the AO on the basis of any evidence. However, in fact, the subsequent examination for the purpose of the Central Empowered Committee report in the Common Cause (supra), the actual production has been quantified at the same figure as disclosed by the assessee. Thus, it cannot be said that the assessee has undertaken illegal mining. This has also been considered by the Id. CIT(A) while deciding the issue on merits. The findings recorded by the Id.CIT(A) in this regard on merits have also not been dislodged by the revenue. In these circumstances, the findings recorded by the Id. CIT(A) on this issue stands confirmed.

4. On contrary, the Id. AR filed the copies of the order of the Tribunal and, as stated above, supported the order of the Id. CIT(A).

5. We have heard the rival submissions. From the records, it is seen that the penalty u/s.271(1)(c) of the Act has been levied on the additions made of Rs.23,12,16,239/- and since such additions have been deleted by the Id. CIT(A) by his order dated 09.03.2023 in I.T.Appeal No.Sambalpur/10016/2019-2020 and this order of Id. CIT(A) stood confirmed by this Bench in ITA No.229/CTK/2023, dated 17.10.2023 by dismissing the appeal of the revenue, therefore, there remained no basis for levy of the penalty u/s.271(1)(c) of the Act. In view of these facts, we are of the view that once the addition made in quantum assessment order

has been deleted, there remained no issue on which penalty u/s.271(1)(c) of the Act could be levied. Accordingly, the order of the Id. CIT(A) in deleting the penalty imposed u/s.271(1)(c) of the Act, is hereby sustained.

6. In the result, appeal of the revenue is dismissed.

Order dictated and pronounced in the open court on 02/05/2024.

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

Sd/-
(MANISH AGARWAL)
लेखा सदस्य/ ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 02/05/2024

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
ACIT, Central Circle, Sambalpur
2. प्रत्यर्थी / The Respondent-
Ditpi Ranjan Patnaik,
A/6, Commercial Estate,
Civil Township, Rourkela
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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack