



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

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

ITA No.117/CTK/2024
Assessment Year : 2017-18

Asst. Commissioner of Income Tax(Exemptions), Room No.Pratakshya Kar Bhawan, Vanivihar, Bhubaneswar.	Vs.	Samaleswari Education Trust, Silicon Institute of Technology, Silicon Hills, Patia, Bhubaneswar.
PAN/GIR No.AAITS 0602 A		
(Appellant)	..	(Respondent)

Assessee by : N o n e
Revenue by : Shri Sanjay Kumar, CIT DR

Date of Hearing : 13/05/2024
Date of Pronouncement : 13/05/2024

ORDER

Per Bench

This is an appeal filed by the revenue against the order of the Id CIT(A), NFAC, Delhi dated 30.1.2024 in Appeal No.CIT(A), Bhubaneswar-1/14647/2019-20 for the assessment year 2017-18.

2. Shri Sanjay Kumar, Ld CIT DR appeared for the revenue. None represented on behalf of the assessee.

3. It was submitted by Id CIT DR that in the course of original assessment, the assessee had not represented its case before the Assessing

officer, which has resulted in an ex parte assessment order passed. The assessee had filed appeal before the Id CIT(A), NFAC and before the Id CIT (A), substantial evidences seems to have been filed. The assessee had invoked the provisions of Rule 46A in regard to the evidences filed before the Id CIT(A) and it submitted that the Id AR of the assessee had expired during the period when the assessment was done. Id CIT(A) had admitted the additional evidences by considering the reasons given as genuine and had sent the details to the Assessing Officer for a remand report. The remand report was to be submitted by 13.8.2022. The remand report was called for by a remand order dated 13.7.2022. It was the submission that barely one month's time had been granted to the Assessing Officer. Subsequently on the ground that no remand report had been received by the Id CIT(A), he passed the order on 30.1.2024 accepting all the contentions of the assessee without examining any of the evidences submitted. It was the submission that the powers of the Id CIT(A) are co-terminus with that of the Assessing officer and natural justice actually required the Id CIT(A) to examine these evidences. It was the submission that even if the Assessing Officer has submitted the remand report, still the Id CIT(A) was duty bound to examine the evidences and in the absence of the remand report, the burden on the Id CIT(A) was far more. It is not appropriate on the part of the Id CIT(A) to shirk the responsibility on his shoulder by simply saying that the Assessing Officer has not responded to

the remand order. It was the submission that the order of the Id CIT(A) is liable to be set aside. It was fairly agreed by Id CIT DR that natural justice would be fully served if the issues are restored to the file of the Assessing officer so that the assessee can produce all the evidences now before the AO also as he has already submitted the same before the Id CIT(A).

4. We have considered the submissions of Id CIT DR. A perusal of the order of the Id CIT(A) in para 4.7 and para 4.8 shows that the Id CIT(A) has got prejudiced on account of the non-submission of the remand report by the Assessing officer. Though clearly adequate opportunity should be granted to both the sides by quasi judicial authority, the fact that the remand report was called for by giving only one months' time on 13.7.2020 being the date of the remand order and 13.8.2020 being the date submission of the remand report, we believe that the time provided is not adequate. In any case, it is much after the date 13.8.2020 being 30.1.2024, Id CIT(A) has passed the order. It was very much open to the Id CIT(A) to give extended time to the AO to submit the remand report. This has also not been done. A perusal of the order of the Id CIT(A) shows that he has not discussed the nature of the evidences submitted by the assessee. This being so, in the interest of natural justice and so as to grant both the sides adequate opportunity to substantiate the facts, the issues in this appeal are restored to the file of the AO for fresh adjudication after granting the assessee adequate opportunity to substantiate his case.

5. In the result, appeal of the revenue stands partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 13/05/2024.

Sd/-

sd/-

(Manish Agarwal)
ACCOUNTANT MEMBER

(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 13/05/2024

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Asst. Commissioner of Income Tax(Exemptions), Room No.Pratakshya Kar Bhawan, Vanivihar, Bhubaneswar
2. The respondent: Samaleswari Education Trust, Silicon Institute of Technology, Silicon Hills, Patia, Bhubaneswar.
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