



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

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.157/CTK/2024

Assessment Year : 2017-18

Aswini Kumar Sarangi, AT: Kotabidyadharpur, PO: Banpur, Dist: Khorda	Vs.	Income Tax Officer, Khorda Ward, Sri Ram Nagar, Khorda
PAN/GIR No.AOLPS 0622 M		
(Appellant)	..	(Respondent)

Assessee by : Shri Rajat Kar, Adv
Revenue by : Shri Charan Dass, Id Sr DR

Date of Hearing : 30/05/2024
Date of Pronouncement : 30/05/2024

ORDER

This is an appeal filed by the assessee against the order of the Id Addl./JCIT(A)-1, Visakhapatnam dated 31.1.2024 in Appeal No.CIT(A),Bhubaneswar-1/14518/2019-20 for the assessment year 2017-18.

2. Shri Rajat Kar, Id AR appeared for the assessee. Shri Charan Dass, Id Sr DR represented on behalf of the revenue.

3. It was submitted by Id AR that the assessee had declared the income on presumptive basis u/s.44AD. The Assessing Officer has completed the assessment u/s.143(3) of the Act by estimating the income of the assessee at 6% on a turnover of Rs.2,18,62,330/-. It was his submission that,

however, on appeal, the Id CIT(A) enhanced the assessment and directed estimation of profit at 8% without affording any opportunity in violation of section 251(2) of the Act. It was his submission that the assessee being a distributor of Hindustan Coca Cola Products, the net profit margin is about 2-3%. It was submitted that the profit may be restricted to 3%.

4. In reply, Id Sr DR supported the order of the Id CIT(A).

5. I have considered the rival submissions. A perusal of the impugned order clearly shows that the Id CIT(A) has enhanced the profit to 8% as against the profit determined by the AO at 6% on the basis of written submission filed by the assessee. For the enhancement carried out by the CIT(A), I observe that it is incumbent upon the CIT(A) under Section 251(2) to provide reasonable opportunity of showing cause against any proposed enhancement to the assessee. Thus, the CIT(A) is prevented from making enhancement to the assessed income without opportunity to the assessee. In view of the explicit provision in this regard, it is mandatory requirement of law to necessarily provide opportunity failing which the enhancement carried out is unsustainable in law. A perusal of the order of the CIT(A), shows nowhere reference to such show cause or opportunity to assessee for carrying out enhancement is found. Therefore, the enhancement made by the CIT(A) is unsustainable in law. Therefore, in the interest of justice, I set aside the order of the Id CIT(A) and remit the matter back to file file

to provide an opportunity to the assessee, if any enhancement is required and thereafter adjudicate the issue.

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

Order dictated and pronounced in the open court on 30/05/2024.

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 30/05/2024

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The appellant: Aswini Kumar Sarangi, AT:
Kotabidyadharpur, PO: Banpur, Dist: Khorda
2. The Respondent: Income Tax Officer, Khorda Ward,
Sri Ram Nagar, Khorda
3. The Addl.JCIT(A)- 1, Visakhapatnam
4. Pr.CIT, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack