



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

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

ITA Nos.350 & 351/CTK/2023
Assessment Years : 2016-17 & 2017-18

Administrator Utility, Berhampur	SOUTHCO Courtpetta,	Vs.	PCIT, Bhubaneswar-1, Bhubaneswar
PAN/GIR No.AAAJA 2238 A			
(Appellant)		..	(Respondent)

Assessee by : Shri P.Venugopal Rao, CA and Sidhartha Ranjan, CA
Revenue by : Shri Sanjay Kumar, CIT DR

Date of Hearing : 10/06/2024
Date of Pronouncement : 10/06/2024

ORDER

Per Bench

These are appeals filed by the assessee against the separate orders of the Id PCIT, Bhubaneswar-1 both dated 4.2.2022 passed u/s.263 of the Act in Appeal No.PCIT, Bhubaneswar-1/Revision-263/100000294479/2021 & Appeal No.PCIT, Bhubaneswar-1/Revision-263/100000311612/2022 for the assessment years 2016-17 & 2017-18, respectively.

2. Shri P.Venugopal Rao and Sri Sidhartha Ranja, Id ARs appeared for the assessee and Shri Sanjay Kumar, Ld CIT DR appeared for the revenue.

3. The appeals have been filed by the assessee with a delay of 406 days. Ld AR submitted that the delay in filing the appeals was on account of the fact that the assessee has become non-operational and no officer was assigned to handle the taxation matter of the non-functioning utility. It was only after the consequential orders were received and the Id counsel was informed about the same that the Id counsel had intimated that the appeals had to be filed. It was the submission that the consequential orders to the orders u/s.263 of the Act have also been passed on 23.3.2023 and the same were subject matter of rectification u/s.154 of the Act and the rectification orders have also been passed on 14.11.2023 granting the assessee some reliefs. It was the submission that on the balance issues, the assessee is in appeal before the Id CIT(A) against the order u/s.144/263 of the Act dated 23.3.2023. It was the submission that the delay was caused as basically, the assessee is a Government Undertaking and on account of the fact that the assessee has become defunct because the license has been redistributed. It was the prayer that the delay in filing the appeals may be condoned and the appeals heard on merits.

4. In reply, Id CIT DR vehemently supported the orders of the Id PCIT. It was the submission that the delay should not be condoned.

5. We have considered the rival submissions. A perusal of the facts of the present case clearly shows that the assessee has given reasons for the delay. The reasons are plausible reasons. Consequently, the delay in filing of the appeals is condoned and appeals disposed of on merits.

6. In regard to merits, it was submitted by Id AR that admittedly, the assessee had not represented itself before the Pr. CIT or the Assessing Officer in the consequential proceedings. It was the submission that the assessee has produced all the evidences which have been challenged by the Pr. CIT before the Assessing Officer in the course of original assessment. At this point, it was put to Id AR that as the assessee has not responded to the show cause notice issued by the Pr. CIT u/s.263 and neither the assessee represented in the set aside proceedings, in such circumstances, the evidences as are being produced by the assessee now before the Tribunal, it is treated as fresh evidence and same cannot be considered and looked into by the Tribunal. It was submitted by Id AR that the issues which have been raised by Pr. CIT in his order u/s.263 of the Act, were in respect of issues which had been considered by the Assessing officer in the original assessment order. It was the submission that the order passed u/s.263 of the Act was only a change of opinion and same is liable to be quashed.

7. In reply, Id CIT DR vehemently supported the orders of the Pr. CIT. It was the submission that in any case, the assessee has filed appeals against the consequential orders passed u/s.144/263 of the Act. It was the

submission that the orders of Pr. CIT are liable to be upheld insofar as the assessee has not cooperated in the revisionary proceedings even though two opportunities have been granted to the assessee. It was the submission that the orders passed u/s.263 are liable to be upheld.

8. We have considered the rival submissions. A perusal of the orders passed u/s.263 of the Act by the Pr. CIT clearly show that though two opportunities have been granted to the assessee, the assessee has not responded to the same. This being so, as also considering the fact that the assessee has opted for alternative remedy in filing the appeals against the consequential orders passed u/s.263 of the Act being order u/s.144/263 of the Act dated 23.3.2023 before the Id CIT(A), we confirm the orders passed u/s.263 of the Act without going into the merits of the case.

9. In the result, appeals of the assessee stand dismissed .

Order dictated and pronounced in the open court on 10/06/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 10/06/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Administrator SOUTHCO
Utility, Courtpeta, Berhampur
2. The Respondent: PCIT, Bhubaneswar-1,
Bhubaneswar
3. DR, ITAT,
4. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack