



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

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

ITA No.169/CTK/2024: Assessment Year : 2007-08

ITA No.170/CTK/2024: Assessment Year : 2008-09

ITA No.175/CTK/2024: Assessment Year : 2009-10

Hi-tech Estates and Promoters Pvt Ltd., Plot No.A/103, Saheed Nagar, Bhubaneswar.	Vs.	DCIT, Circle-1(2) Bhubaneswar
PAN/GIR No.AAACH 9591 G		
(Appellant)	..	(Respondent)

Assessee by : Shri Abhishek Ojha, CA
Revenue by : Shri Sanjay Kumar, CIT DR

Date of Hearing : 01/08/2024
Date of Pronouncement : 01/08/2024

ORDER

Per Bench

These are appeals filed by the assessee against the separate orders of the Id CIT(A), NFAC, Delhi dated 19.2.2024 in Appeal No.CIT(A), Bhubaneswar-1/10222/2018-19, No.CIT(A), Bhubaneswar-1/10225/2018-19 No.CIT(A), Bhubaneswar-1/10226/2018-19, for the assessment years 2007-08, 2008-09 & 2009, 2010, respectively.

2. Shri Abhishek Ojha, Id AR appeared for the assessee and Shri Sanjay Kumar, Id CIT DR appeared for the revenue.

3. Id AR has placed an adjournment application dated 31.7.2024 requesting to adjourn the appeals on account of health issue of Id AR. A perusal of the appeals shows that the appeals can be decided considering the submission of Id AR appeared in the Bar, therefore, the adjournment application is rejected and the appeals are disposed off.

4. It was submitted by Id AR that for the assessment year 2007-08, 2008-09 and 2009-10, originally additions had been made by the Assessing Officer because the assessee was unable to produce evidences in regard to customers advance received and in respect of other additions made. It was the submission that the orders of the Assessing Officer were appealed before the Id CIT(A), who had confirmed the assessment orders against which appeals are also filed before the Tribunal and the Tribunal vide its order in ITA No.235 & 236/CTK/2012 dated 21.9.2017 for Assessment Years 2007-08 & 2008-09, respectively restored the issues to the file of the Assessing officer for re-adjudication. For the Assessment Year 2009-10, in ITA No.119/CTK/2016, vide order dated 22.9.2017 also, the issues were also restored to the file of the Assessing officer for re-adjudication. It was the submission that consequently the orders had been passed by the Assessing Officer, against which impugned appeals are filed. It was the submission that the Assessing Officer did not comply with the orders of the

Tribunal. It was the submission that for the assessment year 2008-09, the original assessment order was also served only 13.1.2010 and, therefore, the original assessment order was barred by limitation. It was the submission that on appeal, the Id CIT(A) had confirmed the impugned assessment orders and the assessee is in appeals before the Tribunal. It was the submission that in the course of original assessment itself, the assessee had provided all the details. It was the submission that the Assessing Officer did not consider any of the evidences though the same were available with him. It was the submission that the assessment orders were liable to be quashed and the additions deleted.

5. In reply, Id CIT DR submitted that the Id CIT(A) has categorically given a finding that no evidence had been produced by the assessee before the AO and Id CIT(A). It was the submission that in absence of the details having been produced, the assessment order and the order of the Id CIT(A) is liable to be upheld. It was the further submission that for the assessment year 2007-08, the additional ground had been raised by the assessee and the original assessment order had been set aside by the Tribunal for readjudication and, therefore, the question of limitation in respect of the original assessment order no more survives. In A.Y. 2008-09, regarding additional ground, Id CIT DR submitted that the order passed u/s.254 is after the date of order of ITAT where the order passed u/s.250 against the

appeal for order u/s.143(3) r.w.s 263 was passed, thus the said order also merged in final order dated 31.10.2018.

6. We have considered the rival submissions. Here, the facts are not brought out clearly. The facts as are available that for the assessment year 2007-08, the original assessment order was passed on 29.12.2009 and same was the subject matter of appeal before the Id CIT(A)-2, Bhubaneswar, which was confirmed by Id CIT(A). The facts in respect of various orders passed on various dates are given in the form of table as below:

“

Sr. No	Description of orders	A.Y. 2007-08	AY. 2008-09	A.Y. 2009-10
1	Orders u/s.143(3) (AO)	29.12.2009	30.12.2010	23.12.2011
2	Order u/s.250 (CIT(A))	1.2.2012	1.2.2012	15.9.2014
3	ITAT order against order dt.1.2.12 of CIT(A) in Sl.No.2 above	21.9.2017	21.9.2017	22.9.2017
4	Order u/s.254	31.10.2018	31.10.2018	31.10.2018
5	Order u/s.254 on appeal against order u/s.254	19.2.2024	19.2.2024	19.2.2024
6	Order u/s.263 of the act	-	22.3.2013	-
7	Order u/s.143(3) r.w.s. 263	-	6.2.2014	-
8	Order u/s.250 in appeal against order referred in Sl.No.7 above	-	6.4.2017	-
9	ITAT order against the order referred in Sl.No.8 above	-	6.8.2018	-

6. Now from the above table, it becomes clear that the Tribunal in all the years had set aside the issues to the file of the Assessing officer for re-adjudication. For the assessment year 2008-09, there is also a ground raised u/s.263 of the Act and consequential orders have also been passed. The status of those orders is not evident from these appeals. Coming to the claim of time barring of the assessment order for the assessment year 2007-08, it must be appreciated that the said order was not challenged as time barred in the course of original proceedings. Once the order for assessment year 2007-08 had been restored to the file of the AO for re-adjudication, admittedly, the question of the time barring in regard to completion of the assessment order got lifted and same gets to the extended period as given effect to the order by the Tribunal. Consequent to this, the time barring effect in respect of the order originally passed for the assessment year 2007-08, no more survives. There is also another reason. What is question is the passing of the orders within the time limit. The orders had been served within a few days but there is no reason given for the delay. The assessee has also produced the evidence. There has been no tinkering in the said order being the date of limitation in respect of the said order. The wording used in section 143(3) is that the order is to be passed. There is nothing to give interpretation in the said section that the order is to be served. Consequently, the issue of limitation in respect of the assessment order raised in the assessment year 2007-08 stands rejected.

7. As mentioned earlier, the facts are not clearly coming out from the various orders. It is also an admitted fact that the assessee has not provided all the details before the Assessing Officer and even in the paper book filed before the Tribunal. The assessee has produced various orders passed by various authorities but no shadow of evidence in respect of evidences has been produced before us. This being so, in the interest of justice and considering the predicament of the assessee going through and so as to grant the assessee another opportunity to set its affairs right, the issues in these appeals are restored to the file of the Assessing officer for re-adjudication. The assessee should cooperate in the set aside proceedings and provide all the facts/ details as called for by the Assessing Officer irrespective of the claim of the assessee that evidences had already been filed earlier. The Assessing Officer shall consider all the evidences as are to be filed by the assessee and pass detailed assessment orders for all the three years under appeal. The Assessing Officer shall also consider various consequential orders that are passed for each of those years.

8. In the result, appeals of the assessee stand partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 01/08/2024.

SD/-
(Manish Agarwal)
ACCOUNTANT MEMBER

SD/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 01/08/2024

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Hi-tech Estates and Promoters Pvt Ltd., Plot No.A/103, Saheed Nagar, Bhubaneswar
2. The respondent: DCIT, Circle-1(2) Bhubaneswar
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary

ITAT, CUTTACK

