

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.183/CTK/2020

(निर्धारण वर्ष / Assessment Year : 2015-2016)

Kandoi Automobiles Pvt. Ltd. 2 nd Floor, Flat No.102/103, Ashray Apartment, Professorpada, Cuttack-12	Vs	Pr.CIT, Cuttack
PAN No. :AAACK 7192 E		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri P.R.Mohanty, Advocete
राजस्व की ओर से /Revenue by	:	Shri Sanjay Kumar, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	07/08/2024
घोषणा की तारीख/Date of Pronouncement	:	07/08/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. Pr.CIT, Cuttack, dated 10.06.2020, passed u/s.263 of the Act in DIN & Letter No.ITBA/COM/F/17/2020-21/1027264323(1) for the assessment year 2015-2016.

2. Brief facts of the case are that the assessee is a private limited company and is engaged in the business of transportation. The assessment in this case was completed u/s.143(3) of the Act vide order dated 05.12.2017 and thereafter the Pr.CIT, Cuttack initiated the proceedings u/s.263 of the Act and passed order holding the said assessment order as erroneous and prejudicial to the interest of revenue for the three issues. The Id. CIT(A) has modified the assessment order and directed the AO to assess the rental income of Rs.24,69,840/- under

the head "income from house property" as against "the business income" declared by the assessee. Besides this, Id. Pr.CIT observed that assessee has declared interest income and also claimed expenses towards interest paid in the profit and loss account. According to the Id. Pr.CIT, the interest income is to be assessed under the head "Income from Other Sources" and allowability of interest paid to be considered u/s.57 of the Act against such income. Further the Id. Pr.CIT also directed to verify the transactions carried out with sister concerns. Against this order, the present appeal is filed by the assessee.

3. Before us, the Id. AR of the assessee submitted that the assessee is having rental income from the open land i.e. shed and godown situated at Jagatpur Industrial Estate, Cuttack, which was given on rent. Since the main income is of renting from immovable property, the same was declared under the head "business and profession" and claimed expenses which are in nature of regular business expenditure and net income was offered for tax which has been assessed by the AO in the order passed u/s.143(3) of the Act. The Id. CIT(Admn.) in order passed u/s.263 of the Act directed that the income declared by the assessee is to be assessed under the head "income from house property". He further submitted that all the issues raised were fully examined by the AO at the time of completion of the original assessment proceedings and merely for the sake of verification, the Id. PCIT without establishing that the order passed by the AO erroneous as well as prejudicial to the interest of revenue, has directed the AO for making fresh verification. During the

course of hearing, he placed the copy of the order dated 11.06.2021 giving effect to the orders u/s.143(3)/263 of the Act, which reads as under:-

INCOME TAX DEPARTMENT		
1.	Name of the Assessee	M/s. Kandoi Automobiles Private Ltd.
2.	Address of the Assessee	2 nd floor, FlatNo. 102/103, Ashray Apartment Professor Pada, Cuttack.
3.	PAN	AAACK7192E
4.	Ward/Circle	ACIT, Central Circle, Cuttack.
5.	Status	Company
6.	Assessment Year	2015-16
7.	Date of order	11.06.2021

GIVING EFFECT TO THE ORDER U/S 143(3)/263 OF THE I.T. ACT, 1961

In pursuance of the order passed u/s. 263 of the I.T. Act on 10.06.2020 by the Pr. Commissioner of Income-tax, Cuttack, the total income of the assessee company is revised by treating the rental income of Rs. 24,69,840/- as assessee's income from house property as per law. Accordingly, the standard deduction @ 30% against such house property income is allowed in place of expenses claimed in P/L account being not related to the said income. Further, the said expenses are also not considered against the interest income which as shown under the head other income by the assessee in its return. Accordingly, the total income of the assessee company after giving effect to the direction of the Pr.CIT as per order u/s. 263 dtd. 10.06.2020 is revised as under :-


Income from house property -

Income from Rent as disclosed	-	Rs. 24,69,840.00
Less- Deduction u/s. 24 @ 30%	-	Rs. 7,40,952.00
		Rs. 17,28,888.00
Add- Interest income as disclosed under the head Other income in return	-	Rs. 9,01,211.00
Add- Other income as disclosed in return	-	Rs. 62,343.00
Add- Undisclosed interest income as determined vide order u/s. 143(3) dtd. 05.12.2017	-	Rs. 8,547.00
		Total Income -Rs. 27,00,989.00

Computation of tax & interest-

	(Rs.)
Income Tax	8,10,297/-
Add- Education cess	24,309/-
Tax payable	8,34,606/-
Add- Interest u/s. 234B	1,64,505/-
Add- Interest u/s. 234D	23,651/-
Tax payable	10,22,762/-
Less- prepaid taxes	3,36,140/-
Payable	6,86,622/-
Add- Refund already issued	2,25,250/-
Balance tax payable	9,11,872/-

Issued copy of the order to the assessee.



(R.D. Mukhopadhyay)
Asst. Commissioner of Income-tax
Central Circle, Cuttack.

DSCR NO - VIII - 01 / 2021-22

4. Ld. AR thus, submitted that from the perusal of the aforesaid order, it is seen that the AO while giving effect to the order of the Id. AO without making any discussion on the issue of allowability of the expenses, has

passed the effect order by treating the rental income under the head "income from house property" and further interest income as "income from other sources" and no deduction as claimed in the profit and loss account were allowed. He further submitted that from the perusal of the order of the Id. Pr.CIT in para 9.3 at page 14, it is clear that direction has been given to the AO for holding the rental income of Rs.24,69,840/- as income from house property, however, there is no doubt raised about the expenditure claimed by the assessee in its profit and loss account, therefore, if the said expenditures are allowed and further deduction at the rate of 30% against the rental income is allowed u/s.24(1) of the Act, there would be no loss to the revenue. Thus, the order of the Id. Pr.CIT does not satisfy the twin conditions as enumerated under Section 263 of the Act. Accordingly, he prayed for cancellation of the order passed by the Id. Pr.CIT.

5. On the other hand, Id. CIT-DR vehemently supported the order of the Id. Pr.CIT and submitted that the AO has wrongly assessed the rental income as income from business instead of its correct head i.e. "income from house property". The Id. Pr.CIT has also doubted the deduction claimed against the interest income which were allowed by the AO without making any verification of the interest expenses claimed. He further submitted that during the course of survey proceedings carried out, it was found that the assessee has made various transactions with its sister concerns which has not been verified and, therefore, the assessment order is erroneous as well as prejudicial to the interest of revenue and

accordingly, he prayed for the confirmation of the order passed by the Id. Pr.CIT.

6. We have considered the rival submissions and perused the material available on record. From the perusal of the order of the Id. Pr.CIT with regard to the first issue of rental income, the observations as made in para 9.3 of its order reads as under :-

9.3 Accordingly, the assessment order dated 05.12.2017 is modified and the AO is directed to give effect to this order by charging the rental income of Rs.24,69,840/- as assessee's income from house property as per law.

7. From the perusal of the observation made by the Id. Pr.CIT, it is clear that the Id. Pr.CIT has modified the assessment order and the AO was directed to give effect by charging rental income of Rs.24,69,840/- under the head "Income from House Property" as against the "Income from Business and Profession" as shown by the assessee, however, nowhere in the order the Id. Pr.CIT has directed the AO not to allow the deduction of expenses claimed in the profit and loss account which are in the nature of the business expenditure and has no relationship with the rental income. If the deduction u/s.24(1) of the Act @30% is allowed out of the rental income of Rs.24,69,840/-, the assessee would get additional deduction of Rs.7,40,952/- in addition to the expenses claimed in the profit and loss account which were available to it under the head business and profession. Assessee's claim that the expenses claimed in the profit and loss account are normal business expenditure, incurred on day to day to business activity cannot be ignored. We are of the considered opinion that for the purpose of Section 37 of the Act, the AO is under obligation to

examine these expenses and if the same were for the purpose of business, the same deserves to be allowed. In the instant case these expenses were allowed after making verification in the order passed u/s.143(3) of the Act and the Id Pr.CIT in revisionary order u/s.263 of the Act nowhere doubted the incurrance of such expenses nor any directions were given with regard to the allowability of the same. However, the expenses directly relatable to rental income which is to be assessed under separate head i.e. "Income from Other Sources", needs to be disallowed. From the perusal of the profit and loss account, we find that depreciation on factory building at Rs.181529/- is not allowable as business expenses. With regard to interest expenses claimed by assessee, Id. PCIT directed the AO to verify whether the same could be allowed u/s 57 of the Act against the interest income which is directed to be assessed as "Income from Other Sources". However, from the effect order it is seen that AO has not allowed deduction of the paid interest u/s 57 of the Act. It is undisputed that assessee has paid interest to Reliance Capital Ltd. on the loan taken. According to assessee, the amount of loan was given to earn interest during the period when the funds remained idle with the assessee., Thus, it has direct nexus with interest income, however, the same is not allowed by the AO in the effect order passed as per directions given u/s.263 of the Act. This amount of interest is otherwise has the character of business expenses and this should be part of the business expenses. Had those business expenses are allowed against the income computed under other heads of Income as directed by

the Id. Pr.CIT in his order u/s.263 of the Act, there would be no loss to revenue. Regarding third issue of examining the transactions with sister concerns, we find no specific transaction was referred by Id. Pr.CIT and also it is a fact on record that no addition is made by the AO while giving effect to the order u/s.263 of the Act. Thus, this issue lost significance. Thus, after reducing the rental income, the interest income and depreciation on rented premises, profit under the head business income would be at a loss of Rs.27,93,193/-. To give effect this, a computation is made following the direction of the Id. Pr.CIT which is as under :-

<u>Income from House Property</u>		
Rental income	Rs.24,69,840/-	
Less: 30% Deduction u/s.24(1)	<u>Rs.7,40,952/-</u>	17,28,888/-
<u>Income from Business :</u>		
Net Profit as per P & L A/c.	Rs.3,96,329/-	
Less : Income to be considered Separately		
Rental Income	Rs.24,69,840/-	
Interest received	Rs.9,01,211/-	
	<u>Rs.33,71,051/-</u>	
	(-) <u>Rs.29,74,722/-</u>	
Add: Depreciation on Building given on rent	<u>Rs.1,81,529/-</u>	(-)27,93,193/-
<u>Income from other sources :</u>		
Interest received		Rs.9,01,211/-
Addition made in the order u/s.143(3)		<u>Rs. 8547/-</u>
Total Income	(-)	<u>Rs.1,54,547/-</u>

8. As per the above computation, if the directions as given by Id. Pr.CIT are taken as correct, even then the resultant income worked out at loss of Rs.1,54,547/- which is less than the income assessed u/s.143(3) of the Act at Rs.4,05,420/-.

9. In view of above facts, we find that the assessment order may be erroneous but it is not prejudicial to the interest of revenue. It is not the

case where error, if any, in the assessment order would result into any loss to the revenue and, therefore, the twin conditions as per Section 263 of the Act i.e. the assessment order must be erroneous and prejudicial to the interest of revenue are not fulfilled. In view of these facts, the order of the Id. Pr.CIT passed u/s.263 of the Act is hereby quashed.

10. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 07/08/2024.

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)

लेखा सदस्य/ ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 07/08/2024

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Kandoi Automobiles Pvt. Ltd.
2nd Floor, Flat No.102/103,
Ashray Apartment, Professorpada,
Cuttack-12
2. प्रत्यर्थी / The Respondent-
Pr.CIT, Cuttack
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