



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

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

ITA No.186/CTK/2024

Assessment Year : 2016-17

Bhairabi Club, Kurumpada, PO: Hadapada, Dist: Khurda	Vs.	CIT (A), NFAC, Delhi
PAN/GIR No.AAAAB 3606 N		
(Appellant)	..	(Respondent)

Assessee by : Shri J.M.Pattnaik, Adv
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 13/8/2024
Date of Pronouncement : 13/8/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 14.6.2023 in Appeal No.CIT(A),Bhubaneswar-1/10037/2018-19 for the assessment year 2016-17.

2. Shri J.M.Pattnaik, Id AR appeared for the assessee and Shri S.C.Mohanty, Sr. DR appeared for the revenue.

3. The appeal is barred by limitation by 253 days. The assessee has filed condonation petition supported by affidavit, stating the reasons that

due to wrong advice of the Chartered Accountant, who was dealing with the matter, instead of second appeal, first appeal was filed on 12.7.2023 against the order passed under section 154 of the Act. That it was in this backdrop that the appeal was delayed by 253 days, which was not intentional. This fact has not been found to be false. Consequently, we condone the delay of 253 days and admit the appeal for adjudication.

4. It was submitted by Id AR that for the assessment year 2016-17, the assessee had filed its return of income on 7.10.2016. The intimation u/s.143(1) of the Act has been issued on 17.3.2018. It was the submission that as no show cause notice as required u/s.143(1) has been issued to the assessee, therefore, the said intimation is liable to be quashed.

5. In reply, Id Sr DR has placed before us the submission of the Assessing officer, wherein, it is mentioned that the said provision of show cause notice applies w.e.f. 1.4.2017 and, therefore, the said provision did not have any application to assessment year 2016-17. The reply filed by the Assessing Officer is as follows:

8/12/24, 10:02 AM webmail.incometax.gov.in/iwc_static/layout/shell.html?lang=en&3.0.3.4.0_24021652

Subject: Fwd: Reminder, Compliance in the case of Bhairabi Club for A.Y. 2016-17.
To: "it.t.cuttack" <it.t.cuttack@incometax.gov.in>
Cc: DIT CPC Bangalore <dit.cpc.bangalore@incometax.gov.in>, jdit sudheendrakumar <bangalore.addicit1.cpc@incometax.gov.in>

Date: 08/09/24 08:23 PM
From: "bangalore.dcit6.cpc" <bangalore.dcit6.cpc@incometax.gov.in>

कायदल अन्तर्गत आदित्य (आई.टी.ई.सी.) कटक 17 AUG 2024 185
Addl. Commissioner of Income Tax (ITAT) Cuttack

section 143(1)_A.Y.2017-18.pdf (271KB) Affidavit related to the case of Bhairabi Club.pdf (573KB)
Order sheet by ITAT Cuttack Bench in the case of B... (301KB)

Sir,

Please refer to the trailing mail. I am directed by Principal Director of Income-tax, CPC, Bengaluru to communicate s under:- "The second proviso to section 143(1)(a) i.e. providing opportunity to the assessee before making prima facie adjustment u/s.143(1) was introduced into said section only from 1.4.2017. Thus, there was no provision for A.Y.2016-17 to issue notice to assessee before making prima facie adjustment u/s.143(1) and hence no notice was issued in this case for A.Y.2016-17. Section 143(1) as amended from 1.4.2017 enclosed herewith."

--
Thanks and Regards,

N.SAJRAJ
Deputy Director of Income-tax, Unit-4
Centralized Processing Centre, Bengaluru.

----- Original Message -----
From: "it.t.cuttack" <it.t.cuttack@incometax.gov.in>
Date: Aug 8, 2024 11:10:41 AM
Subject: Reminder, Compliance in the case of Bhairabi Club for A.Y. 2016-17.
To: "bangalore.dcit6.cpc" <bangalore.dcit6.cpc@incometax.gov.in>

Reminder,

Respected Sir,

Ref: e-mail dated 24/07/2024 from post ID (it.t.cuttack@incometax.gov.in) to your post ID (bangalore.dcit6.cpc@incometax.gov.in)

Kindly find the attachment herewith for your kind perusal and necessary action. Related to the case of Bhairabi Club (PAN:AAAAB3606N), appeal no - ITA/186/CTK/2024 for A.Y. 2016-17

Encl.1 :- Order sheet by ITAT Cuttack bench,Cuttack for compliance.
Encl.2 :- Affidavit for response.

Yours faithfully,
D.K. Nayak,IIT
O/o Addl.CIT(ITAT)-1,Cuttack

https://webmail.incometax.gov.in/iwc_static/layout/shell.html?lang=en&3.0.3.4.0_24021652

6. We have considered the rival submissions. Admittedly, the intimation has been issued on 17.3.2018 much after 1.4.2017. The law in regard to procedure is the law that is applicable as on the date of issuance of the order. In the present case, as the intimation has been issued on 17.3.2018, much after 1.4.2017, when the provision of section 143(1) providing for opportunity to the assessee before any adjustment have come into effect and as it is admitted that no show cause notice has been issued. To this effect, the assessee has filed an affidavit categorically admitting that no

show cause notice has been issued to the assessee, as under:



BEFORE THE NOTARY PUBLIC: CUTTACK

I, Shri Baikunth Nath Martha, aged about 72 years, son of Late Narsingh Martha, permanent resident of Village- Kurumpada, Post-Hadapada, District-Khordha, State-Odisha, PIN-752018 do hereby solemnly affirm and state as under:

1. That I am the Secretary of Bhairabi Club and looking after all the legal matters of the Club.
2. That on 07th October, 2016 I.T. return for the AY 2016-17 was filed;
3. That vide order dated 17.03.2018 demand for the AY 2016-17 was raised u/s 143(1) of the IT Act;

That prior to demand raised u/s 143(1) of the IT Act neither any correspondence nor any show cause notice through electronic or

NOTARY
GOVT. OF ODISHA
REGD. NO. 287008

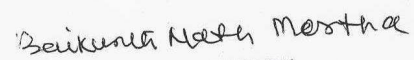
Baikunth Nath Martha
Kurumpada Khordha

physical mode has been intimated to the Assessee by the Ld. Deputy Commissioner, CPC, Bangalore which being vividly verified in the email id i.e. **bhairabi_27@yahoo.co.in**

5. That it is emphatically submitted no opportunity was provided by way of issuing any Show Cause Notice to the Assessee before issuance of intimation u/s. 143 (1) dated 17.03.2018;
6. That this affidavit is sworn in to be filed before the Hon'ble ITAT, Cuttack Bench, Cuttack in connection with ITA No.186/CTK/2024 in compliance of the order dated 22.07.2024.
7. That I am authorized by the management of the Club to file this affidavit;
8. That the facts stated above are true to the best of my knowledge and belief.

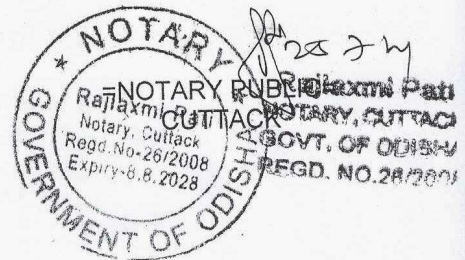
Identified by


Advocate


SECRETARY
BHAI RABI EDUB
Kurumpada, Khordha

The above named deponent being identified by Shri Jagamohan Pattanaik, Enroll No.O-306/87 Advocate, High Court of Orissa do hereby solemnly affirm and state that the facts stated above are true to the best of his knowledge and belief.

Cuttack.
Dt. 25/07/2024



7. As no show cause notice has been issued to the assessee, the intimation issued u/s.143(1) stands quashed.

8. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 13/08/2024.

SD/- (Manish Agarwal) ACCOUNTANT MEMBER
sd/- (George Mathan) JUDICIAL MEMBER
Cuttack; Dated 13/08/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Bhairabi Club, Kurumpada,
PO: Hadapada, Dist: Khurda
2. The Respondent: CIT (A), NFAC, Delhi
3. Pr.CIT, Bhubaneswar
4. DR, ITAT,
5. Guard file.
//True Copy//

By order

Sr.Pvt.Secretary
ITAT, Cuttack