



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

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

ITA No.239/CTK/2024

Assessment Year : 2017-18

Shishir Kumar Pattnaik, At/PO: Jamankira, Sambalpur-768107	Vs.	ITO, Ward-2(1), Sambalpur
PAN/GIR No.AJYPP 5178 M		
(Appellant)	..	(Respondent)

Assessee by : Shri B.R.Panda, Adv
Revenue by : Shri S.C.Mohanty, Id Sr DR

Date of Hearing : 29/8/2024
Date of Pronouncement : 29/8/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order passed by Id CIT(A), NFAC dated 28.3.2022 in Appeal No. CIT(A), Sambalpur/10259/2019-20 for the assessment year 2017-18.

2. Shri B.R.Panda, Id AR appeared for the assessee and Shri S.C.Mohanty, Id Sr. DR appeared for the revenue.

3. It was submitted by Id AR that in this case the assessment has been passed u/s.143(3) of the Act by inflating the assessed income at Rs.46,48,770/- by way of cryptic addition of net profit at Rs.17,81,069/-

from fuel station. It was the submission that the addition of Rs.11,63,998/- has been made by adopting the provisions of section 44AD of the Act and estimated net profit @ 8% from cement and rod business and added interest income separately from security deposits without any valid and cogent reasons. It was also the submission that the Assessing Officer has added Rs.90,000/- u/s.44AE of the Act in a hypothetical manner, thus the entire additions have been made on a very flimsy ground. It was the further submission that the Id CIT(A), NFAC dismissed the appeal of the assessee on the ground of non-presentation of the appeal. It was the submission that the matter may be restored to the file of the Assessing Officer for readjudication.

4. In reply, Id Sr DR supported the orders of the lower authorities.

5. We have considered the rival submissions. On perusal of the both the orders of the AO and Id CIT(A), it is noticed that there was no representation before the AO as well as Id CIT(A) by the assessee. The Assessing Officer has applied the provisions of section 44AD being @ 8% in a case where the turnover far exceeds, which requires audit u/s.44AD. This being so, the provisions of section 44AD cannot be applied to a case where audit u/s.44AD is applicable. Therefore, the issues in this appeal are restored to the file of the Assessing Officer for readjudication after granting the assessee adequate opportunity of hearing. It is also directed that the assessee shall cooperate in the set aside proceedings, failing which, the

Assessing Officer is at liberty to draw adverse inference and pass the order as per law.

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

Order dictated and pronounced in the open court on 29/08/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 29/08/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Shishir Kumar Pattnaik,
At/PO: Jamankira, Sambalpur-768107
2. The Respondent: ITO, Ward-2(1),
Sambalpur
3. CIT(A), NFAC
Pr. CIT, Sambalpur
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.Secretary
ITAT, CUTTACK