



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

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.287/CTK/2024

Assessment Year : 2021-22

Income Tax Officer (Exemptions), Berhampur	Vs.	Seva Bharati, Mundigarh, Tumudibandha, Kandhamal
PAN/GIR No.AABTS 7275 A		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Shri S.C.Mohanty, Id Sr DR

Date of Hearing : 2/09/2024
Date of Pronouncement : 2/09/2024

ORDER

This is an appeal filed by the revenue against the order of the Id CIT(A), NFAC, Delhi dated 28.5.2024 in Appeal No.CIT(A),NFAC/2020-21/10231634 for the assessment year 2021-2022.

2. Shri S.C.Mohanty, Id Sr DR assisted by Shri Chandra Sekhar Panda intern, The Law College represented on behalf of the revenue. None appeared on behalf of the assessee. However, Ms Layatmika Nath, intern, The Law College, Cuttack assisted in the Court for the assessee.

3. I have considered the submission of Id Sr DR. The tax effect in the present case is below the prescribed limit. However, the Id

CIT(Exemptions), Hyderabad has vide letter dated 24.6.2024 given the following reasons for filing of the appeal:

OFFICE OF THE COMMISSIONER OF INCOME TAX (EXEMPTIONS), HYDERABAD
FORM OF DIRECTION U/S 253(2) OF THE INCOME TAX ACT, 1961

Sub: Income-tax Act, 1961 - Section 253(2) - Filing of appeal before the Income-tax Appellate Tribunal, Cuttack, against the order of the Commissioner of Income-tax,(Appeals), NFAC, New Delhi - Direction - Regarding.

F.No.CIT(E)/CIT(A)/254/2024-25 **Dated:24-06-2024**

I have examined the records of **SEVA BHARATI, MUNDIGARH, KANDHAMAL, 762107, Odisha** and I am of the opinion that the order of the Commissioner of Income-tax (Appeals), NFAC, New Delhi in **Appeal No. NFAC/2020-21/10231634, dated 28.05.2024** in respect of the assessee, for the **Assessment Year 2021-22**, is erroneous both in law and on facts.


Further, though the tax effect, in this case is below monetary limit prescribed as per CBDT circular No 17/2019, dated 08.08.2019, this case comes under specific category as per para-No 10(a) of CBDT circular No 3/2018, dated 11.07.2018, where the constitutional validity of provisions of Act or Rule is under Challenge.

Under Section 253(2) of the Income-tax Act, I, therefore direct the Income tax Officer (Exemptions), Berhampur, to file an appeal before the Income-tax Appellate Tribunal, Cuttack against the said order of the Id. Commissioner of Income-tax (Appeals), NFAC, New Delhi on the following grounds.

GROUNDS OF APPEAL

i) *The order of Id. CIT(A), NFAC is erroneous both in facts and law.*
ii) *The Id.CIT(A), NFAC erred in facts and in law in deleting the demand raised of Rs.6,63,137/-.*
iii) *The Id. CIT(A), NFAC erred in law by condoning the delay in filing of audit report in Form 10B and allowing the exemption u/s 11 of the Act.*
iv) *Any other ground that may be urged at the time of hearing of the case.*

The relevant Appellate Order has been received in the office of the Commissioner of Income-tax (Exemptions), Hyderabad on **28.05.2024** which date should be mentioned in the form of appeal as the date of communication of the order of Commissioner of Income-tax (Appeals), NFAC, New Delhi.

Seal  o/c

(B.BALA KRISHNA)
Commissioner of Income-tax (Exemptions)
Hyderabad

4. A perusal of the reasons shows that the reasons claimed is "Constitutional validity of the provisions of Act or Rule is under Challenge" . This is not an issue which can be raised before the Tribunal. In any case, there is no constitutional validity of any provisions applicable in appeal of the Revenue. On this ground, specifically the Id CIT(A) has also not adjudicated any constitutional validity of any provisions of the Act or Rule. On account of tax effect, the appeal of the revenue is dismissed.

5. Further, even on merits, it is noticed that the audit report has been filed within the time by the Chartered Accountant of the assessee and it is an admitted fact that on account of technical issue, the acceptance of the said audit report filed by the auditor of the assessee within the time was delayed by 18 days. This being so, as the audit report has been filed within time by the auditor of the assessee and same has been recognized by the Id CIT(A) and as it is noticed that the Id CIT(A) has followed the judicial discipline in following the decisions of various Hon'ble High courts on this issue, the findings of the Id CIT(A) stands confirmed and the appeal of the revenue stands dismissed.

6. In the result, appeal of revenue stands dismissed.

Order dictated and pronounced in the open court on 2/09/2024.

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 2/09/2024

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Income Tax Officer
(Exemptions), Berhampur
2. The Respondent: Seva Bharati,
Mundigarh, Tumudibandha,
Kandhamal
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Berhampur
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt. Secretary
ITAT, Cuttack

