



IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

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

ITA No.291/CTK/2024  
Assessment Year : 2017-18

Bijay Kumar Lodha, Ward No.15, Link Rairangpur	Vs.	ITO, Ward No.1, Baripada.
PAN/GIR No.AAVPL 2881 K		
(Appellant)	..	( Respondent)

Assessee by : None (written submission)  
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 10/9/2024  
Date of Pronouncement : 10/9/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Ld CIT(A), NFAC, Delhi dated 29.6.2024 in Appeal No.CIT(A),Cuttack/10575/2019-20 for the assessment year 2017-18.

2. None appeared for the assessee. Shri S.C.Mohanty, Sr. DR appeared for the revenue. The Ld AR has filed written submission as follows:

“Sub: Submission as appellant in an appeal filed against the Order vide ITBA/NFAC/S/250/2024-25/1066262464(1) dated

29.06.2024 Passed by Honourable NATIONAL FACELESS APPEAL CENTRE (NFAC), Delhi for AY: 2017-18- matter-regarding

#### Statement of facts

The assessee, an individual filed his return of income Assessment Year 2017-18 on 07.11.2017 disclosing total income of Rs.6,32,930/-. The assessee disclosed his nature of business as "Other Sector" in his return of income. The case was selected for limited scrutiny under CASS the reason being "Large cash deposit in bank accounts during the year". Accordingly statutory notice u/s. 143(2) of the Income- tax Act, 1961 (herein after refer as "the Act") dated 27.08.2018 was issued and served on the assessee.

After that the assessment order was passed under section 144 of the Act on 17-12- 2019 while making addition to the tune of Rs. 1,20,46,770/-. (Marked as annexure- 1)

Aggrieved by this order the appellant-assessee filed appeal before CIT Appeal. Accordingly, CIT Appeal has dismissed the appeal of the appellant-assessee vide order dated on 29-06-2024 without considering merit of the case.

The appellant-assessee has preferred appeal against the order of the CIT(A)(NFAC) on 01.03.2023 communicated to the assessee vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1066262464(1) dated 29.06.2024 raising the following grounds of appeal:

1. The addition of Rs.1,14,13,837/- u/s 69A of the IT Act as unexplained money is illegal/Excessive and without any basis. That the basis of calculation of the unexplained money deposited in bank by the AO is not proper/correct and justified as the sources of deposits of money in banks cannot be only from sale proceeds as considered by AO.
- ii. No due and proper opportunity of being heard was extended to the assessee before passing the order u/s 144 of the IT Act.

- iii. That the Calculation of interest is excessive and not proper.
- iv. The initiation of penal proceeding is illegal as the unexplained income considered by AO is also illegal and unjust.
- v. Other grounds, if any, will be argued and urged at the time of hearing of the appeal
- vi. Penalty u/s 271AAC of the Act is not invalid in our case. U/s 271AAC not applicable in our case against the said sec. Hence pray for deleted the penalty.
- vii. Interest u/s 234A, 234B, 234C is not applicable in our case U/s 234A, B, C is directed to the Ld. AO. Calculate on basis of Act.
- viii. The appellant craves leave to add to alter, amend, modify and/or delete any or all of the above said grounds of appeal. The appellant reserve its right to file further submission in the appeal

Additional grounds of appeal

At this juncture, the assessee craves to raise some additional grounds of appeal which were not raised while filing the appeals before the Hon'ble ITAT. The Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383(SC) has held that it is open to the assessee to raise the points of law even before the tribunal which was not raised earlier. A Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee and where the tribunal is only required to consider a question of law arising from the facts, it should allow it to be raised when it is necessary to consider that question in order to correctly assessee the tax liability of the assessee.

Additional Grounds of appeal being raised by the assessee before the Hon'ble ITAT is as under:

- i. Addition 69A on the basis of Bank A/C is not sustainable as per Act hence, addition fit for deleted.
- ii. Addition u/s 69A without proper satisfaction proceeding is not sustainable in the eye of law.
- iii. On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirm the addition of Rs.1,14,13,837/-failing to appreciate that the fact assessee frequent withdrawals and the subsequent deposit.
- iv. On the facts and circumstances of the case, the Ld. CIT(A) has failed to appreciate that the Ld. A.O. could not discharge his duty of cash deposits and its re-deposits out of withdrawals is not part of Income.

In furtherance of the grounds of appeal raised, the assessee craves to pray & contend:

The Ld. CIT Appeal has upheld the addition made by the Ld. A.O in the hand of assessee. The Ld. CIT Appeal observation and findings para 4 to 5 is reproduced: -

"The order of the Ld. AO passed u/s 144 dated 17.12.2019 as well as grounds of appeal and statement of facts filed by the appellant has been carefully considered. In essence, all the substantial grounds in the grounds of appeal taken by the appellant relate to the action of the Ld. AO regarding addition of Rs. 1,14,13,837/- u/s 69A of the IT Act as unexplained money.

This case was initially fixed for hearing on 26.03.2021 by a notice dated 16.03.2021 in response to which no compliance was made by the appellant. A communication window was opened by the department and communication to the appellant was made on 04.11.2022, but the appellant did not file any document in response to the same. As no compliance was received, nor was there any request for any adjournment, the case was fixed for hearing again vide notices dated 13.09.2023 and 16.10.2023 but no compliance was made. Consequently, a final notice was

issued for hearing on 08.12.2023 vide notice dated 05.12.2023 mentioning that in the event of failure to submit the details within the stipulated time as mentioned in the notice, the appeal may be decided on the materials as available on record without providing any further opportunity of being heard. The case was once again fixed for hearing on 27.06.2014. However, the appellant neither filed any reply on the said date nor till the date of passing of this order. It, therefore, appears that the appellant is not interested to pursue the matter. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in well-known dictum, "vigilantibus et non dormientibus jura subveniunt". Considering the facts and keeping in view the provisions of rule 19(2) of the Income-tax (Appellate Tribunal) Rules in the case of CIT v. Multiplan India (P.) Ltd. (1991) 38 ITD 320 (Delhi), the appeal was treated as unadmitted. (Marked as annexure-2)

In our case the Id. CIT(A) has claimed that despite notice issued for allowing opportunity of hearing to the assessee during appellate proceedings, there was no compliance. None appeared before him to support the grounds of appeal. No written submission was made either. It was further stated by him that the assessee did not comply notice issued by the AO. The Id. CIT(A) has also held that there was no substantive compliance from the assessee to explain his case even before him. Although the assessee did not appear before us also, it is in the fitness of things to allow to the assessee for last opportunity of hearing to the assessee to explain the matter before lower authorities in the interests of justice and fair play. The appeal needs to be set aside for de novo adjudication of the grounds of appeal by the Id. CIT(A). The assessee will place his reliance upon your honour judgement in the case of the case of Mr. Tapan Kumar Bhuyan, Salepur vs Ito, Ward-1(1), Cuttack on 7 August, 2023 where your honour has held in para 7 and 8 that "However, as it is noticed that the assessee has not produced

the evidences called for by the Id CIT(A) for the purpose of adjudication the issues on merits and ascertainment of the correct facts, in the interest of justice, the issues are restored to the file of the Ld. CIT(A) for readjudication. Liberty is granted to the assessee to raise all such issues as he deems necessary for adjudication on merits before the Id. CIT(A). If so desires, the assessee is at liberty to raise the legal issues before the Id. CIT(A). The Id CIT(A) shall re-adjudicate the issues after granting the assessee adequate opportunity of being heard.

In the result, appeals of the assessee stands partly allowed for statistical purposes." (Copy of judgement is marked as annexure-3)

Relying upon the above said judgement the assessee prays to restore the case before the Ld. CIT(A) for fresh adjudication,

Further, in the case of Baldeo Sahu And Sons, Lohardaga vs Acit Central Circle-1, Ranchi on 21 August, 2024

IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH,  
BENCH, RANCHI marked as an (Annexure-4)

"During the hearing, the Bench proposed for restoration of the matter to the Id.CIT(A) for a de novo consideration. The Revenue did not vehemently oppose this plea. Thus, in the interest of justice, we deemed it appropriate to allow the appeal for statistical purposes, emphasizing the need for a thorough and compliant adjudication process. The Id. CIT(A) shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in the set aside remand proceedings for de novo adjudication of the appeal of the assessee filed before him. Needles to state, the assessee will comply with notices and any details sought by the appellate Page5|6 Baldeo Sahu Shiv Prasad Sahu & Baldeo Sahu and Sons authority without fail, as it will not be allowed any further opportunity of hearing in case of any further non-compliance.

In the result, all the above appeals are allowed for statistical purposes."

Further, the assessee will place his reliance upon your honour judgement in the case of Shyama Prasad Bhattacharjee vs. Income Tax Officer Circuit House, Ward 3(4), ITA No. 272/RAN/2023 (Assessment year: 2015-16) IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC" BENCH, RANCHI

The para no-5,6 &7 of the order is reproduced as under: -

"I have considered the facts and circumstances in this case, the submissions of the learned departmental representative and have given considerable thought with regard to the consistent view taken by this Bench in the similar facts and circumstances. There is no doubt that reasonable opportunity has been provided to the assessee by the National Faceless Appeal Centre, Delhi [the learned CIT (A.)]. However, there was no compliance because of which the NFAC was not in a position to adjudicate the matter on merits considering substantively all the evidences/relevant details of this case. The laws pertaining to welfare legislations with whose ambit even Income Tax Act is also considered, it means that wherever possible the interpretation of the facts and circumstances pertaining to a particular case has to be in a way benefiting the assessee, tax payer, wherever possible. There may be a possibility regarding the non-compliance which may not have been deliberate but was due to circumstances beyond the control of the assessee and this benefit of doubt should be provided to the tax payer, assessee. I am therefore of the considered view, following the principles of consistency and natural justice in these facts and circumstances one final opportunity should be given to the assessee to represent his matter substantially on merits before the NFAC, I order accordingly. In view thereof, the order of the NFAC is set aside and is remanded back to its file for denovo adjudication as per law and at the same time, the assessee is directed that this being the final opportunity provided, he must

represent his case with all relevant details/documents and ensure substantive representation on merits. The NFAC shall comply with principles of natural justice.

That as per the above terms, the grounds of appeal stand allowed for statistical purposes.

In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 03.09.2024."

Further, in Patliputra Builders Limited Vs. ACIT, Central Circle-2, Patna Bench In the similar case I.T.A. Nos. 49,50 &51/Pat/2021 Assessment Years: 2006-07, 2007-08 & 2008-09

The para no-4 of the order is reproduced as under: -

"In view of the above submissions, we note that the impugned date of hearings mentioned by the CIT(A) are dated 21.01.2021, 22.02.2021 & 05.03.2021 which dates fall during the Covid Pandemic period. Moreover, it is the case of the assessee that the assessee did not receive the notices of hearings of the aforesaid dates. In our view, the interests of justice will be will-served if the assessee is given an opportunity to present its case before the CIT(A). The impugned orders of the CIT (A) in the captioned appeals are set aside and the matter in all the three captioned appeals is restored to the file of the CIT (A) for decision afresh. Needless to say, that the Ld. CIT (A) will give proper opportunity to the assessee to present its case and thereafter to decide the matter in accordance with law."

Swasthya Bikash Samiti Scb Midical... vs Ito (Exemption), Cuttack on 6 June, 2024 ITA Nos.324 to 328/CTK/20/CTK/2023 Assessment Years: 2003-04 04 to 2007-08

The para no-10 of the order is reproduced as under:-

"With these remarks, as is evident that the lower authorities have not considered various beneficial claims available to the

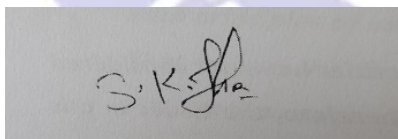
assessee. Therefore, the issues in this appeal are restored in its entirety to the file of the Assessing Officer for denovo adjudication. We may make it clear that all the issues are left open and the assessee is at liberty to raise any fresh claim as is available to the assessee. We also make it clearly that in view of the decision of the Hon'ble Supreme Court in the case of Goetze (India) Limited Vs CIT (284 ITR 323), the Hon'ble Apex Court has held that the Assessing Officer shall consider the fresh claim if any raised by the assessee, even if such claim has not been claimed or made in the return of income. Further, we may mention here that the assessee shall make such claim in the form of a letter at least specifying the claim." (Annexure-5)

The facts of the case of the assessee are on same footing as discussed in the above judicial pronouncement. In this case the Ld. CIT(A) has passed appeal order without considering the merit of the case. It is therefore, prayed before your honour may kindly remand back the case of the assessee to the Ld. CIT(A) for de novo consideration for best interest of justice.

The appellant assessee craves leave to put forward any additional ground at the time of hearing with Hon'ble ITAT.

The appellant- assessee seek adjournment till next date fixed by your honour.

Thanking You



Sharwan Kumar Jha

3. A perusal of the assessment order shows that the Assessing officer has passed the assessment order u/s.144 of the Act, as the assessee did not reply to the notices issued and did not furnish the books of account and

supporting documents. A perusal of the impugned order also clearly shows that there was no compliance to the various notices issued to the assessee, therefore, the Id CIT(A) was compelled to dispose of the appeal exparte confirming the addition made by the Assessing Officer. Therefore, in the interest of justice, the issues in this appeal are restored to the file of the Assessing Officer for adjudication afresh after granting the assessee adequate opportunity of being heard.

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

Order dictated and pronounced in the open court on 10/9/2024.

Sd/- (Manish Agarwal) ACCOUNTANT MEMBER  
Cuttack; Dated 10/9/2024  
B.K.Parida, SPS (OS)

sd/- (George Mathan) JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant : Bijay Kumar Lodha, Ward No.15, Link Road, Rairangpur
  2. The Respondent: ITO, Ward No.1, Baripada
  3. The CIT(A)- NFAC, Delhi
  4. Pr.CIT, Cuttack
  5. DR, ITAT,
  6. Guard file.
- //True Copy//

By order

Sr.Pvt.Secretary  
ITAT, Cuttack