

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, 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.391/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2017-2018)

Akshaya Kumar Choudhury House No.2612, Forest Park Bhubaneswar, Khurda	Vs	ITO, Ward-3(1), Bhubaneswar
PAN No. : ABGPC 9511 R		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Shri Satyajit Pattnaik, Advocate
राजस्व की ओर से / Revenue by	:	Shri S.C.Mohanty, Sr.DR
सुनवाई की तारीख / Date of Hearing	:	17/10/2024
घोषणा की तारीख/Date of Pronouncement	:	17/10/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 02.02.2024, passed in appeal No.CIT(A), Bhubaneswar-1/14472/2019-20 vide DIN & Order No.ITBA/NFAC/S/250/2023-24/1060454453(1) for the assessment year 2017-2018, on the following grounds of appeal :-

- A. *For that the impugned first appellate order is arbitrary in view of the facts above and as such liable to be interfered with by this Hon'ble Tribunal.*
- B. *For that when the learned A.O. verified the books of accounts and came to a finding that the alleged amount of Rs. 17,58,500/- was duly shown in the returned income and suffered to tax at the hands of the firm as well, rejection of such finding by the learned Appellate Authority is arbitrary and baseless. Hence liable to be interfered with by this Hon'ble tribunal.*
- C. *For that rejection of the remand report by the learned First Appellate Authority is arbitrary, baseless and liable to be reversed by this Hon'ble tribunal.*
- D. *For that in view of the facts and law humbly explained above, the impugned addition as of the IT. As, be aside and reversed by this Hon'ble Tribunal.*

notices issued. In first appeal, the Id. CIT(A) has dismissed the ground of appeal of the assessee with regard to bank deposits, however, accepted the contentions of the assessee on account of long term capital gain and allowed part relief by upholding the addition of Rs.2,37,750/- out of total addition of Rs.16,50,250/- made by AO on this account. Aggrieved by the order of Id. CIT(A), the assessee is in appeal before us challenging the confirmation of addition of Rs.17,58,500/-.

4. Since all the grounds of appeal are related to the addition of Rs.17,58,500/- made by the AO and upheld by the Id. CIT(A), therefore, these are canvassed together for the sake of convenience.

5. Before us, Id. AR of the assessee submitted that during the course of assessment proceedings due to unavoidable circumstances of the assessee as he was medically unfit, he could not be able to comply with the notices issued by the AO. However, during the course of appellate proceedings all the documents in support of the contentions raised against the additions made were submitted before the Id. CIT(A) along with a prayer under Rule 46A of the IT Rules, 1962. The Id. CIT(A) obtained the remand report of the AO on the additional evidences submitted by the assessee wherein vide remand report dated Nil, it is stated by the AO that he has made verification of the documents filed and the claim of the assessee with regard to the source of the cash deposit in the bank account and found the contentions of the assessee correct. The remand report as submitted by the AO is reproduced in the appellate order in para 5 from pages 8 to 10, which reads as under :-

Amiya kumar Chaudhury. (v) Madhuri Palo, (vi) Binodini Panigrahi and (vii) Ajaya Kumar Chaudhury I am producing the relevant document for your kind verification. For the shake of natural justice, Shri Akshaya Kumar Chaudhury is only the share of rs. 2,35,750/- (Rs. 16,50,250/7=Rs. 2,35,750/- is coming under the perview of taxation. This amount was not offered for taxation in the assessment year 2017-18. The share of Rs. 2,35,750/- may kindly brought to tax net for the impugned assessment year. In this regard the sale deed is produced for your kind verification."

On verification of the sale deed and other land related documents (old papers of the land like payment of state government taxes), it is seen that, this immovable property stood jointly in the name of Prafulla kumar Chaudhury. Bijay Kumar Chaudhury. Akshaya Kumar Chaudhury. Amiya kumar Chaudhury. Madhuri Palo, (Binodini Panigrahi and Ajaya Kumar Chaudhury

So the share of the property i.e. Rs. 2,35,750/- should be taxed under LTCG in the hands of the assessee0."

6. After receiving the remand report without making any further enquiry from the assessee nor confronted to the AO, Id. CIT(A), NFAC doubted the said report by observing that the AO has submitted a vague reply and confirmed the additions made of Rs.17,58,500/-. Ld. AR further contented that during the course of remand proceedings, books of accounts and another relevant documents such as booking register were produced before the Id. AO and it was claimed that the assessee is one of the partner in M/s Jagannath Choudhury, a partnership firm engaged in the real estate business, who had received advances from the customers against booking of the plot on installment basis during the year. The amounts so received were duly recorded in the cash book of the firm and booking register was also maintained containing complete details of the persons from whom advances were received. Inadvertently, the accountant of the firm had deposited the amount of booking received in cash in the bank account of the assessee instead in the bank account of

the assessee has failed to comply with any notice were explained before the Id. CIT(A), who not only accepted the explanation tendered by the assessee but also admitted the additional evidences submitted by the assessee during the appellate proceedings and sought remand report on the same. The AO vide his remand report has categorically stated that he has made verification of the details submitted by the assessee with the cash book and register of the parties produced by the assessee. In the remand report as reproduced in the appellate order, which is also extracted hereinabove, the observations of the AO are very much clear that he has not only verified the cash book but also the financial statements and the return of firm M/s Jagannath Choudhury and finally concluded that the amounts deposited in the bank account of the assessee were duly recorded in the books of accounts of the partnership firm and pertained to the firm only. The Id. CIT(A) has not accepted this remand report for his own assumption and presumption. If the CIT(A) was not satisfied with the remand report submitted by the AO, he could have directed the AO to make further enquiry in the matter or confront the assessee about the doubts he has on the remand report and the details submitted by the assessee. No such action was taken by Id. CIT(A) and without passing any order u/s.250(4) of the Act for making further enquiry/investigation in the matter, has concluded that the amount deposited in the bank account of the assessee is unexplained cash deposit. Since the assessee has discharged the burden casted upon him to explain the source of deposit to the satisfaction of the AO during the