

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.365/CTK/2024
(निर्धारण वर्ष / Assessment Year : 2015-2016)

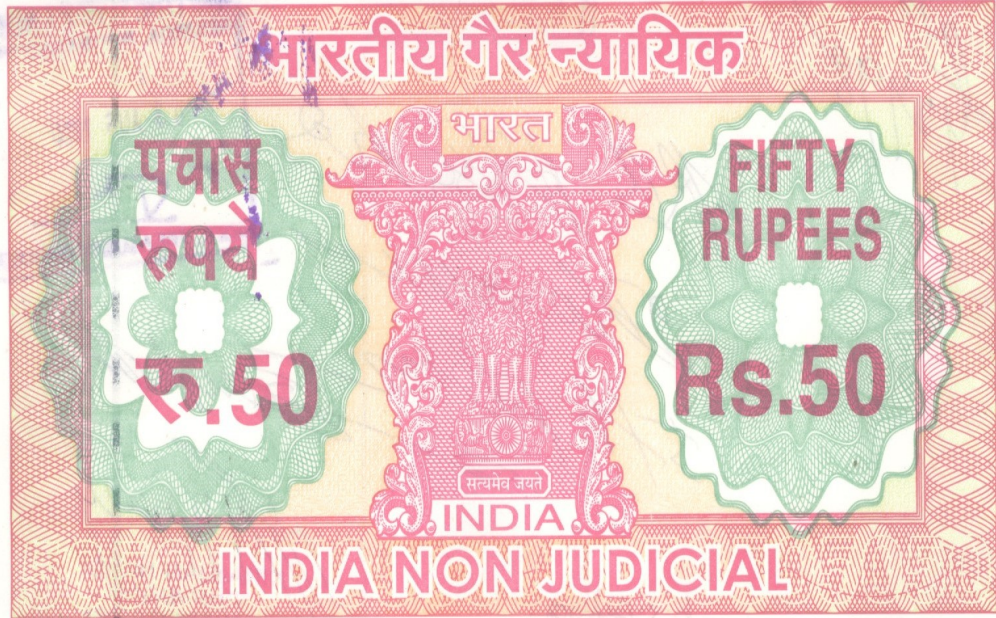
M/s Odisha Industrial Infrastructure Development Corporation, IDCO Tower, Janpath, Bhubaneswar	Vs	DCIT, Circle-4(1), Bhubaneswar
PAN No. : AAAAT 2619 K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Bibekananda Mohanty, CA
राजस्व की ओर से /Revenue by	:	Dr. Abani Kanta Nayak, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	12/11/2024
घोषणा की तारीख/Date of Pronouncement	:	12/11/2024

आदेश / ORDER

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 25.05.2023, passed in appeal No.CIT(A), Bhubaneswar-2/10971/2017-18 vide DIN & Order No.ITBA/NFAC/S/250/2023-24/1053183739(1) for the assessment year 2015-2016.

2. On perusal of the appeal record, we found that the appeal of the assessee has been filed belatedly by 409 days. In this regard, the assessee has filed condonation application along with affidavit stating sufficient reasons for delay in filing the present appeal. The contents of the affidavit filed by the assessee are as under :-



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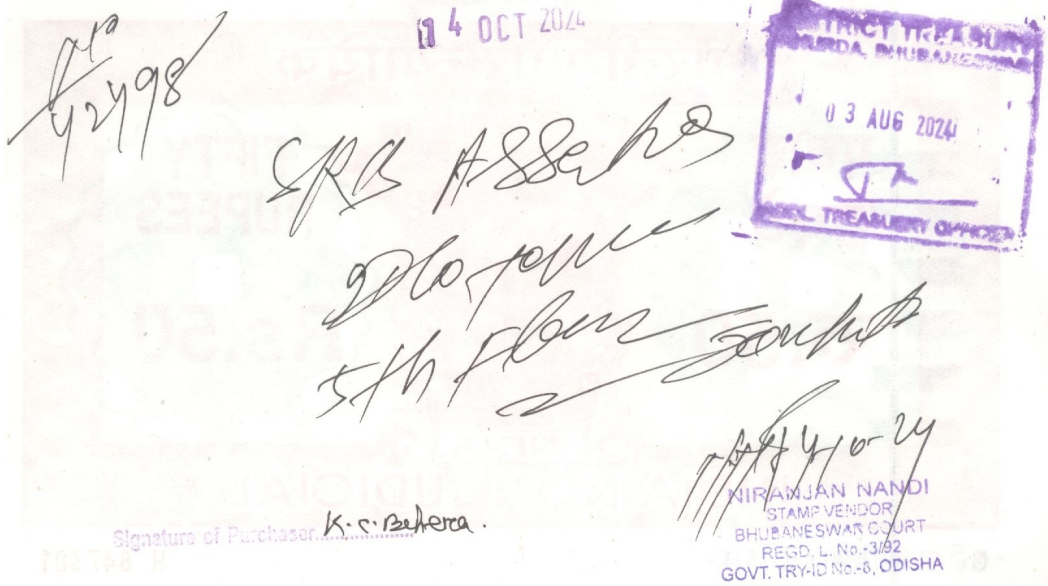
H 847301

BEFORE THE NOTARY : BHUBANESWAR

Affidavit

I, Biswajit Pal, aged about 53 years son of Dr. Bikartan Pal in the capacity of Chief General Manager (Finance & Accounts) do here by solemnly affirm sweath as follows:

1. That, our organization was in appeal which was dismissed by the Hon'ble First Appellate Authority and the appellate order was mailed on dt.25.05.2023.
2. That, since the appellant did not have qualified professionals during that period, persons working in accounts department were not computer savvy and for the purpose said order remained un-noticed.
3. That, in the process, there has been a delay of 430 days in filing appeal for no fault of the appellant. This was un-intentional.



That the facts stated above are true to the best of my knowledge and belief and this swearing in is being made for onward submission before the Honourable Bench, Income Tax Appellate Tribunal, Cuttack as a request for condoning the delay in filing the appeal.

Identified by me

Prisnejit Pat
Deponent
**Chief General Manager (Fin.)
IDCO, Bhubaneswar**

Adv. Bhubaneswar

Notary

Sworn before me

Prisnejit Pat
Deponent
**Chief General Manager,
IDCO, Bhubaneswar**

3. On the other hand, Id. CIT-DR vehemently opposed the condonation of delay in filing the appeal by the assessee and submitted that the assessee itself received the order and since it is a Government Organization having sufficient staff and merely stating that there no professional consultant is available for filing the appeal, is not a

reasonable cause and could not be accepted. Therefore, the delay should not be condoned.

4. After considering the arguments of both the sides and looking to the fact that the assessee is a Government Organization, which depends upon professionals for technical work like filing of appeal etc., we find sufficient and reasonable cause given for delay in filing the appeal. Accordingly, delay in filing the present appeal is hereby condoned and the appeal is heard finally.

5. The assessee has raised following grounds of appeal :-

1. *That, the assessment order U/s 143(3) read with 144B and U/s. 250 of the Income Tax Act, 1961 is against law, weight of evidences and probabilities of the case.*
2. *The appellant being a Public Sector Enterprise spend every year for public purposes as per decision of the Board / State Government for various social development activities. However, IDCO not being a company registered under Companies Act provisions of restrictions on such expenses of Rs.7,26,01,192.00 are not appropriation of profit. Therefore, such expenditures are treated as business expenditures and directly charged to Profit and Loss. A mere nomenclature of Public Charitable activities as "CSR" will not dis-entitle a non-company to claim the expenditure. The learned assessing officer mis-interpreted the provisions of the Act and disallowed the expenses and so also the Honourable First Appellate Authority who also agreed with the views and for this reason, the addition needs to be deleted.*
3. *The learned assessing officer without correlating the facts and without cross verification disallowed a sum of Rs.36,76,670.00 U/s.40(a)(ia) for non deduction of tax. The fact is that all the recipients receiving the said amount have treated the same as income and offered to tax. Accordingly, no disallowance was to be effected in the hands of the appellant as it is not to be treated as assessee in default. The Honourable First Appellate Authority also agreed with the views of the learned assessing officer and for this, the addition is liable to be deleted.*
4. *For these and among other grounds that may emerge at the time of hearing, the order of assessment be quashed to meet the end of justice.*

6. Brief facts of the case are that the assessee is a corporation established by the Government of Odisha as Trust for providing industrial infrastructure and land for industrial and infrastructure development in the state. The return of income was filed on 28.03.2016 at a total income of Rs.67,00,53,090/-. The assessment was completed u/s.143(3) of the Act dated 22.12.2017 wherein the disallowances were made u/s.37(1) of the Act out of CSR expenses of Rs.7,26,01,192/- and disallowance u/s.40(a)(ia) of the Act of Rs.36,76,670/- was made. In the first appeal, the Id. CIT(A) dismissed the appeal of the assessee. Thus, the present appeal is preferred by the assessee before us.

7. Ground No.1 is general in nature and needs no adjudication.

8. In regard to ground No.2, Id. AR submitted that assessee had claimed total expenditure of Rs.10,09,00,041/- under the head CSR Expenses out of which Rs.2,82,98,849/- towards the construction of roads was allowed and remaining amount of Rs.7,26,01,192/- was disallowed for the reason that assessee has failed to submit reasonable explanation for the same. Ld. AR further submitted that during the course of appellate proceedings the assessee has submitted the nature of expenses incurred. Though the Id. CIT(A) had not doubted the genuineness of the expenses incurred, however, by invoking the provisions of Explanation 2 to Section 37(1) has confirmed the disallowance by treating the assessee corporation as a company registered under the Companies Act in whose case the CSR expenses are not allowable u/s.37(1) of the Act. Ld. AR submitted that assessee is a corporation and incorporated as trust by the

State Government and filing its return under the status of AOP and since it is not a company registered under the Companies Act, therefore, the provisions of Explanation 2 to Section 37(1) are not applicable to it.

9. With regard to the disallowance made u/s.40(a)(ia) of the Act, it was submitted that the assessee though had not deducted the TDS on the payments made to various parties, however, the recipients have already included the said amounts in their respective returns and paid the taxes thereon, therefore, no disallowance should be made in the hands of the assessee. However, as the assessee has not been able to furnish the necessary details with respect to the CSR expenses disallowed by the AO and also the necessary certificates of the recipients to whom payments were made without TDS could not be furnished before the lower authorities, therefore, in the interest of justice, it was prayed by Id. AR that both the issues may be sent back to the AO so that the assessee could be able to file the necessary details in this regard.

10. On the contrary, Id. CIIT-DR submitted that the assessee has incurred the CSR expenses on the directives of the State Government and those expenses are not pertaining to its business activity, therefore, are not allowable as revenue expenses u/s.37(1) of the Act. For this, Id. CIT-DR also placed reliance on various judicial pronouncements on the issue of allowability of these expenses u/s.37(1) of the Act. He, however, fairly admit that the Id. CIT(A) has wrongly applied Explanation 2 to Section 37(1) of the Act. With regard to other issue of disallowance u/s.40(a)(ia) of the Act, Id. CIT-DR vehemently supported the orders of the

lower authorities and requested for confirmation of the disallowance so made.

11. We have heard the rival submissions and perused the material available on record. From the order of the Id. CIT(A), it is seen that the Id. CIT(A) has not considered the issue of disallowance of CSR expenses on merits nor any details were furnished by the assessee either before the AO or before the Id. CIT(A) and the Id. CIT(A) has simply confirmed the order of Id. AO by invoking the provisions of Explanation 2 to Section 37(1) of the Act. Admittedly, the assessee is a corporation established by the state government as trust and not registered under the Companies Act, therefore, Explanation 2 to Section 37(1) of the Act is not applicable to it. Accordingly, we set aside the order of the Id. CIT(A) and held that the Explanation 2 to Section 37(1) of the Act is not at all applicable in the case of the assessee corporation. It is further seen that no details were filed with respect to the expenses of Rs.7,26,01,192/- claimed under the head CSR expenses before the lower authorities, therefore, in the interest of justice, we set aside this issue to the file of AO for examination afresh. Needless to say the assessee shall be allowed sufficient opportunities of being heard.

12. With regard to the other issues of disallowance u/s.40(a)(ia) of the Act, it is an admitted position that no TDS was made before making the payments to these parties, however, it was the submission of the assessee that due taxes were paid by the recipients and necessary certificates would be submitted if one more opportunity is provided.

Therefore, in the interest of justice, one more opportunity is provided to the assessee by setting aside this issue to the file of AO with the direction to assessee to file the relevant certificates so as to enable the AO to decide this issue as per law. In view of the above directions, both the grounds of appeal of the assessee are partly allowed for statistical purposes.

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

Order pronounced in the open court on 12/11/2024.

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 12/11/2024

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
M/s Odisha Industrial Infrastructure Development Corporation,
IDCO Tower, Janpath,
Bhubaneswar
2. प्रत्यर्थी / The Respondent-
DCIT, Circle-4(1), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

Sd/-
(MANISH AGARWAL)

लेखा सदस्य/ ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack