



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

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

ITA No.468/CTK/2024
Assessment Year : 2017-18

Madhusmita Jaunliapatty, Bazar, Cuttack	Guin, Choudhury	Vs.	ITO, Ward-2(3), Cuttack
PAN/GIR No.AUJPG 4436 F			
(Appellant)		..	(Respondent)

Assessee by : Shri Mohit Sheth, Adv
Revenue by : Shri Charan Dass, Sr DR

Date of Hearing : 04/12/2024
Date of Pronouncement : 04/12/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id
CIT(A), NFAC, Delhi dated 28.12.2023 in Appeal No.CIT(A),Cuttack
/10263/2019-20 for the assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

"1.For that under the facts and circumstances of the case, the
assessment as made and completed u/s. 144 of the I.T. Act. is

arbitrary, unlawful and unjustified. As the assessee has furnished all the details in response to the notices and those were duly verified by the AO during the course of assessment proceedings. As such it cannot be said that no explanation was furnished to the AO. The appellant made certain deposits in her bank account during the period 08.11.2016 to 30.12.2016 and also made certain deposits in post office. The AO treated all the deposits as unexplained u/s.68 and assessed as total income of the appellant and completed the assessment u/s. 144 without giving proper opportunity to explain the nature and sources of deposits.

2.For that the addition of Rs. 18,12,393/- deposited in the bank account, in Recurring Deposits Account, Fixed Deposits, and payment of loan account are all treated as unexplained and assessed u/s.68 of the I.T. Act. is unlawful and unjustified and as such also arbitrary. The assessee had duly furnished all the details during the assessment proceedings which were duly explained the AO but the AO did not took into consideration. The AO should have accepted the explanation and should have also verified the records of the assessee. The AO without verifying the details properly had just passed the assessment order. The amount of Rs. 18,12,393/- deposited during the demonization period is part of books of accounts which had been duly explained before the AO. Without considering the fact the AO on the basis of surmises and assumption had added the deposits u/s.68 to which the CIT(A) sustained the addition. The addition of Rs. 18,12,393/- u/s.68 is arbitrary, unlawful and unjustified as it

3.For that the addition of Rs. 1,89,000/- deposited in the bank account in Recurring Deposits Account is part and partial of the deposits of Rs. 18,12,393/-. The AO while assessing had added the deposits of Rs. 1,89,000/- again and added back to the total income, which is a double addition made by the AO whereas the same is already added in Rs. 18,12,393/-.

4.For that the addition of Rs.2,24,000/- deposited in the bank account in Loan Account is part and partial of the deposits of Rs. 18,12,393/-. The AO while assessing had added the deposits of Rs.2,24,000/- again and added back to the total income, which is a double addition made by the AO whereas the same is already added in Rs.18,12,393.

5.For that the addition of Rs. 1,35,500/- deposited in the post office account is 5 arbitrary, unlawful and unjustified as the same was duly explained by the AO.

6.For that under the facts and in the circumstances of the case the whole addition as made by the AO is arbitrary, uncalled for and unjustified and such addition should be deleted in the interest of justice. The AO should have given proper opportunity to the appellant and should have accepted the explanation.

7.For that under the facts and in the circumstances of the case the Order u/s.250 of the I.T. Act. as made by the Commissioner of Income Tax (Appeals), NFAC, Delhi is arbitrary, unreasonable, unlawful, uncalled for and unjustified as the CIT(A) without applying his mind and without going through the fact had just passed the order abruptly by sustaining the addition of Rs.23,60,893/- u/s.68 and dismissing this issue raised in the appeal.”

3. Brief facts of the case are that the assessee is an individual and not filed her return of income for the impugned assessment year. As per the information available with the department, the assessee is having bank account with Central Bank of India and Department of Post India, Cuttack and had made cash deposits in the said accounts. Besides this, the assessee is having recurring deposits also. As the assessee has not filed the return of income, the Assessing Officer issued notice u/s.142(1) of the Act. However, same remains un-complied and finally, the Assessing Officer completed the assessment u/s.144 of the Act determining the total income at Rs.23,60,893/- by making addition of the deposits in the bank account as well as in the Post Office account.

4. Before us, Id AR of the assessee submits that the assessee is regularly assessed to income tax and had filed her return of income since

long. The return of income for the year under appeal was not filed as the assessee is having total income below the maximum limit not chargeable to tax. In support of this, a copy of computation alongwith capital account, balance sheet and details of bank accounts, FDRs etc is filed in the paper book at pages 11 to 14. He submits that all the deposits made in the bank account and Post Office account are duly incorporated in the balance sheet so prepared and since even after incorporating all the details, the total income of the assessee is not exceeding the maximum amount not chargeable to tax, she had not filed the return of income for the year under appeal. He further submits that for the assessment year 2015-16, assessment was completed u/s.143(3) of the Act, wherein, the income declared was accepted by the department vide order dated 28.11.2017, copy of which is also placed before us. Ld AR further submits that all the deposits in Recurring Deposit, Fixed Deposit and SB Account with Central bank of India and Post Office were out of the funds available with the assessee for which a fund flow statement was also filed. In the last, it was requested that since the assessee has been regularly assessed to income tax and having opening funds besides the income and other receipts during the year for making such deposits, therefore, no addition is required to be made. Besides this, a written submission was also filed which is placed in the paper book at pages 1 to 4, which reads as under:

"The appellant is an individual was assessed u/s. 144. The appellant did not filed her return of income as her income was not taxable for the aforesaid Asst. year 2017-18. Notice u/s.142(1) was issued and served on assessee. Since income was not taxable, the appellant was advised by advocate that it is not required to file the return of income. As such the appellant did not filed her return of income. In addition to above the appellant was also advised by advocate that since the income is below taxable respond to the notice is not required. As such the appellant was under blind faith that there would be no assessment. The appellant files her return regularly. Only being income not taxable in the year under consideration, She did not filed her return of income.

As per AO

Assessee failed to furnish return of income either u/s.139 or in response to notice issue u/s.142(1) for the A. Year-2017-18.

Assessed u/s.144.

1. All the deposits in the bank were added as the total income.

(a) Small Denomination of MMDC (FD) were added as total income.

(b) Deposits in RD Account and Savings A/c were added as total income.

(c) Deposits in Cent Mortgage Account (Loan A/c) were added as total income.

(d) All total comes to as per the AO (18,12,393 1,89,000+2,24,000+1,35,500) Rs.23,60,893/- .Assessment was completed and demand was raised amounting to Rs.28,81,536/-

As per CIT(A)-

As per the provisions of the Section 249(4)(b) of the Act, the appeal shall not be admitted, unless the appellant has paid an amount equal to the amount of advance tax which was payable by him if no return of income has been filed.

In the present case, the appellant did not file return of income. On or before filing the present appeal, the appellant has failed to make the mandatory payment of the amount equal to the amount of advance tax which was payable by him. Further, the appellant neither provided any clarification/explanation in response to the deficiency letter issued by this office nor did he offer any good and sufficient

reasons seeking exemption from the operation of the sec.294(4)(b) even though sufficient opportunities were provided to him.

On careful consideration of the above facts and circumstances, as the appellant has failed to fulfil the mandatory and essential conditions for admission of appeal before CIT(A) as per Sec. 249(4)(b), the present appeal is liable to be held as not eligible for admission.

In the result, the appeal is treated as dismissed for statistical purposes.

Appellant Contentions -

Assessment completed u/s.144 on the basis that no return of income was filed by the appellant. The AO added the cash deposits deposited in MMDC, RD & SB Account and Cent Mortgage Account. The AO without proper verification and without going through the details just added all the cash deposits and treated the same as total income.

The AO added cash deposits to the extent of Rs. 18,12,393/- made in various accounts during the demonization period.

The AO also added Rs.1,89,000/- deposited in RD Account No.3411257722, 3411977455, and 3411978186. The said RD Account's are old accounts and are duly reflected in the Balance Sheet of the appellant every year.

The AO also added Rs.1,35,500/- deposited in Post Office Account No.3438272537. The said Post Office Account's is an old accounts and are duly reflected in the Balance Sheet of the appellant every year.

The AO also added Rs.2,24,000/- deposited in Cent Mortgage Account (Loan A/c) No.3094773388. The said Cent Mortgage Account (Loan A/c) No.3094773388 A/c's does not belongs to the appellant and the same belongs to the Sumitra Devi Guin and Mohan Guin. As such the addition of Rs.6,27,893/- (Rs.4,03,893 (i.e. out of addition Rs. 18,12,393) + Rs.2,24,000) does not belongs to the assessee. Hence the deposits in the said Account should be deleted.

The cash deposits in various accounts are made out of cash available as on 31.03.2016 and out of the collection of advances and deposits made in past years by the appellant and out of the income earned during the year under consideration and out of the gift received from parents.

The appellant also earned income during the year under consideration and out of such income certain deposits were also made.

Assessment as made u/s.144 is unlawful and arbitrary and without verification of past records of the Appellant.

Addition of Rs.23,60,893/- as made by the AO is fully supported by evidences.

The said deposits should be accepted and the addition made should be deleted.

Prayer:

The appellant prays your honour to be kind enough to considered the submission and adjudicate the matter accordingly.”

5. On the other hand, Id Sr DR vehemently supported the orders of lower authorities and submitted that the assessee has not filed any details before the Assessing Officer nor before the Id CIT(A) and at both the stages orders were passed exparte. He further submits that since the assessee has not filed her ITR, therefore, the AO had left no other option but to complete the assessment on best judgment. He prayed for confirmation of the additions so made.

6. We have considered the rival submissions and perused the materials available on record. In the instant case, the assessment proceedings were taken up for the sole reason that the assessee has made deposits in the bank account and post office account and had not filed her return of income for the impugned assessment year. From the perusal of the computation of total income and balance sheet etc, filed in the paper book, we find that all

the deposits in the form FDs, RDs account and other cash deposits find place in the assets shown in the balance sheet and also the income earned thereon in the shape of interest etc are duly taken to the computation of total income where after considering other incomes and investments made for deduction under Chapter VIA, the total income of the assessee was computed which is lower than the amount maximum not chargeable to tax. Further from the perusal of the fund flow statement, we find that there was opening balance of Rs.6,02,645/- taken from the balance sheet of preceding year and the closing balance was taken to the next year where the return was also not filed being income not exceeding the amount not chargeable to tax. Looking to this fact, it would be fair and reasonable to set aside the matter to the file of the Assessing Officer with the direction to examine whether all these deposits are forming part of the balance sheet submitted before us as available in pages 11 to 14 of PB which are as follows:

AUJPG4436F
WARD - 2 (3)

MADHUSMITA GUIN
D/o. Debendranath Nandi
C/o. Harish chandra Guin
Jaunliapatty,
Cuttack .

Asst. Year : 2017-2018
Year Ending :31.03.2017
D.O.B. :05.02.1985
Status : Individual

STATEMENT OF TOTAL INCOME

BUSINESS --

Income from tuition and from deals in imitation items on behalf of dealers in the nature of trade No proper books of A/c Net Income

Gross receipts	9,76,000.00	
Less- Exp	<u>7,90,300.00</u>	
	<u>1,85,700.00</u>	1,85,700

INTEREST --

i) Bank & postal deposits as per list	55,234.00	
ii) NSC 5th Issue as per list	7,225.00	
	<u>62,459.00</u>	62,459.00

2,48,159

LESS - Deduction U/s 80C

NSC 8th issue	1,35,000.00	
Accrd. Int. on Nsc	10,393.00	
	<u>1,45,393.00</u>	1,45,393

LESS - Deduction U/s 80TTA

S.B A/c Interest	2,258	
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1,00,508

" TOTAL INCOME "

OR

1,00,510

COMPUTATION ON TAX

Tax on total income	-	
Less : Rebate u/s 87A	-	
Add - Education cess	-	
Add Interest u/s 234A	-	
" Tax Due "	<u>-</u>	
		<u>TAX PAID</u>
	TDAS	5,036
	140A	-
	Refundable	<u>5,036</u>

MADHUSMITA GUIN		<u>AUJPG4436F</u>	
D/o. Debendranath Nandi C/o. Harish chandra Guin Jaunliapatty, Cuttack .		WARD - 2 (3)	
		Asst. Year : 2017-2018 Year Ending :31.03.2017 D.O.B. :05.02.1985 Status : Individual	
<hr/>			
CAPITAL ACCOUNT --			
Opening Balance (01.04.2016)	14,65,994.00	Personal Expense	36,000.00
<u>Add - Income of the year</u>		TDAS	5,036.00
Business	1,85,700.00		41,036.00
Interest	62,459.00		
Gift received from parents	2,02,000.00		
	<u>19,16,153.00</u>	Closing Balance (31.3.2017)	<u>18,75,117.00</u>
			<u>19,16,153.00</u>
BALANCE SHEET AS ON 31.03.2017			
CAPITAL		ASSETS	
Madhusmita Guin	18,75,117.00	Bank & Postal deposits as per list	21,63,947.00
Liabilities -		NSC 8th issue	
Mohan Kumar Guin	4,41,000.00	as per list	2,41,125.00
Loan from friends and relatives	94,000.00	Cash In Hand	5,045.00
	<u>24,10,117.00</u>		<u>24,10,117.00</u>
Details of Investments in NSC A/c			
	<u>Op. Balance</u>	<u>Interest</u>	<u>Cl. Balance</u>
for 70,000/- dt.07.03.2012	98,900.00	7,225.00	1,06,125.00
for 45,000/-dt.09.12.2016			45,000.00
for 45,000/-dt.14.12.2016			45,000.00
for 45,000/-dt.15.12.2016			45,000.00
		<u>7,225.00</u>	<u>2,41,125.00</u>
Copy of A/c. with Mohan Kumar Guin			
Opening Balance (01.04.2016)	2,52,000.00		
<u>Add : Additions during the year</u>			
in RD A/c. (5,250 x 12) in 3 Accounts.	1,89,000.00		
	<u>4,41,000.00</u>	Cl. Balance (31.3.2017)	<u>4,41,000.00</u>
			<u>4,41,000.00</u>

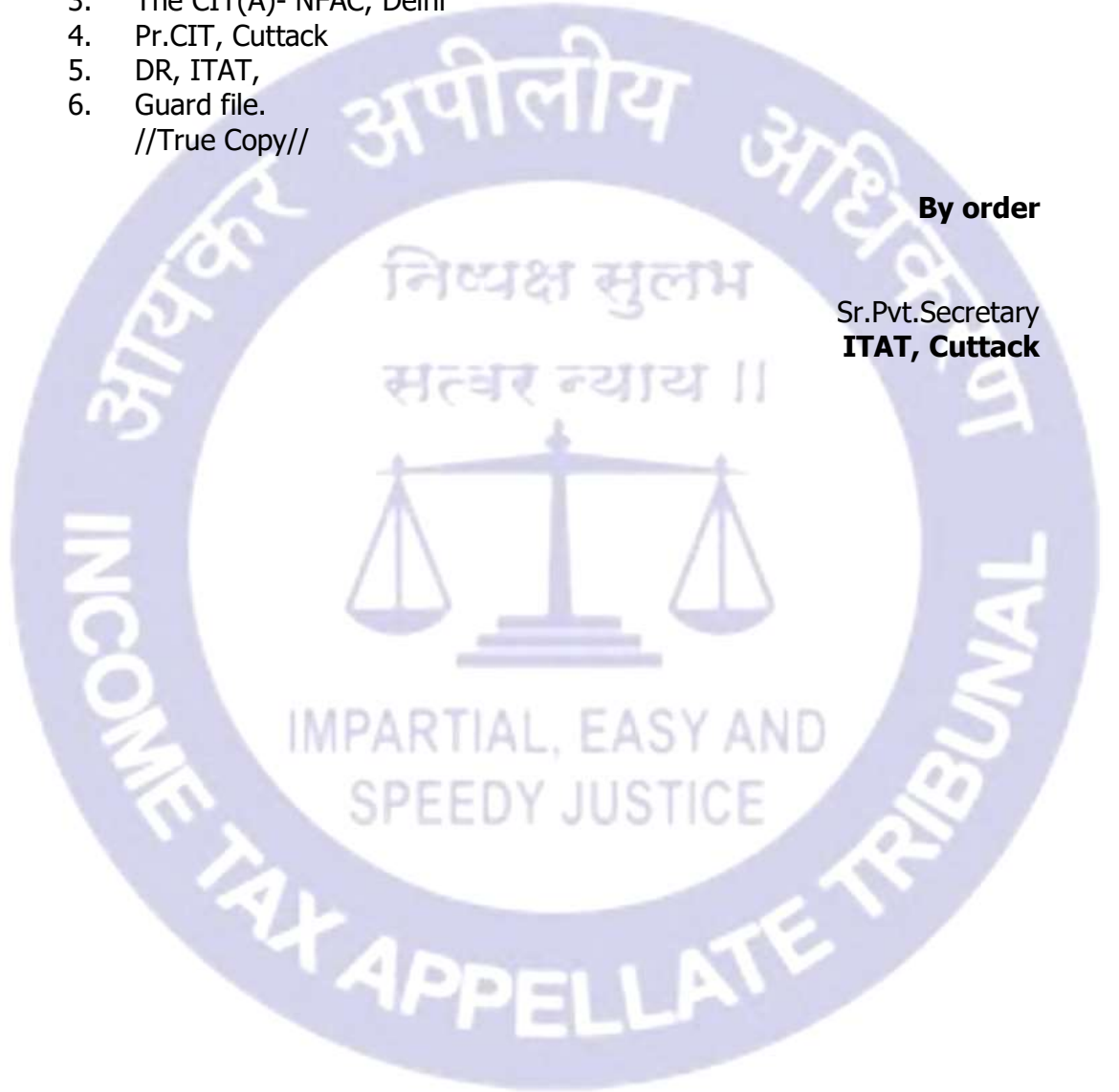
MADHUSMITA GUIN
D/o. Debendranath Nandi
C/o. Harish chandra Guin
Jaunliapatty,
Cuttack .

Asst. Year : 2017-2018
Year Ending :31.03.2017
D.O.B. :05.02.1985
Status : Individual

Statement of Bank S.B a/c , FD a/c Interest & its Closing Balance				
	Op. Balance	Interest	TDAS	Cl. Balance
Central Bank of India				
a SB A/c No.3577866517 (CBIN0280136)		2,238.00		1,96,238.00
b FD A/c No.462 for 13,500/- dt.15.03.2013 (MV for 20,558/- dt.15.03.2018)	17,005.00	1,518.00	152.00	18,371.00
c FD a/c No.335 for 57,260/- dt.03.12.2014 (MV for 69,264/- dt.18.01.2017) renewed	66,787.00	2,477.00	113.00	69,151.00
d FD a/c No.801 for 57,260/- dt.03.12.2014 (MV for 69,264/- dt.18.01.2017) renewed	66,787.00	2,477.00	113.00	69,151.00
e FD a/cNo.393/439 for 10,000/- each X2 dt.15.3.13 (MV for 15,228-X2 dt.15.03.2018)	25,484.00	1,936.00	194.00	27,226.00
f FD a/c No.1078 for 40,000/- dt.19.11.2016 MV for 42938/- dt.19.11.2017		1,050.00	106.00	40,944.00
g FD a/c No.1352 for 40,000/- dt.19.11.2016 MV for 42938/- dt.19.11.2017		1,050.00	106.00	40,944.00
h FD a/c No.948 for 40,000/- dt.19.11.2016 MV for 42,938/- dt.19.11.2017		1,050.00	106.00	40,944.00
i FD a/c No.0128 for 40,000/- dt.21.11.2016 MV for 42938/- dt.21.11.2017		1,034.00	104.00	40,930.00
j FD a/c No.2126 for 40,000/- dt.21.11.2016 MV for 42,938/- dt.21.11.2017		1,034.00	104.00	40,930.00
k FD a/c No.251 for 40,000/- dt.21.11.2016 MV for 42,938/- dt.21.11.2017		1,034.00	104.00	40,930.00
l FD a/c No.8067 for 49,000/- dt.22.11.2016 MV for 52,599/- dt.22.11.2017		1,257.00	126.00	50,131.00
m FD a/c No.2108 for 49,000/- dt.22.11.2016 MV for 52,599/- dt.22.11.2017		1,257.00	126.00	50,131.00
n FD a/c No.111 for 49,000/- dt.22.11.2016 MV for 52,599/- dt.22.11.2017		1,257.00	126.00	50,131.00
o FD a/c No.291 for 49,000/- dt.22.11.2016 MV for 52,599/- dt.22.11.2017		1,257.00	126.00	50,131.00

Copy of the Order forwarded to :

1. The Appellant : Madhusmita Guin,
Jaunliapatty, Choudhury Bazar, Cuttack
2. The Respondent: ITO, Ward-2(3),
Cuttack
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