



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

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

ITA No.526 /CTK/2024
Assessment Year : 2017-18

Sankar Charan Marndi Sukhupada, Kuliana Mayurbhanj, 757030	Vs.	Assistant Commissioner Of Income Tax, ACIT, Circle Balasore
PAN/GIR No.AHXPM 6042 L		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K.Mishra, Adv
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 30/12/2024
Date of Pronouncement : 30/12/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 27/11/2024 in Appeal No. CIT(A), Cuttack/10628/2019-20 for the assessment year 2017-18

2. Shri P.K.Mishra, Id AR appeared for the assessee and Shri S.C.Mohanty, Sr. DR appeared for the revenue.

The assessee has raised following grounds of appeal:

"1. For that, the learned CIT(A) has committed gross error of law as well as of fact, in dismissing the appeal of the appellant and in

confirming the addition made by the learned A.O., without providing sufficient effective opportunity of being heard to the Appellant, as such, the appeal order, being passed on gross violation of principles of natural justice is not sustainable in the eye of law, hence needs to be quashed in the interest of justice.

2. For that, the addition made by the learned A.O. in the order of assessment, ignoring the explanation offered and evidences adduced by the Appellant is not sustainable in the eye of law, as such, the appellate order passed by the learned CIT(A), confirming the assessment order passed by the learned A.O., without examining the assessment record and without providing adequate opportunity of being heard to the Appellant is also not sustainable in the eye of law, hence needs to be quashed in the interest of justice.

3. For that, when the rejection of books of account and ad-hoc estimation of net profit made by the learned A.O., ignoring the explanation offered and evidences adduced by the Appellant is completely wrong, illegal and not supported by valid and justified reason, the learned CIT(A) has committed gross error of law as well as of fact in confirming the same, without applying his judicious mind. The impugned ad-hoc estimation of net profit of Rs. 46,69,565.00, being highly excessive is liable to be reduced to the figure returned in the interest of justice.

4. For that, when the ad-hoc estimation of net profit 2.28% of Rs.46,69,565.00 made by the learned A.O on the total turnover declared by the Appellant is highly excessive, illegal and not backed by any cogent documentary evidences, the learned CIT(A) has committed gross error of law as well as of fact in confirming the same, without applying his judicious mind The impugned ad-hoc estimation of net profit, being highly excessive is not sustainable, hence needs to be reduced to the net profit declared by the Assessee in the interest of justice.

5. For that both the forums below have committed gross error of law as well as of fact in comparing the facts and circumstances of the present case of the Appellant with another Assessee in the same locality is completely different, hence cannot be applied to the facts of the present case, as such, the profit so estimated following that case needs to be rejected and the profit declared by the Assessee being true, genuine and correct needs to be accepted in the interest of justice.

6. For that, the learned CIT(A) has committed gross error of law as well as of fact in confirming the addition of bank deposits of SBNs to the tune of Rs. 23,50,000.00 made by the learned A.O., treating part of sales turnover as unexplained money being completely illegal and contrary to the facts on record is not sustainable in the eye of law, hence the same needs to be deleted in the interest of justice

7. For that, when the learned A.D has accepted the business turnover and amount so deposited in the bank account of the Appellant were out of sales proceeds and formed part of sales turnover, part of the same i.e. Rs.23,50,000.00 cannot be treated as unexplained money u/s.69A of the Act. particularly when, the books of account was rejected, as such the impugned addition of Rs.23,50,000.00 made by the learned A.O. and confirmed by the learned CIT(A), being not sustainable in the eye of law, needs to be deleted in the interest of justice.

8. For that, section 69A of the Act has no application under the facts and in the circumstance of the present case, as such, the impugned addition made by the learned A.O. of Rs. 23,50,000.00 and confirmed by the learned CIT(A), by applying provisions of section 69A of the Act being completely wrong, illegal, contrary to the facts on record is not sustainable in the eye of law, hence needs to be deleted in the interest of justice.

9. For that, the addition of income from other sources of Rs. 1,14,997.00 by the learned A.O. and confirmed by the learned CIT(A) is wrong, illegal and not sustainable in the eye of law, hence needs to be deleted in the interest of Justice

10. For that, the Appellant craves leave of this Hon'ble Tribunal to urge other grounds of appeal, if any, at the time of hearing in the interest of justice."

4. It was submitted by the Id AR passed the order exparte without providing reasonable opportunity of hearing to the assessee. It was also the submission that the assessment order has been passed u/s 144 of the Act by rejecting the books of account of the assessee recomputing the net profit of the assessee @ 2.28% of the gross turnover of Rs.20,48,5,479/-. It was h is submission that without discussing the merits of the case the Id

CIT(A) has dealt the grounds in one or two sentences in his order. It was further submission that the adhoc estimation of net profit @ 2.28% is highly excessive and is not sustainable. Further he submitted that when the AO has accepted the business turnover and amount so deposited in the vbank account of the assessee were out of the self proceeds from part of the sales turnover, part of the same cannot be treated as unexplained money u/s 69 of the Act. Lastly submitted that as the assessment order passed by the AO is u/s 144 of the Act and the impugned order of the CIT(A) is also exparte the matter may be restored back to the file of the AO for fresh adjudication. He undertakes that the assessee will co-operate in the set aside proceeding with documentary evidences to substantiate his claim.

5. In reply, the Id Sr. DR supported the orders of the authority below.

6. We have considered the rival submissions. A perusal of the orders of the lower authorities clearly shows that both the assessment order and first appellate order have been passed exparte. The AO has also rejected the books of account and estimated the net profit on adhoc basis without giving any reasons. Before us the Id AR has requested that if one more opportunity is given the assessee will be in position to substantiate its claim by producing documentary evidences. Therefore, in the interest of justice the issues in this appeal are restored to the file of the AO for fresh adjudication after proving the assessee an opportunity of being heard.

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

Order dictated and pronounced in the open court on 30/12/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated – 30/12/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant :
Sankar Charan Marndi
Sukhupada, Kuliana
Mayurbhanj, 757030
2. The Respondent:
Assistant Commission Of Income Tax,
ACIT, Circle
Balasore
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT,
5. DR, ITAT,
6. Guard file.
//True Copy/

By order

Sr.Pvt.Secretary
ITAT, CUTTACK