



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

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

**ITA No.01/CTK/2025: Asst. Year -2019-20
ITA No.02/CTK/2025: Asst. Year -2017-18
ITA No.03/CTK/2025: Asst. Year -2017-18
ITA No.04/CTK/2025: Asst. Year -2018-19
ITA No.05/CTK/2025: Asst. Year -2018-19
ITA No.06/CTK/2025: Asst. Year -2018-19
ITA No.07/CTK/2025: Asst. Year -2018-19
ITA No.08/CTK/2025: Asst. Year -2019-20**

Sahoo Distributors Private Limited, At-Babuganj Bazar, PO/PS: Chhatia, Dist: Jajpur	Vs.	Asst. Commissioner of Income Tax, Central Circle, Cuttack
PAN/GIR No.AALCS 5499 K		
(Appellant)	..	(Respondent)

Assessee by : S/Shri P.K.Mishra/Himansu Jena/Narahari Swain, Advs
Revenue by : Shri Saroj Kumar Dubey, CIT DR and
Shri S.C.Mohanty, Sr DR

**Date of Hearing : 22/01/2025
Date of Pronouncement : 22/01/2025**

ORDER

Per Bench

ITA No.02/CTK/2025 & ITA No.04/CTK/2025 for the assessment years 2017-18 & 2018-19 are the appeals filed by the assessee against the order dated 29.11.2024 of the Id CIT(A), Bhubaneswar-2 in Appeal

No.CIT(A),Bhubaneswar-2/10498/2016-17 and in Appeal No.CIT(A),Bhubaneswar-2/111280/2017-18 in the matter of assessment u/s.147 r.w.s. 144 of the Act.

2. ITA No.06/CTK/2025 is an appeal filed by the assessee against the order dated 30.11.2024 of Id CIT(A), Bhubaneswar-2 in Appeal No.CIT(A), Bhubaneswar-2/11321/2017-18 in the matter of imposition of penalty u/s.270A of the Act.

3. ITA No.03/CTK/2025, ITA No.05/CTK/2025 and ITA No.01/CTK/2025 are the appeals filed by the assessee against the separate orders of Id CIT(A), Bhubaneswar-2 dated 30.11.2024 in Appeal No.CIT(A), Bhubaneswar-2/10523/2016-17, in Appeal No.CIT(A), Bhubaneswar-2/11322/2017-18 and in Appeal No.CIT(A), Bhubaneswar-2/10681/2018-19 for the assessment years 2017-18, 2018-19 and 2019-20, respectively in the matter of imposition of penalty u/s.272A(1)(d) of the Act.

4. ITA No.07/CTK/2025 and ITA No.08/CTK/2025 are the appeals filed by the assessee against the separate orders of Id CIT(A), Bhubaneswar-2 dated 30.11.2024 in Appeal No.CIT(A), Bhubaneswar-2/11323/2017-18 & in Appeal No.CIT(A), Bhubaneswar-2/10683/2018-19 for the assessment years 2018-19 and 2019-20, respectively in the matter of imposition of penalty u/s.271D A of the Act.

5. S/Shri P.K.Mishra/Himanshu Jena & Narahari Swain, Id ARs appeared for the assessee and Shri Saroj Kumar Dubey, Id CIT DR and Shri S.C.Mohanty, Sr. DR appeared for the revenue.

6. Identical grounds have been raised by the assessee in regard to quantum appeals. For the sake of convenience, grounds raised in ITA No.02/CTK/2025 are reproduced as under:

"1. For that, the initiation of reassessment proceeding for Assessment Year 2017-18 and issuance of notice u/s.148 of the Act, being made in absence of valid reason and contrary to the CBDT instructions is without Jurisdiction and without the authority of law, as such, the consequential reassessment order passed u/s.147 r.w.s. 144 of the Act is without the authority of law. The learned CIT(Appeal) has committed gross error law in dismissing the appeal of the Appellant and in not quashing the reassessment order, as such orders passed by both the authorities below, being not sustainable in the eye of law, needs to be quashed in the interest of justice.

2. For that, the learned CIT(Appeal) has committed gross error of law as well as of fact, in dismissing the appeal of the Appellant, without providing sufficient effective reasonable opportunity of hearing particularly when, the Managing Director of the Appellant Company being busy in marriage of his daughter, sought for two months time, but the learned CIT(Appeal) has committed gross error of law in issuing notices after notices and in dismissing the appeal. The impugned order passed by him, being not sustainable in the eye of law, needs to be quashed in the interest of justice.

3. For that, disallowances of selling and distribution expenses made by the learned A.O. and confirmed by the learned CIT (Appeal) of Rs. 1,70,45,127.00, being not proper and correct in the eye of law as well as of fact, is not sustainable in the eye of law, hence needs to be deleted in the interest of justice.

4. For that, while accepting purchases, sales and net profit declared for the impugned year, both the learned A.O. as well as the learned CIT(Appeal) has committed gross error of law in disallowing purchase expenses of Rs.22,30,000.00 by applying provisions of Section 40A(3) of the Act and in not considering the business exigency and application of Rule 6DD of I.T. Rules, the impugned addition made by the learned A.O. and confirmed by the learned CIT (Appeal) thus, being not sustainable in the eye of law, needs to be deleted in the interest of justice.

5. For that, when the reassessment proceeding was going on during the Corona pandemic and the Managing Director of the Assessee Company on account of serious illness of his wife could not comply and additions were made for want of explanation and evidences, the learned CIT(Appeal) should have allowed sufficient opportunity or should have set aside the issues back to the file of the learned A.O., but in the present case, he dismissed the appeal of the Appellant as such, order passed by both authorities, being not sustainable in the eye of law, needs to be deleted in the interest of justice.

6. For that, both the authorities below have committed gross error of law as well as of fact in determining the total income at Rs.2,98,11,860.00 against the returned income of Rs.1,05,36,730.00, by not providing sufficient opportunity of hearing as such, both additions made by the learned A.O. and confirmed by the learned CIT(Appeal), being not sustainable in the eye of law, needs to be quashed in the interest of justice.

7.. For that, the Appellant Company 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."

7. Identical grounds have been raised in penalty appeals. Hence, for the sake of convenience, grounds raised in ITA No.01/CTK/2025 are reproduced as under:

"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 Company by

not condoning the delay of 433 days in filing of appeal and in confirming the penalty order passed u/s.272A(1)(d) of the Act, by the learned A.O.. particularly when, the Appellant has cited sufficient reasons and reasonable ground for condonation of delay As such, both the orders passed by the learned A.O. and CIT(A), being not sustainable in the eye of law, needs to be quashed in the interest of justice.

2. For that, the learned CIT(A) has committed gross error of law as well as of fact, in dismissing the appeal of the Appellant Company and in confirming the penalty order passed by the learned A.O., for non-compliance to the statutory notice issued u/s. 142(1) of the Act, dated 09.08.2021, particularly when, the said notice was issued during Covid period and due to medical illness of wife of the Managing Director, it could not be complied, as such, the penalty imposed for non-compliance of notice by the learned A.O. and confirmed by the learned CIT(A), being not sustainable in the eye of law, needs to be quashed in the interest of justice.

3. For that, the learned A.O should not have imposed penalty of Rs. 10,000.00 u/s.272A(1)(d) of the Act for non-compliance of the statutory notices issued u/s.142(1) of the Act, dated 09.08.2021 during the course of reassessment proceeding, particularly when, the Assessee had sufficient, bonafied and genuine reason for non-compliance. The impugned imposition of penalty, being not sustainable in the eye of law, needs to be deleted in the interest of justice.

4. For that, the Appellant Company 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.

8. In regard to ITA No.02 & 04/CTK/2024 for A.Ys 2017-18 & 2018-19, it was submitted by Id AR that the Id CIT(A) has passed the orders without providing reasonable opportunity of hearing to the assessee and for want of evidences and explanation. It was also submitted that the assessment order was passed during Covid period, therefore, the order passed by the Id CIT(A) and the AO was made on gross violation of principles of natural

justice. The AR emphasized that the assessee was willing to pursue the appeals and prayed that the matter be restored to the file of the AO and the assessee may be given an opportunity to produce the submission of evidence supporting the claim.

9. It was submitted by Id AR in regard to penalty orders u/s. u/s.271A(1)(d) of the Act that the appeals were not filed before the Id CIT(A) within the due date, therefore, there was delay of 430 days, 433 days and 433 days for the assessment years 2017-18, 2018-19 & 2019-20.

10. Similarly, in regard to penalty order u/s 270A, for the assessment year 2018-19, the appeal was not filed before the Id CIT(A) within the due date, therefore, there was delay of 434 days.

11. Similarly, in regard to penalty order u/s 271 DA, for the assessment years 2018-19 & 2019-20, the appeals were not filed before the Id CIT(A) within the due date, therefore, there was delay of 430 days in both the years.

12. In regard to penalty orders, it was submitted by Id AR that the assessee has filed condonation petitions that although the impugned penalty orders were uploaded in the departmental portal, but the hard copies of the same were never supplied to the assessee nor the assessee had received the orders in e-mail. Therefore, the assessee had no knowledge about passing of such orders. It was also the submission that

during the said period, the Director of the assessee company was seriously ill and was suffered from some severe neurological problems and was under direct supervision of Doctor for treatment. It was the submission that only after receipt of recovery notice and telephonic call from the department, assessee came to know about the penalty proceedings and downloaded the same and requested its professional to file appeals before the Id CIT(A). It was the submission that it was in this backdrop that there was delay in filing of appeals before the Id CIT(A) and the Id CIT(A) has not condoned the request for condoning the delay and confirmed the penalty orders so passed by the Assessing Officer.

13. In reply, Id CIT DR and Sr DR argued that the assessee had been given multiple opportunities to represent its case but the assessee failed to comply the same. It was the submission that the Ld. CIT(A) has considered the grounds of condonation of delay taken by the appellant after giving the thoughtful consideration to the same and has rightly rejected the penalty appeals on the grounds of delay because there was no sufficient cause shown by the assessee/appellant which needed indulgence by the Ld. CIT(A) for condonation of delay. The orders have been uploaded in the I.T. portal and the assessee was not vigilant to its tax matters.

14. We have heard the rival contentions and perused the material available on record. It is noticed that the quantum appeals for the

assessment years 2018-19 and 2019-20 have been passed without affording reasonable opportunity of hearing to the assessee and the assessment orders have been passed u/s.147/144 of the Act due to non-compliance of the notices issued by the AO. Now, the Id AR has prayed that if one more opportunity is granted, the assessee will produce all the relevant documents and evidences in support of its claim. Considering the facts and circumstances of the case, the issues in both the appeals are restored to the file of the Assessing Officer for fresh adjudication after providing reasonable opportunity of hearing to the assessee.

15. Furthermore, the penalty orders were confirmed by the Id CIT(A) without condoning the delay. The assessee had furnished the plausible cause that although the penalty orders were uploaded by the department in the Portal but same were not sent through postal or email and as the Director was seriously ill due to neurological problems and under medical treatment, the appeals could not be filed within the stipulated period. We find the reasons given by the assessee for filing appeals delay before the Id CIT(A) are justifiable and the assessee would not gain anything by filing the appeals late. There is no mala fide imputable to the assessee. At the most for the inaction or a little negligence, the assessee can be burdened with the cost but its right of hearing of the appeal on merit ought not to be shut. It is also a settled position by Hon'ble Supreme Court in [Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353](#), that whenever

substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Thus, taking into account the provision of [section 253\(5\)](#) and the decision of Hon'ble Supreme Court, we take a judicious view and condone delay in filing of appeals before the Id CIT(A) and restore the matter back to the file of Assessing Officer for re-adjudication.

16. As the assessee had not cooperated during the assessment proceedings as well as during the first appellate proceedings, a cost of Rs.2,000/- is levied per appeal to be paid to the ITAT Bar Association within two months and the evidence of receipt be produced before the AO. Non-payment of the cost would result the appeals of the assessee being treated as dismissed and the orders of the AO and Id CIT(A) upheld. The liberty is granted to the assessee to produce all the relevant documents, evidences and other details as are required to prove its case before the Assessing Officer.

17. In the result, appeals of the assessee stand partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 22/01/2025.

Sd/-

(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-

(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 22/01/2025

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Sahoo Distributors Private Limited, At-Banuganj Bazar, PO/PS: Chhatia, Dist: Jajpur
2. The Respondent: Asst. Commissioner of Income Tax, Central Circle, Cuttack
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT,
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.Secretary
ITAT, CUTTACK

