

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
ITA No.487/CTK/2024**

(निर्धारण वर्ष / Assessment Year : 2018-2019)

ANKURAN C/o Maa Gruha Project Bandhugaon, Dist : Koraput-764027 PAN No. : AAATA 8149 A	Vs	ITO, Exemption Ward, Berhampur
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(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Shri S.K.Saranghi, CA
राजस्व की ओर से / Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	27/01/2025
घोषणा की तारीख/ Date of Pronouncement	:	27/01/2025

आदेश / ORDER

Per Bench :

The present appeal is filed by the assessee against the order of Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, passed in Appeal No.NFAC/2017-18/10246290, vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1069079646(1), for the assessment year 2018-2019.

2. It was submitted by the Id. AR that in the course of assessment, the assessee had not been able to produce the evidences as called for by the AO. It was the submission that the assessment order is dated 28.03.2023. The assessee had filed his appeal before the Id. CIT(A) on 27.04.2023. It was the submission that as per the Id. CIT(A), there was one day delay in filing the appeal. It was the submission that the assessment order was received by the assessee only on 29.03.2023 and consequently it should be deemed that the appeal of the assessee is within the time. However, the Id. CIT(A) has dismissed the appeal of the assessee in *limine* alleging one

day's delay. It was further submitted that as per the notice of hearing issued by the Id. CIT(A) on 14.09.2024, copy of which is placed in the paper book at page 1, the date for response was 30.09.2024 but the Id. CIT(A) had already been dismissed the appeal of the assessee on 25.09.2024. It was the further submission that in the course of assessment, the AO had denied the assessee the benefit of Section 11 & 12 of the Act on the ground that there was a delay in filing of the audit report. It was the submission that in view of the decision of the Hon'ble Gujarat High Court in the case of Anjana Foundation, reported in [2024] 168 taxmann.com 462 (Gujarat), dated 09.10.2024, the filing of audit report in Form No.10B is only a procedural requirement and just because there is a minor delay in filing of the audit report, the assessee should not be denied the benefit u/s.11 & 12 of the Act. It was the prayer that the assessment, being ex-parte, issues may be restored to the file of the AO for readjudication and also to consider the decision of the Hon'ble Gujarat High Court in the case of Anjana Foundation (supra).

3. In reply, Id. Sr. DR did not raise any serious objection.

4. We have considered the rival submissions. A perusal of the assessment order clearly shows that the same is an ex-parte order. A perusal of the order of the Id. CIT(A) shows that the appeal was dismissed in *limine* on an alleged delay of one day. A perusal of the assessment order shows that the assessment order has been passed on 28.03.2023 then obviously the assessee should have been given at least one day's time to accept the service, even though it is on the online mode. If the

date of service being the date of which the assessee has been informed of the order of the assessing authority is taken as 29.03.2023 then the appeal filed by the assessee on 27.04.2023 would be within time. This being so, the finding of the Id. CIT(A) that the appeal of the assessee is delayed by one day is reversed. Considering the fact that the assessment order is ex-parte order and the assessee had not had an opportunity to produce the documents before the AO, in the interest of justice, the issues in the appeal are restored to the file of the Id. AO for readjudication after granting the assessee adequate opportunity of being heard to substantiate its case. The AO shall also consider the decision of the Hon'ble Gujarat High Court in the case of Anjana Foundation, referred to supra, at the time of readjudication of the issues.

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

Order pronounced in the open court on 27/01/2025.

Sd/-
(MANISH AGARWAL)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 27/01/2025

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
ANKURAN
C/o Maa Gruha Project Bandhugaon,
Dist : Koraput-764027
2. प्रत्यर्थी / The Respondent-
ITO, Exemption Ward, Berhampur
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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack