

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

**VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER**

**AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. 508/CTK/2024**

**Assessment Year: 2013-14**

Kilamcheti Badri Narayan Subudhi S/o Late K. Kasiviswanath Subudhi, Plot No. C/1, 3 <sup>rd</sup> floor, Shop Cum residential Building Saheed Nagar, Bhubaneswar-751007, Odisha  (PAN: BMPPS3754R)	Vs	Assessing Officer, National Faceless Assessment Centre, Delhi. (ITO, Phulbani Ward, Phulbani)
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri P. K. Mishra, Advocate

Respondent by : Shri S. C. Mohanty, Sr. DR

Date of Hearing : 09.04.2025

Date of Pronouncement : 09.04.2025

**ORDER**

**Per Bench :**

The captioned appeal by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeal), NFAC, Delhi [hereinafter referred to as "the Ld. CIT(A)"] vide order no. ITBA/NFAC/S/250/2024-

25/1069536140(1) dated 08.10.2024 passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2013-14.

2. Shri P. K. Mishra, Advocate represented on behalf of the assessee and Shri S. C. Mohanty, Sr. DR appeared on behalf of the revenue.

3. It was submitted by the Ld. AR that the assessee filed his return of income on 16.06.2014 declaring total income of Rs.9,61,590/-. Assessee is a dealer of vegetables and green leaves on commission basis. It was the submission that the assessee has also earned commission income to an extent of Rs.23,82,650/-. It was the submission that the assessee had filed his return of income originally by applying the provisions of section 44AD of the Act. The return filed by the assessee had been processed and the assessment had been completed u/s. 143(3) of the Act on 03.02.2016 estimating income of the assessee at 10%. It was the submission that subsequently notice u/s. 148 of the Act came to be issued on 31.03.2021 with the following reasons:

Annexure -

Name of the assessee : K. Badri Narayan Subudhi,  
C/1, 3<sup>rd</sup> Floor, Shop-cum Residence,  
Sahid Nagar, Bhubaneswar - 751007.  
PAN : BMPPS3754R

Assessment Year : 2013-14

Details of the Assessing Officer : Income Tax Officer,  
having jurisdiction over the  
assessee. Phulbani Ward, Phulbani.

The assessee is trading in vegetables and green leaves, earning income from commission from M/s Jai Santoshimaa Enterprises. The assessee has also disclosed income from house property as well as interest & remuneration from M/s. Srima Narayan Associates and M/s. S.S. Power. Return of income was filed by the assessee electronically on 16-06-2014 disclosing total income of Rs. 9,61,590/- which was duly processed u/s. 143(1) on 30-10-2014. Subsequently, the case was picked up for scrutiny under CASS and scrutiny assessment was completed on 03-02-2016 on total income of Rs. 11,67,080/-.

2. During the scrutiny proceedings, the following additions have been made to the income of the assessee.

Gross total income as disclosed in the return of income	-	Rs. 10,68,535/-
Add : Income from vegetable and green leaves	-	Rs. 1,91,582/-
Income from other sources	-	Rs. 6,963/-
Gross Total Income	-	Rs. 12,67,080/-
Less: Deduction u/s. 80C	-	Rs. 1,00,000/-
Assessed Income u/s. 143(3)	-	Rs. 11,67,080/-

3. Subsequently, it is noticed that the assessee has received commission to the tune of Rs. 23,82,650/- during the FY 2012-13. The assessee offered income of Rs. 2,38,265/- @ 10% of commission received under the provisions of section 44AD of the Act whereas provisions section 44AD shall not apply to a person earning income in the nature of commission. As the case of the assessee do not fulfil the conditions of Section 44AD, the entire Commission receipts of Rs.23,82,650/- should have been offered as Income. Thus, the assessee has failed to disclose income from commission to the tune of Rs. 21,44,385/- (23,82,650 - 2,38,265 already offered).

4. In view of the above facts, it is clear that there was the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the A.Y 2013-14. I am therefore, satisfied that Income of Rs. 21,44,385/- escaped assessment for A.Y 2013-14 within the meaning of Proviso to Section 147 of the I.T. Act, 1961.

5. The Pr. CIT-1, Bhubaneswar is requested to accord sanction u/s 151(1) for issue of notice u/s 148 for A.Y 2013-14, since more than four years have elapsed from the end of the assessment year.

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( H.K.Swar )  
Income Tax Officer,  
Phulbani Ward, Phulbani.

4. It was the submission that effectively the reopening has been done to bring to tax the estimated income of the assessee from the said commission business. It was the submission that in the original assessment order the total income of the assessee has been assessed at Rs.12,67,080/-. It was the submission that in para 3 of the reasons for reopening, the Assessing Officer has admitted that the income of the assessee had been assessed at 10% of Rs.23,82,650/- and that this was wrong and the entire commission received was liable to be brought to tax. It was the submission that subsequently in the course of the reopened assessment, the Assessing Officer admitted that only 70% of the commission income was liable to be assessed as the income of the assessee and consequently, further addition of Rs.13,50,168/- out of the commission business of Rs.23,83,650/-. It was thus, the submission that only for the purpose of change of rate of percentage of profit, the Assessing Officer has done the reopening which clearly was the change of opinion. It was the submission that reopening cannot be done on the basis of change of opinion.

5. In reply, the Ld. CIT, DR submitted that the assessee had applied the provisions of section 44AD of the Act. It was the submission that the reopening was done to assess the commission income under the right head. It was the submission that the Assessing Officer in the original assessment has not treated the commission business income of the assessee as liable to be taxed at 10%. It was the submission that the reopening is liable to be upheld. He relied on the decision of the Hon'ble Supreme Court in the case of ITO Vs. Techspan India 92 taxmann.com 361 (SC).

6. We have considered the rival submission and the material available on record and the case law relied on by the Ld. CIT, DR in the case of Techspan India (supra), which is in favour of the assessee in so far as in the original assessment order, the Assessing Officer has considered the

total business of the assessee and has estimated the income at 10% by a speaking order. In the reopening, the Assessing Officer himself agrees in para 3 that in the original assessment order the Assessing Officer has accepted 10% as income from commission business of Rs.23,82,650/-. In the reasons recorded for reopening the Assessing Officer has admitted that the balance of Rs.21,44,385/- itself is liable to be taxed in its entirety. However, when the assessment was done, the Assessing Officer has accepted the fact that there are expenditure involved and, therefore, accepted the expenditure at 1/3<sup>rd</sup> of the commission income and thereby brought to tax the resultant income of Rs.13,50,168/-. Thus, it is clear that the Assessing Officer has reopened the assessment only for waiving the percentage of income which has been estimated in the original assessment order and in the reopened assessment order. This is not permissible as it is only a change of opinion. This being so, the reopening of the assessment as done by the Assessing Officer by issuing notice u/s. 148 is held to be bad in law and consequential reassessment is quashed.

7. In the result, the appeal of the assessee is allowed.

Order dictated and pronounced in the open court.

Sd/-  
(Rajesh Kumar)  
Accountant Member

Sd/-  
(George Mathan)  
Judicial Member

***Dated: 9<sup>th</sup> April, 2025***

JD, Sr. P.S.

Copy to:

1. The Appellant: Kilamcheti Badri Narayan Subudhi
1. Respondent – Assessing Officer, National Faceless Assessment Centre, Delhi. (ITO, Phulbani Ward, Phulbani)
2. CIT(A), NFAC, Delhi
3. Pr. CIT
4. DR, ITAT, Cuttack
5. Guard file.

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By Order

Assistant Registrar  
ITAT, Cuttack