IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK ' SMC' BENCH, CUTTACK

BEFORE SHRICHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.113/CTK/2019
Assessment Year : 1999-2000

Sri Padma Lochan Panda, C-77/3, Palaspali, Bhubaneswar.	Vs.	ITO, Ward-1(2), Bhubaneswar.
PAN/GIR No.AGKPP 4821 C		
(Appellant)	..	(**Respondent**)

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

Date of Hearing : 01/4/ 2021
Date of Pronouncement : 11/5/2021

<u>O R D E R</u>

This is an appeal filed by the assessee against the exparte order of the CIT(A),1, Bhubaneswar dated 20.8.2004 for the assessment year 1999-2000.

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

"**1.** For that, the impugned order of Reassessment so passed by the learned A.O. is without jurisdiction and without the authority of law, as such, the same needs to be quashed in the interest of justice.

2. For that, the learned C.I.T.(A) should have quashed the impugned order of Reassessment, particularly when, the same is without jurisdiction, as such the impugned order of Reassessment, being not sustainable in the eye of law is liable to be quashed in the interest of justice.

> 3. For that, when out of total income determined of Rs.29,73,900.00, Rs.28,00,000.00 was added in the hand of the Trust and has already been taxed in the hand of the Trust, the same cannot be treated as the income of the Appellant, as such, the consequential additions made the A.O. and confirmed by the learned C.I.T.(A) needs to be deleted in the interest of justice.
>
> 4. For that, the learned A.O. as well as the learned C.I.T.(A) have committed gross error of law while making addition relying on the statement of one Saroj Kumar Balawantray, without examining the explanation and evidences adduced by the Appellant. The impugned addition being made, ignoring the evidences has no leg to stand, as such, the same needs to be deleted in the interest of justice.
>
> 5. For that, other consequential addition of Rs.51,083.00 and Rs.60,000.00 being illegal and contrary to the facts on record are not sustainable in the eye of law, as such, same needs to be deleted in the interest of justice."

Petition of assessee/appellant for condonation of delay.

2. The appeal is time barred by 5207 days. The assessee has filed condonation petition. In the petition, it is submitted that the appeal order was served on the assessee on 16.11.2004 and the appeal was required to be filed by 15.1.2005. In the meantime, the recovery proceeding was initiated against the assessee since the ld CIT(A) has confirmed the same addition both in the hand of the Trust M/s. Satya Sai Educational Trust as well as in the hands of the assessee. Being aggrieved, the assessee challenged the order of the ld CIT(A) before the Hon'ble High Court of Orissa by way of writ petition bearing W.P.(C) No.675 of 2005 on 14.1.2005. However, Hon'ble High Court while adjudicating the writ petition against the assessment, observed that there is an alternative remedy for

appeal before the ITAT. Therefore, vide order dated 20.3.2019, the Hon'ble High Court granted liberty to the assessee to avail alternative remedy and to file appeals within 30 days. The assessee has received certified copy of the order on 14.4.2019 and preferred appeal before the ITAT on 22.4.2019. It is submitted that due to pendency of writ petition before the Hon'ble High Court, there was delay of 5207 days in filing appeal of appeal. The delay caused is unintentional. In view of above, the assessee has prayed that delay of 5207 days in filing the appeal may be condoned and appeal be admitted for hearing.

3. Ld DR did not oppose the condonation petition as the appeal is filed with the direction of Hon'ble High Court of Orissa.

4. After considering the rival submissions, we find that against the order of the ld CIT(A), the assessee had directly moved to Hon'ble High Court of Orissa in writ petition No.W.P.(C) No.675 of 2005 and vide its order dated 20.3.2019, Hon'ble High Court has observed as under:

> "..3.During course of hearing, ld counsel for the petitioner submits that due to subsequent development in the case, the petitioner may be permitted to file second appeal before the learned Tribunal against the orders under Annexure-8 and 12 and approach the ld 1st appellate authority against the order under Annexure-13 alongwith an application for condonation of delay.
>
> 4. In view of such submission made, permission is granted to the petitioner to avail the alternative remedy of appeal within 30 days from today. If the petitioner approaches the appellate authority by filing an appeal alongwith an application for condonation of delay, the appellate authority shall take into consideration all the

> contentions raised by the petitioner. It is made clear that the appellate authority, while considering the application for condonation of delay in filing the appeal, shall take into consideration the period lapsed by the petitioner in this Court by filing this writ petition i.e. from 14.1.2005 till date. Interim order dated 15.3.2005 passed by this Court shall continue for a period of one month hence, it will open for the petitioner to rely upon the subsequent decision of ld Tribunal."

5. The assessee has obtained the certified copy of order of the Hon'ble High Court on 14.4.2019 and preferred appeal before the Tribunal on 22.4.2019 with petition for condoning the delay. In view of above direction of Hon'ble High Court, I condone the delay of 5207 days in filing the appeal and admit for adjudication.

<u>Ground Nos.1 to 4 of appeal</u>

6. Facts of the case are that the assessee filed his return of income declaring total income of Rs.62,820.00 and agricultural income at Rs.1,00,000.00. The return was processed U/s.143(1)(a) of the I.T Act, 1961. Thereafter, based on the allegation of one Sri S.K. Balabantaray, one of the trustee of the Trust Satyasai Education Trust, reassessment proceeding U/s. 147 was initiated against the assessee. The reason for initiation of 147 proceeding was that, the Fixed Deposits of Rs.28,00,000/- made in the name of Satyasai Educational Trust was not of the Trust but of the assessee. Accordingly, he passed reassessment order u/s.147 of the Act and made addition of Rs.28 lakhs in the hands of the assessee, which was upheld in the first appeal.

7. Ld A.R. of the assessee submitted that while initiating Reassessment proceedings, except the allegation made by the S.K.Balbantaray, there was no evidence in the hand of the A.O., on the basis of which, he believed that income has escaped assessment. Even though, there was no concrete evidences in his hand still relying on the allegation, the A.O has treated Fixed deposit of Rs.28,00,000.00 as undisclosed income of the assessee which is not only wrong but also illegal and not sustainable, as the same is not backed by any evidence. Ld A.R. submitted that the Assessee as well as Shri S.K.Balbantray were the trustees of the Satyasai Educational Trust. At that time, the asessee was the Cabinet Minister in Odisha Government, as such, he could not get sufficient time to look into the Trust Matter and the alleged Trustee was looking after the running of Trust. It was also found that the alleged trustee started misutilising fund of Trust, and, therefore, he was discarded from the Trust. Ld A.R. submitted that thereafter he started giving this allegation. His removal from Trust was challenged by him in High Court and subsequently, in Supreme Court which was dismissed with a stricture against Shri S.K.Balbantray.

8. Ld A.R. submitted that while completing the Assessment of the Trust, the impugned disputed amount of fixed deposits to tune of Rs.28,00,000.00 has already been included in the income of the Trust and has already been taxed in the hands of the Trust. Ld A.R. submitted that the Assessing Officer in the Assessment order has admitted this particular

disputed amount of Rs.28,00,000/- has already been taxed in the hand of the Trust much prior to the date of initiation of 147 proceeding in the hand of the Assessee. He submitted that the fixed deposits of Rs.78,50,000.00 in the name of the Trust relates to three Assessment years, Rs.28,00,000.00 for Assessment year 1999-2000, Rs.33,00,000.00 for Assessment year: 2000-2001 and Rs.17,50,000.00 for Assessment year: 2001-2002.

9. Ld A.R. submitted that the total amounts were already taxed in the hand of the Trust for Assessment year: 1999-2000 and the AO on the basis of same allegation of the ex-trustee, reassessed in the hand of this present Assessee for three Assessment years, adding Rs.28,00,000.00 for Assessment year: 1999-2000, Rs.33,00,000.00 for Assessment year 2000-2001 and Rs.17,50,000.00 for Assessment year 2001-2002. Ld A.R. further submitted that for the assessment year 1999-2000, after getting the order of the ld CIT(A), assessee challenged it before the Hon'ble High Court of Odisha by exercising Writ jurisdiction, but challenged reassessment orders for rest of the two years in Appeal before CIT(A). While disposing of the Appeals for Assessment year: 2000-2001 and 2001-2002, the Ld CIT(A) after examining necessary facts and on the basis of Remand Report of the A.O., deleted additions and held that these amount of fixed deposits of Rs.33,00,000.00 for Assessment year: 2000-2001 and Rs.17,50,000.00 for

Assessment year: 2001-2002 belongs to the trust and not of the assessee and hence, cannot be added in the hand of the assessee.

10. Ld A.R. submitted that when the very particular amount was already taxed in the hand of the Trust and for subsequent two Assessment years in the case of the Assessee on the same issue, the additions were deleted by the learned CIT(A) which were already confirmed by the ITAT and the Appeal filed by the Revenue was dismissed. Therefore, this addition of Rs.28,00,000.00 for Assessment year: 1999-2000 on the same issue cannot be upheld in the hand of the present Assessee. Hence, the issue of addition of Rs.28,00,000.00 involved in this Appeal is squarely coved by the order of this ITAT in the case of the Assessee for Assessment year:2000-01 and 2001-02.

11. He further contended that the impugned addition of Rs.28,00,000/- amounts to double taxation, as such, the same is not sustainable in the eye of law, hence needs to be deleted in the interest of justice.

12. Replying to above, ld DR submitted that the addition was made in the name of the Trust on protective basis but in the name of the assessee on substantive basis. He submitted that the case has to be decided on the facts of the assessment year 1999-2000 but not on the years when the amount of FD were transferred from saving bank the assessee in the name of the Trust. Ld D.R. further submitted that the bank account was not

opened in the name of the Trust but resolution of the Trust was provided in the bank. The account was opened in the name of the wife of the assessee, who was a trustee. Ld D.R. submitted that saving account cannot be opened in the name of the Trust. He, therefore, submitted that the addition of Rs.28,00,000/- deserves to be upheld.

13. I have heard the rival submissions and perused the record of the case. There is no dispute to the fact that the amount of Rs.28,00,000/- was the fixed deposit made in the assessment year 1999-2000. But similar addition in A.Y. 1999-2000 in assessment order dated 31.12.2007 was made in the name of the Trust, Satya Sai Education Trust and was already taxed. I also observe that the Ld CIT(A) in the order dated 25.1.2007 adjudicating the appeal of the assessee has categorically held that for Assessment years: 2000-2001 and 2001-2002, the fixed deposits were of the Trust and not of this Assessee. The relevant observations of ld CIT(a) are as follows:

> "After considering the facts of the case from the assessment order, vis-à-vis the case records of SET Balasore produced by the AO during the appellate hearing and arguments of the ld AR and after considering the enquiry report of the Inspector dated 28.3.2003, I am of the opinion that, the AO was not justified in treating the FDs made in the name of SET in different banks, amounting to Rs.33 lacs, as belonging to the appellant and treating the same as income from undisclosed sources, for the reason that, from the enquiry report of the inspector, it was proved beyond doubt that, small amounts were collected from different persons numbering about 1200 on different dates, for which the receipts were also issued. These facts wee verified by the I.T.Inspector by visiting nearly 100 persons in the said locality, who confirmed to have donated small amounts to SET for constructing the Engineering College in their

> locality. Considering these facts, I have no any option but to direct the AO to delete the addition of Rs.33 lacs made in the hands of the appellant."

13. From the order of ITAT dated 21.1.2011 in ITA No.139 & 140/CTK/2007 in the appeals filed by the revenue against the order of ld CIT(A) granting relief to the present assessee, observed as under:

> "We have heard the rival submissions and perused the material on record. We do not find any force in the argument of the learned DR that additional evidence has been accepted and acted upon by the learned CIT(A) in violation of Rule 46A. The undisputed facts are that it was to ascertain the correctness of the claim of the assessee that the amount in question belonged to the Trust and not to the assessee, the learned CIT(A) called for remand report and enquired through Inspector of Income tax and gave sufficient opportunity to the AO to have his say on the said report. But the AO chose to remain silent. It is well settled law that the power of the appellate authority is co-terminus with that of the AO and he can do what the AO failed to do in order to give substantial justice to the assessee and what the learned CIT(A) has exactly done in the present case. Therefore, considering the facts and circumstances of the case, we do not find any infirmity in the impugned order of the ld CIT(A), which we confirm and dismiss the appeals of the revenue and allow the cross objections filed by the assessee supporting the order of the learned CIT(A)."

14. Therefore, the impugned addition of Rs.28,00,000/- made by the A.O. and confirmed by the learned CIT(A) is not sustainable, being double addition, has no legs to stand, as such, the same needs to be deleted. Further, the impugned fixed deposits were already assessed in the hand of the Trust much prior to the date of this Assessment, therefore, the contention of ld D.R. that the addition made in the hand of the Trust was

on protective basis, hence he added it is added on substantive basis in the name of the assessee is not acceptable. The ld DR did not controvert the very relevant part that on maturity, the amount of FD was received and credited to the account of the Trust not to the assessee When the fixed deposits were of the Trust and treated as income of the Trust, the same amount made in the name of the assessee is directed to be deleted because this amounts to double taxation. In view of above, I delete the addition of Rs.28,00,000/- and allow the ground Nos. 1 to 4 of appeal of the assessee.

Ground No.5 of appeal

15. Since the addition of Rs.28,00,000/- is deleted, consequential addition of Rs.51,083/- being treated as interest income of Rs.28 lakhs is also directed to be deleted. However, with regard to addition of Rs.60,000/- being agricultural income, I find no positive substance in the contention of the ld A.R., therefore, same is confirmed.

16. In the result, appeal of the assessee is partly allowed.

Order pronounced on 19 /5/2021.

Sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 19 /5/2021
B.K.Parida, SPS (OS)

<u>Copy of the Order forwarded to</u> :

1. The Appellant : Sri Padma Lochan Panda, C-77/3, Palaspali, Bhubaneswar

2. The Respondent. ITO, Ward-1(2), Bhubaneswar.

3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.

//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack