IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.36622 of 2021

Shri Gangadhar Jena .... ***Petitioner***
Mr. R.P. Kar, Advocate

-versus-

Principal Chief Commissioner of Income Tax, Odisha and others .... ***Opposite Parties***
Mr. R. Chimanka, Senior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
03.01.2022

Order No.

02. 1. One of the grounds on which the impugned assessment order dated 29th September 2021 passed under Section 144 read with Section 263 of the Income Tax Act, 1961 for the assessment year (AY) 2015-16 has been challenged by the Petitioner is that notices prior to the assessment hearings purportedly issued to the Petitioner and served upon him on 28th December 2020, 22nd January 2021 and 23rd February 2021 and 14th September 2021 were in fact not served on him physically.

2. Mr. Kar, learned counsel appearing for the Petitioner points out that of the four dates given in unnumbered paragraph-3 of the impugned assessment order, the notice served on the Petitioner on 28th December 2020 was not by the Assessing Officer (AO) who passed the impugned assessment order, but by the Deputy Commissioner of Income Tax, Circle-1(1), Cuttack (DCIT) with

whom the file was earlier pending before it was transferred to the present AO.

3. It is further seen from the impugned assessment order that the actual hearings were stated for two days i.e. 12th January 2021 and 1st February, 2021. However, the corresponding notice dates do not appear to tally with the hearing dates. The dates of service of notice as mentioned in the impugned assessment order are 22nd January 2021, 23rd February 2021 and 14th September 2021. If indeed those notices had been served, they would have been indicated dates of hearing which should have been subsequent to 1st February, 2021. However, no hearing took place after 1st February, 2021.

4. Therefore, for the AO to conclude in the impugned assessment order that despite the above notices "no compliance was made" by the Assessee, does not appear to be correct, particularly when no hearing took place admittedly after 1st February, 2021. The impugned assessment order was passed on 29th September, 2021, almost eight months after 1st February, 2021, the last date of hearing.

5. It is thus apparent that no hearing took place after 1st February, 2021 and yet notices were supposed to have been served on the Assessee on at least two dates after the last hearing date. In the circumstances, the Court is satisfied that the Petitioner was not given an effective opportunity of hearing before the impugned assessment order was passed.

6. On this ground, the impugned assessment order as well as the consequential penalty notices under Sections 271(1)(c) and 273 (1)(b) of the Act are hereby set aside and the matter is remanded to the AO i.e. the Assistant Commissioner of Income Tax (Central Circle-2), Bhubaneswar (Opposite Party No.3) for passing a fresh assessment order after an effective opportunity of hearing is given to the Petitioner. For this purpose, the matter will be listed before Opposite Party No.3 on 14th February, 2022. A fresh assessment order after hearing the Petitioner shall be passed in accordance with law within a further period of three months thereafter. The Court clarifies that the present order has proceeded only on the procedural illegalities and does not touch upon the merits of the case.

7. The writ petition is disposed of in the above terms.

8. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin