



IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.4470 of 2023

Alok Kumar Mohapatra **Petitioner**

Represented by Advocate(s) –

Mr. S. Ray, Senior Advocate

-Versus-

Income Tax Officer, Khurda and **Opposite Parties**
others

Represented by Advocate(s) –

Mr. A. Kedia, Advocate
(Junior Standing Counsel)

CORAM:

THE HON'BLE MR. JUSTICE ARINDAM SINHA
AND
THE HON'BLE MR. JUSTICE M.S. SAHOO

ORDER
06.11.2024

Order No.
07.

1. The writ petition is up for hearing. Mr. Ray, learned senior advocate appears on behalf of petitioner-assessee and Mr. Kedia, learned advocate, Junior Standing Counsel, for revenue.
2. We reproduce below paragraphs 1 to 4 from earlier order dated 2nd September, 2023.

“1. Mr. Ray, learned senior advocate appears on behalf of petitioner and submits, impugned are communications dated 27th March, 2019 and 1st



February, 2023. First is, rejection of his client's application for rectification made under section 154 in Income Tax Act, 1961 of having been erroneously assessed in spite of being entitled to exemption of charge of income tax under the proviso to clause (c) under sub-section (1) of section 5 in Income Tax Act, 1961.

2. On query from Court Mr. Ray submits, information regarding discovery of the erroneous assessment was made upon intimation on adjustment of refund for subsequent assessment pertaining to assessment year 2017-2018. Hence, the application was made immediately on the discovery but rejected on reliance of sub-section (7) in section 154. He draws attention to internal communication dated 12th February, 2021 from the ITO to the DCIT to submit, the file is untraceable in the department. He seeks interference.

3. Mr. Chimanka, learned advocate, Senior Standing Counsel appears on behalf of revenue and relies on annexure-1 in the counter. He submits, the system clearly says date of service to have been on 5th April, 2012. There should not be interference. However, adjournment be granted to obtain instructions.

4. There was intimation of adjustment of refund pertaining to assessment year 2017-2018. Considering that and the file not traceable in the



department, revenue must substantiate entry made in their system to demonstrate there was service on 5th April, 2012. Entry made in the system is not primary evidence. It has to be based on something to show that the assessment order denying the exemption claim was informed to petitioner. Adjourment is granted to revenue to produce the evidence.”

3. Counter has been filed. From it, we reproduce the passage dealing with paragraph 3.7 in the petition.

“Para No.3.7

*That the rejection of application for rectification is totally unsustainable and arbitrary because of the fact that the said intimation never saw the light of the day as claimed by the Petitioner is not correct. The return filed by the assessee was processed u/s 143(1) and the demand was uploaded in the system. As per the processing order details generated from the system, the date of service was shown as 05/04/2012. The same is enclosed herewith as Annexure-1. **However, the original return filed by the Petitioner and physical acknowledgement of intimation served on the Petitioner are not traceable.”***

(emphasis supplied)

4. Entry made in dispatch register is not primary evidence for revenue to rely upon and deny petitioner remedy of



rectification on ground of time bar. As such, petitioner is entitled to relief. Communication dated 27th March, 2019 saying petitioner's rectification application cannot be acted upon and subsequent demand dated 1st February, 2023 are set aside and quashed. Concerned authority will consider and deal with the rectification application in accordance with law.

5. The writ petition is disposed of.

(Arindam Sinha)
Judge

(M.S. Sahoo)
Judge

Prasant