

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.132 of 2006

The Managing Director, Bharat Petitioner
Motors Ltd. Bhubaneswar

Mr. P.R. Mohanty, Advocate

-versus-

Additional Commissioner of Income Opposite Parties
Tax, Range-1, Bhubaneswar and
others

Mr. S.S. Mohapatra, Senior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIAK

ORDER
02.02.2022

Order No.

1. This matter is taken up by video conferencing mode.
2. The present appeal by the Assessee arises from an order dated 29th August, 2006 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No. 108/CTK/2005 for the Assessment AY, 2003-2004.
3. By the impugned order the ITAT dismissed the appeal filed by the Appellant/Assessee against an order dated 23rd July, 2006 passed by the Commissioner of Income Tax (Appeals)-1,

Bhubaneswar [CIT (A)] dismissing the Assessee's appeal thereby affirming the penalty order passed by the Assessing Officer (AO).

4. The Appellant is the Managing Director of Bharat Motors Ltd. and has been deemed to be an Assessee-in-default for non-deduction of tax deducted source (TDS) in terms of Section 201(1) of the Income Tax Act, 1961 ('IT Act'). The AO had levied a penalty of Rs.6,52,675/- on the ground that the alleged short deduction of TDS was in contravention of Section 192 of the IT Act.

5. While admitting the appeal on 21st September 2007, this Court framed the following substantial questions of law for consideration:

(i) Whether the ITAT was justified in dismissing the appeal ignoring the facts and figures on record, particularly when specific ground regarding the same had been taken, taking into consideration the fact that the ITAT is the last fact finding authority?

(ii) Whether on the facts and circumstances of the case the ITAT was justified in penalizing the appellant in default U/s 271C of the IT Act in absence of contravention of Section 192 of the IT Act?

(iii) Whether in the facts and circumstances of the case, there exist a reasonable cause U/s 273B of the IT Act when the AO, the CIT (A) and the ITAT failed miserably to correctly ascertain the magnitude of offence U/s 192 of the I.T. Act and imposed the illegal penalty U/s 271C in a mechanical stereotyped manner?

6. At the outset it requires to be noted that the CIT (A) accepted in his order that the Appellant was not deemed to be an Assessee in default and observed as under:

“ 4.1-Therefore, in all fairness as the employees have paid their tax liability directly through self-assessment tax and have filed their returns of income, and no further tax is payable; there should not be any justification for recovery of the short deduction by treating the assess-appellant as an assessee-in-default u/s 201(1) to the extent of short deduction in view of the ratio of the decision in the case of Hon’ble Gujarat High Court in *CIT vs. Rishikesh apartments Cooperative Housing Society, Ltd. (2001) 171 CTR (Guj.)* wherein the Hon’ble High Court has held that if the recipient of income has already paid of his tax liability by way of advance tax and self-assessment tax, the payer-assessee cannot be deemed to be an assessee-in-default u/s 201(1) for not deducting tax at source ...
...”

7. It was specifically concluded by the CIT(A) that the penalty demand of Rs. 6,52,675/- treating the Appellant as Assessee in default under Section 201 (1) of the IT Act to the extent of short deduction of TDS “is hereby deleted”. The reason was that the employees had paid their taxes directly through self assessment and had filed details of their income. Therefore, no further tax was payable.

8. Once it has been categorically held by the CIT (A) that there is no short deduction of TDS, the question of categorising the Appellant as Assessee-in-default for the purposes of Section 201 (1) of the IT Act did not arise. There was, therefore, no occasion for imposition of the penalty under Section 271C of the IT Act.

9. Learned Standing counsel for the Department has been unable to point out how the above orders of the CIT (A) and ITAT upholding the penalty levied by the AO on the Appellant are sustainable in law. Consequently the questions framed by this Court are all answered in favour of the Appellant Assessee and against the Department by holding that the CIT (A) and the ITAT were not justified in dismissing the Appellant's appeal and in sustaining the order of the AO since there was admittedly no short deduction of TDS. The order of the AO and the corresponding orders of the CIT and ITAT to the above extent order are hereby set aside. The appeal is allowed in the above terms. There shall be no order as to the costs.

10. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, as par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Notice No.4798, dated 15th April, 2021 and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

TUDU

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge