IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.83 of 2007 and ITA Nos.73, 74 and 75 of 2008

Commissioner of Income Tax, Bhubaneswar .... ***Appellant***

Mr. Prasanjeet Mohapatra, Standing Counsel

-versus-

Shri Padma Charan Patra .... ***Respondent***

None

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
23.03.2022

Order No.

03. 1. All these appeals concern the same Assessee but for different Assessment Years (AYs). The Court therefore takes up the first of the Appeals i.e. ITA No.83 of 2007 for discussion. This is an appeal by the Revenue challenging an order dated 27th March 2007 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) dismissing the Revenue's appeal being I.T.A. No.596/CTK/2005 for AY 2002-03.

2. While admitting the present appeal as well as all connected appeals on 8th October 2015, the following question was framed for consideration:

> "(i) Whether on the facts and in the circumstance of the case the learned ITAT was correct in law in confirming the order of the learned CIT (A) to delete the addition of Rs.1,74,01,912/- made in the assessment on account of unexplained liabilities?"

3. Interestingly, in all the connected appeals, the same question has been framed viz., deletion by the Commissioner of Income Tax (Appeals) [CIT (A)] of the addition made by the Assessing Officer (AO), which order of the CIT (A) has been concurred with by the ITAT.

4. The background facts are that the Assessee is a roads and bridges contractor. The return filed by him for AY 2002-03 was picked up for scrutiny. The AO passed an assessment order on 31st March 2005 under Section 143 (3) of the Income Tax Act, 1961 (Act) where *inter alia* he made an addition of Rs.1,74,01,912/- being the payments allegedly made by the Assessee to sundry creditors as "undisclosed profits siphoned out of system".

5. As noted by the CIT (A) in the appellate order dated 27th September 2005, allowing the Assessee's appeal, the AO picked up 10 creditors at random for verification. As it turned out the Assessee was able to produce the 10 creditors before the AO and they replied to the queries raised by the AO. They confirmed that they had received the payments for supplies of materials made by them to the Assessee. The AO however did not stop there. He inquired whether the persons who had made supplies to the creditors were existing or not. In other words, he did not stop with inquiring into the identity, genuineness and creditworthiness of the 10 creditors, but the corresponding identity and genuineness of those who supplied materials to the creditors.

6. The CIT (A) accepted the plea of the Assessee that "unless these payments are out of the profits of the current year, they cannot be

brought to tax in this year." The payments made towards expenses had in fact been debited to the profit and loss account. Only those expenses which remained payable at the end of the year would figure as sundry creditors.

7. The CIT (A) noted that the AO had not further examined whether the purchases and expenses related to the current year or to the earlier year. Another factor that weighed with the CIT (A) was that the Assessee had filed site wise details covering opening balance, purchases during the year, payment during the year as well as the closing balance. A third factor was that the Assessee had consistently been showing a high rate of profit from the contract business. Consequently, the CIT (A) disagreed with the AO that the payments made to the creditors by the Assessee were not genuine and that the Assessee was siphoning of profits.

8. The ITAT has concurred with the above findings of the CIT (A) again after discussing the evidence on record.

9. Having heard learned counsel for the Revenue, the Court is not persuaded that the orders of the CIT (A) and the ITAT suffer from any perversity. There is also no legal infirmity in the analysis and the reasoning. The view taken by the CIT (A) appears to be a perfectly plausible one. Consequently, the Court is not convinced that the CIT (A) erred in deleting the addition made by the AO or that the ITAT erred in concurring the CIT (A).

10. The question framed is accordingly answered in favour of the Assessee and against the Revenue.

11. In the connected appeals, the question framed being identical, is also answered in identical fashion.

12. As a result all these appeals are dismissed, but with no orders as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S.K. Guin