IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.232 of 2020

M/s. S.C. Padhee	....	***Petitioner***
		Mr. B. Panda, Advocate

-versus-

The Deputy Commissioner of Income Tax, Range-I and others	....	***Opposite Parties***
		Mr. S.S. Mohapatra, Senior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
24.02.2022

Order No.

06. 1. The challenge in the present writ petition is to an order dated 4th August 2017 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.28/CTK/2016 and another order dated 4th September 2019 passed by the ITAT dismissing the Assessee's Misc. Application No.35/CTK/2017.

2. The Court has heard the submissions of learned counsel appearing for the Petitioner and learned Senior Standing Counsel for the Department.

3. The issue before the CIT (A) and the ITAT was about the Assessing Officer (AO) having disallowed the depreciation in the sum of Rs.57, 03,909/- on plant and machinery on the ground that they were not used for the business of the Assessee during the AY in question.

4. A query was raised by the ITAT for which the Assessee did not have a satisfactory answer. This is reflected in paragraph-29 of the impugned order of the ITAT dated 4th August 2017 and reads as under:

> "29. On appeal, the CIT (A) confirmed the action of the Assessing Officer as the assessee failed to produce any evidence for use of plant and machinery for the business of the assessee. The arguments of ld A.R. is that plant and machinery were kept ready for use for the business of the assessee and hence, the assessee was eligible for depreciation for the same. On a query by the Bench to ld. A.R. as to when the plant and machinery in question were put to use by the assessee in the subsequent year, ld A.R. could not reply to the same. Hence, we find no good reason to interfere with the order of the CIT (A), which is hereby confirmed and ground of appeal of the assessee is dismissed."

5. This led the Assessee to file Misc. Application No.35/CTK/2017 to recall the above order dated 4th August, 2017. Such application was dismissed by the ITAT for the following reasons:

> "5. After hearing the submissions of both the parties and carefully perusing of the Tribunal order, we observe that the Tribunal has confirmed the order of CIT (A) on the basis of material evidence available on record. Ld. AR before us submitted that the Tribunal has not considered the grounds of the assessee with regard to the fact that the assessee was eligible for depreciation as the plant and machinery were kept ready for use for the business of the assessee. However, on perusal of para 29 of the order of the Tribunal dated 04.08.2017, we find that the Tribunal during the course of hearing proceedings, has queried the assessee as to when the plant and machinery were put to use by the assessee in the subsequent year, however, the assessee could not reply the same.

> Therefore, we are of the opinion that there is no mistake apparent from record in the Tribunal's order, which requires rectification u/s 254 (2) and, accordingly, same is dismissed."

6. Having heard learned counsel for the parties, the Court is unable to be persuaded that the ITAT committed any serious legal error in coming to the conclusion both in the original order dated 4th August 2017 or the subsequent order declining to recall that order. The writ petition is dismissed.

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

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S.K. Guin