IN THE HIGH COURT OF ORISSA AT CUTTACK
ITA No. 152 of 2005

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

Mr. S.S. Mohapatra, Senior Standing Counsel (IT)

-versus-

Ram Ratan Banka .... ***Respondent***

None

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No.	**ORDER** **10.02.2022**
07.	1. This appeal by the Appellant (Department) challenges the order dated 13th May, 2005 passed by the Income Tax Appellate Tribunal, Cuttack (ITAT) in ITA No.51/CTK/2004 (*Sri Ram Ratan Banka v. Addl CIT, Range 1, Sambalpur*) and IT (SS) A No.54/CTK/2004 (*JCIT, Range-I, Samablpur v. Ram Ratan Banka, Sambalpur*) for the assessment years (AY) 1995-95 to 2000-01 and 1996-97 to 2001-02 respectively.

2. The four questions of law urged for consideration by the Department before this Court as arising from the impugned order of the ITAT read as under:

> "(i) Whether on the facts and circumstances of the case, the Tribunal is right in deleting addition of Rs.75,81,292/- made u/s 69 of the Act as unexplained cash found in the course of search.
>
> (ii) Whether on the facts and circumstances of the case, the learned Tribunal is right in deleting

addition of Rs.1,50,51,468/- towards unaccounted sale of diesel during the block period.

(iii) Whether on the facts and circumstances of the case, the Learned Tribunal is right in deleting addition of Rs.70,17,843/-made u/s 69 of the Act as unexplained deposit in Bank out of sale of share purchased in earlier years.

(iv) Whether on the facts and circumstances of the case, the Tribunal is right in deleting addition of Rs.30,00,194/- towards alleged share of transaction of Smt. Bhagabati Devi Banka."

3. The background facts are that Sri Ram Ratan Banka is the owner of five petrol pumps of different places near Sambalpur. He derives income from sale of petrol, diesel and lubricants. A search and seizure operation was conducted on 19th and 20th December, 2001 at his residential premises. A total cash of Rs.75,81,292/- was found for which Rs.75,00,000/- was seized apart from certain incriminating materials. Gold jewellery weighing 2527 gms were found but not seized.

4. Simultaneously, a survey under Section 133A of the Income Tax Act (IT Act) was also conducted on 19th December, 2001 at the business premises of the five petrol pumps. This was followed by search notice under Section 158BC of the IT Act issued by the Deputy Commissioner of Income Tax (DCIT), Circle 1(1) to Sri Ram Ratan Banka for filing returns for the block period. In response thereto, Sri Banka filed his return in Form 2B on 13th August, 2002 showing the total undisclosed income for the block period as 'NIL'.

5. A notice under Section 142 (1) of the IT Act along with a questionnaire was issued on 27th November, 2002. Sri Banka then filed his explanation as regards the source of tax, investment in jewellery and house property. The Assessing Officer (AO) then finalized the block assessment on 29th December, 2003 determining the total undisclosed income as Rs.3,32,09,650/-. The appeal filed by Shri Banka was partly allowed by the Commissioner of Income Tax (Appeals) (CIT (A)) allowing deletion of some of the additions but confirming a major portion of the additions.

6. Aggrieved by the above order, both Shri Banka as well as the Department filed appeals bearing IT (SS) A Nos.50 and 51/CTK/2004 respectively before the ITAT.

7. Specific to the four questions sought to be urged by the Department before this Court, as regards the addition of Rs.75,81,292/- under Section 69 of the IT Act, it was on account of the cash seizure which was treated as undisclosed income. Out of the total addition made by the AO, the CIT (A) confirmed the addition to the extent of Rs.10,48,231/- claimed to be belonging to Ram Ratan Banka (HUF) and Smt. Bhagabati Devi Banka. The balance amount was claimed to belong to seven family members and was accordingly deleted. The explanation offered by the Assessee was that the entire cash was found at different places in different in different rooms belonging to different family members and could not be clubbed together. The ITAT has sustained the order of the CIT (A).

8. The CIT(A) in his order noted that what was seized from the bedroom of Sri Ram Ratan Banka was a sum Rs.35,25,162/-. In a room adjacent to the guest room cash of Rs.27,03,390/- was found. The remaining cash was found from the bed rooms of his two sons Sri Natwar Kumar Banka and Shri Pramod Kumar Banka. Cash amounting to Rs.48.00 lakh was seized from rooms which were not in the physical possession of Shri Ram Ratan Banka. The others members of the family included three ladies and three HUFs. According to the CIT (A), sums shown against each of them explained the availability of cash of Rs.27,03,390/- in the common room. He then examined the IT returns of the individual family members which showed the cash availability with each of them. After examining to all of these documents, the conclusion reached was that the Assessee was the exclusive owner of cash of Rs.35,85,166/-. He could not be held accountable for the cash found from the bed rooms of his two sons and from the common room. In the return filed for AY 2001-02 he had disclosed a cash balance of Rs.20,75,215/- The returns of Ram Ratan Bank, HUF and Bhagawat Devi Banka for AY 2001-02 were also examined and the cash balance with the two of them worked out Rs.10,48,231/-. Since this was not disclosed before IT authorities, Section 69A of the IT Act was invoked only as regards this amount and the disallowance was also restricted to the said amount.

9. Having heard learned counsel for the Department and having carefully examined the orders of the CIT (A) and the ITAT the Court is unable to find any legal infirmity in the analysis of the

facts or the law in the concurrent findings of the CIT (A) and ITAT in this regard. The Court therefore, declines to frame the question as prayed for by the Department in this regard.

10. Turning next to the deletion of the addition of Rs.1,50,51,468/- towards unaccounted sale of diesel during the block period it was noted by the ITAT that on the basis of entries in the loose sheets certain discrepancies were found in the sales account for about two and half months. The AO had presumed that there could be similar undisclosed sales for the entire block period. He took the month-wise average of such undisclosed sales and applying the same average determined the undisclosed sales of the past years and thereby added Rs.1,50,51,834/- as undisclosed income for the block period. The ITAT held that the above extent of unaccounted sales spread over the entire block period was not established by the AO with reference to any corroborating evidence. The supplier of petroleum products was HPCL. No effort was made by the AO to ascertain any facts from HPCL. In the circumstances, the ITAT held these additions not to be proper deleted them. In doing so, the ITAT observed that for the purpose of Section 158B of the IT Act the undisclosed income had to be based on seized materials duly corroborated by supporting evidence. It could not be based on surmises and conjectures. The figure of Rs.1,50,51,468/- was arrived by the AO entirely the basis of three lines of scribbling of some figures on a piece of paper.

11. Having heard learned counsel for the Department (Appellant) and having carefully perused the impugned order of the ITAT, the Court would tend to agree with the ITAT that the action of the AO

"does not even stand to the normal probability, it is in the process of regular assessment". The entire addition appears to be based on surmises and conjectures and not on evidence. It was rightly deleted by the ITAT. No substantial question of arises in this regard as well.

12. The next issue concerns the deletion of addition of Rs.70,17,843/- under Section 69 of the IT Act as unexplained deposits in the Bank out of sale of share purchased in the earlier years. The said deposits were made in three bank accounts standing in the name of the individual and HUF. The Assessee had explained withdrawal from his deposits being the source of investment made in his name. The CIT (A) examined the papers submitted by the Assessee which contained details of the share transactions. The returns filed for the AY 2001-02 filed on 11th February 2002, after the date of search, were also perused. The ITAT found that the relevant papers of the share transactions were in fact made available but not discussed by the CIT (A). Having carefully perused the impugned order of the CIT (A) and the ITAT, the Court is of the view that the ITAT's order on this issue requires to be upheld. No substantial question of law arises therefrom.

13. Lastly, the issue concerning the deleting the addition of Rs.30,00,194/- towards alleged share transactions of Shri Bhagawati Devi Banka. Here again, the reasoning is more or less similar to the finding in regard to the earlier grounds. The Court is not persuaded to interfere with the findings of the ITAT in this regard as well. Here again no substantial questions of law arises.

14. For all of the aforesaid reasons, the Court finds that no case is made out for framing any substantial questions of law as prayed for by the Department. The impugned order of the ITAT calls for no interference. The appeal is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/P.A.