IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No. 1 of 2009

Smt. C. Girija .... ***Appellant***

Mr. Sidhartha Ray, Advocate

-versus-

Commissioner of Income Tax, Bhubaneswar and Another .... ***Respondents***

Mr. T.K. Satapathy, Senior Standing Counsel (IT)

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No. **ORDER**
07.02.2022

07. 1. The present appeal arises from an order dated 11th September, 2008 passed by the Income Tax Appellate Tribunal (ITAT), Cuttack Bench, Cuttack in ITA No.87/CTK/2007 for the Assessment Year (AY) 2002-03.

2. Several questions of law were framed while admitting this appeal by order dated 15th January, 2009. For the purposes of the present order, it is enough to note Question No.(i) which reads as under:

> "(i) Whether on the facts and circumstances of the case the completion of assessment u/s 147 of the Income Tax Act without passing any order on the appellant's objection against the initiation of the proceeding u/s 147 of the Income Tax Act, 1961 is legally valid in view of the law laid down by the Hon'ble Supreme Court in case of GKN Driveshafts (India) Ltd. v. Income Tax Officer, reported in (2002) 125 Taxman 963?

3. Mr. T.K. Satapathy, learned Senior Standing Counsel for the Respondent (Department) raised a preliminary objection that the aforementioned question was not urged by the Appellant (Assessee) before the ITAT and drew the attention of this Court to the impugned order.

4. It may be true that Appellant-Assessee did not raise the issue before the ITAT but as rightly pointed out by the learned counsel for the Appellant the question raised before this Court was a jurisdictional one and while admitting the appeal the Court permitted the Appellant to raise it. This Court's order dated 15th January, 2009 framing the above question of law was not challenged by the Department. Therefore, the Court declines to permit Mr. Satapathy, learned Senior Standing Counsel for the Department to raise the above preliminary objection at this stage.

5. Admittedly, the proceedings from which the present appeal arises was pursuant to the reopening of the assessment for the AY in question under Section 147 of the Income Tax Act, 1961 (IT Act). Further, there is no dispute that the rule laid down by the Supreme Court of India in ***GKN Driveshafts (India) Ltd. v. Income Tax Officer, (2002) 125 Taxman 963*** was not complied with in the present case.

6. On that sole ground the completion of the assessment under Section 147 of the IT Act by the Department in the present case for the AY in question stood vitiated in law. Question No.(i) is

therefore answered in the negative by holding that initiation of the proceedings under Section 147 of the IT Act against the Assessee without following the Rule laid down in ***GKN Driveshafts (India) Ltd.*** *(supra)* is not sustainable in law. The impugned order of the ITAT and the corresponding orders dated 22nd November, 2006 of the learned CIT (A), Berhampur and the Assessing Officer are accordingly set aside.

7. In view of the above answer to question (i), there is no need to answer the remaining questions.

8. The appeal is disposed of in the above terms.

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

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/P.A.