IN THE HIGH COURT OF ORISSA AT CUTTACK

I. T. A. No.1 of 2010

Santosh Kumar Patro .... ***Appellant***

Mr. Raj Mohanty, Advocate

-versus-

The Income Tax Officer, Berhampur, Ganjam and others .... ***Respondents***

Mr. T. K. Satapathy, Senior Standing Counsel for the Income Tax Department

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
08.02.2022

Order No.

04. 1. This appeal arises from an order dated 20th July, 2009 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.219/CTK/2008 pertaining to Assessment Year (AY) 2002-03.

2. The background facts are that the Appellant-Assessee is a Hindu undivided family (HUF) deriving income from house property and dairy farming. During the AY 2002-03, the Appellant filed the statutory return disclosing a net income of Rs.69,200/-. The return was picked up for scrutiny. A representative of the Assessee appeared and produced the books of account.

3. One issue that arose concerned the valuation of the construction raised. A report of the District Valuation Officer (DVO) was called for by the Assessing Officer (AO). The DVO estimated the cost of construction at Rs.2,58,323/-. The Assessee then filed objection to the valuation by comparing the cost of index as per the CPWD and the prevailing rates of Berhampur. However, according to the AO, the Assessee did not produce any evidence in support of the claim with regard to the prevailing market rate of cement, steel and materials. The AO then concluded that the excess cost of construction i.e. investment in house property as determined by the DVO, was Rs.58,323/-, which was then accepted as correct. This was added as unexplained income under Section 69 of the Income Tax Act, 1961 (IT Act).

4. The Commissioner of Income Tax (Appeals), Berhampur [(CIT) (A)] dismissed the Assessee's appeal by an order dated 19th June, 2008. It was noted by the CIT (A) that, while the DVO arrived at the cost of construction as Rs.75,76,239/-, the cost admitted by the Appellant was Rs.48,50,000/-. The approved valuer had valued it at Rs.46,68,713/-. It was observed by the CIT (A) that, the cost of construction in a companion appeal of the same Assessee was determined at Rs.53,82,184/-. Therefore, the difference in cost of construction as determined and the admitted cost spread over six years worked out to Rs.21,944/- and not Rs.58,323/-. Therefore, the relief to the extent of Rs.36,378/- was granted to the Assessee.

5. The Assessee went in further appeal before the ITAT, which upheld the order of the CIT (A).

6. It was contended by learned counsel for the Appellant that the AO had blindly accepted the correctness of the report of the DVO and that there was no occasion to reject the report of the approved valuer as submitted by the Assessee.

7. As noted by the ITAT, reliance placed was not just on the report of the DVO but the report of the approved valuer was also taken into account. Further, the Assessee was given a chance to submit objections to the DVO's report.

8. Learned counsel for the Appellant sought to place reliance on the decisions in ***Commissioner of Income Tax v. Berry Plastics (P) Ltd., (2013) 217 Taxman 39 (Guj), S. S. Jyothi Prakash v. Additional Commissioner of Income Tax, (2016) 240 Taxman 741 (Kar), Commissioner of Income Tax v. Sadhna Gupta, (2013) 352 ITR 595 (Del)*** and the decision dated 28th October, 2015 of the Delhi High Court in ITA No.144 of 2003 (***R.S. Bedi v. The Assistant Commissioner of Income Tax-VI***).

9. Having carefully perused the above decisions, the Court is of the view that each of them turned on their own peculiar facts. There cannot be any blanket rule that the valuation report prepared by the DVO can never be accepted. Nevertheless, in the present case, not only was the said report looked into but, the report of the approved valuer was also examined. The Assessee was given sufficient opportunity to object to the DVO's report.

A balanced approach was adopted by giving relief to the extent possible to the Assessee to the tune of Rs.36,378/-. Consequently, the Court does not find any legal infirmity in the said approach.

10. No substantial question of law arises. The appeal is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda