

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**ITA No. 69 of 2009**

***P. Aruna Kumari Patro***

....

***Appellant***

Mr. Raj Mohanty, Advocate

*-versus-*

***Income Tax Officer and Others***

....

***Respondents***

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

**CORAM:**

**THE CHIEF JUSTICE**

**JUSTICE R.K. PATTANAİK**

**Order No.**

**ORDER**  
**07.02.2022**

04. 1. The present appeal arises from an order dated 30<sup>th</sup> April, 2009 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) dismissing the Appellant's appeal in ITA No.305/CTK/2007 for the Assessment Year (AY) 2004-05.
2. While admitting this appeal on 10<sup>th</sup> November, 2009, this Court framed the following questions of law for consideration:
- “1. Whether under the facts and circumstances of the case the learned Tribunal is correct in ignoring the jurisdiction question of law that so raised questioning the power of initiation of proceeding u/S. 147 of the Act particularly when the statutory time limit for initiation of Regular assessment has not been expired?
2. Whether under the facts and circumstances of the case the learned Tribunal is justified in confirming the additions made in A/y 2004-05 by the ‘fora’ below particularly when the said disputed income belongs to the previous assessment years?

3. Whether under the facts and circumstances of the case the learned Tribunal is justified in confirming the addition made u/S.68 of the Act particularly when the books of accounts maintained in day to day course of business does not show any unexplained cash credit?

4. Whether under the facts and circumstances of the case Section 68 of the Act has any application?”

3. Mr. T.K. Satapathy, learned Senior Standing Counsel for the Respondent (Department) points out that as regards the issue concerning Section 147 of the Income Tax Act, 1961 (IT Act), the Assessee should be precluded from urging its since before the ITAT, he did not press it. He points out that the Assessee also did not press the issue regarding disallowance of Rs.2,76,167/- under Section 40A (3) of the IT Act.

4. Indeed in the impugned the ITAT has recorded as under:

“2. In the appeal, the assessee has taken the following grounds:

*1. For that the disallowance of Rs.2,76,167 u/s.40A(3) as made by the learned A.O. is improper and unjustified and the learned Commissioner should not have sustained the action of the A.O.*

*2. For that the addition of Rs.7,01,000/- as sustained by the learned Commissioner is highly unjustified and uncalled for.*

*3. For that the proceedings initiated u/S.147 are not proper.*

*4. For that in any view of the case the assessment as made is otherwise bad-in-law.”*

3. At the time of hearing before us, the Assessee has not pressed ground nos. 1 and 3. Therefore, both the grounds are dismissed as not pressed. Ground No.4 being general in nature, does not require adjudication.”

5. Mr. Raj Mohanty, learned counsel for the Appellant states that the above ‘concession’ by his counterpart before the ITAT was a mistake. This Court finds that no application was filed by the Appellant under Section 254 of the IT Act for rectification of the order. No review petition was even filed. In the circumstances, the Court does not permit the Appellant at this stage to take the above plea.

6. With the Appellant having given up the plea regarding Section 147 of the IT Act before the ITAT the Court decides that issue in favour of the Department and against the Appellant. As regards issues 2, 3 and 4, these pertain to merits of the case. The total additions made by the Assessing Officer (AO) to the taxable income of the Appellant Assessee was Rs.9,41,000/- which was treated as ‘unexplained’ investment.

7. It must be noted that the above addition was made by the Assessing Officer (AO) after accepting the explanation of the Appellant Assessee for the sum of Rs.4,02,000/- shown as investment. On appeal by the Appellant the Commissioner of Income Tax (Appeals) [CIT(A)] further deleted an addition of Rs.2,40,000/- thereby sustaining a total addition of Rs.7,01,000/-

on account of the cash flow statement for the initial assessment year 1990-91. This comprised Rs.1 lakh and marriage (cash) gift of Rs.50,000/-, marriage (gold) gift of Rs.1,15,000/- and postal interest of Rs.35,000/- receipt from husband – Rs. 2 lakhs, own earnings during 1990-91 to 2002-03 amounting to Rs.66,000/-, customary gifts received during 1990-91 to 2002-03 Rs.70,000/-. In the impugned order, the ITAT has further reduced the addition to Rs. 5,01,000.

8. Mr. Raj Mohanty, learned counsel for the Appellant - Assessee submitted that even if the explanation offered by the Appellant was not satisfactory the authorities should have applied their discretion properly and ought not to have made the addition mechanically. He further submitted that the addition was made on surmises and conjectures despite the Appellant having given a satisfactory explanation. He submitted that the recourse to Section 68 of the IT Act was not warranted when the accounts were maintained properly and formed part of the records.

9. The Court is unable to agree with the above submission of learned counsel for the Appellant that the additions were made mechanically. At every stage the AO, the CIT(A) and the ITAT have granted the Appellant some relief. As regards the addition of Rs.5,01,000/- there have been concurrent findings by the AO, the CIT(A) and the ITAT. Each of their orders is well reasoned, giving complete reasons. The Court is, therefore, not persuaded to interfere with their concurrent findings.

10. The reliance is placed by Mr. Raj Mohanty on the decisions of the Madras High Court in *Commissioner of Income Tax v. K.M. Pachayappan* [2008] 304 ITR 264 (Mad) and *Commissioner of Income Tax v. Qatalys Software Technologies Ltd.*, [2009] 308 ITR 249 (Mad) are to no avail. Both the decisions turned on their peculiar facts.

11. On a careful perusal of the entire record, the Court is of the view that there was justification for the Department invoking Section 147 of the IT Act. The Court finds no reason to interfere.

12. Questions 2, 3 and 4 are accordingly answered against the Assessee and in favour of the Department, upholding the orders of the AO, the CIT (A) and the ITAT.

13. The appeal is accordingly dismissed.

**(Dr. S. Muralidhar)**  
**Chief Justice**

**(R.K. Pattanaik)**  
**Judge**