

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.151 of 2004

M/s. Puri Hotel Private Ltd. ***Appellant***
Mr.B.Panigrahi, Advocate

-versus-

Additional Commissioner of ***Respondent***
Income Tax, Orissa, Bhubaneswar
Mr.T.K.Satpathy, Sr. Standing Counsel
for Income Tax Department

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

Order No.

ORDER
04.01.2022

09. 1. This appeal by the assessee is directed against the order dated 3rd April, 2004 passed by the Income-Tax Appellate Tribunal, Cuttack Bench, (ITAT) in ITA No. Nos. 53 of 2001 for the assessment years (AY) 1995-96.
2. While admitting the present appeal on 12th October, 2004, the following question of law was framed for consideration:

“Whether the Income Tax Appellate Tribunal would have come to a different conclusion on the disallowance of 5% of the expenses claimed under the head “marketing expenses and provisions” if the Tribunal had considered the documents/agreements

produced by the appellant before the Tribunal?

3. On the same day in Misc. Case No. 35 of 2004, the following order was passed by this Court:

“Heard Mr. G.Mishra, learned counsel for the appellant and Mr. A. Mohapatra, learned Standing Counsel for the Income Tax Department.

This is an application for stay of the order dated 15.06.2004 passed under section 254 of the Income Tax Act, 1961 pursuant to the judgment passed by the Income Tax Appellate Tribunal impugned in ITA No.151 of 2004.

It appears from the said order passed under section 254 of the I.T. Act, 1961 that as a consequence of the impugned order of the Tribunal, a sum of Rs.80,221/- is payable by the petitioner to the Income Tax Department.

We direct that on the petitioner paying 50% of the said amount of Rs.80,221/- by the end of January, 2005 the balance of the demand shall remain stayed pending disposal of the ITA No.151 of 2004.

Urgent certified copy of this order be granted as per the rules.”

4. This Court has heard the submissions of Mr. B. Panigrahi, learned counsel for the Appellant and the T.K.Satpathy, learned Senior Standing Counsel for the Income Tax Department.

5. The limited question for consideration is about the extent of disallowance of expenditure claimed by the appellant-assessee. It has been noted by the ITAT in Para-2.2 of the impugned order that for the earlier AY 1993-94 against the expense of Rs. 43,39,111 claimed by the Assessee, the Assessing Officer (AO) had disallowed Rs.8,64,822/- which was found by the CIT (A) in appeal to be excessive. Accordingly, the CIT(A) restricted the disallowance for AY 1993-94 to Rs.60,000/- which works out approximately to 1.5% of the expenses claimed by the Assessee. Admittedly, the ITAT dismissed the Department's appeal for AY 1993-94 and upheld the disallowance of Rs. 60,000/- as ordered by the CIT (A).

6. As far as the present AY 1995-96 is concerned, the extent of disallowance by the AO was Rs.7,00,000/- respectively. This was restricted by the CIT (A) to Rs.1,25,000/-. The only reason indicated by the ITAT in the impugned order while interfering with the above determination by the CIT (A) is set out in para 2.3 which reads as under:

“We have carefully considered the submissions made by the rival parties and the facts of the case. We find that the expenses claimed by the assessee are not properly vouched and verified. Therefore, there is justification for some disallowance. We agree with the view of the CIT(A) that the disallowance made by the AO in both the years are high and excessive. At the same time we are also of the view that the

disallowance sustained by the Id. CIT(A) on lower side. In our considered view it would be fair and reasonable to restrict the disallowance to 5% of the expenses claimed under the Head 'Marketing Expenses and Provisions'. Calculated at this rate the disallowance will work out to Rs.2,37, 800 in assessment year 1994-95 and Rs.2,56,000 in assessment year 1995-96."

7. The Court finds that the ITAT has in coming to the above conclusion resorted to surmises and conjectures. There is no reason given for restricting the disallowance to 5% of the expenses claimed and thereby arriving at the figure of Rs.2,56,000 for the AY in question, except stating that the disallowance sustained by the learned CIT (A) is "on the lower side". The ITAT could have followed the approach for the AY 1993-94 where the disallowance was restricted to around 1.5% of the expenses claimed by the Assessee, and which was upheld by the ITAT itself.

8. Having considered the entire matter, the Court is of the view that the Income Tax liability of the Appellant as a result of the disallowance should be restricted to 50% of liability arising from the impugned order of the ITAT. It is ordered accordingly. With the Appellant assessee already having paid 50% of the said liability pursuant to the interim order passed by this Court on 12th October, 2004, no further amount will be required to be paid by the Assessee. The impugned order of the ITAT stands

modified in the above terms and the question of law framed is answered accordingly.

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

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge

Kabita

