

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.113 of 2013

Commissioner of Income Tax, Appellant
Bhubaneswar

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

-versus-

M/s. Paradeep Phosphates Ltd., Respondent
Bhubaneswar

None

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

Order No.

ORDER
15.11.2022

04. 1. The Revenue in an appeal is against an order dated 13th June, 2013 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.328/CTK/2013 for the Assessment Year (AY)— 2007-08.
2. The aforementioned order of the ITAT was in an appeal filed by the Respondent-Assessee against an order of the Commissioner of Income Tax (CIT) assuming jurisdiction under Section 263 of the Income Tax Act, 1961 (Act) after perusing the assessment records, which included an assessment order dated 23rd December, 2010 passed by the Assessing Officer (AO) under Section 143(3) of the Act.
3. *Inter alia*, the CIT noted that during the AY in question the Assessee had made payments to the tune of Rs.1344,63,25,000/- to non-resident payees without deducting tax at source and

accordingly directed the AO to make the assessment *de novo* other than the issue of disallowance of expenditure of Rs.1344,63,25,000/- under Section 40(a)(ia) of the Act. According to the CIT, the aforementioned sum claimed as expenditure towards import value of machinery, spares and raw materials and charged to the P&L account would not be eligible for deduction since the Assessee had not deducted tax under Section 195(1) of the Act.

4. In the impugned order, the ITAT has noted that the AO had in fact allowed the aforementioned sum, which was paid towards import of raw materials utilized in the turnover of the Assessee and “was therefore in accordance with the scheme of the business of the Assessee”. The ITAT was of the view that the direction by the CIT to the AO to add the aforementioned sum without a direction to the AO to re-examine the issue was beyond the scope of the powers of the CIT under Section 263 of the Act. It was held that the CIT “could not unilaterally direct the AO to disallow the same when the procedure to adopt assuming jurisdiction under the provisions of Section 263 remained unfulfilled by the learned CIT.”

5. The ITAT further noted the decision of the Supreme Court in ***GE India Technology Cen. (P) Ltd., v. CIT (193 Taxman 234)*** to the effect that if there is a remittance abroad, the requirement under Section 195(1) of the Act to deduct tax would arise “only if the tax is assessable in India.” Since this involved payment made for import, the issue required re-examination by the AO. The impugned order of the CIT was quashed only to that extent.

6. This Court has heard the submissions of Mr. T. K. Satapathy, learned Senior Standing Counsel for the Revenue Department and has carefully perused the orders of the CIT as well as the ITAT.

7. The conclusion reached by the ITAT that the CIT could not have unilaterally directed the AO to add back the aforementioned sum by holding that it was disallowable as expenditure could not have been issued under Section 263 of the Act without the AO again examining the issue. To that extent, the said direction was indeed beyond the jurisdiction of the CIT under Section 263 of the Act.

8. The said conclusion of the ITAT suffering from no legal infirmity, no substantial question of law arises for consideration. The appeal is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda