IN THE HIGH COURT OF ORISSA AT CUTTACK

I. T. A. No.27 of 2010

M/s. Basanta Maharana, Balugaon, Khurda	....	***Appellant***
		Mr. Prakash Chandra Sethi, Advocate
	-versus-	
Income Tax Officer, Khurda Ward, Khurda 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 31st December, 2009 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.285/CTK/2008 for the Assessment Year (AY) 2005-06.

2. The issue sought to be urged by the Appellant-Assessee, which is a partnership firm, is that the Assessing Officer (AO) erred in adding a sum of Rs.4.50 lakhs of the total introduction of capital of Rs.9 lakhs in the hands of the Assessee by treating it as "Unexplained cash credit."

3. This Court has heard the submissions of Mr. Prakash Chandra Sethi, learned counsel for the Appellant and Mr. T. K. Satapathy,

learned Senior Standing Counsel for the Income Tax Department.

4. The facts in brief are that there was a reconstitution of the Assessee-Firm on 1st April, 2004, on which a sum of Rs.3 lakhs was introduced as capital in the Firm by each of the 3 incoming partners. The AO found that the Assessee was unable to prove the said credits in the capital account and did not produce the partners for examination. He accordingly proceeded to treat 50% of the total amount introduced as unexplained and added it as income in the hands of the Assessee. The Commissioner of Income-Tax (Appeals) (CIT) (A) partly allowed the appeal filed by the Assessee. However, the above addition of Rs.4.50 lakhs as unexplained credit was sustained. It was held that the onus was on the Firm to establish the genuineness of the amount shown in the books of account as capital. Of the 3 partners, the CIT (A) found that one of them, Sri Sukanta Moharana had produced a rough kutcha book allegedly showing cash receipts. This was however not permitted to be led as evidence under Rule 46A (1) of the Income Tax Rules, 1962 (the Rules). As regards the 3rd partner, Sri Purna Chandra Behera not even a kutcha book was available. As regards Sri Bijay Kumar Swain, the rough kutcha book revealed that it was written at a single stretch and there was no supporting evidence in the form of bills or vouchers. There was no bank account of fixed assets to establish the date and period during which the income was earned and surplus generated.

5. The ITAT also found that no evidence had been led to support the claim of the partners that they have the capacity to bring in Rs.3 lakhs as cash each.

6. Mr. Sethi argued that the unexplained cash credit should have been taxed in the hands of the individual partners and not in the hands of the Firm. He placed reliance on the decisions in ***CIT v. Burma Electro Corporation, 252 ITR 344 (P&H)*** and ***Dy. CIT v. Rohini Builders, 256 ITR 360 (Gujarat).***

7. Having perused the said judgments, the Court is not satisfied that they have any application to the facts of the present case. Here the onus was on the Assessee-Firm to demonstrate that the money is brought in on the first day of the reconstituted Firm, was sufficiently explained with reference to Bank accounts or other documents of credible nature. In the case of ***Burma Electro Corporation*** (*Supra*), the creditors had been assessed to income tax and they were shown to be persons of sufficient means. Mr. Sethi then referred to the amendment to Section 68 brought about by the Finance Act, 2021, which requires proof of "source of source" and submitted that since it was prospective in nature, the Department in the instant case could not insisted on the Firm proving the source of these cash credits. The Court is unable to agree with the above submissions. While the amendment by itself is clarificatory in nature as far as the present case is concerned, it was incumbent on the Assessee- Firm to satisfactorily explain the source of the cash credits. In the circumstances, the Court finds that no grounds are made out for

interference with the impugned orders of the CIT (A) and the ITAT.

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

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda