IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.81 of 2010

Balaraj Singh .... ***Appellant***
Mr.S.K. Acharya, Advocate

-versus-

Commissioner of Income Tax, Cuttack, and another .... ***Respondents***
Mr. S.S. Mohapatra, Sr. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

ORDER
08.02.2022

Order No.

10. 1. The present appeal arises from an order dated 30th July, 2010 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.278/CTK/2009 for the Assessment Year (AY) 2005-06.

2. While admitting this appeal on 18th December, 2019, the following substantial questions of law are framed for consideration.

> 1. Whether in the facts and circumstances of the present case, the Hon'ble ITAT was justified in upholding the appellate order of the Ld. CIT (Appeals)-1, Bhubaneswar, in estimating the net profit of the Appellant Sub-contractor at an exaggerated rate of 6%?
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> 2. Whether in the facts and circumstances of the present case, the Hon'ble ITAT was justified in confirming the appellate order of Ld. CIT (A) in estimating the profit of the appellant at 6 % in light of the fact that the Appellant had cited cases wherein the jurisdictional Tribunal and also the Ld. CIT (A)

had laid down the law that the net profit of sub-contractors be estimated at 4% of the turnover?

3. Whether in the facts and circumstances of the present case, the Hon'ble ITAT was justified in confirming the appellate order of the Ld. CIT (A) in estimating the profit of the Appellant at 6 % in light of the fact that under the provisions of Section 44AD, the net profit of a main contractor is estimated at 8 % in cases of best judgment assessment U/s144 of the Act, and thus a subcontractor should be estimated at 4% for the same?"

3. Although the three questions have been framed as above, the essential question relates to whether the CIT(A) and the ITAT erred in law in not accepting the case of the Appellant sub-contractor that the estimated net profit could not be higher than 4% of the turn over?

4. While learned counsel for the Department raised a doubt whether the Appellant was, in fact, a sub-contractor, it is seen from the questions framed by this Court that the Appellant has been described as sub-contractor. Even the impugned order does not appear to doubt it.

5. Relying on the decision of the ITAT dated 10th January, 2006 in ITA No.220/CTK/2005 (*Shri Gajendra Nath Das, Cuttack v. Assistant Commissioner of Income Tax, Circle-1(1), Cuttack*) and the decision dated 22nd August, 2005, the ITAT in ITA No.650(CTK)/2004, (*ACIT, Circle-2, Cuttack v. M/s. Sagar Construction, Madhusudan Nagar, Cuttack*), Mr. Acharya, learned counsel for the Appellant assessee, contended that the accepted practice was to estimate sub-

contractor's profit at half of the profit percentage of the contractor. He submitted that the present case the contractor's profit was estimated at 8%, and therefore the assessee sub-contractor profit ought to have been estimated at 4% and not 6%.

6. Learned counsel for the Department was unable to contest the above proposition as accepted in the aforementioned decisions of the ITAT.

7. Consequently, accepting the assessee's contention, this Court holds that in the present case the estimated net profit could not have been higher than the 4% of the profit turn over. The questions framed are accordingly in favour of the Appellant assessee and against the Department. A direction is issued to give appeal effect to this decision which would in substitution of the decisions on this point of the AO, CIT(A) and the ITAT.

8. The appeal is accordingly disposed of in the above terms.

9. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

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