

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.105 of 2009

M/s. Ashok Kumar Martha **Appellant**
Mr. P.K.Harichandan

-versus-

Commissioner of Income Tax, **Respondent**
Bhubaneswar

Mr. T.K.Satpathy, Senior Standing Counsel
for the Income Tax Department

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAİK

Order No.

ORDER
07.02.2022

4. 1. The present appeal has been filed challenging an order dated 12th June, 2009 passed by the learned Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITA) dismissing appeal by the Appellant Assessee in ITA No. 286/CTK/2008 for the Assessment Year (AY) 2005-06.
2. The background facts are that the Assessee firm came into existence on 1st April, 2004 with four partners who brought in capital as under:
- | | |
|----------------------|---------------|
| “Ashok Martha | Rs.3,53,520/- |
| Amit Martha | Rs.2,00,000/- |
| Smt. Saramani Martha | Rs.2,36,373/- |
| Purnachandra Martha | Rs.3,25,000/- |
3. The return filed by the Appellant form for AY in question was picked up for scrutiny by the Assessing Officer (AO). In the Assessment order dated 13th July, 2007 the AO concluded that are sums brought in by the individual partners and introduced as

capital of the firm prior to 31st December, 2004 were acceptable. However the sum of Rs. 2,40,000/- i.e. Rs.60,000/- each introduced by the four partners as capital on 31st December, 2004 was not satisfactorily explained and therefore, should be charged to the income of the assessee.

4. During the pendency of the appeal before the Commissioner of Income Tax (Appeals) i.e. CIT (A), a remand report was called for by the CIT (A). After the receipt of the remand report, the CIT (A) again considered issue and came to the conclusion that capital contribution on 31st December, 2004 was not satisfactorily explained. The discussion in the impugned order dated 12th September, 2008 of the CIT (A) in this regard reads as under:

“The AO has given credit for the capital introduced on 01.04.2004, 10.07.2004 and 1.11.2004, he has not accepted the genuineness of only the capital contributed on 31.12.2004 by the four partners keeping in view the income returned and sources disclosed in the returns of income. He has made an observation that the opening balance and receipts of the business were not subjected scrutiny by the department. While there is some merit in this stand, the AO cannot reject the evidence in the form of returns filed before the formation of the partnership, as unreliable. All partners have shown income from business, interest, property and etc. It is uncharitable to say that there is no evidence for the income. I however, find that the AO has been extremely fair in accepting the genuineness of the capital introduced by each partner on 01.04.04, 01.07.04 and 01.11.04. He is right in concluding that the deposit of Rs.60,000/- each made on 31.12.2004 cannot be explained with reference to the income earned during the year under consideration, by each of the partners. The action of the AO in taxing a sum of Rs.2,40,000/- u/s 68 of the Act is therefore, upheld.

Coming to the argument of the appellant, that the AO has not rejected the books and therefore, the credits cannot be attributed to the undisclosed income of the firm, it is to be pointed out that if there is a credit in the books of an assessee, if no satisfactory explanation is given, the credit will be deemed to be the income of the assessee u/s 68 of the Act.”

5. Mr. Harichandan, learned counsel for the Appellant sought to argue that the AO and CIT (A) and the ITAT erred in taxing the above sum in the hands of the Assessee whereas at the highest it could have been taxed in the hands of the four individual partners. He submitted that this was an instance of demanding disclosure of ‘source of the source’ which was impermissible in law. He relied on the decisions in *Commissioner of Income Tax v. Burma Electro Corporation (2001) 252 ITR 344 (P & H)*, *Kesharwani Sheetalaya Sahsaon Allahabad v. Commissioner of Income Tax, Allahabad, (2020)-315 CTR (Allahabad)-815* and *Principal Commissioner of Income Tax-4 v. Vaishnodevi Refoils & Solvex (2018) 253 Taxman (Guj) 135*. He also pointed out that in the recent Finance Act, 2022 there is a proposal to amend Section 43-A of the Income Tax Act, 1961 with prospective effect.

6. Having considered the above submissions and the decisions cited, this Court is of the view that there is no legal infirmity in the impugned order of the ITAT in taxing the aforementioned sum of Rs.2,40,000/- in the hands of the assessee.

7. The Court notes that the CIT (A) took a very balanced approach in appreciating the remand report of the AO. It was noted that the AO had accepted the genuineness of the capital contribution on three occasions i.e. 1st April, 1st July and 1st November, 2004. However, the contribution of Rs. 60,000/- each made on 31st December, 2004 was not satisfactorily explained with reference to the cash flow statement and balance sheets, which were not produced. It was rightly noted by the ITAT that in the absence of the aforementioned two documents of the individual partners for the financial year 2004-05, it was not possible to accept the explanation offered by Assessee.

8. With the concurrent findings returned by the AO, CIT (A) and ITAT this Court is not persuaded to admit this appeal and frame the questions of law as urged by the learned counsel for the appellant.

9. The appeal is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge