IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.120 of 2013

Commissioner of Income Tax (TDS), Khurda	....	***Appellant***

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

-versus-

Neelachal Ispat Nigam Limited	....	***Respondent***

None

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
18.02.2022

Order No.

04. 1. The present appeal by the Department is directed against an order dated 10th June, 2013 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No. 296/CTK/2013 for the assessment year (AY) 2007-08.

2. The question of law sought to be urged is whether the Respondent Assessee- Deductor is not liable for deduction of TDS under Section 194H of the Income Tax Act, 1961 ('Act') on 3% guaranteed profits otherwise known as trade margin?

3. The background facts are that the Assessee-Company is in the business of production and sale of pig iron, billets, wire rods, granulated slag and other products. The Assessee has been promoted by M/s MMTC. Pursuant to an agreement executed between MMTC and the Assessee in 1999, MMTC was made the sole selling agent of the products of the Assessee. On the purchases of the Assessee's

products by MMTC, excise duty and sale tax had been paid. It was also paid on sales by MMTC to third parties. MMTC raised debit notes for trade margins at 3%. MMTC was paid a guaranteed profit on the total sales made by MMTC of the products of the Assessee.

4. The aforementioned trade margin of 3% was treated by the Assessing Officer (AO) as commission. Since the Assessee had not deducted TDS under Section 194H of the Act, the AO treated it as an Assessee in default and levied tax under Section 201 (1) of the IT Act and interest under Section 201 (1A) of the Act. According to the Assessee, although MMTC was the sole selling agent, no commission per se was paid by the Assessee to MMTC. Further, the arrangement of MMTC being the sole and exclusive agent of the Assessee was only till such time the corporate guarantee provided by the MMTC was discharged to its satisfaction.

5. The order of the AO in this regard was confirmed by the Commissioner of Income Tax (Appeals) [CIT(A)]. The Assessee then went an appeal before the ITAT. The ITAT noticed that MMTC had clarified that they were accounting for the purchase from the Assessee in their books as purchases and sales therefrom as sales. This was also informed by MMTC to the ITO (TDS) in response to the information sought under Section 133(6) of the Act. The ITAT accepted the argument that the control of MMTC over the Assessee was limited till such time the corporate guarantee provided by MMTC stood discharged. All of these factors made it clear that the 3% amount was only a guaranteed profit and not a commission on which tax was deductible under Section 194-H of the Act. Accordingly, the Assessee's appeal was allowed.

6. Having heard learned Senior Standing Counsel for the Department and having perused the impugned order of the ITAT, the Court is of the view that the conclusion reached by the ITAT is a plausible one on facts and calls for no interference.

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

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda