IN THE HIGH COURT OF ORISSA AT CUTTACK
ITA No. 117 of 2009

M/s. Maa Mangala Enterprises .... *Appellant*

Mr. Basudev Panda, Senior Advocate

-versus-

The Income Tax Officer,Ward-4, Cuttack and Others ... *Respondents*

Mr. R.S. Chimanka, Senior Standing Counsel
Mr. A. Kedia, Junior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
10.05.2022

Order No.

07. 1. The present appeal is directed against an order dated 27th August, 2009 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.156/CTK/2006 for the assessment year (AY) 1998-99.

2. While admitting the present appeal on 22nd February, 2022 the following question of law was framed by this Court for consideration:

> "Was the ITAT right in disallowing sum of Rs.4,02,600/- incurred towards transportation charges ?

3. The background facts are that the Assessee derives its income from sale of foreign liquor. Its return for the AY in question was picked up for scrutiny. In the assessment order dated 30th March, 2001, the Assessing Officer (AO) noted that the Assessee had

received credit notes totaling to Rs.4,91,350/- from M/s. Raman Distilleries Ltd. (RDL). As against this, the Assessee showed that it had received from RDL a total commission in the form of credit notes of Rs.88,750/-. Thus, the AO concluded that the Assessee had suppressed commission amounting to Rs.4,02,600/- i.e. Rs.4,91,350/- (-) minus Rs.88,750/-.

4. When the Assessee was asked to explain, it mentioned that RDL's Marketing Agent was BDA Limited through whom the purchase orders, commission, credit notes and payments were routed. It was submitted that the Assessee had received credit notes of Rs.4,91,350/- and paid Rs.4,02,600/- towards transportation through the Marketing Agent. The net amount of Rs.88,750/- had been taken by the Assessee as commission receipt and accordingly, the net "carriage inward" had been debited in the trading account. The ledger copy of the BDA Ltd. in respect of "M/s. Maa Mangala Enterprises" [as per trade licence Mr. K.K. Sahoo) duly signed by the Local Chief of BDA Limited was enclosed with the reply. It was claimed that the ledger had been defaced and destroyed by the cyclone and therefore, the figures could not be reconciled.

5. The AO, however, did not accept the above explanation and added the sum of Rs.4,02,600/- apart from other allowances to the taxable income of the Assessee.

6. The matter was then carried by the Assessee in appeal to the Commissioner of Income Tax (Appeals) who by an order dated

31st January, 2006 dismissed the appeal and confirmed the above addition. The Assessee then went before the ITAT with ITA No.156/CTK/2006.

7. Initially, by an order dated 2nd September, 2008 the ITAT disposed of the appeal remanding the matter to the AO. However, the Assessee filed M.A. No.10/CTK/2009 seeking recall of the aforementioned order since the submissions of its authorized representative (AR) were not considered by the ITAT. By an order dated 27th April, 2009 the ITAT recalled its earlier order dated 2nd September, 2008.

8. Thereafter the appeal was again heard by the ITAT and disposed of by the impugned order dated 27th August, 2009. Specific to the disallowance of the sum of Rs.4,02,600/- towards transportation charges, the ITAT observed that the Assessee had not produced any agreement with M/s. RDL to demonstrate that under an arrangement it had to incur the relevant expenditure and later claimed reimbursement. The ITAT observed that the queries posed to the AR were not satisfactorily answered. The materials produced by the Assessee did not sufficiently explain the transaction in question and, therefore, the said addition was not interfered with.

9. This Court has heard the submission of Mr. Basudev Panda, learned Senior Counsel appearing for the Appellant and Mr. R.S. Chinanka, learned Senior Standing Counsel for the Respondents.

10. Mr. Panda, learned Senior Counsel pointed out that Paper Book I submitted to the ITAT a copy of the letter of confirmation issued by the BDA Limited dated 17th April, 1998 was included. This was in the initial stage of hearing of the appeal verified by the ITAT. Mr. Panda further pointed out that RDL had engaged BDA Limited as its Marketing Agent to liaise between the supplier and the Appellant and that the said arrangement had been accepted by the Revenue for a number of AYs. Therefore, the credit note of Rs.4,02,600/- ought not to have been rejected by the ITAT.

11. The contention of the Assessee that its books were destroyed in a cyclone ought not to have been brushed aside easily by the ITAT particularly since the Assessee was located in Odisha and the problem during the AY in question was not peculiar to it. In any event, this claim could have easily been verified by the ITAT instead of entirely disbelieving the case of the Appellant.

12. The Court has perused the confirmation letter issued by BDA Ltd. Addressed to the Appellant which states that RDL had issued the credit note of Rs.4,91,350/- out of which Rs.4,02,600/- is "towards reimbursement of transportation charges (carriage inward)" borne by the Appellant at the time of delivery of stocks. It could have been possible for the AO to have summoned the Area Sales Executive of BDA Limited, who issued the above letter. For some reason, that was not done. The ITAT could have also adopted the approach earlier adopted by it in its order dated 2nd September, 2008 viz., sending the matter back to the AO for a fresh verification. Even that was somehow given up when the

ITAT again passed the subsequent order after recall of the earlier order.

13. In the circumstances, the Court is of the view that the disallowance of Rs.4,02,600/- claimed by the Appellant towards transportation charges was not justified. The question is accordingly answered in the negative i.e. in favour of the Assessee and against the Department. The impugned order of the ITAT to the above extent is hereby set aside as of the corresponding orders of the AO and CIT(A).

14. The appeal is allowed in the above terms, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.