IN THE HIGH COURT OF ORISSA AT CUTTACK
ITA No. 28 of 2011

Commissioner of Income Tax .... ***Appellant***
Aayakar Bhawan, Rajaswa Vihar

Mr. Tushar Kanti Satapathy, Sr.
Standing Counsel (ITI)

-versus-

M/s. Titanium Minerals Products Ltd. .... ***Respondent***

Mr. A. Majumdar, Sr. Advocate with
Mr. P. Ramakrishna Patro, Advocate
and Ms. Megha Agarwal, Advocate

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
06.09.2022

Order No.

7. **1.** This matter is taken up by virtual/physical mode.

2. Challenging the order dated 15th November, 2010 passed in I.T.A. No.157/CTK/2010 by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack directed against the appellate order dated 24th December, 2009 passed in I.T. Appeal No.162/2008-09 by the Commissioner of Income Tax (Appeals), Cuttack, pertaining to assessment order dated 22nd December, 2008 formulated by Assistant Commissioner of Income Tax, Circle-2(1), Bhubaneswar under Section 143 for the assessment year 2006-07 (previous year 2005-06), the Commissioner of Income Tax has preferred the Appeal before this Court under Section 260A of the Income Tax Act, 1961.

3. The Assistant Commissioner of Income Tax being aggrieved by the appellate order of Commissioner of Income Tax (Appeals) approached the Income Tax Appellate Tribunal.

The Appellate Authority-Commissioner of Income Tax (Appeals) in-appropriately on an erroneous approach deleted the addition made by the Assessing Officer by misinterpreting the provision of Section 2(22)(e) of the Income Tax Act. It is contended in this Appeal that the Assessing Authority was justified in adjudicating that the assessee was liable to pay tax as it was beneficial owner of the shares in respect of loan granted by the M/s. Multiplex Equipments and Services Pvt. Ltd., M/s. Saraf Agencies Pvt. Ltd. and M/s. Titanum Mineral Products Ltd. The Appellate Authority's order suffers infirmity as he had deleted additions by holding that assessee was not registered shareholder of any of the three Companies from which the Appellant herein had taken loans. The Income Tax Appellate Tribunal while dismissing the appeal filed by the Commissioner of Income Tax sustained the reasoning assigned by the Appellate Authority. The Commissioner of Income Tax has preferred this Appeal on the following question of law:-

> *"(i) Whether on the facts and in the circumstances of the case, the Learned ITAT is justified in deleting the additions of Rs.2,24,65,590/- made under Section 2(22)(e) of I.T. Act, 1961.*
>
> *(ii) Whether on the facts and in the circumstances of the case, the Learned ITAT is justified in holding that the provisions of Section 2(22)(e) of the I.T. Act, 1961 was applicable only in case of registered shareholders and not beneficial shareholders."*

4. On 1st August, 2022, when the matter is taken up before this Court, it was pointed out by the Counsel for the Respondents Mr. A. Majumdar, Sr. Advocate stated that the tax effect is less than Rs.1.00 crore and therefore, in terms of the Circular No.5/2019 dated 5th February, 2019 and Circular No.17/2019 dated 8th August, 2019, the present Appeal is not liable to be entertained. On the prayer of Mr. Tushar Kanti Satapathy, Senior Standing Counsel for IT time is granted to examine.

5. On the resumed hearing today, enclosing a copy of Circular No.17/2019 (F. No.279/Misc. 142/2007-ITJ(PT.) issued by Government of India, Ministry of Finance, Department of Revenue, Central Board Direct Taxes, Judicial Section dated 8th August, 2019, on instruction, Mr. Satapathy, Senior Standing Counsel for IT submitted that the tax involved in this case is Rs.75,61,918/- which is below the monetary limit prescribed for filing of appeal before this Court. Therefore, he prayed for not to press the appeal.

6. In view of such submission, the Income Tax Appeal is dismissed. However, the question of law raised in the said appeal is left upon to be decided in appropriate case.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant September 06, 2022 Cuttack