

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18868 of 2015

M/s. D.R. Patanaik

....

Petitioner

Mr. Sidhartha Ray, Advocate

-versus-

***Chief Commissioner of Income Tax,
Odisha and others***

....

Opposite Parties

Mr. R.S. Chimanka, Senior Standing Counsel along with
Mr. A. Kedia, Junior Standing Counsel
for the Income Tax Department

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

**ORDER
02.05.2022**

Order No.

06. 1. The challenge in the present petition is to an order dated 25th March, 2015 passed by the Principal Commissioner of Income Tax (PCIT), Ainthapali, Sambalpur (Opposite Party No.2) under Section 264 of the Income Tax Act, 1961 ("IT Act") rejecting the Petitioner's challenge to a reassessment order dated 21st November, 2012 passed by the Assessing Officer (AO) i.e. DCIT, Rourkela under Section 143(3)/147 of the IT Act for the Assessment Year (AY) 2008-09.
2. While directing notice to issue in the present petition on 7th December 2017, this Court stayed the operation of the impugned order dated 25th March, 2015 as well as the order dated 21st November, 2012 passed by the AO.

3. The background facts are that the Petitioner-Assessee derives income from mining. The Petitioner is the proprietor of M/s. Dipti Ranjan Patnaik, a mining concern. He filed a return of income on 29th September, 2008 for the Assessment Year (AY) 2008-09 declaring a total income of Rs.2,39,29,880/-. The return was picked up for scrutiny and the assessment was completed under Section 143(3) of the IT Act by an assessment order dated 31st December, 2010 with the AO determining the assessable income as Rs.2,88,014.90.

4. Notice under Section 148 of the IT Act was issued to the Petitioner seeking to reopen the above assessment under Section 147 of the IT Act. By a letter dated 23rd August 2012, the AO communicated the following reasons for reopening the assessment:

"From the details, it is revealed that assessee has provided temporary advance of Rs.7.96 Cr. in respect of nine concerns namely Kalinga Hatchery, Jyoti Motors, Passary Minerals, Carnex Sales Agencies P. Ltd., Altrade Expo Pvt. Ltd., RKD Construction Pvt. Ltd., Tarini Minerals Pvt. Ltd., Rudra Commercial, Epsochem Altrade for non-business purpose. Further, it is seen that assessee has raised huge secured loan and claimed interest expenses on such secured loan which were utilized for providing temporary advance to the sister concerns and accordingly, the claim of interest expenses is not at all related to business. Therefore, the interest @ 12% on the diversion of money of Rs.7.96 Cr. given for non-business purpose which comes to Rs.95,48,392/- is treated as escapement of income.

Hence, there is reason to believe that interest on the temporary advance of Rs.7.96 Cr. given for non-business

purpose which comes to Rs.95,48,392/- is income escaped assessment.

Issue notice u/s. 148 of I.T. Act., 1961."

5. Objecting to the reopening of the assessment, the Assessee submitted a letter dated 26th September, 2012 pointing out that of the advances made to certain concerns, Rs.3.44 Crores was for business purposes, Rs.1.25 Crores was given to RKD Construction (P) Ltd. for acquiring immovable property and the balance, Rs.3.27 Crores was for non-business purposes. Further, the Assessee pointed out that he had a Capital of Rs.17.55 Crores, other than borrowed funds and, therefore, he was having ample interest free funds for giving loans and advances.

6. A further show-cause notice was issued to the Petitioner on 7th November, 2012 asking him to explain why interest of Rs.69,63,062/- paid by the Petitioner should not be disallowed. The Petitioner responded to this notice on 14th November, 2012 reiterating that he had sufficient funds to make such advances and there was no nexus between the borrowed funds and such advances. Consequently, no part of the interest paid by the Assessee to banks/financial institutions was disallowable.

7. The grievance of the Petitioner is that without considering the above objection, a reassessment order was passed by the AO on 21st November, 2012, which the Assessee challenges before the PCIT under Section 264 of the IT Act.

8. In the impugned order, the PCIT has failed to deal with one of the principal grounds of challenge to the assessment order viz., that without considering the Petitioner's objection to the reopening of the assessment under Section 147 of the IT Act, the reassessment order could not have been framed and that this was contrary to the dictum of the Supreme Court in ***GKN Driveshafts (India) Ltd. v. Income Tax Officer [2003] 259 ITR 19 (SC)***. On a perusal of the impugned order, it reveals that the above objection was in fact not considered by the PCIT.

9. Although notice was issued in the present petition way back on 7th December 2017, till date no reply has been filed by the Department.

10. Having heard learned counsel for the parties, the Court is of the view that the impugned order of the PCIT is unsustainable in law in so far as it is failed to consider the principal objection of the Petitioner to the opening of the assessment. Therefore, the flaw vitiates the order of reassessment equally vitiates the impugned order of the PCIT as well.

11. In this connection, references were being made to the decision of this Court in ***Viresh Hemani v. Income Tax Officer [2021] 435 ITR 376 (Ori.)*** and the recent decision dated 15th February, 2022 passed by this Court in W.P.(C) No.25229 of 2017 (***M/s. Tuff Tubes (Orissa) Pvt. Ltd. v. The Deputy Commissioner of Income Tax***).

12. For the aforementioned reasons, the impugned order dated 25th March, 2015 of the PCIT, Sambalpur as well as the reassessment order dated 21st November, 2012 of the AO (Annexure-8) are hereby set aside.

13. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge



M. Panda