IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.11 of 2019

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

Mr. Sidharth Sankar Mohapatra,
Senior Standing Counsel for the Department

-versus-

M/s. Sarada Mines Pvt. Ltd., Keonjhar .... ***Respondent***

None

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
11.05.2022

Order No.

I.A. No.18 of 2022

03. 1. For the reasons stated therein, the delay in filing the appeal is condoned and the application is disposed of.

ITA No.11 of 2019

2. The Revenue is an appeal against the order dated 31st August, 2018 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack in ITA No.297/CTK/2017 for the Assessment Year (AY) 2008-09.

3. The question sought to be urged for consideration by this Court by the Revenue is whether the Tribunal was correct in holding that the Assessee is liable to deduct TDS under Section 194-C (payments to the contractors) and not Section 194-I (payment of hire charges) of the Income Tax Act, 1961 ('the IT Act')?

4. A perusal of the impugned order of the ITAT shows that the transaction in question as described by the authorized representative of the Assessee thus:

> "27. Before us, ld A.R. of the assessee referred to the agreement entered with the three contractors and submitted that the machines were provided by the contractor with operator. It was the responsibility of the contractor to provide diesel, repairs and ensure the upkeep and maintenance of the machines as envisaged in the agreements with the contractors. Therefore, the agreements with three contractors, namely; Jindal Steel & Power Ltd., Minerals Management Services India Pvt. Ltd. and G.S. Atwal & Co., was a contract for work and not contract for hire and hence, the assessee was liable to deduct TDS from the payments to the contractors u/s.194-C of the Act and not u/s.194-I of the Act, hence the liability determined u/s.201(1A) should be deleted."

5. Given the above nature of contract, the view taken by the Tribunal following the decision of its Pune Bench dated 12th August, 2015 in ITA No.593 of 2014 ***(DCIT v. City Corporation Ltd.)*** that the Assessee was liable to deduct TDS from the payments to the Contractors under Section 194-C and not 194-I of the IT Act was a plausible one to take.

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

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda