AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK
ITA No. 17 of 2012

Rupashree Das, Khurda	....	*Appellant*
		Mr. P.C. Sethi, Advocate
	-versus-	
Commissioner of Income Tax and Others	....	*Respondents*
		Mr. T.K. Satapathy, Senior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No. **ORDER**
10.02.2022

Dr. S. Muralidhar, CJ.

04. 1. The present appeal has been filed against the order dated 9th November, 2011 of the Income Tax Appellate Tribunal (ITAT), Cuttack Bench, Cuttack in ITA No.303/CTK/2011 for the assessment year (AY) 2006-07.

2. The appeal had been filed before the ITAT by the Assessee aggrieved by the order dated 17th March, 2011 passed by the Commissioner Income Tax under Section 263 of the Income Tax Act (IT Act) for the AY 2006-07.

3. Preceding the said order under Section 263 of the Act, a notice has been issued to the Assessee on 9th/10th February, 2010 signed by the Income Tax Officer (Tech) on behalf of the CIT, Bhubaneswar.

4. The first ground of attack therefore was that the notice was bad in law since it was not issued by the CIT himself but by an Officer

on his behalf. In support of the submission, reliance is placed by Mr. Sethi learned counsel for the Appellant on the decision of this Court in ***M/s. Kalinga Institute of Industry and Technology v. Commissioner of Income Tax, Orissa 2011 (1) ILR -CUT-290***.

5. A careful perusal of the said decisions reveals that it concerned with the proceedings under Section 12AA(3) of the IT Act and not Section 263. Secondly, while in para 4.3 the submission of learned counsel for the Assessee to the effect that the notice under Section 12 AA(3) of the Act ought to have been issued by the CIT himself and not by the ITO (Tech) was noted, there is nothing in the judgment itself to indicate this Court accepted the above submission. What is recorded in paras 5 and 6 of the judgment reads as under:

> "5. On a consideration of the submission of the learned counsel for the parties as noted hereinabove and on perusal of the impugned notice under Annexure-1 as well s the order of the Income Tax Appellate Tribunal under Annexure-6, it is clear there from that the Tribunal has held hat though power has been vested under Section 12AA (3) of the Income Tax Act in the Commissioner of Income Tax to safeguard the interest of the revenue, but such power vested in him can only to be exercised by him on a clear-cut satisfaction of the circumstances for exercise of such power. Although, the Tribunal's order quashed an earlier order of Commissioner dated 15th December 2006 under Section 12AA (3) of the Act, the same order also clarified that such power "should be utilized quite cautiously and consciously". Therefore, we have no hesitation to direct quashing of the impugned notice dated 24th September, 2009 issued under Section 12AA(3) of the Income Tax Act vide Annexure-1 to the writ petition and we order accordingly.

> 6. We make it clear that the power under Section 12AA(3) of the Income Tax Act may be exercisable by the Commissioner only on recording his satisfaction of the circumstances that may warrant the exercise of such power and to record in the notice and the basis, if at all for the initiation of such proceeding."

6. The Court is therefore, not able to agree with counsel for the Appellant that the notice under Section 263 of the IT Act issued by the Respondent is bad in law because it was not issued by the CIT himself or by an officer for him. The fact remains that the CIT did consider the response of the Appellant and passed the final order under Section 263 of the IT Act himself.

7. It was then submitted by Mr. Sethi that twin test of the order of assessment having to be prejudicial resolution to the interests of the Revenue and erroneous in law were not satisfied in the present case. Reliance is placed on the decision of the Bombay High Court in ***Commissioner of Income Tax v. Gabriel India Ltd. 203 ITR 108 (Bom)***. A perusal of the order passed under Section 263 of the IT Act by the CIT in the instant case reveals that the reasons for invocation of the said provision have been clearly stated. The twin requirements do appear to be satisfied.

8. It was then argued that the Assessing Officer (AO) failed to provide certified copies of the entire assessment record and decided to give access only to a portion thereof. In this regard, it is seen that the AO wrote the Assessee on 16th February, 2010 stating that the entire order sheet could not be given but only such of individual entries as are referred to in an appealable order or have any connection therewith may be supplied to the assessee on

application. As regards the other particulars the Assessee was asked to please specify the "particular document of which you need a certified copy or if you like, you may inspect the relevant assessment record during office hours on any working day."

9. The Court does not find any illegality committed by the AO and giving the Assessee the restricted access to the assessment record. The Court is therefore not satisfied that any illegality has been committed by the CIT or by the ITAT warranting interference. No substantial question of law arises.

10. The appeal is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/P.A.