IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.7 of 2020

M/s. Ashirvad Infrastructures .... ***Appellant***
Mrs. Susmita Pattnaik, Advocate

-versus-

Commissioner of Income Tax, Bhubaneswar .... ***Respondent***
Mr. T.K.Satpathy, Senior Standing Counsel for the Income Tax Department

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

Order No.

ORDER
07.04.2022

4. 1. This is an appeal by the Assessee directed against an order dated 11th September, 2019 passed by the Income Tax Appellate Tribunal, Cuttack (ITAT) in ITA No. 255/CTK/2018 for the Assessment Year (AY) 2015-16. While admitting this appeal for hearing on 25th November, 2021, following question was for framed for consideration:

(i) Whether the Tribunal was justified in following the percentage completion method for calculating the profits of the Assessee for the Assessment Year in question and determining the net profit @ 6.45%?

(ii) Whether the Tribunal is justified in declining the Appellant time for production of books of account?

2. The background facts are that the Appellant firm is engaged in real estate Business and is also a builder. Its accounts have been audited as per Section 44AB of the Income Tax Act, 1961(Act).

For the AY 2015-16 the gross total income disclosed was Rs.8,08,190/- which was also its taxable income. By way of self assessment in terms of the return filed on 1st October, 2015 the assessee paid Rs. 2,73,948.00 towards tax in interest. The audit report was also uploaded on the Income Tax portal. The return of the assessee was processed of the under Section 143 (3) of the Income Tax Act and subsequently, a notice under Section 143(2) of the Act was served. The Assessee appeared before the Income Tax Officer (ITO)/ Assessing Officer (AO) through counsel on 25th September, 2019 and filed the Audited Accounts, copy of bank statement, copy of the Computation of Income and ITR-V. A written submission was also filed by the authorized representative (AR) of the Appellant.

3. It is stated that after perusing the relevant documents/records, the AO passed the impugned assessment order dated 28th December, 2017. It is stated that the Assessee has been consistently following the 'Completed Services Contract Method' which was also accepted by the Department. In the preceding years there has been no change in the method of Accounting/Revenue Recognition. Nevertheless in the assessment order, AO estimated the profit @ 15% on the closing stock of Rs. 1,88,08,700/-.

4. The appeal filed by the Assessee was dismissed by the Commissioner of Income Tax (Appeals) [CIT (A)]. The ITAT while disposing of the further appeal by the Assessee by the impugned order has reduced the net profit @ 6.45% on the value of unsold closing stock.

5. It is pointed out by the learned counsel for the Assessee that on the unsold closing stock no profit percentage could have been applied to arrive at an estimated profit. In other words, it is submitted that without sale of the commodities, the question of estimating profit on the basis of percentage of the value of closing stock would not arise. It is further pointed out that the audited accounts of the Assessee have been accepted by the Department and therefore, no there was no logic in going in for an estimated profit on the basis of the valuation of the closing stock.

6. Mr. Satapathy, learned counsel appearing for the Department sought to submit that the Assessee's own case was that the net profit could be 6.45% on the value of the unsold closing stock and that since this was an admitted position no interference was called for.

7. Having considered the above submissions, the Court is of the view that there is merit in contention of the Assessee that there cannot be an estimate of net profit on the basis of the value of 'unsold closing stock'. Without there being sales of the stock it would not be possible to estimate the net profit. Moreover, there has been no rejection of the books of account of the Assessee which reflects the 'Completed Services Contract Method' of accounting consistently followed by the Assessee. This was lost sight of by the ITAT as well as the CIT (A). That this has been the consistent practice of the Appellant was easily verifiable from the returns already filed in the earlier AYs.

8. In that view of the matter, the questions framed by this Court are answered in favour of the Assessee and against the Department by holding that the ITAT was not justified in following the percentage completion method for calculating the profit of the Assessee for the AY in question and determining the net profit @ 6.45%. The ITAT also erred in declining the Appellant Assessee an opportunity of producing its books of account. The impugned order of the ITAT and the corresponding orders of the CIT (A) and the AO on this point are hereby set aside.

9. The appeal is accordingly disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge

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