

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.32 of 2018

***Principal Commissioner of
Income Tax-1***

....

Appellant

Mr. S. Jolly, Advocate

-versus-

***Indian Metals and Ferro Alloys
Ltd.***

....

Respondent

Mr. T.K.Satpathy, Senior Standing Counsel
for the Income Tax Department

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

Order No.

**ORDER
14.07.2022**

13. 1. This is an appeal by the Revenue against an order dated 13th October, 2017 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITA) which is common to two appeals: one an appeal by the Revenue in ITA No. 22/CTK/2015 and the other by the Respondent Assessee in ITA 472/CTK/2014, both pertaining to the Assessment Year (AY) 2011-12.
2. The operative portion of the impugned order is to the effect that both the appeals which were directed against an order dated 7th November, 2014 of the Commissioner of Income Tax (Appeals) [(CIT)(A)] were 'allowed'.
3. The grievance of the Revenue as far as the present appeal is concerned is that its appeal before the ITAT was in fact directed against the original order 14th October, 2014 of the CIT (A) and

not the subsequent order dated 7th November, 2014 which is an order by way of rectification of the earlier order dated 14th October, 2014 of the CIT (A). The Revenue accordingly prays before this Court that the ITAT should be asked to re-hear the Revenue's appeal vis-à-vis the original order dated 14th October, 2014 of the CIT (A).

4. The background facts are that against an assessment order dated 14th March, 2014 under Section 143(3) of the Income Tax Act, 1961 (Act) for the aforementioned AY 2011-12, the Respondent Assessee went in appeal before the CIT (A) which appeal came to be allowed by the CIT(A) by the order dated 14th October, 2014. Thereafter, on his own the CIT (A) sought to exercise power under Section 154 of the Act and purportedly 'rectified' the order dated 14th October, 2014 thereby passing a rectification order dated 14th November, 2014. This was a 10 page order where under the purported grab of 'rectification' certain claims of the Respondent Assessee were in fact disallowed resulting in affirming certain portions of the assessment order. The net result was that the Assessee's appeal which had been entirely allowed by the CIT (A)'s original order dated 14th October, 2014 stood now only partly allowed in terms of the CIT (A)'s rectification order dated 7th November, 2014.

5. Contending that this course of action was impermissible for the CIT (A) to adopt under Section 154 of the Act, the Assessee assailed the said rectification order dated 7th November, 2014 by filing ITA No.472/CTK/2014 before the ITAT. After the

Assessee filed the above appeal, the Revenue filed a cross appeal being ITA No. 22/CTK/2015 against the same order dated 7th November, 2014 of the CIT (A). In fact the Revenue could not have been aggrieved by the rectification order since it accepted only part of the claim of the Assessee. The Revenue was, if at all, aggrieved by the original order dated 14th October, 2014. For some reason in its appeal before the ITAT, the Revenue chose not to challenge that order dated 14th October, 2014 but challenged only the rectification order dated 7th November, 2014.

6. In the impugned order the ITAT noted that the power of the CIT (A) under Section 154 of the Act was to 'rectify only obvious and patent mistakes apparent from the record' and that as explain by the Supreme Court in ***T.S. Balaram, Income Tax Officer v. Volkart Brothers 82 ITR 50 (SC)*** even such mistake must be 'an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. A decision on a debatable point of law is not a mistake apparent from the record'.

7. Accordingly the CIT (A)'s rectification order dated 7th November, 2014 was set aside by the ITAT by the impugned order and since both the Revenue and the Assessee had challenged the said order, the ITAT allowed both the appeals.

8. Soon thereafter both the Assessee as well as the Revenue filed applications under Section 254 (2) of the Act before the ITAT pointing out certain obvious errors in the impugned order of the

ITAT. While M.A. No. 42/CTK/2017 was filed by the Assessee and M.A. No. 11/CTK/2018 was by the Revenue. According to the Revenue the ITAT ought to have examined its appeal as a challenge to the original order dated 14th October, 2014 of the CIT (A) and not the rectification order dated 7th November, 2014. According to the Assessee there was a mistake in allowing the appeal of the Revenue which was in fact not maintainable in the first place since the rectification order which was challenged by the Revenue was in fact not adverse to the Revenue. The point made was that the operative order of the ITAT ought to have been to allow the appeal of the Assessee and dismiss the appeal of the Revenue.

9. On both this applications i.e. M.A. No. 42/CTK/2017 by the Assessee and M.A. No. 11/CTK/2018 by the Revenue, a common order has been passed on 24th June, 2022 by the ITAT, disposing of the applications and rectifying the operative line of the order dated 13th October, 2017 (which is under challenge in the present appeal) to the effect that the appeal of the Assessee against the rectification order dated 7th November, 2014 of the CIT (A) was allowed and the appeal of the Revenue against the same order was dismissed.

10. Mr. T.K.Satpathy, learned Sr. Standing Counsel for the Revenue urged that he would want to seek instruction what course of action the Revenue should adopt now with a subsequent order dated 24th June, 2022 of the ITAT. Mr. Sachin Jolly, learned counsel appearing for the Assessee on the other hand points out that if aggrieved by the order dated 24th June, 2022 it would

always be open to the Revenue to do so in separate proceedings. He submits that as far as the present appeal is concerned, since the Revenue was intending to challenge the original order of the CIT (A) which it did not, but only challenged the rectification order dated 7th November 2014, which he could not have, there is no merit in the present appeal whatsoever.

11. Having considered the above submissions, it appears to this Court that the course of action that the Revenue intended to adopt viz., to challenge the original order dated 14th October, 2014 of the CIT (A) before the ITAT was perhaps inadvertently not adopted by it since the prayer in the appeal of the Revenue before the ITAT was only to set aside the CIT (A)'s rectification order dated 7th November, 2014. Consequently, the ITAT correctly proceeded on the basis that order which was under challenge before it by the Revenue was the CIT (A)'s order dated 7th November, 2014 under Section 154 of the Act. The CIT (A)'s order dated 7th November 2014, as pointed out by the ITAT, was a 10 page order, which in fact changed the result of the appeal of the Assessee which had originally been allowed by the CIT (A) by the order dated 14th October, 2014. Consequently, the Court finds no error having committed by the ITAT in setting aside the CIT (A)'s rectification order dated 7th November, 2014.

12. As regards the subsequent order passed by the ITAT on 24th June 2022, if the Revenue is aggrieved by such order it will be open to the Revenue to challenge it in accordance with law in other appropriate proceedings.

13. For the aforementioned reasons, the Court declines to interfere with the impugned order of the ITAT. No substantial question of law arises therefrom.

14. The appeal is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge



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