IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.3 of 2018

Principal Commissioner of Income Tax, Sambalpur	....	***Appellant***

Mr. Sidharth Sankar Mohapatra, Senior Standing Counsel

-versus-

M/s. S. C. Padhee, Sambalpur	....	***Respondent***

None

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
23.03.2022

Order No.

Misc. Case No.1 of 2018

02. 1. For the reasons stated therein, the delay in filing the appeal is condoned. The application is accordingly disposed of.

ITA No.3 of 2018

2. This appeal by the Revenue challenges an order dated 4th August, 2017 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.495/CTK/2014 for the Assessment Year (AY) 2010-11.

3. By the impugned order, the ITAT upheld the deletion by the Commissioner of Income Tax (Appeals)-II, Bhubaneswar [CIT(A)] of the addition made by the Assessing Officer (AO) under the heads of "remuneration to the working partners" and "ground loss/shortage". However, the ITAT set aside the order of the CIT (A) on the issue of suppressed sale on which ground an addition

had been made by the AO and remanded it to the file of the AO for a fresh adjudication after considering the report of the Principal Surveyor of the Department of Mines and after allowing reasonable opportunity to the Assessee.

4. As far as remand to the AO is concerned, the Court is of the view that it does not give rise to any substantial question of law.

5. On the issue of disallowance of remuneration to the working partners, the Court notes that the CIT(A) had relied on the decision of the Himachal Pradesh High Court in ***CIT v. Anil Hardware Store, (2010) 323 ITR 368 (HP)*** and the Tribunal's own decision in ***CIT v. Suman Constructions (2009) 34 SOT 495 (Pune)***. The disallowance of the deduction by the AO was on the ground that the partnership deed did not provide how remuneration to the partners was to be quantified. The above decisions support the view of the Assessee that the remuneration payable to the partners has only to be authorised by the partnership deed and not necessarily quantified.

6. Nothing has been shown by the Revenue to doubt the correctness of the above conclusion concurrently arrived at both by the CIT (A) and ITAT. Consequently, no substantial question of law arises on this score.

7. As regards the deduction disallowed by the AO, and allowed by the CIT(A) and ITAT on account of ground loss, CIT(A) noted that there were two kinds of losses: those at the Railway siding and those at the Port. The CIT(A) found that there was no logic behind the AO in computing the ground loss at 10.57% when the actual loss worked out to 11.93%. Here again the Revenue has not been

able to point out any serious error in the order of the CIT(A) or the ITAT in arriving at the conclusion that the entire ground loss have to be allowed as claimed by the Assessee. Consequently, no substantial question of law arises even on this score.

8. The appeal is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda