IN THE HIGH COURT OF ORISSA AT CUTTACK
ITA No. 31 of 2018

Principal Commissioner of Income Tax-I, Bhubaneswar	....	***Appellant***

Mr. T.K. Satapathy, Senior Standing Counsel

-versus-

Indian Metals & Ferro Alloys Ltd., Rasulgarh, Bhubaneswar	....	***Respondent***

Mr. Sachit Jolly, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE A.K. MOHAPATRA

Order No. **<u>ORDER</u>**
14.03.2022

11. 1. The present appeal by the Revenue is directed against the 25th October, 2017 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.48/CTK/2014 and ITA No.74/CTK/2014 for the assessment year (AY) 2008-09.

2. While admitting this appeal, on 10th February, 2020 the following questions of law were framed for consideration:

> "A) Whether on the facts and circumstances of the case and in law, the learned Tribunal is justified in holding that when the complete materials were not produced nor were available with the Assessing Officer (AO) during the course of original assessment proceedings, the Assessing Officer cannot reopen the assessment under Section 147 of the IT Act, 1961 even as the income chargeable to tax had escaped assessment ?

> B) Whether on the facts and in the circumstances of the case and in law, the learned Tribunal was justified in not appreciating the fact that non-deduction of tax under Section 195 of the IT Act had rendered the assessment under-assessed and whether clause (c) of Explanation 2 in the Section 147 of the IT Act had thus been patently ignored by the learned Tribunal ?"

3. On perusal of the impugned of the ITAT reveals that in the original assessment proceedings the Assessee had produced various documents, books of accounts on the basis of which the assessment order was passed by the Assessing Officer (AO) as noted in para 14, the Assessee submitted copies the audited balance sheet, e-return, TDS on the commission paid, the TDS details, travelling and conveyance commission under the head selling expenses. Further, in respect of disallowance under Section 43-B of the IT Act the Assessee had made a disclosure in Schedules I and N at point N in the accounts. This persuaded the ITAT to observe in para 17 that the recorded reasons for reopening of the assessment made no reference to 'any fresh tangible information' which came to the notice of the AO after completion of the original assessment under Section 143(3) on 29th December, 2010 for the AY 2008-09.' A reference was made to the decision of the Supreme Court of India in ***CIT v. Kelvinator of India Ltd. 320 ITR 561 (SC).*** Even as regards the second question regarding Section 195(1), (2) and (3) of the IT Act, there was no fresh material to enable the AO to form a subjective satisfaction regarding income having escaped assessment.

4. Having heard learned counsel for the parties and having carefully perused the impugned orders, the Court is satisfied that

the questions framed are to be answered in the affirmative i.e. in favour of the Assessee and against the Department. Indeed, there appears to have been no fresh material on the basis of which the AO could have formed reason to believe that income had escaped assessment on the above grounds.

5. The appeal is accordingly dismissed, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(A.K. Mohapatra)
Judge

S.K. Jena/P.A