**IN THE HIGH COURT OF ORISSA AT CUTTACK**

AFR

**ITA No.20 of 2017**

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| ***Principal Commissioner of Income Tax, Bhubaneswar*** | .... | ***Appellant*** |

Mr. T.K. Satapathy,
Sr. Standing Counsel Income Tax Deptt.

*-versus-*

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| ***Orissa Mining Corporation Ltd.*** | .... | ***Respondent*** |

Mr. S. Ray, Advocate

**CORAM:**

**THE CHIEF JUSTICE**
**JUSTICE A.K. MOHAPATRA**

**ORDER**
**25.02.2022**

**Order No.**

***Dr. S. Muralidhar, CJ.***

07. 1. The matter is taken up through hybrid arrangement (virtual/physical mode).

2. This is an appeal filed by the Revenue against an order dated 21st April, 2017 passed in ITA No.372/CTK/2015 for the assessment year 2008-09. The question of law sought to be urged by the Revenue is: 'whether the Tribunal is correct in quashing the reassessment order dated 30th January, 2015 of the Assessing Officer (AO) on the ground that it was completed without issuing notice to the assessee under Section 143 (2) of the Income Tax Act, 1961 (for short 'the Act')?

3. Mr. T.K. Satpathy, learned counsel for the Revenue placed reliance on the judgment of the Delhi High Court in the case of ***Commissioner of Income Tax v. Madhya Bharat Energy***

***Corporation Ltd (2011) 337 ITR 389 (Del)***, which purportedly supports the Revenue's point of view.

4. In response to the same, Mr. S. Ray, learned counsel for the assessee draws attention of this Court to the subsequent judgment in the case of ***Pr. Commissioner of Income Tax-08 v. Shri Jai Shiv Shankar Traders Pvt. Ltd. (2016) 383 ITR (Del) 448***, wherein in para-9 it has been noted as under:

> "9. Dr. Rakesh Gupta, learned counsel appearing for the Assessee, at the outset drew the attention of this Court to an order passed by this Court on $17^{th}$ August, 2011 in Review Petition No.441/2011 in ITA No.950/2008 (*CIT v. Madhya Bharat Energy Corporation*) whereby this Court reviewed its main judgment in the matter rendered on 11st July, 2011 on the ground that the said appeal had not been admitted on the question concerning the mandatory compliance with the requirement of issuance of notice under Section 143(2) of the Act. In its review order, this Court noted that at the time of admission of the appeal on $17^{th}$ February, 2011 after noticing that in the said case that no notice under Section 143(2) had ever been issued, the Court held that no question of law arose on that aspect. The upshot of the above discussion is that the decision of this Court in *CIT v. Madhya Bharat Energy Corporation* (*supra*) is not of any assistance to the Revenue as far as the issue in the present case is concerned."

5. As a result, the decision in *Madhya Bharat Energy Corporation Ltd (supra)* does not any longer support the case of the Revenue.

6. Mr. Satpathy next relied on the decision of the Supreme Court in the case of ***Commissioner of Income Tax, Shillong v. Jai Prakash Singh (1996) 3 SCC 525***. The Court notes the said a case arose out of a challenge to an assessment order and not a re-assessment order and examined the effect of non-service of notice under Section 143 (2) of the Act in that context.

7. However, in the context of reopening of assessment, as a result of block assessment proceedings, the Supreme Court in ***Assistant Commissioner Income Tax v. Hotel Blue Moon (2010) 321 ITR 362 (SC)*** has held that the completion of an assessment pursuant to block assessment proceedings without notice under Section 143(2) of the Act and within the time prescribed therein is fatal to such assessment. The said decision of the Supreme Court that was relied on in the decision of the Delhi High Court in ***Shri Jai Shiv Shankar Traders Pvt. Ltd.*** *(supra)***,** which has answered the very question raised by the Revenue here against it and in favour of the Assessee.

8. Finally it was submitted by Mr. Satapathy, that although the Assessing Officer did not issue notice under Section 143 (2) of the Act, he had issued a letter to the Assessee beyond the time within which the notice should have been issued. This Court is not able to accept that the sending of such letter belatedly constitutes compliance with the mandatory requirement of a notice under Section 143 (2) of the Act.

9. Consequently, this Court is not inclined to entertain the appeal by framing the question urged by the Revenue. The appeal is accordingly dismissed.

10. Issue urgent certified copy as per rules.

***(Dr. S. Muralidhar)***
***Chief Justice***

***( A.K. Mohapatra )***
***Judge***

R.K. Singh/U. Sahoo