

IN THE HIGH COURT OF ORISSA AT CUTTACK**ITA No. 53 of 2017**

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

Mr. T.K. Satapathy, Senior Standing Counsel
-versus-

M/s. Orissa State Police Housing & Welfare Corporation Ltd. ***Respondent***

Mr. A.K. Parija, Senior Advocate along with
Mr. B.C. Mohanty and Mr. D.K. Mohanty, Advocates

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

Order No.

ORDER
26.04.2022

Dr. S. Muralidhar, CJ.

03. 1. This appeal by the Revenue is directed against an order dated 7th June 2017 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.223/CTK/2014 for the Assessment Year (AY) 2009-10.

2. The Revenue seeks to urge the following question for consideration by this Court in assailing the above order of the ITAT:

“Whether the Tribunal was justified in setting aside the order of the Commissioner of Income Tax (CIT) under Section 263 of the Income Tax Act, 1961 (Act) directing the Assessing Officer (AO) to redo the assessment after verifying the valuation, made by the Assessee, of the Work in Progress (WIP) disclosed in its return of income and further, the profit element contained therein?”

3. The facts in brief are that the Respondent Assessee which is *inter alia* engaged in the construction of buildings filed its return of income for the AY in question disclosing an income of Rs.9,20,48,485/-. In terms of a revised computation, the Assessee declared a taxable income to the extent of Rs.11,58,48,250/-. The return was selected for scrutiny and notice under Section 143 (2) of the Act was issued to the Assessee. Thereafter, notice under Section 142(1) of the Act along with questionnaire was also issued.

4. In the assessment order dated 22nd December 2011, the AO dealt specifically with two issues in which the discrepancies were found viz., ‘Transport hire charges and Helicopter hire charges’ and ‘Disallowance of depreciation on building’.

5. The CIT called for the assessment record and *inter alia* noticed that the profit in respect of the WIP worked out @8.56%, which translated as Rs.4,95,96,982/- should have been disclosed as income during the year but the same was not shown. It was further stated that “the AO also did not add the impugned amount to the total income while completing the assessment”. On that basis forming the view that the assessment order was erroneous as it was prejudicial to the interest of the Revenue, a show cause letter dated 7th February 2014 was issued to the Assessee, asking it to explain “why the assessment order for AY 2009-10 should not be modified/ cancelled under Section 263 of the Act”.

6. After the Assessee appeared and made his submissions, the CIT concluded in Para-5 of the order dated 29th March 2014 as under:

“I have carefully examined the facts of the case, the case record and the submissions made on behalf of the Assessee. The basic issue in the instant case is the valuation of work-in-progress (WIP) and profit element contained therein. In accordance with the accounting standard-7 which is mandatory for percentage completion method, the profit in respect of WIP has to be accepted as income. The Assessee’s contention is that the same has been done so. This contention of the Assessee needs further verification and therefore the matter is set-aside and restored to the file of the AO for redoing the assessment after offering proper opportunity to the Assessee. While redoing the assessment, the AO is to verify the total income shown in the revised computation of income as well as the calculation of interest U/s.234C of the Act.”

7. The above order was assailed by the Assessee before the ITAT by filing ITA No.223/CTK/2014.

8. In the impugned order dated 7th June 2017, the ITAT noticed *inter alia* in Para-6 as under:

“We find that in the instant case, it is not in dispute that during the course of assessment, the Assessing Officer called for details of closing work-in-progress, which was furnished by the Assessee and was also examined by the Assessing Officer. It is not the case of the Id Commissioner of Income Tax that the Assessing Officer has not examined the valuation of closing work in progress. That being so, in our considered view, the Id Commissioner of Income Tax could have interfered with the order of the Assessing Officer u/s.263 only when it finds that the conclusion of the Assessing Officer is either erroneous in fact or erroneous in law. Without returning a clear finding that the order of the Assessing Officer was erroneous, the Id Commissioner of Income Tax could not interfere with such an order u/s.263 for making a fishing or roving enquiry.”

9. The ITAT further observed that in terms of Section 263 of the Act, the CIT could either have himself verified the submissions of the Assessee or could have got it verified by the other agencies and thereafter could have come to a conclusion whether the order of the AO was actually erroneous. Since that was not done, the order of the CIT was set aside as being untenable in law.

10. This Court has heard the submissions of Mr. T.K. Satapathy, learned Senior Standing Counsel for the Department and Mr. A.K. Parija, learned Senior Counsel appearing for the Respondent.

11. Relying on the judgment of the Madras High Court in *M/s. TTK LIG Ltd. v. The Assistant Commissioner of Income Tax Company Circle III (2), (2012) 346 ITR 452*, Mr. Satapathy submits that it was not incumbent on the CIT to have himself verified the submission of the Assessee before remanding the matter to the AO for a fresh assessment. According to him, it was sufficient that the CIT formed an opinion that the assessment order was erroneous and prejudicial to the interests of the Revenue.

12. Mr. Parija, learned Senior Counsel on the other hand, pointed out that after noting the submission of the Assessee that it had in fact accounted for the profit element in the WIP, the CIT simply remanded the matter to the AO stating that the said submission required to be verified. There was no doubting by the CIT of the submission made by the Assessee that in fact it had accounted for the profit element in the WIP. In other words, there was no real

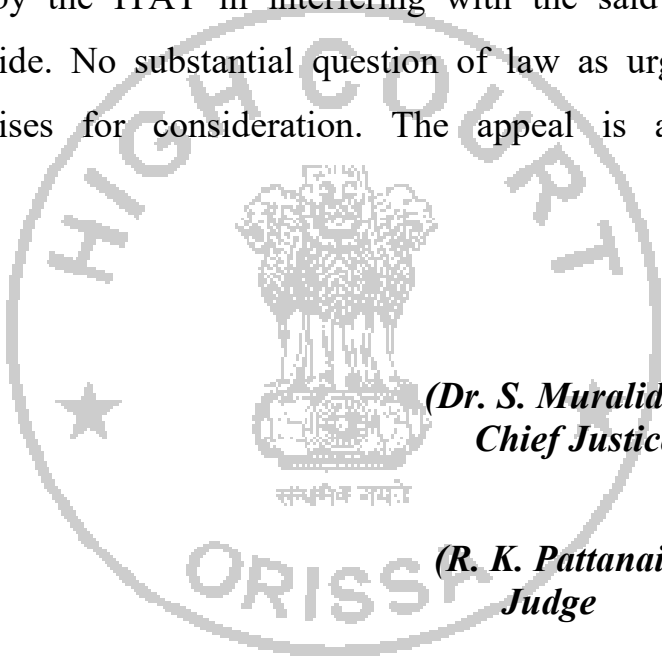
formation of an opinion that the order of the AO was erroneous much less that it was prejudicial to the interests of the Revenue.

13. The submissions of the learned counsel for the parties have been considered. While the order of the CIT sets out its conclusion in Para-3 that the assessment order is erroneous and prejudicial to the interests of the revenue, this can only at best be considered to be conclusion without the reasons being spelt out. In fact, it is only in Para-5 that the CIT discloses reasons why the matter was being remanded to the AO. What appears to have weighed with the CIT was only this viz., that the Assessee did not account for the profit element in the WIP in accordance with Accounting Standard - 7. When the Assessee appeared before the CIT, the Assessee contradicted this assumption and contended that it had in fact accounted for the profit element in the WIP. There is nothing in the order of the CIT that indicates that the CIT formed a view that the above contention of the Assessee was erroneous by examining the order of the AO. As rightly pointed out by the ITAT in the impugned order, the AO had in fact called for the details of the closing WIP which had been furnished by the Assessee and had examined it. If the CIT was of the view that the AO had not examined this issue at all, it could then led to the conclusion that the order of assessment was erroneous. That is not, however, the case here. The CIT simply decided that even for verification of the correctness of the submission of the Assessee, the matter had to be remanded to the AO.

14. Section 263 of the Act requires the CIT, after hearing the Assessee, to pass an order by making “such enquiry as he deems

necessary”. The purpose of such an enquiry would be to arrive at a subjective view that the order of the AO was erroneous in so far as it is prejudicial to the interest of Revenue. Even if such enquiry may not be mandatory, there has to be some basis on which the CIT can form such a view. In the present case, the basis for forming a view that the profit element in the WIP was not accounted for by the Assessee is absent in the order of the CIT.

15. Consequently, the Court is unable to find any error having been committed by the ITAT in interfering with the said order and setting it aside. No substantial question of law as urged by the Revenue arises for consideration. The appeal is accordingly dismissed.

The seal of the Orissa High Court is a circular emblem. It features the Ashoka Lion Capital in the center, with the motto 'Satyameva Jayate' in Devanagari script below it. The words 'HIGH COURT' are written in an arc at the top, and 'ORISSA' is written in an arc at the bottom. A five-pointed star is positioned to the left of the central emblem.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S.K. Guin