IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.18 of 2010

Smt. Lopamudra Mohapatra .... ***Appellant***
Mr.B.K. Mohanty, Sr. Advocate
Assisted by Mr. Adhiraj Mohanty, Advocate

-versus-

Income Tax Officer, Bhubaneswar and another .... ***Respondents***
Mr. T.K. Satapathy, Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

ORDER
08.02.2022

Order No.

10. 1. The present appeal arises from an order dated 21st December, 2009 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.266/CTK/2007 for the Assessment Year (AY) 1999-2000.

2. Admit. The following substantial questions of law are framed for consideration:

> (i)Whether on the facts and circumstances of the case the AO, the CIT (A) and the ITAT were correct in refusing the benefit under Section 54F of the Income Tax Act, 1961 ('Act') to the Appellant Assessee?"
>
> (ii) Whether the ITAT erred in relying on the Full Bench decision of the ITAT in ***ITO v. Sushila M. Jhaveri (2007) 292 ITR 1*** and overlooking the decision of the coordinate Benches of the ITAT in the case of ***Smt. Santilata Mohanty*** (decision dated 13th May 2005 in ITA No.243/CTK/2000), ***Shri Prem Prakash Bhutani*** (decision dated 2nd April 2006 in ITA No.5598/Del/1998) and ***Satarupa***

Nayak v. ITO (decision dated 8th September, 2006 in ITA No.503/CTK/2005)?

3. This Court has heard the submissions of Mr. B.K. Mohanty, learned Senior counsel for the Appellant and Mr. T.K. Satapathy, learned Standing Counsel for the Department.

4. A perusal of the impugned order of the ITAT reveals that on the issue of whether the claim for exemption should be not under Section 54 but under Section 54-F of the Act, the ITAT relied on the decision of the Full Bench in ***Sushila M. Jhaveri*** (*supra*) which was by a Larger Bench of the ITAT instead of following the coordinate Benches in ***Satarupa Nayak, Santilata Mohanty*** and ***Prem Prakash Bhutani*** which were all in favour of the Assessee.

5. The admitted position is that the Larger Bench decision of the ITAT in ***Sushila M. Jhaveri*** now stands overruled by the Andhra Pradesh High Court in ***Commissioner of Income Tax v. Sayed Ali Adil (2013) 352 ITR 418 (AP)***. The SLP filed by the Department against the decision of the Andhra Pradesh High Court in ***Sayed Ali Adil*** admittedly has been dismissed by the Supreme Court of India. Thus the judgment of the Andhra Pradesh High Court in ***Sayed Ali Adil*** has attained finality.

6. In that view of the matter, the ITAT's reliance on the decision of ***Sushila M. Jhaveri*** cannot be sustained in law. Thus, the questions framed are answered in favour of the Assessee and against the Department by holding that

(i) The AO, the CIT (A) and the ITAT were incorrect in refusing the Appellant Assessee the benefit under Section 54F of the Act; and

(ii) the ITAT erred in ignoring the decision of the coordinate Benches of the ITAT in ***Satarupa Nayak, Santilata Mohanty and Prem Prakash Bhutani.*** The impugned order of the ITAT and the corresponding orders of the AO and the CIT (A) are accordingly hereby set aside. The appeal is allowed, but in the circumstances, with no order as to costs.

7. The appeal is disposed of in the above terms.

8. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

KC Bisoi