IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.31 of 2005

M/s. Ashirbad Prakashan Pvt. Ltd. .... ***Appellant***

Mr. Sidhartha Ray, Advocate

-versus-

Commissioner of Income Tax, Orissa and another .... ***Opposite Parties***

Mr. T.K. Satapathy, Senior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
02.02.2022

Order No.

05. 1. This matter is taken up by video conferencing mode.

2. Admit. The following question of law is framed for consideration:

> "Whether the ITAT is legally correct in holding that the addition of Rs.29,53,544/- is justified when such addition has been made on consideration of materials partly relevant and partly irrelevant and is also based on suspicion, conjecture and surmises having no nexus with the facts and materials on record and whether such a finding of the ITAT is not contrary to the law laid down by the Hon'ble Supreme Court in *37 ITR 151* and *26 ITR 736*?".

3. The present appeal arises from an order dated 28th May 2004 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.440/CTK/2001.

4. The facts in brief are that for the Assessment Year (AY) in question i.e. 1998-99, the Appellant-Assessee filed its return of

income disclosing a net loss of Rs.8,43,862/-. The return was picked up for scrutiny and the Assessing Officer (AO) while examining the list of sundry creditors came across an outstanding liability of Rs.1.33 crores in the account of one M/s. Universal Paper Enterprisers, Naya Sarak, Cuttack towards purchase of newsprint from the said entity to the tune of Rs.2,16,73,543/-. Of the above expenditure, the AO disallowed a sum of Rs.29,53,544/- and granted relief only to the extent of Rs.1,87,19,999/-.

5. Mr. Ray, learned counsel for the Appellant-Assessee points out that the disallowance by the AO of the above sum was based entirely on surmises and conjectures, and not on the books account produced before him. The only reason for disallowing the amount was that it was paid in cash. Nevertheless, according to Mr. Ray, it did not impinge on the genuineness of the transaction.

6. The Appellant-Assessee appears to have placed all the relevant details including the exact quantity of newsprint required for a daily circulation of 85,000 newspapers. The disallowance of a substantial sum of Rs. 29,53,544/- had to be based on some credible and relevant material. On the other hand, it appears from a perusal of the assessment order that it was based only on suspicion and surmises and was not supported by the record of the case.

7. The question formulated by this Court is therefore answered in the negative i.e. in favour of the Appellant-Assessee and against the Department. It is held that the ITAT erred in upholding the disallowance by the AO of Rs.29,53,544/- particularly since it was based entirely on surmises and conjectures. The impugned order of

the ITAT, and the corresponding orders of the AO and CIT (A) are accordingly set aside. The appeal is allowed, but in the circumstances, with no orders as to costs.

8. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos. No.514 and 515 dated 7th January, 2022.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S.K. Guin