

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No. 59 of 2018

Nababharat Shiksha Parishad

....

Appellant

Mr. Ajit Ku. Roy, Advocate

-versus-

Deputy Commissioner of Income Tax ...

Respondent

Mr. R.S. Chimanka, Senior Standing Counsel

Mr. Abhinash Kedia, Junior Standing Counsel

CORAM:

THE CHIEF JUSTICE

JUSTICE M.S. RAMAN

Order No.

ORDER
15.12.2022

04. 1. While admitting the present appeal on 3rd September, 2021 the following questions were framed for consideration:

“(i) Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was right in law in sustaining the order of the Commissioner of Income Tax (Appeal)-2 without any decision on merit in respect of jurisdiction of the Assessing Officer to complete the scrutiny assessment in violation of CBDT guidelines for scrutiny assessment (assessment year 2010-11) published on 10.9.2011 ?

(ii) Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was right in law to uphold the findings of the Commissioner of Income Tax (Appeals)-2 on diversion of funds Rs.88,04,000/- in violation of provisions of section 11(5) and 13(1)(d) of the Act although the Appellant’s case falls u/s 11(1) of the Act ?

(iii) Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal

was right in law in confirming the addition of Rs.88,04,000/- despite the said advance is not an investment or deposit as per Section 10(23C)(vi) of the Act ?

2. As far as question No.(i) is concerned, it is relevant to note that the Central Board of Direct Taxes had issued guidelines dated 10th September, 2011. *Inter alia* this concerns the selection of cases for scrutiny. As far as the Appellant is concerned, the relevant clause of the guideline reads as under:

“(g) Assessing Officer may select any return for scrutiny after recording the reason and obtaining approval of the CCIT/DGIT. The cases under this category should be selected if, there are compelling reasons and the case is not selected through CASS. These cases should be watched by CCIT/CIT in respect of the quality of assessment.”

3. The specific case of the Appellant-Assessee was that while completing the assessment under Section 143(3) of the Income Tax Act, 1961 (Act), the Assessing Officer did not comply with the requirement of the above clause. In other words, the prior approval of the CCIT/DGIT was not obtained.

4. The Commissioner of Income Tax (Appeals) dismissed the Appellant's appeal by an order dated 20th February, 2015 following which the Appellant went before the Income Tax Appellate Tribunal (ITAT), Cuttack Bench with ITA No.163/CTK/2015. In the impugned order, the contention that the assessment order stood vitiated for non-compliance with the mandatory requirement of the guidelines was negated by the ITAT on the ground that the authorized representative (AR) of the Appellant “could not prove

that there is lack of jurisdiction of the AO” and further that the explanations of the AR were “not convincing to us”.

5. As rightly pointed out by the learned counsel for the Appellant, the guidelines which are relatable to Section 119 (2) of the Act were binding on the Department. The decisions of the Supreme Court of India in *UCO Bank v. Commissioner of Income Tax (1999) Vol 237 ITR 889* and the judgment of Andhra Pradesh High Court in *Commissioner of Income Tax v. Smt. Nayana P. Dedhia 270 (2004) ITR 572 (AP)* support to the contention of the Assessee that as far as the Department is concerned, the above guideline is binding.

6. There is no doubt that under the said clause in the guideline obtaining the prior approval of the CCIT for scrutiny assessment was mandatory and in the present case that was not obtained.

7. The Court is unable to agree with the approach of the ITAT that the Assessee was required to ‘prove’ lack of jurisdiction of the AO. When the admitted fact is that prior approval of the CCIT was not obtained, nothing more need to be shown to demonstrate that the guideline was not followed.

8. For the aforementioned reasons, while setting aside the impugned order of the Tribunal, this Court also sets aside the assessment order dated 16th January, 2013 passed by the AO for the Assessment Year 2010-11.

9. In view of the above, question (i) framed by the Court, is answered in the negative i.e. in favour of the Appellant-Assessee

and against the Department. In view of the answer to question (i) there is no requirement to answer questions (ii) and (iii).

10. The appeal is accordingly allowed. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Jena/Secy.

