IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.28 of 2013

Commissioner of Income Tax, Cuttack .... ***Appellant***

Mr. R. Chimanka, Senior Standing Counsel

-versus-

Suvendu Bhusan Behera .... ***Respondent***

None

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
18.02.2022

Order No.

02. 1. The present appeal by the Department is directed against an order dated 30th November 2012 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.512/CTK/2012. By the impugned order, the ITAT allowed the Assessee's appeal against an order of the Commissioner of Income Tax (Appeals), Cuttack [CIT(A)] which had affirmed the order of the Assessing Officer (AO) on the question of deduction of tax at source in terms of Section 194C of the Income Tax Act, 1961 (IT Act).

2. The Assessee was carrying on the business of transport contractor by transporting materials for principal through hiring trucks whenever required, from truck owners. The truck owners then asked to provide trucks on payment basis to transport the materials. The truck owners furnished declarations in Form-15-I. In turn, the Assessee filed Form-15-J along with Form-15-I. However, this was ignored by the AO and he made an addition of Rs.3,92,32,730/- for the assessment year (AY) 2009-10 under Section 40 (a)(ia) of the IT Act.

3. The case of the Assessee was that once Form-15-I was collected from a truck owner, who had discharged his responsibility, there could could be no deduction of tax from source. However, the CIT(A) dismissed the Assessee's appeal and disallowed the aforementioned sum.

4. Importantly, the ITAT noticed that the Assessee's intention from the very beginning was that having taken a sub-contract for transportation of material of Rs.10 crore, it was his endeavour to engage trucks and obtain a Permanent Account Number as required under Section 194C (6) of the IT Act which was clarified with effect from 1st October, 2009. It was found that the Assessee had engaged trucks for transporting materials by way of a sub-contract whereas the provisions under Section 194C (5) of the IT Act as clarified required a formal contract to be entered into.

5. Having heard Mr. Chimanka, learned Senior Standing Counsel for the Department and having perused the impugned order of the ITAT, the Court is not able to find any legal or factual error having been committed which calls for interference. No substantial question of law arises. The appeal is dismissed. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin