IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No. 78 of 2018

Principal Commissioner of Income Tax-I, Bhubaneswar, Dist-Khurda	....	***Appellant***

Mr. T.K. Satapathy, Senior Standing Counsel

-versus-

M/s. T. Biswanath Patro (HUF), Prop. of Adikanta Associates, Laxmi Bazar, Aska, Dist-Ganjam	....	***Respondent***

None

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No. **ORDER**
16.03.2022

02. 1. The Department is in the appeal against an order dated 31st January, 2018 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.20/CTK/2017 for the Assessment Year (AY) 2011-12.

2. The question sought to be urged by the Revenue is:

> "Whether on the facts and in the circumstances of the case, the learned ITAT is justified in law, in deleting the additions made under the heads unexplained sundry creditors of Rs.62,41,342/- and sundry debtors of Rs.9,81,442/- under Section 68 of the Income Tax Act ?"

3. The ground on which the ITAT accepted the plea of the Assessee and set aside the additions made by the Assessing Officer (AO) is that the AO had not rejected the books of account of the Assessee in which all the details concerning the sundry creditors

were disclosed. Even the purchases and sales as disclosed in the accounts were accepted by the AO. The Commissioner of Income Tax (Appeals) [CIT(A)] had called for comments from the AO on the documents produced in the appeal proceedings. In his remand report, while the AO doubted the balance of the sundry creditors, he accepted the purchases and sales figure as disclosed in the books of account.

4. Mr. Satapathy, Learned Senior Standing Counsel appearing for the Appellant (Department) sought to place reliance on the decision of Kerala High Court in ***M.A. Unneeri Kutty v. CIT (1992) 198 ITR 147 (Ker)*** to urge that the burden was on the Assessee to prove the identity and credit worthiness of the creditors in terms of Section 68 of the Income Tax Act, 1961 (IT Act). He further submitted that the Special Leave Petition filed against the said decision by the Assessee was dismissed by the Supreme Court and is reported as ***(1993) 201 ITR (St.) 23***. He accordingly, submitted that in the present case the Assessee had not proved the genuineness or credit worthiness of the creditors .

5. The fact remains that the full disclosure of the creditors was made by the Assessee in the books of account which was not doubted by the AO. Unless the AO rejected the books of account, for non-furnishing of a proper explanation of the Assessee, it is not possible to accept the plea of the Department that in the present case the Assessee had not discharged the burden of showing the genuineness and creditworthiness of the creditors. After all, the books of account of the Assessee were audited in terms of Section

44 AB of the IT Act and therefore, could not have been lightly rejected by the AO.

6. Consequently, the Court is unable to find any error having been committed by the ITAT in allowing the Assessee's appeal. No substantial question of law arises.

7. The appeal is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/P.A.