

IN THE HIGH COURT OF ORISSA AT CUTTACK**ITA Nos. 221, 222 and 223 of 2004****ITA No.221 of 2004*****M/s. Crescent Co.*****... *Appellant******-versus-******Commissioner of Income Tax, Sambalpur*****.... *Respondent*****ITA No.222 of 2004*****M/s. Gangpur Wine*****... *Appellant******-versus-******Commissioner of Income Tax, Sambalpur*****.... *Respondent*****ITA No.223 of 2004*****M/s. Moinuddin Enterprises*****... *Appellant******-versus-******Commissioner of Income Tax, Sambalpur*****.... *Respondent*****Advocates, appeared in these cases by video conferencing mode:*****For Appellant(s)*****:****Mr. Sidhartha Ray, Advocate*****For Respondent(s)*****: *संस्थानिक न्यायो*****Mr. S.S. Mohapatra
Senior Standing Counsel (IT)****CORAM:****THE CHIEF JUSTICE****JUSTICE R. K. PATTANAIK****JUDGMENT****02.02.2022****Dr. S. Muralidhar, CJ**

1. These matters are taken up by video conferencing mode.

2. The aforementioned three appeals arise from a similar set of facts and the questions of law are also identical. Accordingly, these appeals are being disposed of by this common judgment.

3. As far as ITA No.221 of 2004 is concerned, it arises from an order dated 23rd August, 2004 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.542/CTK/2003 for the Assessment Year (AY) 1998-99. While admitting this appeal by order dated 8th May, 2017 the following two questions of law were framed by this Court for determination:

“I) Whether in the particular facts and circumstances of the case rejection of books of accounts and estimation of profit can be said to be legal and proper ?

II) Whether the ITAT is legally correct in holding that rejection of books of accounts solely on the ground of non-issuance of sale memos is proper and justified ?”

4. As far as ITA No.222 is concerned, it is directed against an order of the same date i.e. 23rd August, 2004 of the ITAT again for AY 1998-99. In this appeal since the question of law involved is identical to ITA No.221 of 2004, this appeal is admitted and the same questions of law as above are framed for consideration in this appeal as well.

5. ITA 223 of 2004 is directed against the order dated 23rd August, 2004 of the ITAT in ITA No.541/CTK/2003 for AY 1998-99. This appeal too was admitted on 8th May, 2017 by this Court and the questions of law framed were identical to the questions framed in ITA 221 of 2004.

6. The background facts are that each of the Assessee is a partnership firm deriving income from sale of country liquor. It must be noted at

the outset that as regards the AY 2001-02 the ITAT has accepted the books of accounts of all these three Assesseees and has allowed their appeals setting aside the orders of the Assessing Officer (AO) and the Commissioner Income Tax (Appeal) [CIT(A)] affirming the said assessment orders.

7. It is seen in the impugned assessment order which is identical in each of the cases that although the AO accepted the fact that there was nothing wrong with the Assessee's books of accounts, only on the ground that sales memos were not filed, the books of accounts were rejected by the AO. When the matter went in an appeal to the CIT(A) it was noted by him in Para 1.3 of the order dismissing the appeals that "it is true that the AO had not pointed out any specific omission or commission nor cited any specific instance of irregularity in the books of accounts" and that the only reason for rejection was that "element of inflation in purchases or incorrectness of purchase could not be ruled out". However, it was again surmised that "there was also possibility of suppression of sale price". It is therefore plain that both the AO and CIT(A) proceeded on surmises and conjectures with no supporting material to justify the rejection of the Assessee's books of accounts. The ITAT having accepted the Assessee's accounts for the subsequent AY 2001-02 for some reason did not accept them as far as the AY in question was concerned.

8. Where the issue is of sale of country liquor to tribal populations to expect the Assesseees to issue sales memos is not even realistic. Importantly, since the books of account of the Assesseees in the present appeals have been accepted by the Excise Department, and for the subsequent year AY 2001-02 by the ITAT, there was no reason to resort

to surmises and conjectures and ‘best judgment assessment’ to reject the Assessee’s books of account for the AY in question.

9. The decision of this Court in ***Ram Chandra Ram Nivas v. State of Odisha (1970) 25 STC 501 (Ori)*** supports the aforementioned contentions of the Assessee. There it was held that earning low profits by itself, without corresponding facts, cannot be a ground for holding that the books of account are not properly maintained. In ***Md. Umar v. Commissioner of Income Tax (1975) 101 ITR 525 (Patna)*** a Division Bench of that High Court accepted the Assessee’s books of account and held that the rejection was based on suspicion and surmises as well as irrelevant material. In ***St. Teresa’s Oil Mills v. State of Kerala (1970) 76 ITR 365 (Ker)***, a Division Bench of Kerala High Court held that the rejection of accounts was not justified particularly because it was based only on the fact of variation in the consumption of electricity.

10. In the present case, mere non-issuance of production of sale memos could not have been a ground to reject the entire books of account particularly since it pertained to sale of country liquor to tribal populations. Also the ITAT appears to have overlooked the fact that the books of account of the Assessee were not rejected by the Excise Department and that the ITAT itself had accepted them for the subsequent AY 2001-02.

11. For all of the aforementioned reasons, the two questions formulated by this Court are answered in favour of the Assessee and against the Department. The impugned orders of the AO, the CIT(A) and the ITAT are accordingly set aside. The appeals are allowed, but in the circumstances, with no order as to costs.

12. 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.

(S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S.K. Jena/PA

