IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.173 of 2011

Commissioner of Income Tax, ***Bhubaneswar***	....	***Appellant***
	Mr.T.K. Satpathy. Standing Counsel	

-versus-

Trishna Real Estate Pvt. Ltd. ***Bhubaneswar***	....	***Respondent***

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

ORDER
10.02.2022

Order No.

03. 1. The present appeal arises from an order dated 25th August 2011 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.091/CTK/2011 for the Assessment Year (AY) 2007-08.

2. While admitting this appeal on 3rd January, 2013, the following substantial question of law is framed for consideration.

(i) Whether on the facts and in the circumstances of the case, the learned ITAT was justified in deleting the additions made by the A.O. on account of unexplained investment when the asseessee could not produce the relevant details in support of the claims."

3. The facts in brief are that the Respondent Assessee is a Real Estate Developer. He filed a return of income for the AY in question disclosing an income of Rs.23,47,494/-. His return

was selected for scrutiny. The Assessing Officer (AO) in the assessment order dated 31st December, 2009 under Section 143(3) of the Income Tax Act, 1961 (IT Act) noted that the Assessee had disclosed details of closing project work in progress in the sum of Rs.4,27,88,559/-. The closing balance of advances received from the customers as as on 31st March, 2007 was Rs.11,78,41,329/- whereas the corresponding figure for 31st March, 2006 was Rs.6,20,00,335/-. According to the AO, the increase in advances was not properly explained by the Assessee by providing the names and addresses of the customers. Thus, the AO decided to add a sum of Rs.2,41,08,962/- to the taxable income of the Assessee.

4. The Commissioner of Income Tax (Appeals)-II [CIT (A)] by order dated 10th November, 2010 dismissed the Assessee's appeal. The Assessee thereafter went in appeal before the ITAT. The ITAT, during the course of hearing, called for the assessment folder and found that "details were available to the Assessing Officer as has been perused by us in assessment folder." According to ITAT, while the previous AOs had been able to correlate the details available in the file with the figures submitted by the Assessee, the present AO was unable to do so and this has resulted in the erroneous addition of Rs.2.41 crores. Additionally, the ITAT found that the Assessee had submitted the details of the opening balance of the customers who had booked flats, shops in the Assessee's premises but had later cancelled the same and this totalled Rs.2.41 crores. Since the Assessee was following the project completion method of accounting, the ITAT concluded that the above

addition in the sum of Rs.2,41,08,962/- was unsustainable in law.

5. Having heard Mr. Satpathy, learned Standing Counsel for the Department and Mr. P.R. Mohanty, learned counsel for the Respondent Assessee, the Court is of the view that the impugned order of the ITAT turns entirely on factual details and is based on an analysis of the evidence and material produced before the AO and the ITAT. The Court is unable to discern any illegality or infirmity of the approach of the ITAT. The view taken by the ITAT appears to be a plausible one. Consequently, the Court is not satisfied that the impugned order calls for interference.

6. The question framed is accordingly answered in favour of the Appellant assessee and against the Department. The appeal is dismissed.

HIGH COURT
सत्यमेव जयते
ORISSA

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

KC Bisoi