IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No. 38 of 2022

M/s. Eklavya Career Academy Trust, Rourkela	....	***Appellant***

Mr. Sidhartha Ray, Advocate

-versus-

Income Tax Officer, Ward-2, Rourkela	....	***Respondent***

Mr. R.S. Chimanka, Sr. Standing Counsel
Along with Mr. A. Kedia, Jr. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

Order No.

ORDER
21.07.2022

01. 1. This is an appeal filed by the Assessee aggrieved by an order dated 31st May 2022, passed by the Income Tax Appellate Tribunal, Cuttack Bench (ITAT) in ITA No.176/CTK/2016 for the Assessment Year 2010-11.

2. The short ground which is urged for consideration by the Assessee is whether after finding the assessment order passed by the ITO, Rourkela Circle-2 to be entirely without jurisdiction, the ITAT was justified in remanding the matter to the Assistant Commissioner of Income Tax (ACIT), who admittedly had jurisdiction, to proceed afresh in the matter?

3. The facts are not in dispute. A notice was issued by the ACIT, Rourkela Circle, Rourkela, who had jurisdiction to conduct the assessment, to the Assessee under Section 143(2) of the Income Tax Act, 1961 (Act). However, before he could further proceed in the matter, the Joint Commissioner of Income Tax (JCIT), Rourkela Range, Rourkela transferred the file from the ACIT to the ITO

Ward-2, Rourkela. This was clearly without jurisdiction and all the actions taken consequent thereto by the ITO, Ward-2, Rourkela was also without jurisdiction. Correctly, therefore, the ITAT set aside the assessment order as it had been vitiated by an 'incurable defect'.

4. Mr. Sidhartha Ray, learned counsel for the Appellant states that in support of its decision to remand the matter to the ACIT for fresh assessment, the ITAT relied on the decision of this Court in ***Commissioner of Income Tax v. Shivkumar Agrawal (1990) 186 ITR 734*** in which only a passing remark was made that if the penalty had been imposed by an officer not having jurisdiction, the proceeding by itself does not come to an end and that "the same has to be finalized by the officer having jurisdiction."

5. This Court is of the view that once the order was set aside for lack of jurisdiction, the consequential direction of the ITAT that the assessment should now be by the officer having jurisdiction cannot be said to be erroneous in law. It was a consequential order and which was only natural because the ACIT, admittedly the officer having jurisdiction, had initiated the proceedings by issuing the notice under Section 143 (2) of the Act. The proceedings had to therefore be taken to the logical next step.

6. In that view of the matter, no substantial question of law arises. The appeal is dismissed in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S. Behera