IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.92 of 2018

Principal Commissioner of Income Tax (Central), Vishakhapatnam .... ***Appellant***

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

-versus-

M/s. Midas Capital Pvt. Ltd. .... ***Respondent***

Mr. R.V. Easwar, Senior Advocate along with
Mr. Mukesh, Panda, Advocate
Mr. S.K. Tulsiyan, Advocate
Ms.Rubal Bansal, Advocate
Ms. Ananya Rath, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
05.07.2022

Order No.

03. 1. The present appeal by the Revenue is directed against an order dated 23rd March 2018 of the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in IT(SS)A No.04/CTK/2018 for the assessment year 2011-12.

2. The questions sought to be urged by the Revenue in the present appeal, *inter alia*, are;

(i) Whether the ITAT was correct in setting aside the assessment order holding that no addition can be made in an assessment under Section 153 A of the Income Tax Act, 1961 (Act) consequent to a search and seizure action when no incriminating material was found relatable to the issue on which addition was made?

(ii) Whether in the event of a concluded assessment, the necessity for finding incriminating material is relevant?

3. Having heard Mr. Chimanka, learned Senior Standing Counsel for the Revenue and Mr. Easwar, learned Senior Advocate appearing for the Assessee, the Court finds that both the questions stand answered in favour of the Assessee and against the Revenue by two decisions of this Court in ***Smt. Jami Nirmala v. Pr. CIT, Bhubaneswar [2021] 437 ITR 573 (Orissa)*** and ***Smt. Smrutisudha Nayak v. Union of India [2021] 439 ITR 193 (Orissa)***. Reference has been made by this Court in the said decisions to the decision of the High Court of Delhi in ***CIT v. Kabul Chawla [2016] 380 ITR 573 (Delhi)*** where, *inter alia,* while summarizing the legal position, it was observed as under:

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> iv. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the assessing officer which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously, an assessment has to be made under this Section only on the basis of seized material.
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> xxx xxx xxx
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> vii. Completed assessments can be interfered with by the assessing officer while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed

income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

4. Consequently, this Court declines to frame the questions as urged by the Revenue in the present appeal. Accordingly, the present appeal is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin

HIGH COURT
सत्यमेव जयते
ORISSA