IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15975 of 2022

M/s. L.A. Developers	....	***Petitioner***
		Mr. P.C. Sethi, Advocate

-versus-

Union of India and others	....	***Opposite Parties***
		Mr. P.K. Parhi, A.S.G. for Union of India
		Mr. T.K. Satapathy, Sr. Standing Counsel for the Revenue

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
07.07.2022

Order No.

01. 1. The present writ petition challenges an order dated 2nd June 2022 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in dismissing the Petitioner's appeal being ITA No.273/CTK/2015 for the assessment year (AY) 2008-09. In the said appeal, the Petitioner had challenged an order dated 9th March 2015, passed by the Commissioner of Income Tax (CIT), Bhubaneswar under Section 263 of the Income Tax Act, 1961 (Act).

2. Against an order passed by the ITAT in an appeal, the further remedy provided under Section 260A of the Act is an appeal to this Court. Despite being aware of this provision, Mr. Sethi, learned counsel appearing for the Petitioner insists that this Court should entertain the present writ petition only because he had, before the ITAT in the above appeal, raised the issue of jurisdiction of the ITAT to hear the appeal by contending that after the amendment to

Section 255 of the Act by the Finance Act 2021, the procedure for the ITAT for hearing appeals has changed. It must be noted that in the impugned order, the ITAT has disagreed with the contention of the Petitioner-Assessee by *inter alia* pointing out that the relevant provisions i.e. Section 255 (7) (8) (9) although inserted to the Act with effect from 1st April 2021 have not yet been notified by the Central Government for becoming operational and therefore till such time, the existing arrangement of the ITAT hearing appeals had to continue. It is further seen that this issue of jurisdiction has been dealt with by the ITAT in the impugned order from paras 1 to 6, and from para 7 onwards, the merits of the appeal have been discussed. The appeal has been dismissed on merits.

3. Mr. Sethi wants to split up the impugned order by treating paras-1 to 6 as to jurisdiction separately from the rest of the order and yet question the entire order of the ITAT in this writ petition.

4. In the considered view of the Court, this attempt is misconceived. With the impugned order of the ITAT being in an appeal before it, that entire order is an appealable one and the further remedy of the Petitioner is to file an appeal against the said order in accordance with law. Consequently, this writ petition is not entertained and it is dismissed on the ground of maintainability.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin