IN THE HIGH COURT OF ORISSA AT CUTTACK

I.T.A. No.69 of 2017

M/s. S.C. Padhee .... ***Appellant***
Mr. B. Panda, Advocate

-versus-

The Deputy Commissioner of Income Tax, Circle-1(1), Sambalpur and another .... ***Respondents***
Mr. S.S. Mohapatra, Sr. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

ORDER
09.03.2022

Order No.

02. 1. This Assessee's appeal is directed against an order dated 4th August, 2017 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.28/CTK/2016 for the Assessment Year (AY) 2011-12.

2. Admit. The following questions of law is framed for consideration.

> "i) Whether the Assessing Officer (AO), Commissioner of Income Tax (Appeals) [CIT(A)] and the ITAT were right in holding the Assessee not entitled to claim the depreciation of plant and machinery during the AY in question on account of non use of said machinery?

3. This Court has heard the submissions of learned counsel for the parties.

4. A perusal of the impugned order of the ITAT on the above aspect shows that the depreciation was allowed on the ground that the Assessee could not produce evidence regarding "payment of electricity and diesel" for the purpose of operating the crusher plant and not disclosing "from where iron ore fines had been brought" and evidence of "processing if any of the iron ore fines purchased by it." Accordingly, the AO disallowed the depreciation of Rs.57,03,909/- only on the ground that the machinery was not used during the AY in question for the purpose of business of the Assessee.

5. That the Assessee owns the above plant and machinery and that it is available in the business premises of the Assessee is not in doubt. Learned counsel for the Revenue is unable to show any statutory requirement that in order to claim depreciation of plant and machinery used for the purpose of business, the Assessee has actually to demonstrate the running/operation of the plant and machinery throughout the year. The Court has not been shown any provision mandating such requirement for the purpose of claiming depreciation.

6. In that view of the matter, the question framed is answered in favour of the Assessee and against the Department and the orders of the AO, CIT(A) and the ITAT relevant to the above question are accordingly set aside. The AO is now directed to give appeal effect to the present order in accordance with law. The appeal is disposed of.

7. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

KC Bisoi