IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No. 132 of 2018

Principal Commissioner of Income Tax .... ***Appellant***

Mr. T.K. Satapathy, Senior Standing Counsel

-versus-

M/s. Ahinsa Vinimay Pvt. Ltd. .... ***Respondent***

None

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
05.04.2022

Order No.

02. 1. This is an appeal by the Revenue against the order dated 19th April, 2018 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in IT (SS) A No.40/CTK/2018 for the Assessment Year (AY) 2008-09.

2. The questions sought to be urged by the Revenue in the present appeal whether the ITAT was right in deleting the additions made by the Assessing officer (AO) under Section 68 of the Income Tax Act, 1961 (IT Act).

3. A perusal of the impugned order of the ITAT reveals that the addition was supposed to be made on the basis that the amount shown has been received by the Assessee towards sale consideration of shares held by the Assessee in M/s. Surya Sponge Iron Ltd. was in fact received as loans. It has been shown to the satisfaction of the ITAT that in the succeeding assessment year i.e. AY 2009-10 the shares against which the sale consideration was

received by the Assessee was transferred to the payers of the amount. They had disclosed the transactions in their respective returns. The capital gain earned by the Assessee was offered to tax in the return of income filed for the AY 2009-10.

4. The Revenue was unable to dispute the fact that capital gains offered in the return of income filed by the Assessee was assessed for tax in the AY 2009-10. The search was conducted on 12th December, 2013 but for the AY 2009-10 itself no incriminating materials was found during the course of search. The ITAT has correctly concluded that under Section 153A of the IT Act, additions could be made only on the basis of incriminating materials found in the course of search relevant to the AY concerned.

5. Once it is found that the Assessee had duly disclosed the receipt of capital gains in the regular books of account and offered capital gains to tax which had also been accepted by the Revenue, there was no occasion to make addition on the basis of unexplained cash credit.

6. In the considered view of the Court, no substantial question of law arises for consideration from the impugned order of the ITAT. The appeal is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/P.A.