IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

W.P. (C) No.32051 of 2021

M/s. Astha Commercials Pvt. Ltd. .... ***Petitioner***
Mr. Sidhartha Ray, Advocate

-versus-

National Faceless E-Assessment Centre, New Delhi & others .... ***Opp. Parties***

Mr. S.S.Mohapatra, Sr. Standing Counsel for IT Department

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

Order No.	**ORDER** **28.07.2022**
	Dr. S. Muralidhar, CJ.
02.	1.The challenge in the present petition is to an order dated 21st April, 2021 passed by the Commissioner of Income Tax under Section 263 of the Act re-visiting the assessment originally made for the above AY on 27th December, 2007 and setting it aside. The challenge is also to the consequential order of re-assessment dated 30th September, 2021 passed under Section 143(3)/263 of the Income Tax Act, 1961 for the Assessment Year (AY) 2015-16 and the.
	2. The background facts are that for the AY in question the return filed by the Petitioner-Assessee was taken up for scrutiny and the original assessment order was passed on 6th April, 2017.

3. It is the above assessment order was sought to be re-visited by the CIT for issuing a show cause notice dated 24th February, 2020 under Section 263 of the Act. After the Petitioner filed a reply thereto on 20th February, 2020 the impugned order was passed by the CIT under Section 263 of the Act on 21st April, 2020.

4. Mr. Ray, learned counsel appearing for the Petitioner refers to Section 263 (2) which mandates that "no order shall be made sub-Section 1 after the expiry of two years from the end of the financial year in which the order sought to be revised was passed". Although, Mr. Mohapatra, learned Senior Standing Counsel for the Department urges that this plea was not raised either in the reply to the notice under Section 263 of the Act or even as a ground of the present writ petition assailing the order passed thereunder, the fact remains that the plea of limitation goes to the root of the matter. Such a plea can be raised at any stage of the proceedings notwithstanding that it may not have been pleaded as such.

5. The financial year in which the impugned assessment order has been passed is 2017-18. It was therefore, mandatory in terms of Section 263 (2) of the Act for the CIT to have 'made' the order within the period of two years from the end of the said FY 2017-18. In other words, it should be have been passed on or before 31st March, 2020. Admittedly

the impugned order under Section 263 of the IT Act has been passed on 21st April 2020 which is beyond the period of two years. Consequently, the mandatory requirement of Section 263(2) of the Act is not fulfilled and accordingly, the said order dated 21st April, 2020 is hereby quashed.

6. The impugned re-assessment order dated 30th September, 2021 which was passed consequent to the above order, is also hereby quashed.

7. The writ petition is allowed in the above terms.

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

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge

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