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IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.1 of 2023

Principal Commissioner of Income Tax, Sambalpur *Appellant*

Mr. Sidharth Sankar Mohapatra, Senior Standing Counsel
-versus-

M/s. Shark Mines and Minerals Pvt. Ltd., Keonjhar *Respondent*

None

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

Order No.

ORDER
02.03.2023

Dr. S. Muralidhar, CJ.

01. 1. The present appeal by the Revenue is directed against an order dated 18th August, 2022 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) allowing the Assessee's Appeal i.e. ITA No.128/CTK/2019 for the Assessment Year (AY) 2014-15.
2. By the impugned order, the ITAT has set aside an order dated 29th March, 2019 passed by the Principal Commissioner of Income Tax (Pr. CIT), Cuttack under Section 263 of the Income Tax Act, 1961 (Act) for the said AY holding that the original Assessment Order dated 23rd November, 2016 under Section 143(3) of the Act passed by the Assessing Officer (AO) under 'limited scrutiny' category was erroneous and prejudicial to the interest of Revenue.

3. The background facts are that the original assessment in the case of the Assessee came to be completed under Section 143(3) of the Act by the AO by the Assessment Order dated 23rd November, 2016 in the 'limited scrutiny' category where the issue was "excess liability shown and disallowance under section 40A(3) of the Act."

4. When the Pr. CIT decided to invoke the revisional jurisdiction under Section 263 of the Act, he issued a Show Cause Notice (SCN) to the Assessee seeking to revisit the Assessment Order on the question of "under valuation of closing stock", which was beyond the scope of the 'limited scrutiny' undertaken by the AO.

5. By the order dated 29th March 2019, the Pr. CIT while concluding that the Assessment Order was erroneous and prejudicial to the interest of Revenue, directed the AO "to modify his Assessment Order dated 23.11.2016 by making further addition of Rs.15,53,849/- under the head undervaluation to closing stock."

6. Before the ITAT it was argued on behalf of the Assessee *inter alia* that the Pr. CIT was not justified in giving the above direction under Section 263 of the Act since the issue of "valuation of closing stock" was not part of the 'limited scrutiny' undertaken by the AO while completing the assessment under Section 143(3) of the Act. It was pointed out that the said 'limited scrutiny' was in relation "to excess liability shown and disallowance under Section 40A(3) of the Act." The contention of the Revenue was that the ITAT was liable to follow the judgment of a Co-ordinate Bench of the ITAT dated 5th October, 2020 in ITA No.226/CTK/2019 (*Sri Sushanta Kumar Choudhury v. Pr. CIT*) where it was held that the

revisional powers under Section 263 of the Act could be exercised even in relation to the issues which were not part of the limited scrutiny.

7. Conscious that there was another decision of the Co-ordinate Bench of Chennai Bench of the ITAT dated 2nd December, 2019 in ITA No.1306/Chny/2019 (*Smt. Padmavathi v. ITO*), which had been upheld by the Madras High Court in *CIT v. Smt. Padmavathi, (2020) 120 taxmann.corn 187 (Mad)*, it was contended by the Revenue before the ITAT that if it is not inclined to follow the decision in *Sri Sushanta Kumar Choudhury* (supra), it should refer the matter to the Larger Bench of the ITAT.

8. In the impugned order, the ITAT distinguished its own decision in *Sri Sushanta Kumar Choudhury* (supra) as under:

“12. Coming to the issue of the decision of Co-ordinate Bench of this Tribunal in the case of Sri Sushant Kumar Choudhury (supra) the facts in the said case were that the Pr. CIT mentioned that the order of the AO is erroneous insofar as he did not ask for permission for complete scrutiny and to that extent, the assessment order was erroneous and prejudicial to the interest of the Revenue. In the present case, there is no such averment by the Pr. CIT. Even assuming such averment is there, the order of revision would be unsustainable insofar as the issue raised by Pr. CIT is in no way connected to the issues that have been raised in the limited scrutiny assessment. Thus, the decision in the case of Sri Sushanta Kumar Choudhury (supra) is clearly distinguishable. Therefore, the prayer of the ld. CIT DR that the matter be referred to Larger Bench also does not survive insofar as the facts of the present case and in the said decision in the case of Sri Sushanta Kumar Choudhury (supra) is fully distinguishable.”

9. Indeed, the Court finds that the Madras High Court has while affirming the decision of the ITAT in *Smt. Padmavathi* (supra) taken the view that while exercising *suo motu* revisional power under Section 263 of the Act, the CIT cannot travel beyond the scope of the issues which form part of the 'limited scrutiny' in the original Assessment Order. This Court concurs with the above view.

10. What persuades this Court to reach this conclusion is the requirement in law that if the AO has to go beyond the scope of the issues for which 'limited scrutiny' has to be undertaken by him, he has to seek prior permission of the superior officer in terms of the CBDT Instruction No.7/14 dated 26th September, 2014 and Instruction No.20/15 dated 19th December, 2015. Consequently, it was not open to the Pr. CIT while exercising *suo motu* revisional power under Section 263 of the Act to find fault with the assessment order of the AO on the ground of its being erroneous on an issue not covered by the 'limited scrutiny' when the AO could not have possibly examined such issue. To reiterate, in the present case, the limited scrutiny was in respect of excess disallowance under Section 40A(3) of the Act whereas the SCN under Section 263 was regarding the FIFO method of valuation of closing stock adopted by the Assessee. These were, as rightly noted by the ITAT, unconnected issues and the assessment order could not have been held to be "erroneous and prejudicial to the interest of Revenue" when the AO could not have travelled beyond the issues forming subject matter of the 'limited scrutiny.'

11. The Court is unable to find any error having been committed by the ITAT in coming to the above conclusion. No substantial question of law arises. The appeal is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda

