

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA Nos.27 and 26 of 2023

Principal Commissioner of Income Tax Appellant
(Central) Visakhapatnam

Mr. R. Chimanka, Senior Standing Counsel assisted by
Mr. A. Kedia, Junior Standing Counsel
-versus-

M/s. Bishandayal Jewellers Respondent

CORAM:
THE CHIEF JUSTICE
JUSTICE G. SATAPATHY

ORDER
09.03.2023

Order No.

01. 1. On being mentioned, ITA No.26 of 2023 is taken up by a separate notice and is disposed of along with ITA No.27 of 2023 by this common order.
2. The present appeals by the Revenue is directed against the judgment dated 26th September, 2022 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) dismissing the appeals IT(SS)A No.77/CTK/2019 and IT(SS)A No.79/CTK/2019 for the assessment years (AYs) 2012-2013 and 2016-2017.
3. The questions sought to be urged by the Revenue are as under:
- (i) Whether the ITAT was correct in ruling that findings of the DDIT cannot be used by the AO in the assessment proceedings when the DDIT is an Assessing Officer as per clause 2A of Section 2 of the Act?

(ii) Whether the ITAT has erred in law, in concluding that the AO had merely reproduced the appraisal report in his assessment order without verifying the contents of the digital evidence although the issues contained therein were properly confronted to the assessee before completion of assessment proceedings?

(iii) Whether the ITAT has erred in law in concluding that the AO had merely reproduced the appraisal report in this assessment order without verifying the contents of the digital evidence marked as BDJC-27 and CWJ-12 which were non digital evidence like loose sheet bunch marked as BDJC-21, which were duly verified and confronted to the assessee before completion of assessment proceedings.

4. This Court has heard the submissions of Mr. Radheshyam Chimanka, learned Senior Standing Counsel for the Revenue.

5. The Assessee is a partnership firm engaged in the business of jewellery, precious and semi precious stones. A search was undertaken in the premises of the Assessee on 9th December 2015 followed by a notice under Section 153A of the Income Tax Act, 1961 (Act) on 10th January, 2017. Certain loose sheets (identified as BDJC-21), a register (identified as BDJC-25) and a hard disc and its extracts (BDJC-27) were stated to have been found in the course of the search.

6. Before the CIT(A), the Assessee claimed that the Assessing Officer (AO) had not given copies of the seized materials extracted from the hard disk and the pen drive. The CIT(A) called for a remand report from the AO. By the time, the remand report could be submitted, the AO changed. The AO had tried to open the hard disk in a standard computer, but he was unable to do so. In the

remand report, while stating this fact, the AO provided a soft copy of the hard disk and pen-drive to the CIT (A). The ITAT has noted in the impugned order that the AO has simply reproduced the appraisal report and has not undertaken any analysis of the seized materials. Even the hard disk with the working copy was not seen by the AO. The seized material had neither been opened nor examined. The expert report also failed to point out that the software was “hardware specific”. In this respect, the ITAT has made the following observations:

“On this point, it would also be worthwhile to mention that in the inventory, on the date of search, which has been shown at page 4 of the paper book of the assessee at item No. 27, shows the hard disk “with working copy” identified as BDJC-27. What is meant by this “working copy”? If it is the extract, then what happened to those extracts? Why were they not available before the AO? Why they have not been referred to in the appraisal report? These facts clearly show that the foundation on the basis of which the assessment has been done, being the so called extracts from BDJC-27 and CWJ-12, are not available with the department, nor they were provided to the assessee for his rebuttal.”

7. In the impugned order the ITAT has concluded that the CIT(A) was right in holding that the additions made in the all three AYs was “in total violation of the principles of natural justice” and that the additions have been made clearly on estimate basis.

8. With there being concurrent findings on fact by the both the CIT(A) and ITAT and there being clear violations of the legal requirements by the AO, this Court is unable to find any error committed by the CIT (A) or the ITAT in disagreeing with the AO and setting aside the assessment order.

9. No substantial question of law arises. The appeals are dismissed.

(Dr. S. Muralidhar)
Chief Justice

(G. Satapathy)
Judge

S.K. Guin

