

05. 31.07.2019

Heard learned counsel for the appellant and learned Standing Counsel for the opposite party-Income Tax Department.

2. By way of this appeal, the appellant has challenged the order dated 29.08.2002 passed by the learned Income Tax Appellate Tribunal, Cuttack Bench, Cuttack in ITA No.316/CTK of 1998 for the assessment year 1991-92.

3. The main contention of the appellant is that the Tribunal while deciding the matter has gone on the concession recorded by the advocate who was appearing before the Tribunal. Now the advocate, who was appearing before the learned Tribunal at present is aged about 81 years, has stated on oath as under:

"Affidavit

I, **Dhairyakant Sheth**, son of Late Kanji Sheth, aged about 81 years, resident of Kaligali, P.O., Chandinchowk, P.S. Lalbag, in the Town and District of Cuttack-753002, do hereby solemnly affirm and state as follows:

1. That I am an Advocate by Profession and normally practice in the State of Odisha.

2. That I was engaging by M/s Bijaya K.B. Bricks, having its principal office at Durga Talkies Compound, Town Hall Road, Cuttack-753009 to appear in and conduct their Income Tax Appeal No.316/CTK of 1998 for the Assessment Year 1991-92 before the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack.

3. That the Commissioner (Appeals), Cuttack vide order dated 01.05.1998 in M/s. Bijaya K.B. Bricks own I.T. Appeal No.217/ORS/94-95 for the assessment year 1991-92 had allowed the appeal on the following finding:

"I have given careful consideration to the matter. I fully agree with the appellant that the learned AO has not pointed out any material defect in the audited books of accounts of the appellant. The addition made by making estimate u/s. 145 of the I.T. Act cannot be sustained. The AO is directed to accept the book result".

4. That I appeared before the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack, at the hearing of the above appeal.

5. That I hereby state and confirm that at the hearing of the above appeal before the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack in view of the order passed in the First Appeal there was no question of agreeing to set aside the matter for fresh assessment and I had not agreed for setting aside the First Appellate Order and for remitting the matter back to the Assessing Officer for fresh assessment

6. That the hearing before the Income Tax Appellate Tribunal was for three years together i.e. Asst. Year 1990-91, 1991-92 and Asst. Year 1993-94. I agreed for remitting the matter to the Assessing Officer in respect of Asst. Year 1990-91 (ITA No.272/CTK/1998 and CO No.51/CTK/1998) but not for order years.

7. That I am swearing this affidavit for submitting before the Hon'ble High Court of Orissa in the Income Tax Appeal No.8 of 2003 before the Hon'ble Court in respect of the Assessment year 1991-92.

8. That the facts stated above in Para-1 to 7 of this affidavit are true to the best of my knowledge and belief."

4. In that view of the statement made by the advocate and looking at the seniority, this Court accepts the affidavit filed. Hence, the matter is remitted back to the Tribunal to decide the same afresh in accordance with law, as expeditiously as possible.

5. It is made clear that we have not expressed any opinion in the matter. We have remitted the matter back only on the ground that the Tribunal has allowed the appeal on concession of the lawyer which has, in fact, not been supported by any other document but on the contrary the advocate has filed an affidavit in Court today to the effect that he had never conceded before the learned Tribunal.

In that view of the matter, the Tribunal is required to decide the matter on merits, as expeditiously as possible.

6. With the aforesaid direction, the appeal stands disposed of. All connected Misc. Cases/I.As are disposed of accordingly.

Urgent certified copy of this order be granted on proper application.

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(**K.S. Jhaveri**)
Chief Justice

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(**K.R. Mohapatra**)
Judge