

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.50 of 2020

M/s. Unideep Food Processing (P) Ltd. Appellant

Mr. Prajnaraj Mohanty, Advocate

-versus-

*Income Tax Appellate Tribunal, Respondents
Cuttack Bench, Cuttack and others*

Mr. T.K. Satapathy, Senior Standing Counsel

CORAM:

THE CHIEF JUSTICE

JUSTICE M.S. RAMAN

Order No.

ORDER
14.02.2023

04. 1. This appeal by the Assessee is directed against an order dated 8th July 2019 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) dismissing the Assessee's ITA No.328/CTK/2017 for the assessment year (AY) 2007-08.
2. The short question is whether the Assessing Officer (AO) was justified in directing the addition of Rs.45,29,020/- to the taxable income of the Appellant under the head 'unsecured loan' under Section 68 of the Income Tax Act, 1961 (Act).
3. Before the ITAT, it was the second round of litigation. In the first round, the ITAT had remanded the matter to the AO with the certain specific directions as under:

“...Therefore, in the interest of justice and fair play we reverse the finding of the CIT (A) and restore this matter to the file of the AO to verify the genuineness of the transaction. The AO is directed to verify whether the assessee has repaid this amount to all the persons stated in his accounts in various years

by calling all the creditors. Therefore, the AO is directed to verify and if the assessee has already repaid the amount, it may be deleted as per law after giving due opportunity of hearing to the assessee.”

4. When the matter went back before the AO, the Assessee did not produce the 200 odd farmers from whom the Assessee had borrowed an unsecured loan of amounts ranging from Rs.7,000/- to Rs.19,500/-. The AO observed that the Assessee had failed to produce those farmers who would have confirmed before the AO that the statement of the Assessee that they had been repaid the loan during the financial year 2013-14 was in fact correct.

5. The above observation of the AO has been concurred with by the Commissioner of Income Tax (Appeals) [CIT(A)] in the order dated 22nd May 2017 where it was observed in paras 2.1 and 2.2 as under:

“2.1 In the course of appeal hearing, the Id. AR of the assessee has submitted that the loans in question have been repaid subsequently during the FY 2013-14. In this connection, he has filed a copy of audited accounts for the FY 2013-14. It is the contention of the Id. AR that since loans have been repaid, the same should be treated as genuine.

2.2 I have considered the matter with reference to the facts on record. The direction of the Hon’ble ITAT to the AO was to verify whether the assessee has repaid the loan amounts to the alleged creditors by calling the creditors. The AO required the assessee in the course of fresh assessment proceeding to produce the creditors for verification of loan repayments. The assessee failed to do so despite being given adequate opportunities. Since the assessee failed to comply with the direction of the Hon’ble ITAT, the AO had no other alternative

but to consider the loans as unexplained and make addition accordingly. On the facts of the case, I do not find any infirmity in the order of the AO. Hence, the addition of Rs.45,29,017/- on account of unsecured loans is confirmed.”

6. Mr. Mohanty, learned counsel appearing for the Appellant seeks to contend that in terms of the direction issued by the ITAT, it is the AO who should have issued summons to the farmers in question to verify the facts. The direction issued by the ITAT in the first round was to the effect that the AO should verify whether the Assessee had repaid the amount “by calling all the creditors”. Therefore, it is the AO who should have issued summons to them to appear. Even assuming that the AO did not do so, the fact remains that the Assessee did not ask for summons to be issued and the Assessee did not produce any fresh affidavits of the lender farmers to confirm that their loans to the Assessee had been repaid to them. The Assessee could have easily done this to satisfy the requirement of the directions of the ITAT in remand.

7. Learned counsel for the Appellant then cites the decision of the Supreme Court of India in ***Commissioner of Income Tax v. Bharat Engineering & Construction Co. (1972) 83 ITR 187 (SC)***. There, the Supreme Court declined to interfere with the finding of the ITAT that the Assessee could not have possibly borrowed the huge amounts sought to be added as unexplained cash credit and the Supreme Court deferred to the finding of the ITAT on facts. In the present case, factually the ITAT has found the addition to be justified and going by ratio of the aforementioned decision, this Court should not interfere with such factual determination by the ITAT.

8. Mr. Mohanty then cites *India Rice Mills v. Commissioner of Income Tax (1996) 218 ITR 508 (Allahabad)* which held that the individual partners of a firm had to explain the sources of the deposits and the addition could not be made in the hands of the firm under Section 68 of the Act. Again on facts the said decision appears to be distinguishable since in the present case it is plain that the Appellant did not comply with the terms of the remand order of the ITAT in the first round.

9. Lastly, Mr. Mohanty cites the decision dated 12th January 2009 of the Rajasthan High Court in ITA No.185 of 2008 (*Commissioner of Income Tax, Bikaner v. M/s. Kewal Krishan*). On a perusal of the said order, it again appears that it is distinguishable on facts. It was held that it was for the partners of a firm to explain the sources of the deposits and if they failed to discharge that onus, the addition could be made in the hands of the partners and not of the firm. In the present case, the facts are entirely different and therefore, the said decision does not help the Appellant.

10. The Court is unable to find any substantial question of law arising from the impugned order of the ITAT. The appeal is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge