

**BEFORE THE DIVISION BENCH-II: ODISHA SALES TAX TRIBUNAL:
CUTTACK.**

S.A. No. 1718 of 2005-06

(Arising out of the order of the learned ACST (Appeal), Puri Range,
Bhubaneswar, in First Appeal Case No. AA 409/BH-I/04-05,
disposed of on dtd.12.09.2005)

P r e s e n t : Shri A.K. Panda & Shri P.C. Pathy,
1st Judicial Member Accounts Member-I

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack.

... Appellant

- V e r s u s -

M/s. Atrik Construction (P) Ltd.,
Cuttack Road, Bhubaneswar.

... Respondent

For the Appellant ... Mr. M.L. Agarwal, S.C.
For the Respondent ... Mr. P. Vyas, Advocate

Date of hearing: 20.08.2018 **** Date of order: 27.09.2018

O R D E R

This appeal is directed against the order dtd.12.09.2005 passed by the learned Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter referred to as, the learned ACST) in First Appeal Case No. AA 409/BH-I/04-05, wherein and whereby he has allowed the first appeal in part by reducing the tax demand to Rs.59,275.00 from Rs.3,21,234.00 raised by the learned Taxing Authority, Bhubaneswar I Circle, Bhubaneswar (hereinafter referred to as, the learned Taxing Authority) in an assessment u/s.12(5) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act) in respect of the respondent-dealer for the assessment year 1997-98.

2. The respondent-dealer being a builder engaged in construction of apartments for its clients on contract basis. In spite of its liability to pay

sales tax as a works contractor, it could not be registered and as such the learned Taxing Authority initiated a proceeding u/s.12(5) of the OST Act against it for its assessment for the assessment year 1997-98 and on verification of the books of account completed the assessment by raising a tax demand of Rs.3,21,234.00. But, thereafter, being aggrieved with the order of the learned Taxing Authority, the respondent-dealer preferred an appeal before the learned first appellate authority and on consideration of the materials on record, the learned first appellate authority set aside the order of the learned Taxing Authority and remanded the matter to him for fresh consideration of the same on examination of the claim of the respondent-dealer for allowing deduction of the cost of land from the GTO and to determine the tax liability. In view of the order of the learned first appellate authority, the learned Taxing Authority reconsidered the matter on examination of the books of account and the other relevant materials produced by the respondent-dealer and found out no merit in its claim and accordingly confirmed his earlier order by raising the tax demand of Rs.3,21,234.00. Therefore, again being aggrieved with the order of the learned Taxing Authority, the respondent-dealer preferred an appeal before the learned ACST bearing First Appeal Case No. AA 409/BH-I/04-05. On hearing and on consideration of the materials on record in detail, the learned ACST arrived at a conclusion that, the appellant-dealer is entitled to get deduction of the cost of land and the cost of registration of the flats collected from the clients and accordingly allowed the appeal in part by reducing the tax demand to Rs.59,276.00 from Rs.3,21,234.00 as raised earlier by the learned Taxing Authority. Thus, thereafter, being aggrieved with the order of the learned ACST, the Revenue as appellant has preferred this second appeal.

3. The appellant-Revenue has taken the following grounds in its grounds of appeal:-

- (i) That the order of the learned ACST is not just and proper.
- (ii) That extra deduction for supervision charges cannot be allowed.

(iii) That deduction on the score of labour and service charges is only allowable.

(iv) That the land cost has not been reimbursed to the landlord.

4. No cross objection has been filed by the respondent-dealer.

5. Heard both the sides. The learned Standing Counsel appearing for the appellant-Revenue submitted that, the learned ACST has not considered the matter properly and has allowed deduction of the cost of land and the cost of registration of the flats from the GTO for determination of the TTO and the tax liability of the respondent-dealer and the order passed by him in this regard being erroneous is liable to be set aside and the order passed by the learned Taxing Authority being proper and justified, the same is liable to be restored. On the other hand, the learned Counsel appearing for the respondent-dealer supported the order of the learned ACST and urged for dismissal of the appeal.

6. Perused the orders of the both the learned forums below and the other materials available on record. From the materials on record, it is seen that, as per the tripartite agreements, the customers have agreed to pay the cost of the building to the respondent-dealer and the cost of the land to the land owner. Thus, by virtue of such tripartite agreement the respondent-dealer has collected the entire cost from the customers at the time of allotting the flats and has allotted some of the flats to the land owner in lieu of the cost of the land. Similarly, the respondent-dealer has also collected an amount of Rs.4,08,670.00 towards the cost of registration of the flats and as such both the cost of land and the cost of registration charges are to be deducted from the GTO to determine the TTO. On further consideration of the entire materials available on record, it can clearly be said that, the learned ACST has considered the matter properly and has passed the order in a justified manner. Though the appellant-Revenue has relied upon on certain case laws, the same are of no help to it. As the learned ACST has passed the order in a proper and justified manner on consideration of the entire materials available on record and as the order

passed by him suffers from no infirmity, the same needs no interference of this forum.

7. In the result, the appeal is dismissed being devoid of merit.

Dictated & corrected by me,

Sd/-
1st Judicial Member,
Odisha Sales Tax Tribunal

Sd/-
1st Judicial Member,
Odisha Sales Tax Tribunal

I agree,

Sd/-
Accounts Member-I,
Odisha Sales Tax Tribunal