

आयकर अपीलीय अधिकरण न्यायपीठ रायपुरमें।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

(Through Virtual Court)

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No. 238/RPR/2017

निर्धारण वर्ष / Assessment Year : 2010-11

The Income Tax Officer-1(1),
Bhilai (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Mahakal Ispat Pvt. Ltd.
84, Light Industrial Area,
Bhilai-490026.
PAN : AAECM5799D

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Sanjay Kumar, DR

सुनवाई की तारीख / Date of Hearing : 14.03.2022

घोषणा की तारीख / Date of Pronouncement : 30.03.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the Revenue is directed against the order passed by the CIT (Appeals)-II, Raipur, dated 02.06.2017, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s 147 of the Income-tax Act, 1961 (in short 'the Act'), dated 18.11.2016 for assessment year 2010-11. Before us the revenue has assailed the impugned order on the following effective ground of appeal:

"1. Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in accepting the fresh evidence produced by the assessee without allowing the ASO, proper opportunity to examine the same, thereby violating the provisions on law under Rule 46A of I.T Rules."

2. Succinctly stated, the assessee company which is engaged in the business of manufacturing of sponge iron and generation of power, had filed its return of income for the assessment year 2010-11 on 14.10.2010, declaring an income of Rs.2,68,900/-. Original assessment was framed by the Assessing Officer vide his order passed u/s. 143(3) of the Act, dated 12.03.2013, determining the income of the assessee company at Rs.3,68,900/-.

3. Observing that the assessee had raised a claim for excess depreciation on electrical installation i.e @15% as against that allowable to it @10%, its case was re-opened by the Assessing Officer u/s. 147 of the Act. As the assessee had failed to account for sales of raw materials (ingots) of 355.31 MTs, the Assessing Officer while framing the re-assessment made an addition of Rs.89,42,387/- and vide his order passed u/s.143(3) r.w.s 147 of the Act, dated 18.11.2016, determined the assessee's income at Rs.92,11,290/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). Observing, that the sales of the finished goods was inclusive of those of the raw materials, the CIT(Appeals) did not find favor with the view taken by the Assessing Officer that the assessee had sold the raw material without taking the same in its profits earned during the year. It was observed by the CIT(Appeals) that on a reconciliation of Part A and Part B of the "Annexure" to the Tax Audit Report with the sales register, no variation or difference did therein emerge. It was also observed by the CIT (Appeals) that the Excise Return Form (ER-1) of the assessee company supported the

reconciliation of the sales of finished products and raw materials that was furnished by the assessee before him. Backed by his aforesaid observations the CIT(Appeals) vacated the addition of Rs.89,42,387/- (supra) that was made by the Assessing Officer.

5. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. The solitary grievance of the Revenue is that the CIT (Appeals), while concluding, that the assessee had duly reconciled its sales of finished goods and raw materials, had taken cognizance of the "Excise Return Form" (ER-1) i.e, an additional evidence, without confronting the same and calling for the comments of the Assessing Officer prior to admission of the same. Elaborating on his aforesaid grievance, it was submitted by the Ld. Departmental Representative (for short 'DR'), that as the ER-1 that was filed by the assessee before the CIT(Appeals) was in the nature of an additional evidence, therefore, as per mandate of Rule 46A of the Income Tax Rules, 1962, it was obligatory on the part of the CIT(Appeals) to have afforded a reasonable opportunity of

being heard to the Assessing Officer prior to admission of the same. It was submitted by the Ld. DR that as the CIT (Appeals) had failed to comply with the aforesaid statutory obligation that was cast upon him, therefore, the order passed by him could not be sustained and was liable to be set-aside, with a direction to pass a fresh order after affording a reasonable opportunity to the department to rebut the admission of the ER-1 i.e, an additional evidence.

7. As the respondent assessee despite having been put to notice had failed to appear before us, therefore, we are constrained to dispose off the appeal as per Rule 25 of the Appellate Tribunal Rules, 1963 i.e, after hearing the appellant revenue and perusing the orders of the lower authorities.

8. As observed by us hereinabove, the solitary grievance of the revenue before us lies in a narrow compass i.e, admission of ER-1 by the CIT(A), an additional evidence, without confronting and calling for the objection of the Assessing Officer and recording in writing reasons for admitting the same. Admittedly, as per Rule 46A of the Income Tax

Rules, 1962, it is only subject to certain exceptional circumstances as had been carved out in the said rule, that any evidence, whether oral or documentary, other than the evidence produced by the assessee during the course of proceedings before the Assessing Officer, can be admitted in the course of the proceedings before the CIT (Appeals).

For the sake of clarity Rule 46A is culled out as under:

"46A. (1) The appellant shall not be entitled to produce before the ⁹⁴[Deputy Commissioner (Appeals)] ⁹⁵[or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the ⁹⁶[Assessing Officer], except in the following circumstances, namely :—

- (a) where the ⁹⁷[Assessing Officer] has refused to admit evidence which ought to have been admitted ; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the ⁹⁷[Assessing Officer] ; or
- (c) where the appellant was prevented by sufficient cause from producing before the ⁹⁷[Assessing Officer] any evidence which is relevant to any ground of appeal ; or
- (d) where the ⁹⁷[Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the ⁹⁸[Deputy Commissioner (Appeals)] ⁹⁹[or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

(3) The ²[Deputy Commissioner (Appeals)] ³[or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the ⁴[Assessing Officer] has been allowed a reasonable opportunity—

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or
(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the ⁵[Deputy Commissioner (Appeals)] ⁶[or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the ⁷[Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271."

9. In our considered view, as stated by the Ld. 'DR', and rightly so, as the CIT(Appeals) had admitted the ER-1, an additional documentary evidence, without affording any reasonable opportunity to the Assessing Officer to examine the same, therefore, the admission of the same clearly militates as against the procure contemplated under law. Apart from that, the CIT(Appeals) had also not complied with the statutory obligation that was cast upon him as per Clause (1) of Rule 46A(1) of the Income-Tax Rules, 1962, as per which he was obligated to record in writing the reasons for admitting the aforesaid document i.e. ER-1 as an additional evidence. Backed by our aforesaid observations, we are of the considered view, that as admission of ER-1, an additional evidence, by the Ld. CIT(Appeals) clearly militates as

against the procedure contemplated in Rule 46A of the Income-tax Rules, 1962, therefore, the order passed by him cannot be sustained and is liable to be set-aside. We, thus, in terms of our aforesaid deliberations restore the matter to the file of the CIT(Appeals) with a direction to dispose off the appeal afresh.

10. In the result, appeal of the revenue is allowed for statistical purposes.

Order pronounced in open Court on 30th day of March 2022.

Sd/-
JAMLAPPA D BATTULL
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 30th March, 2022
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (C.G)
4. The Pr. CIT-II, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	14.03.2022	Sr.PS/PS
2	Draft placed before author	15.03.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		