



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA Nos.268, 270 & 272/CTK/2020  
ITA Nos.269, 271 & 273/CTK/2020  
Assessment Years : 2008-09 to 2010-2011**

Deputy Commissioner of Income Tax, Central Circle, Sambalpur	Vs.	M/s. Tarini Minerals Pvt Ltd., A-6, Commercial Estate, Civil Township, Rourkela
PAN/GIR No.AAACT 6489 P		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

**C.O. Nos.6 to 8/CTK/2021  
(in ITA Nos.268, 270 & 272/CTK/2020)  
Assessment Years : 2008-09 to 2010-2011**

M/s. Tarini Minerals Pvt Ltd., A-6, Commercial Estate, Civil Township, Rourkela	Vs.	Deputy Commissioner of Income Tax, Central Circle, Sambalpur
PAN/GIR No.AAACT 6489 P		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri S.C.Bhadra, AR  
Revenue by : N o n e

**Date of Hearing : 2 /5/ 2022  
Date of Pronouncement : 2/5/2022**

**ORDER**

**Per George Mathan, JM**

ITA Nos.268, 270 & 272/CTK/2020 are filed by the revenue against the separate orders all dated 21.9.2020 of the Id CIT(A), Cuttack in

quantum appeals arising out of appeal Nos.0016/2019-2020, No.0014/2019-2020 and No.0011/2019-2020 for the assessment years 2008-09 to 2010-11, respectively.

2. ITA Nos.269, 271 & 273/CTK/2020 are filed by the revenue against the separate orders all dated 22.9.2020 of the Id CIT(A), Cuttack in Appeal Nos.0025/2019-2020, 0023/2019-20 and 0019/2019-2020 against the cancellation of penalty levied u/s.271(1)(c) of the Act in respect of quantum additions made for the assessment years 2008-09 to 2010-2011, respectively.

3. The assessee has also filed cross objections against the revenue's quantum appeals all dated 21.9.2020 in respect of assessment years 2008-09 to 2010-2011.

4. As all these appeals relate to same assessee, they are being disposed of by this common order for the sake convenience.

5. Ld CIT DR has filed adjournment petition dated 29.4.2022, wherein, he has mentioned as follows:

1. That as per the cause list the above case has been fixed for hearing on 2.5.2022.

2. I am presently holding six additional charges including four charges of Commissioner of Income Tax (Appeals) and thus overburdened with the task of passing appellate orders.

3. Further, I shall be availing C.L./ on 2.5.2022 to attend to pressing medical issues in my family.

4. In the above compelling circumstances, it is prayed that the instant case may kindly be adjourned for a fortnight and inconvenience caused to your honour is regretted.”

6. The adjournment sought by Id CIT DR is rejected and these appeals are being disposed of. Here, it may be mentioned that the appeals had been originally filed on 6.1.2021. The appeals were posted first on 8.3.2021 on which date at the request of Id CIT DR, adjournment was granted and the appeals were fixed for hearing on 14.4.2022 and at the request of Id CIT DR, the appeals were adjourned to 8.3.2022. Again, on 8.3.2022 at the request of Id CIT DR, the adjournment was granted. Thereafter, the appeals were posted on 12.4.2022, on which date, the bench did not function. The appeals have now been posted today and again Id CIT DR has sought adjournment. Ld counsel for the assessee, Shri S.C.Bhadra, CA submitted that he does not wish to argue the appeals, as Id CIT DR has sought adjournment.

7. At the outset, it may be mentioned that the adjournment is not a right but it is a liberty granted by the Bench. The frequent taking adjournment clearly shows that it is an abuse of that liberty already granted several times. Consequently, the adjournment sought is refused and the appeals are being disposed of on merits.

8. In the quantum appeals, the revenue has raised the following grounds:

"1. That on the facts and circumstance of the case, the Ld. CIT (A) erred in holding that the proceedings u/s. 147 are null and void and the Assessing Officer had no tangible material to form a reason to believe that income had escaped assessment.

2. That on the facts and circumstances of the case, the Ld. CIT (A) erred in holding that there was no illegal mining without referring to the decision of Hon'ble Supreme Court in W.P. (C) No. 114/2014 (2017) in the case of Common Cause Vs Union of India and Ors.

3. That on facts and circumstance of the case, the Ld. CIT (A) erred in deleting the disallowance of expenditure inadmissible u/s. 37(1) of the Income-tax Act, 1961, related to illegal mining without referring to the decision of Hon'ble Supreme Court in W.P. (C) No. 114/2014 (2017) in the case of Common Cause Vs. Union of India and Ors.

4. Any other ground that may be urged at the time of hearing."

9. Perusal of Ground No.1 shows that the revenue has challenged the order of the Id CIT(A) in respect of quashing of the reopening. We find that at page 5 of 15 of the impugned order, the Id CIT(A) has examined the issue of reopening of assessment and has categorically given finding that the entire reassessment proceedings u/s.147 is based on report of Justice M.B.Shah Commission in regard to illegal mining in the State of Odisha which was placed in the public domain in the months of July, 2013 and October, 2013. Ld CIT (A) further goes on to hold that without any independent application of mind, the AO has accepted the Commissions finding that the assessee had indulged in illegal mining of iron ore. Id CIT (A) has categorically given a finding that the AO has made no attempt to

reconcile the production data furnished by the assessee in its H-1 report submitted to the Indian Bureau of Mines with the data shown by it in its tax audit report. Ld CIT (A) has further noted that the AO has failed to take the cognizance of the decision of Hon'ble Supreme Court in the case of Goa Foundation vs Union of India & others, in which the Hon'ble Supreme Court has cast aspersions on the findings of the Hon'ble Justice M.B.Shah Commission report in so far as the report had been made without giving an opportunity to the affected parties to respond. Ld CIT(A) while quashing the reopening of assessment has given a categorical finding that the AO has accepted information from outside source without subjecting it to critical scrutiny and that the AO's "reason to believe" that income had escaped assessment was not based on an independent application of mind to the facts available. The revenue, admittedly has not been able to dislodge any of the categorical findings of the Id CIT(A). This being so, we find no error in the order of the Id CIT(A) in quashing the reopening of assessment. Consequently, Ground No.1 of revenue stands dismissed.

10. In Ground Nos.2 & 3, the revenue has raised the issue against the order of the Id CIT(A) in holding that there was no illegal mining and deleting the disallowance of expenditure u/s.37(1) of the Act.

11. Perusal of the order of the Id CIT(A) most specifically pages 9 of 15 shows that the Id CIT(A) has examined the Form H-1 submitted to the

Indian Bureau of Mines in regard to production of iron ore and has found that the very same figure has been reported by the assessee in its audit report in Form 3CD. He further goes on to hold that the figure also tallies with that given by the Central Empowered Committee while reporting on the production of iron ore carried out by the assessee. After giving these findings, the Id CIT(A) has come to the conclusion that there is no suppressed production and had consequently deleted the addition made by the Assessing Officer. Nothing has been produced by the revenue to dislodge these findings of fact by the Id CIT(A). Consequently, the findings of the Id CIT(A) is confirmed and Ground No.2 of the revenue stands dismissed.

12. In regard to illegal expenses, Id CIT(A) has taken cognizance of the Explanation 1 to section 37 and in page 14 of his order, has categorically held that the disallowance u/s.37 would only come into play if the assessee had been penalized under the appropriate sections of the respective statute and if the assessee has claimed this penalty as an expenses in the profit and loss account. Ld CIT(A) further goes on to hold that the payments made by the assessee to various parties represent genuine business expenditure for mining activities carried out by these parties like raising of iron ore and transportation of the same. He further held that they are neither in the nature of bribes/protection money nor do they suffer from the taint of illegality as no statutory law has been violated by the assessee

in the course of incurring this expenditure. As the revenue has not been able to dislodge the findings of fact arrived at by the Id CIT(A), we find no error in the findings of the Id CIT(A). Consequently, Ground No.3 of the revenue stands dismissed.

13. Ground No.4 of revenue is general in nature and hence, requires no adjudication.

14. Resultantly, appeals filed by the revenue in ITA Nos.268, 260 & 272/CTK/2020 are dismissed.

15. As the appeals filed by the revenue in quantum appeals have been dismissed above, the appeals against the deletion of penalty u/s.271(1)(c) by the Id CIT(A) in ITA Nos.269, 271 & 273/CTK/2020 does not have any legs to stand. Consequently, same are dismissed.

16. In the cross objections, the assessee has raised the issue that the Id CIT(A) has not adjudicated Ground No.6 taken in Form No.35 that the AO has not followed the law laid down in the case of GKN Driveshafts India Ltd vs DCIT (2003) 259 ITR 19 (SC). This is purely a legal issue and goes to the root of the assessment. On perusal of assessment order, it clearly shows that the reasons recorded for reopening of assessment has been given to the assessee. On perusal of assessment order in para 3 shows that the assessee had asked for reasons for issuance of notice u/s.148, and same were also communicated to the assessee vide revenue office letter

dated 18.9.2015. The assessee has not been able to show any where that he has raised any objection against the reasons recorded for reopening of assessment. Consequently, it cannot be said that the AO has not followed the decision of Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd (supra). Consequently, Cross objections filed by the assessee are dismissed.

17. It is also noticed that the cross objections filed by the assessee are delayed by 16 days. The assessee has filed application for condoning the delay, wherein, it is mentioned that the assessee is in Rourkela and the Authorised Representative is in Bhubaneswar and this caused the delay of 16 days in filing of cross objections. The reasons given by the assessee are not convincing. Consequently, the delays in filing the cross objections are not condoned and even on this ground, the cross objections stand dismissed.

18 .In the result, appeals filed by the revenue and cross objections filed by the assessee are dismissed.

Order dictated and pronounced in the open court on 2 /5/2022.

Sd/-  
**(Arun Khodpia)**  
**ACCOUNTANT MEMBER**

sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant : Deputy Commissioner of Income Tax, Central Circle, Sambalpur
2. The Respondent. M/s. Tarini Minerals Pvt Ltd., A-6, Commercial Estate, Civil Township, Rourkela
3. The CIT(A)-, Cuttack
4. Pr.CIT-, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**