



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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA Nos.36 & 37/CTK/2024

Assessment Years : 2010-11 & 2011-12

JM Mining and Trading Pvt Ltd., At-Madhusudan Avenue, Tulsipur, Cuttack	Vs.	ACIT, Circle-2(1), Cuttack
PAN/GIR No.AABCJ 2946 C		
(Appellant)	..	(Respondent)

Assessee by : Shri Sandeep Kumar Jena, Adv
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 23/07/2024

Date of Pronouncement : 23/07/2024

ORDER

Per Bench

These are appeals filed by the assessee against the separate orders of the Id CIT(A), NFAC, Delhi dated 30.11.2023 in Appeal No.CIT(A),Cuttack/10884/2016-17 (Manual Appeal Register Number:0182/2016-17 and Appeal No.CIT(A),Cuttack/10886/2016-17(Manual Appeal Register Number :0183/2016-17) for the assessment years 2010-11 and 2011-12, respectively.

2. Shri Sandeep Kumar Jena, Id AR appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the assessment orders u/s.147 r.w.s 144 came to be passed for the assessment years 2010-11 & 2011-12 on 31.3.2016. The assessee had filed the appeals against the said orders in physical form on 12.5.2016 before the Id CIT(A), Cuttack. It was the submission that the appeals filed by the assessee had migrated to the electronic form and the Id CIT(A), NFAC rejected the appeals of the assessee on the ground that the appeals were filed in paper form and not verified in the prescribed manner as per the provisions of section 249 of the Act. It was the submission that the assessee may be granted an opportunity to represent the matter before the Id CIT(A). Id AR of the assessee has filed written submission, as follows:

“WRITTEN SUBMISSIONS (A)

1. That Mr. Soumendra Nandan Dasmohapatra, who is the Chairman cum Director of appellant company named as M/S. JM Mining and Trading Company Pvt. Ltd. in short JMMTPL is a senior citizen, aged about 75 years physically handicapped, under loco motor disability. Mr. Soumendra Nandan Dasmohapatra has a mining license in his individual capacity as it was very difficult on his part to monitor day today mining business activities due to his ill health; he entered in to an agreement with JMMTPL the appellant company on 30.06.2004 to run the business.

2. That the appellant carried on business in trading of minerals by acting as a facilitator / agent. For the relevant assessment year, the return of the Appellant Company was e-filed on 15.09.2010 and on 21.09.2011 for the A/Y-2010-11 & 2011-12 respectively along with statutory audited accounts by the CA, the accounts of the Appellant Company were prepared in accordance with the accounting standard specified by the Institute of

Chartered Accountants of India and the accounting standards enumerated by the Govt. of India and the said accounts were duly audited along with tax audit. That the appellant company has filed its return of income relying on such audited accounts by truly and fully disclosing sales of minerals, interest and other income the copy of the audited accounts for year ended 31/03/2011 which reflects both the years is enclosed herewith marked as ENCLOSURE-1.

3. That suddenly the assessments for the four assessment years from the A/Y-2008- 09,2009-10, 2010-11 and 2011-12 in the case of Mr.S.N' Dasmohapatra were reopened u/s.147of the Income Tax Act, 1961(Act) by the Ld. Assistant Commissioner of Income Tax, CircJe-2(1), Cuttack who was the jurisdictional assessing officer in short Ld .A.O on the sole basis that, the Ld. A.O gathered certain information special investigation team(SIT) from the contents of the Justice Shah Commission Report by pick and choosing some opinion from the said Report without any independent enquiry, investigation and application of mind. That in response to notices issued u/s.148 of the Act the appellant company filed return by disclosing the same original income as disclosed earlier, the copy of the same is enclosed herewith marked as ENCLOSURE-2.

4. That the entire reassessment proceeding for the A/Y-2010-11 & 2011-12 completely stands on such borrowed information, wherein the Ld. A.O has arrived at an erroneous conclusion under pretense that the appellant company carried on illegal mining activities for which there are possibilities of escapement of income within the meaning of section 147 of the Act. As a consequence the assessment for the impugned A/Y 2010-11 and 2011-12 the appellant company JMMTPL were also reopened u/s.147 of the Act. As a result for the Ay-2008-09 to 2010-11 the assessments were completed u/s.147/144 of the Act in substantive manner in the case of Mr. S.N Dasmohapatra and for the impugned A/Y 2010-11 and 2011-12 the appellant company JMMTPL in the protective manner, for which toe appellant has taken specific grounds in the present appeals.

5. That so far as the appeals of Mr. S.N Dasmohapatra are concerned the same are pending for disposal before the Ld.CIT (A), NFAC the details of which are given here under:

Assessment Years' Appeal Number and date of its filing

2008-09	CIT(A),Cuttack/10878/2016-17, dt, 12/05/2016
2009-10	CIT(A),Cuttack/10880/2016-17, dt. 12/05/2016
2010-11	CIT(A),Cuttack/10886/2016-17, dt. 12/05/2016
2011-12	CIT(A),Cuttack/10886/2016-17, dt. 12/05/2016

6. That in all cases the entire re-assessment proceeding for the assessment year 2010-11 and 2011-12 of JMMTPL were conducted physically, upon appellant's appearances before the Ld. AO. But unfortunately, following the casual issuance of the assessment order, the Ld. A.O negligently failed to

upload the said orders and demand notices dated 31.03.2016 onto the LT Department Portal. Consequently, the appellant including Mr. S.N Dasmohapatra were unfairly deprived of e-filing their appeals within the statutory time limit, i.e., on 12.05.2016. Despite the absence of an opportunity for e-filing, while the First Appellate Authority, Ld. C.1.T (A), Cuttack, accepted the appeals in paper form and issued acknowledgments the copy of the same is enclosed herewith marked as ENCLOSURE-3. However the Ld. CIT CA), Cuttack transferred the appeals to NFAC without uploading the appeal record onto' the Income Tax Portal, whereas the CBDT issued a directive dated, 09/07/2020 to the tax authorities including CITCA), that all appeal which were filed manually and which are not entered in the system to be uploaded by 31/08/2020 the copy of the same is enclosed herewith marked as ENCLOSURE-4.

7. That presently, despite the appellant's detailed case on merit, the appeal was technically dismissed by the Ld. CIT CA), NFAC. This dismissal sidestepped the illegality in the Ld. AO's actions during re-assessment and neglected to consider the appeals merit. The suggestion to re file the appeal before the CIT CA) NFAC, complying with statutory provisions including Section 249 of the Act and Rule 45 of the Rules, serves as undue harassments as such no scope to e-file appeal is available with the appellant under the e- filing portal. These suggestions of the Ld. CIT CA), NFAC is just like tie someone, push him in to the deep water and instruct him to swim. On last occasion on 21/05/2024 this Hon'ble Bench has directed the Ld. Sr. D.R to verify whether the impugned assessment orders have been uploaded on the portal. Recently on 22/07/2024 the appellant verified the portal and enclosing the copies of the latest screenshot of e-proceeding portal in the present appeals for evidencing the same marked as ENCLOSURE-5; wherefrom it appears that as on date options for e-filing appeal are not available and disabled in both the cases. The appellant place its reliance on two orders of Hon'ble ITAT Mumbai Bench and one order of Chennai Bench as below:

I) Ara Law Vrs. ACIT in ITA No- 4012/Mum/2018 (Mumbai) dated, 04/07/2019 (pg-4 Para-6)

ii) Estate of Ramniklal Rajmal Mehta Vrs. DCIT in ITA No- 628 to 632/ Mum/ 2021(Mumbai) dated, 30/11/2021(pg-8 para-15 &16)

iii) Ravi Prabhakar Vrs. ITO in ITA No- 1153/Chny/2019 (Chennai) dated, 02/01/2020 C Pg 6 para-B &9)

Here in all three appeals the Hon'ble ITAT send the matter back to the Ld, CIT CA), for consideration of case on merits.

Merits of the Appeals

So far as regards to the merit of the case, it is submitted that reassessment initiated in case of appellant without conducting independent inquiry by

Assessing Officer, merely on basis of Shah Committee Report, was to be quashed, particularly when High Court had already concluded that observations in Shah Commission Report were merely opinion and same could not form basis alone for purpose of reopening assessment. The Hon'ble Bombay High Court has held that the reasons for reopening clearly show that the assessing officer, except borrowing the information from the third report of the Justice M,B, Shah Commission, failed to record independently to his own satisfaction any reason so as to direct the reopening of the assessment. The Hon'ble High Court has held that the reasons for reopening clearly show that the assessing officer, except borrowing the information from the third report of the Justice M.B. Shah Commission, failed to record independently to/his own satisfaction any reason so as to direct the reopening of the assessment. The copy of Judgement dated 26.04.2024 in W.P.(C) No. 262 of 2016 in the case of M/s. Balaji Mines and mineral Vrs. ACIT is enclosed herewith please see at page. 29, Para 46 to 51. Further coordinate Bench of this Hon'ble ITAT in the case of Deputy Commissioner of Income Tax, Central Circle, Sambalpur Vrs. M/s. Tarini Minerals Pvt Ltd. in ITA Nos- ITA Nos.268, 270 & 272/CTK/2020, vide order dated, 02/05/2022 have decided the identical issue in favour of the assessee. In another appeal the same Hon'ble Bench in the case of Bikash Dev Vrs. DCIT, Circle 2(1), Bhubaneswar in ITA No. 357 & 388/CTK/2019 order dated 17/01/2023 at Page.18, Para.17 which is reproduce as below:

'Thus, in these circumstances, as the reasons recorded does not quantify even an estimated amount of the alleged income which has escaped assessment and as it is noticed that the reasons recorded do not contain any live link to the alleged illegal mining, the reasons recorded for the purpose of reopening of assessment are invalid and is nothing but fishing enquiry. Consequently, the reasons recorded are held to be invalid and notice issued u/s.148 of the Act for the purpose of reopening stands quashed. Consequently the assessment also stands quashed therefore cannot be sustainable under law'.

Under the aforesaid facts and circumstances, the impugned reassessment order along with the order of Ld. CIT CA), NFAC are deserved to be quashed.

Cuttack
Date: 23/07/2024

WRITTEN SUBMISSIONS (B)

1. That Mr. Soumendra Nandan Dasmohapatra, Chairman cum Director of appellant company named as M/S. JM Mining and Trading Company Pvt. Ltd, in short JMMTPL aged about 75 years is a senior citizen, physically handicapped under loco motor disability, the copy of the disability certificate is enclosed herewith marked as ENCLOSURE-1, also very recently

undergone heart surgery at New Delhi. Previously Mr. S.N Dasmohapatra had a mining license in his individual capacity as it was very difficult on his part to monitor day today activities for his ill health; he entered In to an agreement with JMMTPL the appellant company on 30.06.2004 to run the business.

2. That the assessments for the assessment years from the A/Y-2008-09, 2009-10, 2010-11 and 2011-12 in the case of Mr. S.N Dasmohapatra were reopened u/s.147 of the Income Tax Act, 1961(Act) by the Ld. Assistant Commissioner of Income Tax, Circle-2(1), Cuttack who is the jurisdictional assessing officer in short Ld AO on the sole basis that/the Ld. A.O gathered certain information from the contents of the Justice Shah Commission Report by pick and choosing some opinion from the said Report without any independent enquiry, investigation and application of mind. The entire reassessment proceeding completely stands on such borrowed information, wherein the Ld. A.O has arrived at an erroneous conclusion under pretense that the appellant carried on illegal mining activities for which there are possibilities of escapement of income within the meaning of section 147 of the Act. As a consequence the assessment for the impugned A/Y 2010-11 and 2011-12 the appellant company JMMTPL were also reopened \1/s.147 of the Act. As a result for the Ay- 2008-09 to 2010-11 the assessments were completed u/s.14 7 /144 of the Act in substantive manner and for the impugned A/Y 2010-11 and 2011-12 the appellant company JMMTPL in the protective manner, for which the appellant has taken specific grounds in the present appeals.

3. That so far as the appeals of Mr. S.N Dasmohapatra are concerned the same are pending for disposal before the Ld. CIT CA), NFAC the details of which are given here under:

Assessment Years	Appeal Number and date of its filing
2008-09	CIT(A),Cuttack/10878/2016-17, dt, 12/05/2016
2009-10	CIT(A),Cuttack/10880/2016-17, dt.12/05/2016
2010-11	CIT(A),Cuttack/10886/2016-17, dt. 12/05/2016
2011-12	CIT(A),Cuttack/10886/2016-17, dt. 12/05/2016

4. That in all cases the entire re-assessment proceeding for the assessment year 2010-11 and 2011-12 of JMMTPL and for the A/Y-2008-09 to 2011-12 in the case of Mr. S.N Dasmohapatra were conducted physically, upon appellant's appearances before the Ld. AO. But unfortunately, following the casual issuance of the assessment order, the Ld. A.O negligently failed to upload the said orders and demand notices dated 31.03.2016, onto the I.T Department Portal. Consequently, the appellant including Mr. S.N Dasmohapatra were unfairly deprived of e-filing their appeals within the statutory time limit, i.e., on 12.05.2016. Despite the absence of an opportunity for e- filing, while the First Appellate Authority, Ld. C.I.T CA), Cuttack, accepted the appeals in paper form and issued acknowledgments, has partly heard the appeals for both in the case of appellant and Mr. S.N Dasmohapatra twice under physical/manual mode on two occasion Le, on

14.02.2019 and 29.05.2019 respectively. However the Ld. CIT CA), Cuttack transferred the appeals to NFAC without uploading it onto the Income Tax Portal.

5. That presently, despite the appellant's detailed case on merit, the appeal was technically dismissed by the Ld. CIT CA), NFAC. This dismissal sidestepped the illegality in the Ld. AO's actions during re-assessment and neglected to consider the appeal's merit. Further Mr. S.N Dasmohapatra's predicament is the Ld. CIT CA), NFAC will pass similar unfair appeal orders like in the case of appellant. The suggestion to re file the appeal before the CIT CA) NFAC, complying with statutory provisions including Section 249 of the Act and Rule 45 of the Rules, serves as undue harassments as such no scope to e-file appeal is available with the appellant under the e-filing portal. The appellant is also enclosing the copies of the screenshot of e-proceeding portal dated 20.05.2024 in its own appeals as well as in the aforesaid appeals of Mr. S.N Dasmohapatra, for evidencing the same marked as ENCLOSURE-2; wherefrom it appears that as on date options for e-filing appeal are not available and disabled in both the cases. Under the facts and in the circumstances of the cases the first appeal order dated, 30.11.2023 in the case of the appellant which are under appeal before this Hon'ble Bench constitutes a judicial error, and not providing any option to the appellant is illegal as such hit by Article-21 of the Constitution of India i.e. right to access for speedy justice, therefore cannot be sustainable under law.

PRAYER

Under the aforesaid facts and circumstances, it therefore prayed that this Hon'ble Bench to be graciously be pleased to set-aside and restore the impugned first appeal orders in case of the appellant passed by the Ld. CIT CA), NFAC. Since the case of the appellant and Mr. S.N Dasmohapatra are correlated the same may be clubbed together and be heard, under physical mode by the jurisdictional Ld. CIT CA), Cuttack, who in fact accepts the appeals filed in paper forms and has partly heard the appeals for both in the case of appellant and Mr. S.N Dasmohapatra twice under physical/manual mode on two occasion Le, on 14.02.2019 and 29.05.2019 respectively. Therefore in all fairness, it is further prayed that necessary directions may kindly be given to the first appellate authority to decide the appeals on its own merit in order to meet the end of justice.

For which act of your kindness the appellant as in duty bound shall ever pray. "

Dated 21.5.2024

"WRITTEN SUBMISSIONS (C)

"1. That the aforesaid appeals having common issues fixed first time for hearing today by this Hon'ble Bench.

2. That on verification of grounds of appeal, it reveals that, the re-assessment proceedings and orders for both the years have been passed u/s.147/144 manually upon appearances by the appellant before the Ld. AO. That after passing the assessment order casually the Ld. A.O has completely forgot to upload the impugned assessment orders and demand notices dated, 31.03.2016 under the LT Department's e- proceeding Portal. For this reasons the appellant has been unlawfully prevented by not e-filed the appeals, however filed the same before the Ld. C.I.T (Appeals), Cuttack within the statutory time limit as there is no scope available with the appellant for e-filing the appeals. The Ld. C.I.T (A), Cuttack has accepted the appeal and issued acknowledgement to the appellant without raising any objection. In fact the Ld. C.LT (A), Cuttack heard the appeals physically / manually on two occasion i.e, on 14.02.2019 and 29.05.2019 respectively. The Ld. CIT (A) Cuttack though has transferred/migrated the appeals to the NFAC but without uploading the appeal record which includes the compliances made before him in the I.T Department's e- proceeding Portal again. The Ld. C.I.T (A), NFAC issued a deficiency letters on 09.02.2021 copy enclosed marked as ENCLOSURE-I. The appellant responded promptly on the next date i.e, on 10.02.2021, ,copy enclosed marked as ENCLOSURE-2 by uploading the necessary documents and made necessary compliance as required.

3. That despite the compliances made in the appeals by the appellant, the Ld. CIT (A),NFAC has been technically treated the appeals invalid and not maintainable as filed in paper form and dismissed the appeals by without going into illegality committed by the Ld. AO while framing the re-assessment orders further without deciding the appeal on its own merit.

4. That under such circumstances it is felt that for better appreciation of facts and adjudication the reassessment record for the assessment year-2010-11 and 2011-12 may required to be called for from the Ld. Asst. Commissioner of Income Tax, Circle- 2(1), Cuttack, Odisha, and after verification of the same this Hon'ble Bench may kindly be pleased to hear and disposed up the present appeals in the interest of justice. In the meantime the appellant will prepare and file it's written submissions and documents in shape of a paper book which will be served before department one week prior to the date of hearing.

5. That the appellant is filing this petition bona-fide and in the interest of justice.

PRAYER

Under the aforesaid facts and circumstances, it is humbly prayed that Your Honour may be kind enough to allow this petition and further be pleased to

direct the department to produce the assessment record for the A/Ys-2010-11 and 2011-12 on the next date of hearing and adjourn the aforesaid appeals fixed for hearing today to some other convenient date in the interest of justice.

And for which act of kindness, the appellant shall ever pray. "

Dated 20.5.2024

4. Ld AR also placed reliance on the decision of the Co-ordinate Bench of Cuttack Tribunal in the case of Dinesh Chandra Das vs ACIT in ITA Nos.337 & 338/CTK/2023 for A.Ys. 2008-09 & 2009-10 order dated 30.4.2024, wherein, in paras 4 & 5, the Co-ordinate Bench has held as follows:

"4. Ld AR further submitted that the notices have been issued by the Id CIT(A). However, the assessee was not well versed with the computer information technology and consequently, did not know about the notices. It was only when the order was received that the assessee came to know. It was the submission that the Id CIT(A) has dismissed the appeal of the assessee on the ground that the appeal is filed in the paper form manually on 11.5.2016 and was not in electronic form. Ld CIT(A) has also referred to Circular issued by CBDT dated 26.5.2016, wherein, it is mentioned that Rule 45 of I.T.Rules has made compulsory to e-file the appeals w.e.f. 1.3.2016 and the time limit for filing of e-appeal which due to be filed by 15.5.2016 could be filed upto 15.2.2016. Admittedly, the impugned appeals have been filed before the Id CIT(A) on 11.5.2016 manually. This was filed before the circular issued on 26.5.2016. Considering these facts and considering the fact that the e-filing of appeal was made compulsory and it was during the time of change over from physical filing to e-filing that the appeals were filed, in the interest of justice, the issues in these appeals are restored to the file of the Id CIT(A) for re-adjudication. The Id CITA(A) shall issue fresh defect notice to the assessee for the purpose of filing of appeals in electronic form and then dispose off the said appeals in accordance with law after granting adequate opportunity of hearing. We are live to the fact that we can direct the assessee to file appeals electronically. However, should there be the requirement of opening of assessment for the purpose of filing electronic filing, for this purpose, the issues are restored to the file of the Id CIT(A) so that he may give necessary direction for the purpose of permitting the assessee to rectify the mistake, if any.

5. In the result, appeals of the assessee stand partly allowed. "

5. Ld AR further placed reliance on the decision of the Co-ordinate Bench of this Bench of Mumbai Tribunal in the case Estate of Ramniklal Rajmal Mehta vs DCIT in ITA Nos.628 to 632/Mum/2021 for A.Ys. 2011-12 to 2015-16 order dated 30.11.2021, wherein, in paras 15 & 16, the Co-ordinate Bench has held as follows:

“15. From the perusal of the assessment order and the submission made before us. It is abundantly clear that the appeal was filed in physical form , though was required to be filed in electronic form before the appellant authority. Needful was not done and sufficient reasons were given before us for not preferring the appeal in electronic form by the estate of Shri Ramniklal R. Mehta.

16. In our opinion, the Board framed the rules to achieve the ends of Justice and not to put impediments in the path of Justice. The assessee can not be asked to manage the portal of the revenue and forcibly file the appeal electronically. In our view, the assessee made sufficient and sincere efforts to file the appeal in electronic forms, albeit the assessee failed in his efforts for the reasons recorded in the order. In our considered opinion, the non filing of the electronic appeal was on account of the inaccessibility of the Income tax portal to the estate of Shri RamniklalR.Mehta and assessee was forced to file the appeal in physical form . The assessee had preferred the appeal in electronic form on 12/03/2021 against the same assessment order dated 28/12/2018. In our view the revenue can not take the benefit of non functioning/ malfunctioning of its portal and deny the statutory right of the assessee. In any case the assessee can not be non suited for abrasion in the portal of the revenue . Therefore we deem it appropriate to set aside the orders passed by the CIT(A) with the following directions :-

A. The CIT(A) is directed to decide the appeals filed by the assessee filled physically as well as electronically on merit.

B. The Ld. CIT(A) shall grant the opportunity of hearing to the assessee and shall also permit the assessee to file any other documents as the assessee deem appropriate in support of his case.

C. The CIT(A) is directed to decide the appeal of assessee after affording the opportunity of hearing to the assessee in accordance with the rules framed for this purpose.”

6. Ld AR also placed reliance on the decision of the Co-ordinate Bench of this Tribunal Chennai Bench in the case of Shri Ravi P:rabhakar vs ITO in

ITA No.1153/Chny/2019 for A.Y. 2013-14 order dated 2.1.2020, wherein, in paras 6 to 9, the Co-ordinate Bench has held as follows:

"6. The assessee admittedly filed the appeal manually / in paper form within the period of limitation before the CIT(Appeals) under Section 246A of the Act. Now the Revenue claims that Rule 45 of Income-tax Rules, 1962 provides for filing appeal electronically in Form 35, therefore, the appeal filed in Form 35 manually / in paper form is not maintainable. This contention of the Revenue takes us to a question when there is a conflict between substantive justice and technicality, whether technicality is to be preferred or substantive justice? This was examined by the Apex Court in Collector, Land Acquisition v. MST. Katiji And Others (1987) 167 ITR 471. The Apex Court found that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred rather than technicality. In fact, the Apex Court has observed as follows:-

"And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. " Every day's delay must be explained " does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, common sense and pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.
6. It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

7. Moreover, under Article 265 of Constitution of India, no tax shall be levied except by authority of law. Therefore, when the assessee has a substantial right of appeal under Section 246A of the Act, such a right cannot be taken away so lightly merely because there was a violation of procedural aspect in the form of filing appeal. So far, the assessee was permitted to file appeal in manual / paper form. Now the Department switched over to electronic format for filing the appeal. This is the transition stage. Therefore, there may be a misunderstanding in filing the appeal whether the appeal has to be filed electronically or manually. This Tribunal is of the considered opinion that whatever may be the reason for filing appeal manually, now the assessee filed the appeal electronically on 25.07.2019. Therefore, even the procedure of filing of appeal electronically has been complied with by the assessee. Therefore, throwing the assessee out of court by saying that the appeal was not filed electronically may not be justified at all.

8. The assessment proceeding before the Assessing Officer and the CIT(Appeals) is a judicial proceeding as provided under Section 136 of the Act. Moreover, the very object of proceeding before the income-tax authorities is to compute the taxable income, levy tax thereon as per the law and collect the same as per the procedure prescribed for collection of tax. Therefore, merely on technicalities, the Government cannot retain a single pie of taxpayer which is not authorized by law. In this case, an effective appeal remedy is provided under Section 246A of the Act, therefore, merely because there was a technical flaw or violation of not filing the appeal initially by electronically which was admittedly complied by the assessee subsequently on 25.07.2019, this Tribunal is of the considered opinion that the appeal of the assessee cannot be thrown away. At the best, we may say that there is a delay in filing the appeal electronically as provided under Rule 45.

9. By keeping the law laid down by Apex Court in Collector, Land Acquisition (supra), provisions of the Constitution for levy and collection of taxes and the transition period the taxpayers and the Department are passing through, this Tribunal is of the considered opinion that the delay in filing the appeal electronically has to be condoned. Accordingly, the delay in filing the appeal electronically is condoned and the impugned order of the CIT(Appeals) is set aside and the entire issue raised by the assessee is remitted back to the file of the CIT(Appeals) for consideration on merit."

7. It was the submission that the issues in these appeals may be restored to the file of the Id CIT(A) for re-adjudication after granting the assessee adequate opportunity of hearing.

8. In reply, Id Sr DR vehemently supported the orders of the Assessing Officer and Id CIT(A).

9. We have considered the rival submissions. At the outset, a perusal of the assessment orders in the present case clearly shows that the assessment in the assessee's case is a protective assessment. As per the Id AR the appeals in respect of substantive assessments have also been filed physically and they are also pending disposal before the Id CIT(A). A perusal of the orders of Id CIT(A) show that the Id CIT(A) recognises that the appeals were not e-filed. Id CIT(A) issued notice on 21.10.2023 requesting the assessee as to why the manually filed appeals should not be treated as invalid. The assessee was to respond by 27.10.2023. The assessee responded on 28.10.2023 requesting for adjournment in the e-proceedings. Again, the assessee sought adjournment on 13.11.2023. On 20.11.2023, Id CIT(A) issued another reminder as a final opportunity. The response was sought by 24.11.2023. The assessee responded to the said notice with a detailed written submission but not answering the issue of the non-filing of appeals in the e-format. Thus, clearly, multiple opportunities had been granted to the assessee to explain the cause for non-filing of appeals in e-format. The assessee admittedly did not respond to the same.

10. A perusal of the decision of the Co-ordinate Bench of this Tribunal of Cuttack Bench in the case of Dinesh Chandra Das (supra) shows that in that case no opportunity was given by Id CIT(A) nor show cause notice was

issued by the Id CIT(A) and in such circumstances, the issue was restored to the file of the Id CIT(A) to issue the defect notice and grant the assessee an opportunity of rectifying the defect.

11. A perusal of the decision of the Co-ordinate Bench of Mumbai Bench in the case of Estate of Ramniklal Rajmal Mehta (supra) shows that it was a case where the appeal had been filed in physical form and subsequently in electronic format and the delay in filing the appeal in electronic format was on account of some defects in the Income tax portal. This delay was also condoned and the appeal restored to the file of the Id CIT(A) for adjudication on merits.

12. A perusal of the decision of the Co-ordinate Bench of Chennai Bench in the case of Shri Ravi Prabhakar (supra) shows that, that was a case where the assessee therein had filed the appeal originally in manual form and had subsequently filed in electronic form also and the Id CIT(A) had not condoned the delay in filing the appeal in electronic form and this delay was condoned and the issue restored to the file of the Id CIT(A) for adjudication on merits.

13. When these decisions and facts in those cases are considered with the facts in the present case, it clearly shows that the Id CIT(A) did issue show cause notice to the assessee and the assessee was very much at liberty to have the appeals filed in electronic form. The claim of the

assessee that the assessment order was not in the income tax portal does not stand to reason insofar as when filing the appeal in electronic form, the assessee had the liberty to upload the assessment order also in the electronic form. Even after, multiple opportunities were given by the Id CIT(A). The assessee sought it fit not to rectify the defect. In short, this is nothing but a challenge by the assessee to the statutory requirement of filing the appeal in electronic form as required under the Statute. This is not a case where the Id CIT(A) has either failed to give the assessee an opportunity to correct the mistake nor the Id CIT(A) has refused to condone the delay, if any, on account of the assessee rectifying any mistake in compliance with the Statute. This being so, as the Id CIT(A) has treated the appeal filed by the assessee as invalid, the issues in these appeals cannot be restored to the file of the Id CIT(A) insofar as there is no appeal before the Id CIT(A), which can be restored. This being so, the appeals filed by the assessee are dismissed and the orders of Id CIT(A) stand upheld.

14. In the result, appeals of the assessee stand dismissed.

Order dictated and pronounced in the open court on 23/07/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 23/07/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : JM Mining and Trading Pvt Ltd., At-Madhusudan Avenue, Tulsipur, Cuttack
2. The Respondent: ACIT, Circle-2(1), Cuttack
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Cuttack
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary

ITAT, Cuttack

