



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

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

ITA No.276/CTK/2024

Assessment Year : 2008-09

MGM Minerals Limited., 65, Forest Park, Bhubaneswar	Vs.	DCIT, Circle-2(1), Bhubaneswar
PAN/GIR No.AADCM 2818 E		
(Appellant)	..	(Respondent)

Assessee by : S/Shri B.K.Mahapatra/A.K.Sabat, CAs
Revenue by : Shri Sanjay Kumar, CIT DR

Date of Hearing : 4/9/2024
Date of Pronouncement : 4/9/2024

ORDER


Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 30.8.2021 in Appeal No.CIT(A), Bhubaneswar-1/10095/2016-17 for the assessment year 2008-09.

2. S/Shri B.K.Mahapatra/A.K.Sabat, Id ARs appeared for the assessee and Shri Sanjay Kumar, Id CIT DR appeared for the revenue.

3. It was submitted by Id AR that the Id CIT(A), NFAC has dismissed the appeal of the assessee holding that the assessee has opted for the Vivad Se Vishwas Scheme vide application dated 25.12.2020 pursuant to the order of

Pr. CIT, Bhubaneswar-1 in Form No.5 dated 5.5.2021. It was the submission of Id AR that during the course of audit, it was noticed that this finding of Id CIT(A) was erroneous and an application u/s.154 of the Act has been filed before the Id CIT(A), NFAC on 30.5.2024, copy of which is submitted as follows:


MGM MINERALS

BEFORE Commissioner of Income Tax (Appeals)
National Faceless Appeal Centre (NFAC), Delhi

In the matter of MGM Minerals Limited
PAN : AADCM2818E

And

In the matter of **Order u/s 250 of the IT Act dated 30.08.2021**
(Vide DIN : ITBA/NFAC/S/250/2021-22/1035181288(1)) in respect of Order dated 28.03.2016 u/s 143(3) r.w.s. 147 of the IT Act of the ACIT, Circle-2(1), Bhubaneswar

And


In the matter of IT Appeal No. CIT (A), Bhubaneswar- 1/10095/2016-17

And

In the matter of **Assessment Year 2008-09**

Application u/s 154 of the Income Tax Act, 1961 (IT Act / Act) for rectification of mistakes apparent from records.

1. The Appellant / assessee, MGM Minerals Limited is engaged in the business of mining iron ore and manufacturing of Steel.
2. That for the Assessment Year 2008-09, aggrieved by the Order of the ACIT, Circle-2(1), Bhubaneswar dated 28.03.2016 u/s 143(3) r.w.s. 147 of the IT Act, the assessee had filed an appeal before the CIT(Appeals), Bhubaneswar (IT Appeal No. 1/10095/2016-17). Subsequently, the appeal was transferred to National Faceless Appeal Centre (NFAC), Delhi.



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Regd. & Corporate Office: MGM Minerals Ltd., 65, Forest Park, Bhubaneswar - 751009, Odisha, India
Phone: +91 674 2596410 Email: info@mgmmin.in CIN - U72101OR1996PLC004413

Continuation Sheet



3. The learned CIT(Appeals), NFAC vide Order dated 30.08.2021 u/s 250 of the IT Act has treated the aforesaid appeal as dismissed for statistical purposes by stating as under:

" 2.0 It is noted that the appellant opted for the Vivad Se Vishwas Scheme vide application dated 25.12.2020. Pursuant thereto, the PCIT, Bhubaneswar-1, has certified the full and final payment of Rs.0/- as taxes in terms of Form No. 5 aa dated 05.05.2021. In view of the above, the appeal is treated as infructuous as per clause 4(2) of the Direct Tax Vivad Se Vishwas Act, 2020."

4. In this regard it may kindly be noted that the assessee has never opted for the Direct Tax Vivad Se Vishwas Scheme (in short 'VSVS') for the aforesaid appeal (IT Appeal No. 1/10095/2016-17) in respect of the aforesaid Order of the ACIT, Circle-2(1), Bhubaneswar dated 28.03.2016 u/s 143(3) r.w.s. 147 of the IT Act, 1961.
5. It is also pertinent to mention herewith that no Orders in Form No.5 and Form No.3 as per Rule 7 and 3 respectively of VSVS has been issued by the learned PCIT-1, Bhubaneswar for this order at all.
6. In view of the above, the learned CIT(Appeals), NFAC stating that the appellant has opted for the VSVS vide application dated 25.12.2020 and pursuant thereto the PCIT, Bhubaneswar-1 has issued Form No.5 dated 05.05.2021 does not arise at all and is mistake apparent from records.
7. In the above circumstances, the appeal of the assessee being treated as infructuous as per clause 4(2) of the Direct Tax Vivad Se Vishwas Act, 2020 and thereby dismissing the appeal are also mistakes apparent from records and requires to be rectified u/s 154 of the IT Act.



Continuation Sheet



8. It is also hereby clarified that the assessee had applied for VSVS in respect of an Appeal (being ITA No. 291/CTK/2017) pending before the Hon'ble Income Tax Appellate (ITAT), Cuttack Bench, Cuttack for the Assessment Year 2008-09 relating to the order of the CIT(Appeals) dated 03.04.2017 in respect of Order dated 24.03.2014 passed u/s 143(3) / 147 of the Act by the DCIT, Circle-1(1), Bhubaneswar and in respect of the aforesaid ITAT appeal (ITA No. 291/CTK/2017), the Form No. 3 and 5 of the learned PCIT, Bhubaneswar-1 have been issued which clearly states that the application for opting for VSVS is for the aforesaid ITAT appeal (ITA No. 291/CTK/2017). Therefore, it appears that the Id. CIT(Appeals) has mistaken the aforesaid Form No.3 & 5 issued by PCIT, Bhubanewar-1 is for the appeal under consideration viz (IT Appeal No. 1/10095/2016-17). In this regard, copies of aforesaid Form 5 and 3 issued by the PCIT, Bhubaneswar-1 are enclosed as Annexure-1 & 2 respectively for your ready reference and record.

PRAYER

In the above circumstances it is humbly prayed that:

- (a) the appeal of the assessee being treated as infructuous as per clause 4(2) of the Direct Taxes VSVS Act, 2020 and thereby dismissing the appeal being mistakes apparent from the records kindly be rectified u/s 154 of the IT Act;
- (b) the aforesaid appeal kindly be restored for adjudication on merits; and
- (c) an opportunity of being heard kindly be given, including by way of video conferencing, for the interest of justice.

and for which act of your kindness the assessee shall remain grateful.

For and on behalf of assessee

MGM Minerals Limited

Raghu Nath Panda

(Raghu Nath Panda)

Chief Financial Officer

Encl. : As above.

Dt: 30-05-2024



4. It was the submission that Form No.5 and the application under Vivad Se Vishwas Scheme dated 25.12.2020 was in respect of appeal pending before the Tribunal in respect of assessment order passed u/s.143(3) r.w.s 147 of the Act dated 24.3.2014. It was the submission that there was no application under Vivad Se Vishwas Scheme in respect of the impugned assessment order passed u/s.143(3)/147 of the Act dated 28.3.2016. It was the submission that as a precautionary measure, the appeal has been filed before the Tribunal. It is admittedly with a delay of 966 days for which condonation has been prayed. It was the submission that if the Id CIT(A) recalls the order which is the impugned order before the Tribunal in the present appeal as a consequence to the application u/s.154 of the Act, then the present appeal before the Tribunal would become infructuous. At this point, Id CIT DR submitted that as 154 application has been filed before the Id CIT(A) in respect of the impugned order before the Tribunal in the present appeal, the appeal of the assessee should be dismissed.

5. We have considered the rival submissions. As it is noticed that the assessee has filed application u/s.154 of the Act against the impugned order of Id CIT(A), NFAC and as it is noticed that the present appeal is only a precautionary measure, the appeal filed by the assessee is dismissed as application u/s.154 of the Act is pending before the Id CIT(A), NFAC against the impugned order. However, liberty is granted to the assessee for taking

appropriate remedial appellate recourse in the event that satisfactory results are not obtained in respect of 154 application filed by the assessee.

6. In the result, appeal of the assessee stands dismissed with the direction given above.

Order dictated and pronounced in the open court on 4/9/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 4/9/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : MGM Minerals Limited., 65, Forest Park, Bhubaneswar
2. The Respondent: DCIT, Circle-2(1), Bhubaneswar
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Bhubaneswar
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.Secretary
ITAT, Cuttack