IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA

BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA Nos. 034 & 035/PAN/2025

Assessment Year : 2011-12 & 2014-15

Damodar Mangalji & Company Ltd.
Damodar Niwas, 1st Floor,
MC Road, Panaji, Goa-403001.
PAN : AAACD6880G . . . . . *Appellant*

V/s

Jt./Asstt. Commissioner of Income Tax,
Range-1/Circle-1(1), Goa. . . . . *Respondent*

Appearances

Assessee by : Adv Rahul Sarda ['Ld. AR']

Revenue by : Mr M Satish ['Ld. DR']

Date of conclusive Hearing : 20/11/2025

Date of Pronouncement : 18/12/2025

ORDER

PER G. D. PADMAHSHALI;

The captioned twin appeals of assessee instituted u/s 253(1) of The Income-tax Act, 1961 ['the Act'] are directed against separate DIN & Order 1070138041(1) dt. 08/11/2024 & 1070321994(1) dt. 13/11/2024 passed u/s 250 of the Act by National Faceless Appeal Centre, Delhi ['Ld. NFAC/CIT(A)'] which sprang from assessment orders passed u/s 143(3) of the Act anent to assessment years 2011-12 & 2014-15 ['AY'].

2. Since facts involved in this bunch of appeals and issue dealt therein are common & identical, on rival party's joint request these appeals for the sake of brevity & convenience are heard together for being disposed-off by this common & consolidated order.

3. In adjudicating these matters together, the first appeal ITA No. 034/PAN/2025 is taken as lead case, resultantly our adjudication laid separately (if any) in succeeding paragraphs shall *mutatis-mutandis* apply to remaining appeal and be read as such.

ITA No 034/PAN/2025, AY : 2011-12;

4. Tersely stated facts of the case are that; the assessee a public limited company was engaged in the business of mining and export of iron ore besides running LPG Gas agency. For the year under consideration the assessee e-filed its return of income

on 27/09/2011 declaring total income of ₹486,00,13,789/-, which was summarily processed u/s 143(1) of the Act. Subsequently vide notice dt. 143(2) of the Act the return of the assessee subjected to scrutiny and consequential assessment u/s 143(3) of the Act by an order dt 14/03/2014 was completed wherein Ld. JCIT, Range-1, Panaji ['Ld. AO'] made four additions owning to; (1) disallowance u/s 14A ₹3,06,076/- (2) disallowance of demurrage charges u/s 40(1)(i) ₹3,69,331/- (3) disallowance of sampling & analysis charges ₹23,38,465/- and (4) addition of ₹36,73,895/- being difference in closing inventory due to incorrect valuation which remain unexplained satisfactorily to the Ld. AO.

ITA No 035/PAN/2025, AY : 2014-15;

5. Similarly for AY 2014-15 the assessee filed its return of income online on 29/11/2014 declaring

total income of ₹22,88,88,792/-, which vide notice 143(2) of the Act also subjected to scrutiny and the consequential assessment u/s 143(3) of the Act by an order dt 28/12/2016 was completed wherein Ld. ACIT, Circle-1(1) Panaji ['Ld. AO'] made two additions due to; (1) disallowance u/s 14A of ₹22,200/- and (2) disallowance of capital expenditure of ₹20,70,58,100/- u/s 37(1) of the Act as, a sum paid to State Govt. for conversion of land for enduring period of 20 years.

6. Aggrieved assessee filed separate appeals before Ld. NFAC/CIT(A) and agitated the aforementioned disallowances/additions made in former twin assessments but remained unsuccessful. Aggrieved by the *ex-parte* orders of first appellate authority ['impugned orders'], the assessee came in present twin appeals admittedly with a delay of 37 days from expiry of time limit prescribed u/s 253(3) of the Act.

7. In the absence of any evidences (including additional evidences or material in support of the claims/grounds of twin appeals) filed in the present proceedings by the appellant, we have heard rival party's common submissions on; (i) delay in instituting the present twin appeals (ii) reasons behind non-prosecution of first appeals which were disposed-off *ex-parte* on merits (ii) seeking remand of cases to the file of Ld. NFAC. Subject to rule 18 of ITAT-Rules, 1963 we have also perused affidavits and supporting material placed on record and considered the facts & former twin issues in the light of settled position of law which are forewarned to rival parties for refutation.

8. Delay; We note that, the impugned orders under challenge were respectively passed on 08/11/2024 and 13/11/2024 and the present twin appeals

thereagainst are filed by the appellant u/s 253(1) of the Act indisputably on 20/02/2025. In terms of provisions of s/s (3) of section 253 of the Act, w.e.f. 01/10/2024 every appeal u/s 253(1) or 253(2) of the Act is required to be filed *within two months from the end of the month in which order sought to be appealed is communicated to the assessee*. In view thereof the present twin appeals are filed with a 19 days delay. Thus these appeals are filed beyond the statutory period of two month from the end of month in which impugned orders were effectively communicated to the appellant. Hence these appeals as per section 253(3) of the Act are barred by limitation. In the event, irrespective of length of delay their admission in view s/s (5) of section 253 of the Act is subject to establishing satisfactorily '*sufficient cause*' behind such occurrence of delay on record in first place.

9. ***Ex-parte*****;** Secondly, we also note that, against assessment order dt. 14/03/2014 for AY 2011-12 the appellant filed an appeal u/s 246A of the Act on 09/04/2014. However, the appellant opted out from prosecuting it sincerely. In the absence of additional documentary evidences in support of appellant's claim, coupled with notices remained un-responded, the Ld. first appellate authority culminated the proceedings *ex-parte* on merits on the basis facts narrated by the appellant & material available on record. Likewise, we also note that, against the assessment order dt. 28/12/2016 passed for AY 2014-15 the appellant assessee filed an appeal u/s 246A of the Act before first appellate authority on 25/01/2017. This appeal was too not prosecuted by the appellant nor adduced any additional evidences in support of its claims and likewise nor did reply to

the notices issued to it. In the event, the impugned appellate proceedings also found culminated *ex-parte* on merits based on fact narrated by the appellant & material available on record.

10. Insofar as delay in filing is concerned; the appellant filed separate applications dt. 06/02/2025 seeking condonation of delay, wherein it has claimed that much of the delay is attributable to its consultant Mr Mehul Shah's attempt to co-ordinate with CA Vipul Shah who communicated of not handling cases before Tribunal, and thus time taken by it in finding for alternatives from other cities.

11. Insofar as the non-prosecution of first appeals are concerned, vide affidavit dt. 18/02/2025 of Mr Mehul Shah an ex-employee deposed to have assisting the appellant as its consultant in

maintaining books and filing income tax return & GST return etc., since his retirement in 2017. In furtherance of hearing, a notarised affidavits dt. 27/05/2025 from director Mr Gopal Narayan Dharwadkar was placed on records for twin years. Pre-empting that former affidavits may go futile or as were of much less sound in explaining existence of *'sufficient cause'* behind non-prosecution of impugned proceedings, the appellant submitted revised notarised affidavits dt. 30/05/2025 of Mr Mehul Shah and dt. 07/08/2025 of director Mr Dharwadkar thereby dilated the facts & circumstances to rewrite the earlier explanation etc.

12. The sum of the substance of contents of these affidavits, appellant's common submissions and Ld. AR's common arguments are that; (i) appellant's inability to find an alternate professional who could

have been engaged to represent before the Tribunal has delayed the filing of present twin appeals, and (ii) solitarily due to lack of co-ordination and miscommunication or misknowing between various counsels Mr Kishore Bandekar and Mr Vikas Shah engaged by the appellant to represent it in a proceedings before tax authorities below and the appellant as well as its ex-employee Mr Mehul Shah etc. the impugned first appellate proceedings for both the year under consideration went unattended, Thus appellant claims that, neither the non-prosecution of impugned proceedings nor the belated filing of present appeals was deliberate but inadvertent.

13. ***Au contraire*** the respondent revenue strongly coaxed to prove otherwise. In dismantling the narratives of the appellant, the Ld. DR at the outset contended that, the assessee enjoyed plentiful

opportunities and adduced sufficient evidential documents in the course of original assessment proceedings, and upon their due consideration additions/disallowance were made by the Ld. AO, who passed well-reasoned orders. In the impugned proceedings, the appellant since had nothing more to adduce or add to then existing evidence or explain more than what been stated in the course of original assessment, hence opted-out itself from prosecuting the first appeals for almost a decade insofar as AY 2011-12 is concerned and more than half a decade insofar as AY 2014-15 is concerned. It comes with no surprise that, in-spite various notices issued and copious opportunities granted to it, the appellant not only overlooked them but pull the lights off by adopting delaying tactics *via* frequent adjournments on melodic reasons and with illusory VSVA opting.

14. Collaging the contents from all the affidavits of Mr Mehul Shah and Mr Dharwadkar, the respondent revenue tried to excite by asserting that, the appellant is trying to buy home a relief reclusively on the basis of revised affidavits where deponents have modified their version of facts, amended the reasoning and changed the colour of explanation. This endeavour of the appellant *per-se* is accommodative and intelligible that former as well later affidavits badly lacks bonafide. Reiterating the contents of affidavits, the respondent revenue also refuted appellant's plea of having any *'sufficient cause'* behind unprosecuted impugned proceedings and connecting belated filing of present appeals. Conversely it was implored that, mis-communication between the appellant and its counsel is orchestrated on paper without any cogent material & evidences.

15. Thus, the sum and substance of objection of the respondent is twofold that; (i) the reasons stated in seeking condonation of delay and behind non prosecution of appeals are *prima-facie* flimsy, without any evidence and they not only lack bonafide, but are with much less imputables, **and** (ii) on the basis of evidence adduced in the course of assessment, the Ld. AO came to categorical findings in making disallowances and by Ld. CIT(A)/NFAC in sustaining them in appeals. The findings since are free from any error or much less pleaded to be erroneous by the appellant, therefore Tribunal is vested with no power to remand these matters to Ld. CIT(A)/NFAC even if it considers to condone the delay in filing appeals.

16. As stated hereinbefore, in the absence of any shred of evidences filed in present proceedings, in deciding *'as to whether in the aforestated facts of*

circumstances, these twin appeals deserves remand to the file of Ld. NFAC for adjudication consequent to their admission (if any)?' necessitated us to vouch twin issues conjointly viz; (i) sufficient cause behind non-prosecution of impugned appeals *vis-à-vis* error (if any) in their findings **and** (ii) sufficient cause behind belated filing of appeals. We say so, because considering the one autonomously without the other would have an effect of impairing the basis therefor and resultant adjudication. Indeed the rival parties concurred that, even if appellant is successful in establishing a sufficient cause in filing these appeals belatedly, the consequent remand is not automatic but is subject to establishing on record; (i) undeliberate, bonafide *'sufficient cause'* behind such non-prosecution **and** (ii) findings rendered or manner adopted by tax authorities are not free from error.

17. Before advancing, we are mindful to note that, there is no unfettered right conferred under the statute to assessee to claim remand where *ex-parte* order is passed. Inversely, the remand of file/case to tax authorities by the Tribunal is neither automatic nor inevitable in all cases where assessee entered no appearance before tax authorities. Where assessee files material which in view of the tax authorities is sufficient to frame assessment or adjudicate appeal in the manner provided in law, non-prosecution in-spite multiple opportunities for insufficient reasons shall not make out a fit case for remand. Therefore, remand in our thoughtful view is *quid pro quo* to twin conditions viz; (i) material necessary for assessment/adjudication was incomplete before tax authorities **and** (ii) assessee, undeliberately for sufficient cause prevented from prosecuting appeals.

18. Firstly, in order to vouch actual reasons behind non-prosecution of impugned proceedings/appeals, case records from Ld. CIT(A)/NFAC were summoned and upon their production verified in presence of rival parties and returned thereafter. The perusal of case records of impugned proceedings for AY 2011-12 revealed that, upon institution of first appeal on 09/04/2014, the Ld. CIT(A)/NFAC issued as many as five notices viz; 20/12/2018, 14/10/2019, 30/10/2019, 29/01/2020, 07/02/2020 afore triggering COVID-19 pandemic in the Country. In response to first four hearings/notices, the appellant sought adjournments for various reasons and were granted. Insofar as the fifth notice is concerned, vide letter dt. 20/02/2020 the appellant through its appointed AR's communicated of its consideration to settle AY 2011-12 dispute under '*Vivad Se Vishwas*

Act/Scheme' ['VSVA'] and thus requested to put proceedings in abeyance. However until passing final order u/s 250(6) of the Act by Ld. NFAC there was hardly any action found taken on such account.

19. During pandemic few more notices namely dt. 05/03/2020, 11/03/2020, 04/08/2020 & 20/08/2020 were issued, which of course owning to restrictions could not be attended. From para 4.2 of the impugned order it reveals that, upon pandemic restriction relaxed, Ld. NFAC resumed the proceedings and called the appellant on 12/01/2021, 09/08/2021, & 25/10/2024 to adduce additional evidence (if any) in support of grounds and claims made against agitated disallowances. Finding appellant being indifferent, the Ld. NFAC vide para 4.5 advanced *ex-parte* on merits and upheld the disallowance/addition by a reasoned order.

20. The perusal of case record of impugned proceedings for AY 2014-15 revealed much alike, hence deemed pointless to reiterate the identical observation made in relation to AY 2011-12.

21. It shall be worthy to note from the records that, for both the years under consideration the appellant company was represented by CA Kishor Bandekar in assessment proceedings and insofar as the impugned proceedings are concerned the appellant was vide POA dt. 22/10/2019 jointly represented by CA Pradip Mahatme, CA Kishor Bandekar & CA Peeti Mahatme as its authorised representative for AY 2011-12 & AY 2014-15. In the revised affidavits, the wholetime director deposing on behalf of the appellant has claimed contrary to the records that, Mr Vipul Shah Chartered Accountant was engaged as its authorised representative for both the pending

matters before Ld. NFAC/CIT(A) and CA Bandekar was just assisting him for filing adjournment letters etc. There is much less evidence to show on record that, the appellant indeed anytime appointed Mr Vipul Shah as its attorney in place of or in addition to previously appointed three attorneys from M/s P P Mahatme & Co. Chartered Accountants. Contrary to the appellant's all along claim, the record showed much less evidence about Mr Vipul Shah's engagement or being appointed for or represented in any proceedings for the appellant. Therefore, the appellant's claim that lack of co-ordination and miscommunication or misknowing between various counsels Mr Kishore Bandekar, Mr Vikas Shah etc., (claimed to have engaged to represent impugned proceedings) and the appellant as well as its ex-employee/consultant found factually incorrect and

misleading. In the event we are mindful to hold that there was *prima-facie* no reason or much less reason shown by the appellant behind not prosecuting the impugned proceedings or appeals diligently before Ld. NFAC.

22. In view of aforestated findings, the Ld. DR's argument has evoked our concurrence to hold that the appellant ostensibly failed to exhibit *'sufficient cause/reason'* perhaps brought out no reason (at all) behind its non-prosecution of impugned proceedings or appeals. On the contrary, in absence of evidence to show otherwise, the revenue's argument finds merit that the undue adjournments of hearings sought coupled with request for halting the impugned proceedings for illusory 'VSVA' goes to suggests that the appellant was not at all serious, diligent but tried to dilute the litigation with delaying tactics.

23. Remand Request; On the other hand, a cursory look into facts, it *prima-facie* revealed that, the disallowances/additions made by the Ld. AO are supported of definite/solid findings arrived after considering the material adduced and explanation tendered by the appellant. From para 4.2 to 4.5 of the impugned order we also noted that there were no further material laid in support of the claims made by the appellant in the impugned proceedings which could have triggered an otherwise inference by the Ld. NFAC. Further there is nothing on record to suggests that either findings recorded or manner adopted by the Ld. NFAC is not free from any error. Therefore, appellant's plea that, the cases have merits and can be proved on second innings if remanded just because they were *ex-parte* orders, is in our considered view is without basis and meritless.

24. It is not the case that, tax authorities had given less than reasonable opportunities to the appellant. On the contrary they accorded more than plentiful & judicious hearings in both these cases. It remained undisputed that, on the basis of material placed in assessment proceedings, and the representation of appointed counsel Mr Bandekar, the Ld. AO rejected the appellant's explanations, and after giving concrete findings made disallowances/additions by well-reasoned orders. Subsequently in appeals, the appellant choose not to adduce any further evidence than what was there on records and consciously opted out by remaining silent to multiple notices. In the event, facts and material already on records were reconsidered by the Ld. NFAC independently which persuaded him in upholding the assessments & in dismissing the appeals *ex-parte* on merits.

25. In our considered view, on one hand the assessments as well as the impugned proceedings showed much less error in the approach adopted by the tax authorities below and on the other hand revenue proved the appellant's failure to establish sufficient cause in not prosecuting impugned proceedings well as the belated filing of present appeals. Further appellant could lay no convincing reasons to establish *'sufficient cause'* so as to qualify for consequential remand of these appeals in law. The appellant was or at least shown to have been neither vigilant nor diligent therefore case laws relied by appellant could hardly come its rescue or help. In view thereof, in our consideration the request for consequential remand by condoning the delay deserves to be rejected conjointly and thus the former questions framed be answered accordingly.

26. We note that, similar facts and circumstances came for consideration before the Hon'ble High Court of Allahabad in *'CST Vs Ram Dyal Har Vilas'* [1983, taxmann.com 795] wherein their Hon'ble lordship laid down a ratio that, when there is no material on record to suggests that, consideration of which could dismantle the inference already drawn by the tax authorities, the Tribunal is unequivocally right in rejecting request for remand made by the revenue.

27. The issue of remand by Tribunal in a case where facts have reached their finality and tax authorities below gave concrete findings & decided the disallowance/addition came before Hon'ble Jurisdictional High Court in the case of *'Siemens India Ltd. Vs. CIT'* [1997 226 ITR 801 (Bom)], wherein their hon'ble lordships have held that where all facts & cogent material had been produced before tax

authorities, after full enquiry & examination into such facts and evidences, had given a definite finding on the question in issue, and there is nothing on record to suggest any further evidence to dismantle the of tax authorities, the Tribunal's order of remand was held to be invalid.

28. Furthermore, considering the ratio laid in *'Cholamandalam MS General Insurance Co. Vs. Royal Sundaram Alliance General Insurance Co. Ltd'* [2013, 357 ITR 597 (Mad)], the hon'ble high court in *'PCIT Vs Prabha Jain' [2022, 112 CCH 245 (Mad)]* dealt with the issue as to when is not permissible for Tribunal to remand file back to tax authorities below. It has been laid that, unless the Tribunal finds an error in the approach of Assessing Officer or a CIT(A) and only after interfering with such a finding, the Tribunal after recording reasons can remand & not otherwise.

29. In view of our aforestated findings and discussion, respectfully following the judicial precedents (supra) the appellant's request for remand in our considered view cannot be accepted because the appellant in first place failed to prove that there was violation on the part of Ld. NFAC in observing the principle of natural justice while dealing with the impugned proceedings. Though not in the present case/s, but otherwise, even where there is a violation of principle of natural justice, with the passage of time the Hon'ble High Courts and Hon'ble Supreme Court have now permitted the appellate authority like Tribunal to deal with lis without resorting to remand. While permitting so, the Hon'ble Constitutional Courts are of the considered view that, idea of permitting adjudication without remand to lower forum is to curtail the litigation and not to regenerate

it, as remand unnecessarily generate fresh litigation by untying settled rights and liabilities. The reference in this regard can be made to the judgement of Hon'ble Apex Court in the case of 'M.C. Mehta Vs UOI & Anrs' [1999, 6 SCC 237 (SC)], 'State of UP Vs Sudhir Kumar Singh & Anrs' [2021,19 SCC 706 (SC)], and 'Srishnadatta Awasthy Vs State of MP' [2024, SCC Online Sc 493 (SC)] which were also relied in 'Suvej Singh Vs Ram Naresh & Anrs' [reported in 2025 INSC 1405 (SC)]

30. While dealing with condonation of delay, we are mindful that the length of delay does not matter but the reason behind it alone does. Therefore it shall be fit reject the admission of time barred appeals only when the appellant fails to prove *'sufficient cause'* behind the delay with bonafide imputable.

31. As we observed that, the appellant did opt not to respond to any of the notices issued to it, or adduce necessary evidences to prove its claim to the satisfaction of the Ld. first appellate authority. Whereas failure on the part of appellant to prove its case on merits resulted into continuing the disallowances/additions on such account. Moreover the appellant failed to prove any reasonable cause beyond such multiple failures before Ld. NFAC, which in our considered view the appellant's disregard and disrespect towards quasi-judicial proceedings and authorities. For the reason we see strong force in the averments of the Ld. DR, that remanding these issues again (effectively second time) for adjudication/verification would certainly cause hardship to the Revenue and second innings to the luxury litigant assessee and we hold so in the

light of decision of Hon'ble Karnataka High Court in *'Karnataka Wakf Board Vs State of Karnataka,'* [reported in AIR 1996 (Kar.) 55], wherein their lordship vide page 63 & 64 held that:

> *"Where the **party had an opportunity of adducing evidence in the case but with open eyes failed to adduce that evidence, the case should not be remanded to give a second chance to the party to adduce that evidence.** The policy of the law is that once that matter has been fairly tried between the parties, it should not, except in special circumstances, be reopened and retrieved. In a recent decision their Lordships of the Supreme Court laid down that power to order retrial after remand, where there had already been a trial on evidence before the court of first instance, cannot be exercised merely because the Appellate Court is of the view that the parties who could lead better evidence in the Courts of first instance have failed to do so."*
>
> *(Emphasis supplied)*

32. Perchance, by condoning the ordinate delay in filing present twin appeals, these cases would have

been to remitted back to the Ld. NFAC giving second innings, had the appellant assessee not adopted any dilatory tactics in the first round of appeals, and come clean in explaining *'sufficient cause'*.

33. It is settled principle of law that the assessee cannot be given a second innings to make good its case and we find that same our view has been concurred by Co-ordinate benches in the case of *'ACIT Vs Anima Investment Ltd.'* reported in 73 ITD 125 (Delhi) (TM) and in *'ACIT Vs Arunodoi Apartments (P.) Ltd.'* reported in 123 Taxman 48 (Gauhati).

34. As we find no cogent reasons to remand these matters second time for the benefit of party seeking it to fill-up gaps. In the light of ratio laid down in *'Rajesh Babubhai Damania Vs CIT'* [251 ITR 541], and in *'CIT v. Harikishan Jethalal Patel'* [reported at

168 ITR 472] and further placing reliance co-ordinate bench's decision in *'Zuari Leasing & Finance Corpn. Ltd. Vs ITO'* [reported in 112 ITD 205(TM)], we reiterate that, these appeals fails to make out a case in seeking ***'one more innings or second innings'.***

35. In the absence of any deprecative material placed against the disallowances/additions before us and failure on the part appellant to bring any facts so has to interfere with or deviate from the actions of tax authorities below, we respectfully following judicial discipline and foregoing case-laws, see no reasons to interfere with the impugned orders as they have rightly dealt with the issues under appeal. Further we also deem both these cases are unfit for remanding back to the file of the Ld. NFAC once again, for the reason that it would amount to granting second innings to the luxury litigant assessee.

36. In view of the Hon'ble Apex Court ratio laid in the case of *'Collector, Land Acquisition Vs Mst Katiji & Others' [1987, 167 ITR 5 (SC)],* we also hold that appellant failed to satisfactorily explain the *'sufficient cause'* not only for condonation of delay and but also in non-prosecuting impugned appeals proceedings. Further the appellant has much less proved the existence of any error in the findings of tax authorities below or in the manner adopted in adjudication *vis-à-vis* assessment. For the reasons request for consequential remand on condoning the delay in filing appeals stands rejected conjointly.

37. In result, the twin appeals stands DISMISSED.

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned herein before.

-S/d-	**-S/d-**
PAVAN KUMAR GADALE	**G. D. PADMAHSHALI**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Panaji/Dt: 18th December, 2025.

Copy of the Order forwarded to :

1. The Appellant. 2. The Respondent. 3. The CIT(A)/NFAC Concerned
4. PCIT Concerned 5. DR, ITAT, Panaji Bench, Goa 6. Guard File

By Order,
Sr. Private Secretary / AR ITAT, Panaji.