

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA Nos.6532, 6533 & 6534/Del./2016
Assessment Years: 2006-07, 2008-09 & 2010-11

M/s. Metalyst Forgings Ltd., C/o- M/s. RRA TAXINDIA, D-28, South Extension, Part-1, New Delhi	Vs.	ACIT, Central Circle-30, New Delhi
PAN :AACCA3454H		
(Appellant)		(Respondent)

Appellant by	Shri Rahul Yadav, Adv.
Respondent by	Shri Atiq Ahmed, Sr.DR

Date of hearing	19.04.2021
Date of pronouncement	31.05.2021

ORDER

PER O.P. KANT, AM:

These three appeals by the assessee are directed against a common order dated 28/10/2016 passed by the Learned CIT(Appeals)-31, New Delhi [in short 'the Ld. CIT(A)'] for assessment years 2006-07, 2008-09 and 2010-11. Identical issues are involved in these appeals and, therefore, same were hard together and disposed off by way of this consolidated order for the sake of convenience.

2. At the outset, the Learned Counsel of the assessee submitted that the Learned CIT(A) has passed *ex parte* order without providing opportunity of being heard to the assessee and also dismissed the appeal on technical ground of not 'E filing' the appeal. According to him, the assessee should have been provided option to file the appeal electronically and then should have been heard on merit. He submitted that by way of dismissing the appeal as non-est due to technical breach, the assessee has been deprived of the substantial justice. He submitted that appeal might be restored back to the file of the Learned CIT(A) for deciding afresh.

3. The Learned DR, on the other hand, relied on the order of the Ld. CIT(A) and submitted that Ld. CIT(A) has also decided the appeals on merit.

4. We have heard rival submission of the parties on the issue in dispute. The Ld. CIT(A) held the appeals as non-est in para 10 of the impugned order, which is reproduced as under:

"10. It may be mentioned here that Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing appeals before Commissioners of Income Tax (Appeals) w.e.f. 01.03.2016 in respect of persons who are required to furnish Return of Income electronically. The CBDT vide circular No. 20/2016 dated 26.05.2016 had extended the time limit for filing of such appeals which were due to be filed by 15.05.2016, up to 15.06.2016. All e-appeals filed within this extended period would be treated as appeals filed in time. However, admittedly the appellant did not file the e-appeal for any of the years under considered even in the extended period. Therefore, in the absence of the e-appeal, the aforesaid appeals are non-est and on this ground alone the same are liable to be dismissed."

5. The Learned CIT(A) in para 4 & 5 of the impugned order, has mentioned the fact of intimation of mandatory 'E filing' to the Authorized Representative of the assessee. The Authorized

Representative was also intimated that all the appeals were liable to be rejected. The relevant paragraphs of the impugned order are reproduced as under:

“4. Aggrieved with the above, the appellant filed the present appeal. In response to the notices of hearing issued to the appellant from time to time, none appeared till 28.10.2016 on which date Sh. Sachin Saxena, CA appeared and filed power of attorney but did not furnish any submissions per the order sheet noting of same date, he was informed that in the absence of e filing of appeals, which was mandatory after 01.03.2016, all the appeals under consideration are liable to be rejected.

5. As mentioned above, the appellant has neither made any submission nor has substantiated the grounds of appeal. Under the circumstances, I have no other option except to decide the appeal on the basis of the material on record. The only material available on record is appeal memo containing the assessment order, the grounds of appeal and the statement of facts. Hence, I have to decide the appeal on the basis of the above.”

6. It is evident that the Authorized Representative of the assessee was informed of rejection of the appeal of the ground of non-e-filing of the appeals. The Ld. CIT(A), on the one hand, informed the assessee that the manual appeals filed were liable to be rejected, but, on the other hand, also decided the appeals on merit without any submission or opportunity of being heard to the assessee. In our opinion, the assessee cannot be denied substantial justice merely on the ground of technical breach of not filing the appeals in electronic format. The Learned CIT(A) himself has mentioned that rule for compulsory e-filing of the appeal before the CIT(Appeals) was made effective from 01/03/2016, whereas these appeals have been filed in the month of April, 2016. This was the period of the beginning of the electronic filing of the appeals before the Ld. CIT(A) and possibility mistake on the part of the professionals of the assessee company

may not be denied. But for such technical breach, it is not appropriate to deny the substantial justice by way of rejecting the appeals of the assessee. The Ld. CIT(A) intimated to the Authorized Representative of the assessee that appeals were liable to be rejected on technical ground of non-e-filing, but simultaneously, he decided the appeals of merit. The action of the Ld. CIT(A) in deciding the appeal on merit, after intimating that appeals are liable to be rejected on technical breach, is also not justified. While deciding on merit, no written or oral submission on behalf of the assessee were available with the Ld. CIT(A), and thus appeals have been decided on merit *ex parte*.

7. In view of above facts and circumstances, we set aside the order of the Learned CIT(A) on the issue in dispute and restore the matter back to the file of the Ld. CIT(A) for providing opportunity to the assessee for electronic filing of the appeals and thereafter the appeals shall be decided afresh on merit, after providing adequate opportunity of being heard to the assessee.

8. In the result, all the three appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 31st May, 2021

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 31st May, 2021.

RK/-(DTPS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi