



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

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

**ITA No.184/CTK/2024**  
Assessment Year : 2010-2011

Tirupati Prasad Sahu, Rayagada	Vs.	Income Tax Officer, Rayagada
PAN/GIR No.		
<b>(Appellant)</b>	..	<b>( Respondent )</b>

Assessee by : Shri P.K.Mishra, Adv  
Revenue by : Shri Charan Dass, Sr DR

**Date of Hearing : 24/06/2024**  
**Date of Pronouncement : 24/06/2024**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 27.2.2024 in Appeal No.NFAC/2009-10/10216527 for the assessment year 2010-2011

2. Shri P.K.Mishra, Id AR appeared for the assessee and Shri Charan Dass, Sr.DR appeared for the revenue.

3. It was submitted by Id AR that the appeal of the assessee was delayed by 145 days before the Id CIT(A). It was the submission that the Id CIT(A) has also recognized that there was a confusion in regard to

mentioning of date of the order being 22.7.2022 and 22.9.2022. The reasons given for the delay was that the assessee did not receive the order of the Assessing Officer in time. Ld CIT(A) has also recognized that the ITBA system shows that the order u/s.154 of the Act is dated 27.9.2022 and was served through e-mail of the assessee. It was the submission that the issue is in regard to claim of depreciation. It was the submission that in any case even the depreciation is not claimed by the assessee, the depreciation is liable to be allowed as per the statute itself whether the assessee claims or not. It was the submission that on mere technicality, on appeal before the Id CIT(A), substantial justice should not be denied.

4. In reply, Id Sr DR submitted that the issue may be restored to the file of the Id CIT(A) for adjudication on merits.

5. We have considered the rival submissions. Considering the facts in the present case, we are seized of many cases where assessee mistakenly did not receive the orders sent through email as many of these orders are going to spam folders. In any case, there is a delay of 145 days. This being so, considering the explanation given by the assessee, we are of the view that the explanation is a possible explanation and consequently, we condone the delay of 145 days in filing the appeal before the Id CIT(A). We are not giving any findings on merits of the case insofar as the Id CIT(A) has not given any findings on merits. This being so, we restore the issue in

the appeal to the file of the Id CIT(A) for adjudication on merits after granting the assessee adequate opportunity of being heard.

6. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 24/06/2024.

Sd/-

**(Manish Agarwal)**

ACCOUNTANT MEMBER

Cuttack; Dated 24/06/2024

B.K.Parida, SPS (OS)

sd/-

**(George Mathan)**

JUDICIAL MEMBER

**Copy of the Order forwarded to :**

1. The Appellant : Tirupati Prasad Sahu,  
Rayagada
2. The Respondent: Income Tax Officer,  
Rayagada
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Berhampur
5. DR, ITAT,
6. Guard file.  
//True Copy//

**By order**

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