



॥आयकर अपीलीय न्यायाधिकरण, पुणे “बी” न्यायपीठ, पुणे में॥  
**IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE“B” BENCH, PUNE**  
**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER**

**AND**

**SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No. 319/PUN/2021**

**निर्धारण वर्ष / Assessment Year : 2017-2018**

Sai Construction

B-1, Room No.1, MHB Colony,

Satpur, Nashik Ind. Estate,

Nashik, Maharashtra - 422007

PAN: AANFM3669A

..... अपीलार्थी / **Appellant**

**बनाम / V/s.**

Dy. Commissioner of Income Tax,

CPC, Bengaluru

.....प्रत्यर्थी / **Respondent**

**द्वारा / Appearances**

Assessee by : None for the Assessee

Revenue by : Shri M. G. Jasnani

सुनवाई की तारीख / Date of conclusive Hearing : 29/09/2022

घोषणा की तारीख / Date of Pronouncement : 29/09/2022

**आदेश / ORDER**

**PER G. D. PADMAHSHALI, AM;**

This appeal challenges the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) [for short **“CIT(A)”**] dt. 09/06/2021 passed u/s 250 of the Income-tax Act, 1961 [for short **“the Act”**], which ascended out of assessment order dt. 30/10/2018 passed u/s 143(1) by the Dy. Commissioner of Income Tax, CPC, Bengaluru [for short **“AO”**] for assessment year [for short **“AY”**] 2017-18.



2. Before advancing the matter on facts for adjudication, it is necessary to reproduce **grounds challenged** by the appellant assessee as under;

*1. On the basis of the facts and in the circumstances of the case, the Learned CIT(A) erred in confirming addition u/s 143(1)(a)(vi) of Rs.1,93,416/- made to the income declared u/s 44AD of the IT Act, 1961 being deemed profit calculated on excess amount of business receipts appearing in Form 26AS by disregarding the submission of the appellant that these excess receipts do not belong to the appellant. Appellant prays to delete the addition made to the return of income.*

*2. In the alternative without prejudice to Ground No.1 and on the basis of the facts and in the circumstances of the case, the Learned CIT(A) erred in not considering the prayer to give credit of tax deducted at source from excess amount of receipts appearing in Form 26AS when addition of Rs.1,93,416/- is made on the basis of said excess amount. Appellant prays to allow credit of tax deducted at source amounting to Rs.63,039/- on this excess amount of receipts appearing in Form 26AS.*

*3. Your appellant craves for addition to, deletion, alteration, modification, change in any of the grounds of appeal mentioned above.*

*4. Your appellant requests to grant for the penalty proceedings and the outstanding demand till the disposal of this appeal.*

3. **The brief facts of the case under appeal are;**

3.1 The assessee is a resident partnership firm, filed its return of income [for short **"ITR"**] on 28/03/2018 for the impugned AY 2017-18 declaring total taxable income of ₹2,20,340/- and was processed summarily u/s 143(1) of the Act determining taxable income at ₹4,13,750/- on account of addition computed @6.12% of receipts appearing in Form No 26AS.

3.2 Aggrieved by such addition, the assessee unsuccessfully challenged the same before first appellate authority [for short **"FAA"**] as a result; the appellant is before the Tribunal seeking reversal of order passed by tax authorities below.

4. During the course of physical hearing, the learned departmental representative [for short **"DR"**] candidly submitted that the assessee had remained absent before the Ld. FAA and return in this case being summarily processed without due opportunity to the appellant, the case in the interest of justice deserves to be remanded to the Ld. AO for due verification of claim of the assessee.



5. When the matter called up at physical hearing, none represented the assessee, mindful to the conduct of the appellant showing no appearance on **four** occasions and availed as many as **thirteen** (13) adjournment on unfounded cause, we in the interest of justice proceeded to adjudicate the matters following rule 24 of the **ITAT-Rules**, which empowers this Tribunal to decide the appeal filed by the appellant ex-parte on merits where the appellant does not appear in person or through an authorised representative and the same is done placing on record a no-objection from the respondent revenue. It is needless to mention further that, the proviso to the said rule carves out an exception by empowering the Tribunal to recall the **ex-parte** order, if the appellant appears afterwards and **satisfies** placing evidential material before the Tribunal that, there was **sufficient cause for his non-appearance** when the appeal was called for hearing and in the event of failure to substantiate the non-appearance, the recall exercise dies out.



6. We have heard the rival contentions of both the parties; and subject to the provisions of rule 18 of **"ITAT Rules"**, perused the material placed on record, case laws relied upon by the appellant as well the respondent and duly considered the facts of the case in the light of settled legal position forewarned to either parties.

7. The solitary contention of assessee before the Ld. AO was that, the additional receipts of ₹31,61,944/- which were reflected in Form 26AS do not pertain to or accrued to assessee, however, brushing aside the assessee's submission, both the tax authorities proceeded without according proper opportunity to the appellant to represent the contentions, in the evince we deem fit to restore the issue back to the file of Ld. AO to reconcile the statement vis-à-vis income of the appellant with for the impugned assessment year reference to Form 26AS and ***reframe the assessment de-nova in the light of applicable provisions of the Act***, after affording reasonable opportunity of hearing to the assessee, with a rider that, the appellant shall co-operate for early completion of assessment and shall not seek any unreasoned adjournment.



**8. Resultantly, the appeal of the assessee is allowed for statistical purposes.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Thursday 29<sup>th</sup> day of September, 2022.

-S/d-

**S. S. GODARA**  
**JUDICIAL MEMBER**

-S/d-

**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

पुणे / PUNE ; दिनांक / Dated : 31<sup>st</sup> day of September, 2022.

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

- |                                       |                                      |
|---------------------------------------|--------------------------------------|
| 1. अपीलार्थी / The Appellant.         | 2. प्रत्यर्थी / The Respondent.      |
| 3. The concerned Pr. CIT (M.H.-India) | 4. The concerned CIT(A) (M.H.-India) |
| 5. DR, ITAT, Pune Bench 'B', Pune     | 6. गार्डफ़ाइल / Guard File.          |

आदेशानुसार / BY ORDER,  
वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.