



॥ आयकर अपीलीय न्यायाधिकरण, पुणे “सी” न्यायपीठ, पुणे में ॥
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE “C” BENCH, PUNE
BEFORE HON’BLE SHRI S. S. GODARA, JUDICIAL MEMBER
AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 604 to 609/PUN/2022

निर्धारण वर्ष / Assessment Year : 2014-15 to 2019-20

M/s Jyoti Ceramic Industries

1001, Sadguru Sharan, Plot No 150, 29th Rd.,

TPS-III, Bandra(W), Mumbai-400050.

PAN : AAACJ0247P

..... अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax

TDS-Circle, Nashik.

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : None

Revenue by : Shri Suhash Kulkarni

सुनवाई की तारीख / Date of conclusive Hearing : 27/12/2022

घोषणा की तारीख / Date of Pronouncement : 27/12/2022

आदेश / ORDER

Per G. D. Padmahshali, AM

The present bunch of six appeals is challenged against separate orders of National Faceless Appeal Centre [for short **“NFAC” or CIT(A)**] passed u/s 250 of Income-Tax Act, 1961 [for short **“the Act”**] which confirms the orders passed u/s 201(1A) of the Act by Deputy Commissioner of Income Tax, TDS Circle Nashik [for short **“AO”**], for six assessment years [for short **“AY”**] 2014-15 to 2019-20.



2. Since the legal issue involved in these bunch of appeals is identical, with the agreement of parties present, the matter is heard together for a consolidated order, resultantly the adjudication in lead case ITA/604/PUN/2022 positioned in succeeding paragraphs, shall ***mutatis mutandis*** apply to ITA/605 to 609/PUN/2022.

3. Before travelling to facts, it's necessary to reproduce the identical grounds assailed by the appellant in all these appeals as;

Ground No. 1

The Dy. Commissioner of Income-tax TDS, Circle, Nashik [“learned assessing officer”] has erred in treating the Appellant as an assessee in default under section 201(1) of the Act and charging interest thereon by inadvertently considering that the TDS on salary is to be deducted on accrued / due basis by referring to section 15 of the Act rather than on payment basis at the average rate of tax on annual estimated income as per section 192 of the Act.

Ground No. 2

The learned assessing officer has erred in treating the Appellant as an assessee in default under section 201(1) of the Act for non-deduction of TDS on monthly accrual basis without appreciating the fact that the commission /



performance incentive bonus is paid / provided on annual basis as per the directors' agreement & board resolution.

Ground No. 3

The Hon'ble Commissioner of Income-tax (Appeals), National Faceless Appeal Centre has passed the order on 2 June 2022 under section 250 of the Act before the due date of filing the submission (6 June 2022) in response to the hearing notice dated 26 May 2022. The Appellant has been denied the opportunity of being heard by curtailing sufficient and reasonable time for making representation and submission and as such, the order passed by the Hon'ble CIT(A) is invalid as per the principle of natural justice.

Your appellant craves leave to add to and/or to amend and/or to modify and/or to cancel any one or more grounds of appeal at the time before or at the time of hearing.

4. When case was called up at pre-scheduled physical hearing, none represented the assessee, having regards to grounds of appeal, in the interest of justice we proceed to adjudicate the matter following rule 24 of the **ITAT-Rules**, which empowers the Tribunal to decide the appeal **ex-parte** on merits where appellant does not appear in person or through its authorised representative and the same is done placing on record



a no-objection from the respondent revenue. It is needless to mention that, proviso to said rule carves out an exception empowering the Tribunal to recall **ex-parte** order if appellant appears afterwards and **satisfies** placing evidential material to the effect that, there was **sufficient cause for its non-appearance** when appeal was called for hearing, however in the event of failure to substantiate non-appearance in the evince of evidentiary material, the recall exercise turns futile.

5. During the course of physical hearing, the learned departmental representative [for short **"DR"**] at the outset, adverting to ground number 3, entreated that, the appellant has alleged the violation of principle of **"audi alteram partem"**, for the reasons case deserves to be remanded back to the file of NFAC.

6. After hearing to the rival contentions of both the parties; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short **"ITAT, Rules"**] perused the material placed on records



and duly considered the facts of the case in the light of settled legal position and the case laws relied upon by the appellant assessee as well the respondent revenue.

7. Without touching the merits of the case, we note that, the Ld. NFAC by service of notice dt. 26/05/2022 called upon the appellant to substantiate its claim by 06/06/2022, however before the expiry of said notice period accorded to make representation, the Ld. NFAC adjudicated the matter by an order dt. 02/05/2022 i.e. well before the expiry of time period allowed to the appellant to refute its case on the basis of evidentiary documents, which evidently is violative of basic principle natural justice and for the reason concurring with Ld. DR, we find merit in the ground number 3 raised by the appellant; consequently the matter deserves to be remanded back to the file of Ld. NFAC for **de-nova** adjudication with a direction to observe the principle of natural justice by effectively providing reasonable opportunity to the appellant to make representation in rebuttal, **ergo** ordered accordingly.



8. Resultantly, the bunch of appeals of the appellant assessee is ALLOWED FOR STATISTICAL PURPOSE in aforesated terms.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Tuesday 27th day of December, 2022.

-S/d-

S. S. GODARA

JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI

ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 27th day of December, 2022.

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

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr. CIT, Nashik (Mh-India)

4. The NFAC (New Delhi-India)

5. विभागीय प्रतिनिधि, आयकर अपीलीय न्यायाधिकरण, पुणे "सी" बेंच, पुणे / DR, ITAT, Pune "C" Bench, Pune.

6. गार्डफ़ाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.