



॥ आयकर अपीलीय न्यायाधिकरण, पुणे "एसएमसी" न्यायपीठ, पुणे में ॥



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE "SMC" BENCH, PUNE

BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 800/PUN/2023

निर्धारण वर्ष / Assessment Year : 2012-13

Sambhaji Sattaji Sarpate,
803-9, Qnyaneshwar nagar,
Wadi BO Gram Wadi BU TQ,
Nanded, Dist Nanded – 431602.
PAN: DJBPS7573D

..... अपीलार्थी / Appellant

बनाम / V/s

Income Tax Officer,
Ward-4, Nanded

..... प्रत्यर्थी / Respondent

द्वारा/ Appearances

Assessee by : Shri Pratik Jha

Revenue by : Shri R.Y. Balawade, Addl. CIT

सुनवाई की तारीख / Date of conclusive Hearing : 07/08/2023

घोषणा की तारीख / Date of Pronouncement : 01/09/2023

आदेश/ ORDER

PER G. D. PADMAHSHALI, AM;

Present appeal is filed by the assessee challenging the DIN & order No. ITBA/NFAC/S/250/2023-24/1053263618(1) dt. 29/05/2023 passed u/s 250 of the Income-tax Act, 1961 [‘the Act’] by the National Faceless Appellate Centre [‘NFAC’] for assessment year 2012-13 [‘AY’].

2. Briefly the facts of the present case are;

2.1 The assessee an Individual and a non-filer, in whose case information of cash deposit of ₹10Lakhs made into bank account maintained with SBI was received, pursuant to which the assessee was put to notice u/s 148 of the Act.



2.2 In the event of assessee's failure to respond to aforesaid notice further notices were issued u/s 142(1) dt. 04/01/2016, 16/02/2016 and 25/02/2016 calling thereby information about the source and nature of cash deposits. In the event of no response, the AO sought information from the banker u/s 133(6) of the Act. Following the principle of natural justice, by a notice u/s 144 of the Act, the assessee was again called upon to explain the source of aforesaid cash deposit made into his savings bank account. On an effective failure of assessee to establish and explain nature and source of such cash deposit, the Ld. Income Tax Officer, Ward-4, Nanded ['AO'] culminated the assessment proceedings u/s 144 r.w.s 147 of the Act by bringing to tax entire amount cash deposit ₹10Lakhs u/s 68 of the Act treating it as cash credit.

2.3 Aggrieved assessee, taken the matter before National Faceless Appeal Centre(NFAC). After considering the submission of the assessee, the NFAC in the absence of cogent evidence placed before it, confirmed the findings of learned Assessing Officer, however, treated the cash deposit as unexplained money and brought to tax the same u/s 56(2)(vii) of the Act.

2.4 Aggrieved by the actions of both the tax authorities below, the assessee came in present appeal with following grounds;

"1. On the facts and circumstance previewing in the case, the Id. National Faceless Appeal Centre (NFAC), Delhi, has erred in confirming the addition of Rs.10,00,000/-, made by the AO u/s 68 of the IT act, on account of cash deposits made in the saving bank account, ignoring and not rebutting the issues discussed in the written submission made by the appellant on 25.02.2023, under Ack No. 966550751250223.



2. On the facts and circumstance previewing in the case, the Id. National Faceless Appeal Centre (NFAC), Delhi, has eared in confirming the addition of Rs. 10,00,000/-, made by the AO u/s 68 of the IT act, on basis of non jurisdictional decision IT AT Agra Tribunal in the case of Smt. Renu Agrawal V/SITO in ITA NO. 55(Agar) of 2007 Judgment dated 11.01.2023 reported in 51 taxmann. com 207, ignoring the jurisdictional decision of IT AT, Pune in the cases of Anil K. Marda V/S ITO (ITA No. 176/PUN/2013/AY2009-10, dated 01.07.2019), and Hon'ble Supreme Court in National Thurmanl Company Ltd V/S CIT(1988), 229ITR 283 (SC). Further, the Hon' ble NFAC has not given due consideration to the jurisdictional decision of Hon'ble Bombay High Court in the case of CIT V/S Bhaichand S. Gandhi (1983) 143 ITR 67 (BOM) (HC), Mehul Vayas V/S (2017) 164ITD 262 Mumbai (Trib) (AY2008-09). Therefore, the NFAC has not followed the judgment which are covered to the case of the appellant, which are having jurisdictional in nature and as such the addition made of Rs 10,00,000/- u/s 68 of IT Act deserved to be deleted.

3. The assessee craves right to add, alter, amend, modify, delete the grounds of appeal and right to make detailed submissions, clarifications and explanation on the grounds of anneals at the time of hearing.”

3. During the course of physical hearing, learned Counsel for the assessee Mr. Pratik Jha reiterated all submissions which were laid before the First Appellate Authority in support of grounds of appeal. *Per contra*, the learned Departmental Representative Mr. Balawade placed strong reliance on the orders of lower tax authorities and contended that no interference therewith is called for.

4. Heard the rival contentions and perused the records placed before us. Evidently, when assessee failed to furnish return of income and explain nature and source of cash deposits, the Ld. AO after according reasonable opportunities added entire cash deposits as cash credit u/s 68 of the Act. Whereas, in an appeal, the Ld. NFAC placing reliance on the decision of '*Smt*



Renu Agrawal Vs ITO' [ITA No. 55/AGRA/2007 - TM] directed the Ld. AO to carry-out the alternative addition either u/s 69A or u/s 56(2)(vii) of the Act. In our considered view, this direction of the Ld. NFAC is inconsonance with the clause (a) of sub-section (1) of section 251 of the Act. We note that, pursuant to restriction placed by clause (a) supra, the Ld. NFAC was to adjudicate the issue either by confirming or annulling the addition or reducing or enhancing the addition made. And while doing so the Ld. NFAC is required to *state point of determination, its decision thereon and clear reasons therefore* in terms of section 250(6) of the Act. In the instant case, the order of Ld. NFAC suffers from aforesaid compliance, hence we see strong force in the request of Ld. AR in remanding the file back to the Ld. NFAC for *de-nova* adjudication. Ordered accordingly with a direction to accord not more than two opportunities of hearing to the assessee.

5. In the result, the appeal is allowed for statistical purpose.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Friday, 01st day of September, 2023.

-S/d-

S. S. GODARA
JUDICIAL MEMBER

-S/d-

G. D. PADMAHALI
ACCOUNTANT MEMBER

पुणे/ PUNE ; दिनांक / Dated : 01st day of September, 2023.

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1.अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr.CIT Pune

4. The CIT(A), NFAC Delhi

5. DR, ITAT, Pune 'SMC', Pune

6.गार्डफाइल / Guard File.

*SGR

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.