



॥ 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. 842/PUN/2023

निर्धारण वर्ष / Assessment Year : 2011-12

Reshma Devendra Shingavi,  
161/162, Dwarika Apt,  
Mukund Nagar, Pune.  
PAN: BOLPS7850G

..... अपीलार्थी / Appellant

बनाम / V/s

Income Tax Officer,  
Ward-5(1), Pune

..... प्रत्यर्थी / Respondent

द्वारा/ Appearances

Assessee by : Shri Tushar Varma

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

सुनवाई की तारीख / Date of conclusive Hearing : 11/08/2023

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/250/2023-24/1052988515(1) dt. 19/05/2023 passed u/s 250 of the Income-tax Act, 1961 ['the Act'] by the National Faceless Appellate Centre ['NFAC'] for assessment year 2011-12 ['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 ₹36Lakhs made into bank account maintained with HDFC 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 notices 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 nature and source of aforesaid cash deposit made into her 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 ₹36Lakhs u/s 68 of the Act treating it as cash credit.

2.3 Aggrieved assessee, taken the matter before National Faceless Appeal Centre(NFAC). In the absence of cogent evidence placed before it, the Ld. NFAC confirmed the findings of learned Assessing Officer, and dismissed appeal of the assessee *ex-parte* for non-prosecution.

2.4 Aggrieved by the actions of both the tax authorities below, the assessee came in present appeal with sole and substantive ground directed against the addition made u/s 68 of the Act alleging the violation of principle of natural justice.

3. During the course of physical hearing, learned Counsel for the assessee Mr. Tushar Varma reiterated all contention 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 therewith as the appellant did neither co-operated in assessment proceedings nor in first appellate proceedings. The Ld. DR objecting the request of Ld. AR in remanding the file back to Ld. NFAC, has submitted that, though the proceedings before Ld. NFAC were initiated during the COVID-19 pandemic period, however the assessee did not bother to even attend to notices issued post COVID-19, hence assessee deserves no relief in the present appeal.

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 confirmed *ex-parte* for non-prosecution in spite assessee was served with multiple notices.

5. We are heedful to the restriction placed in clause (a) of sub-section (1) of section 251 of the Act which obligates the Ld. FAA 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, in the absence of cogent material brought on record, the Ld. NFAC perfunctory confirmed the order of Ld. AO, without adjudicating the matter in terms of sub-section (6) of section 250 of the Act, which in our considered view suffered from aforesaid compliance.



6. We note that most of the notices calling upon the assessee were issued during the subsistence of COVID-19 pandemic, which prevented the assessee from responding to notice which in turn resulted into non-compliance. Whereas the Ld. NFAC proceeded ex-parte with adjudicating the matter in terms of 250(6) of the Act. For these combined and cumulative reasons we see strong force in the request of Ld. AR in remanding the file back to the Ld. NFAC for *de-nova* adjudication and passing a speaking order as envisaged u/s 250(6) of the Act. Thus, ordered accordingly with a direction to accord not more than two opportunities of hearing to the assessee. Needless to state that, the assessee without seeking unreasoned adjournment shall co-operate in remand proceeding by adducing necessary evidences in support of claims.

**7. 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**

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.

-S/d-

**G. D. PADMAHALI**  
**ACCOUNTANT MEMBER**