



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



**IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE "SMC" BENCH, PUNE
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND**

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 866 & 867/PUN/2023

निर्धारण वर्ष / Assessment Year : 2018-19 & 2019-20

Bhim Prerna Sanskrutik Kendra,
Plot No.136/A, Sector 15,
New Panvel - 410206.
PAN: AABTB0109Q

.....अपीलार्थी / *Appellant*

बनाम / V/s

Income Tax Officer,
Exemptions Ward, Thane

..... प्रत्यर्थी / *Respondent*

द्वारा / Appearances

Assessee by : Shri Hari Krishan [Ld. AR]

Revenue by : Shri Ganesh Budruk [Ld. DR]

सुनवाई की तारीख / Date of conclusive Hearing : 04/09/2023

घोषणा की तारीख / Date of Pronouncement : 05/09/2023

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

These twin appeals of the assessee are instituted against separate orders of National Faceless Appellate Centre ['NFAC' hereinafter] passed u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] vide DIN & order No. ITBA/NFAC/S/250/2023-24/ 1053536000(1) & 1053536364(1) dt. 02/06/2023. ['Impugned Order' hereinafter]

2. Since substantive issue involved in both these appeals being common, at the request of rival parties hereof, these are taken up together for the sake of brevity and for a common & consolidated order.



3. We first deal with ITA No. 866/PUN/2023 as lead case, resultantly, our adjudication laid in subsequent paragraphs shall *mutatis-mutandis* apply to ITA No. 867/PUN/2023.

4. Briefly stated facts of both the cases are;

4.1 The assessee for assessment year 2018-19 [‘AY hereinafter] filed its return of income [‘ITR’ hereinafter] on 12/10/2018 declaring total income at ₹51,220 after claiming exemption of ₹21,89,048/- u/s 11 & 12 of the Act.

4.2 The ITR was summarily processed determining total income of the assessee at ₹22,40,263/- u/s 143(1) of the Act on account of denial of exemption in the absence of audit report i.e. Form No. 10B which was one of the condition precedent for claiming exemption u/s 11 & 12 of the Act.

4.3 Aggrieved assessee assailed said denial on legal as well meritare grounds before first appellate authority u/s 246A(1) of the Act, which came to be dismissed owing to assessee’s failure to furnish audit report in Form No. 10B within the prescribed due date u/s 139(4A) r.w.s. 139(1) of the Act.

4.4 In the aforestated circumstance, the assessee brought up grievance in the present appeal before the Tribunal effectively on twin grounds viz;

- (i) *Violation of principle of natural justice for adjudicating the matter without first service the notice of hearing.*
- (ii) *Failure to decide the case on merits.*



5. During the course of hearing, the Ld. AR without touching merits of the case, at the outset pressing into service ground number 1 of appeal memo submitted that, the impugned order has suffered from violation of principle of natural justice as the Ld. NFAC placing reliance on CBDT Circular No. 03/2020 dt. 03/01/2020 has straightway dismissed the appeal without putting a single notice of hearing to the assessee. The Ld. AR further contended that, the Ld. FAA came to dismiss the appeal perfunctorily without adjudicating the matters on merits even, for the reasons; the matter requires reconsideration at first appellate stage, thus prayed for remand to the file of Ld. NFAC. *Per contra* the Ld. DR could hardly controvert the factual position solidified by impugned order.

6. Heard rival contentions and perused the material placed on record in light of rule 18 of ITAT-Rules 1963.

7. Ostensibly from the face of the impugned order, we find that, while adjudicating the issue the Ld. NFAC did serve not even a single notice and provide an opportunity to the appellant of being heard or an opportunity to adduce evidential material in support of grounds raised in an appeal. We also note that, the impugned first appellate proceedings ceased without first identifying therein points of determination, decision thereon and reasoning therefore in terms of provision of s/s (6) of section 250 of the Act, thus the impugned order in our considered view has also suffered therefrom.



8. For the aforesaid reasons, without commenting on merits of the case, we set-aside the impugned order and remand the matter back to the file of Ld. NFAC for *de-novo* adjudication with a direction to accord not more than three effective hearings to the appellant assessee and to pass a speaking order in terms of section 250(6) of the Act. Thus both the grounds stands adjudicated accordingly.

13. In result, twin appeals of the assessee are **ALLOWED FOR STATISTICAL PURPOSE.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Tuesday, 05th day of September, 2023.

-S/d-

PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 05th day of September, 2023.

आदेशकी प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The NFAC, New Delhi (India)

4. The CIT-1, Thane,

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

6. गार्डफ़ाइल / Guard File

Ashwini

आदेशानुसार / By Order

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