

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE 'SMC' BENCHES :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &  
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No.1020/PUN/2023  
(A.Y. 2013-14)

Palliyampil Mathai Kurian, Sanu Constructions Sursangam Complex, At post Mahad, Tal-Mahad, Dist. Raigad, Mahad-402301  PAN: AFMPK 8531 P	vs	DCIT, Circle, Panvel.
Appellant		Respondent

Assessee by	:	Shri Sharad Shah, CA
Revenue by	:	Shri Gaurav K. Singh, DR
Date of hearing	:	21/02/2024
Date of pronouncement	:	23/02/2024

ORDER

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 01.08.2023 for A.Y.2013-14 as per the grounds of appeal on record.

2. In this case, a notice u/sec. 148 was issued to the assessee after recording the reasons u/sec. 147 of the Act by the Assessing Officer (AO). Thereafter, assessment was completed u/sec. 147 r.w.s. 144 of the Act at an assessed income of Rs.37,76,403/- by making the following additions:-

- |    |   |               |
|----|---|---------------|
| a  | undisclosed investment u/sec. 69                                | Rs. 13,45,986 |
| b. | 8% service tax returns on turnover/ receipts on Rs. 38,28,350/- | Rs. 3,06,268  |

c.	8% on contract receipts u/sec. 194(C)	Rs. 15,71,823
d.	Interest income	<u>Rs. 5,52,326</u>
	Total	<u>Rs. 37,76,403</u>

3. Being aggrieved by the order of the AO, the assessee filed appeal before the NFAC. The assessee had not appeared before the appellate proceedings, therefore, the NFAC by following the judgment of the Hon'ble Supreme Court in the case of *B.N. Bhattacharge* 118 ITR 461 (SC), dismissed the appeal of the assessee *ex-parte*. Now, the assessee is in appeal before this Tribunal.

4. We have heard the submissions of the parties herein and have considered the facts and circumstances. We have given considerable thought to the entire factual scenario along with the relevant documents on record. In this case, the assessment was completed u/sec. 147/144 of the Act due to non-compliance by the assessee. That, even before the NFAC, as evident from para 5 of its order, as many as 03 opportunities were given for hearing, however, again before the NFAC there was no compliance by the assessee. At the time of hearing, Id. counsel for the assessee submitted an affidavit swearing on oath before the Notary of the Government of India along with the statement of facts explaining the reasons why the assessee could not comply with the hearing notices before the sub-ordinate authorities. We have gone through the contents of the said affidavit and the statement of facts and we are convinced that the reasons for non-compliance by the assessee, were not deliberate and intentional

but were purely circumstantial in nature and, therefore, we are of the view that one final opportunity may be provided to the assessee, so that he can represent his case before the AO on merits. It was also submitted by the Id.counsel for the assessee that though in the assessment order there is no mention of filing of return by the assessee for the relevant assessment year, but the fact remains that the assessee had filed the return of income for the relevant A.Y. 2013-14 in response to the notice issued u/sec. 142(1) on 27/09/2016. It is the case of the assessee that while framing the assessment u/sec. 144/147 of the Act, the AO has not considered the return filed, and there have arisen a huge difference in income computation as per the said assessment framed and the return which had been filed by the assessee. The submission of the Id. counsel was that since it was an *ex-parte* assessment through best judgment, there was no occasion for the AO to look into the said return of income and various other relevant documents also were required to be considered. In this regard, he prayed for one final opportunity to represent the case of the assessee before the AO by filing additional evidences in the paper book. Ld. counsel also submitted that even compared to Form 26AS for A.Y. 2013-14 whatever has been assessed, it is actually double of the said figure as appearing in Form 26AS for the relevant assessment year meaning thereby, that even there is a disparity of the assessed income arrived at by the AO as compared to the Form 26AS generated for the said assessment year.

We are of the considered view that all these facts needs detailed examination and factual verification at the level of AO. Considering the entire factual matrix in this case, we are inclined to provide one final opportunity to the assessee for representing his case on merits before the AO so that correct income is only brought to tax. In view thereof, we set aside the order of NFAC and remand the matter back to the file of the AO as per our aforestated direction for *de novo* adjudication complying with the principles of natural justice. Grounds stands allowed for statistical purposes.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in open Court on 23<sup>rd</sup> February, 2024.

Sd/-  
(G.D. PADMAHSHALI)  
ACCOUNTANT MEMBER

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Dated : 23<sup>rd</sup> February, 2024

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "SMC" Bench Pune.
5. Guard File.

By Order

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Senior Private Secretary  
ITAT, Pune.