



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE 'B' BENCH, PUNE



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

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 0853/PUN/2023

निर्धारण वर्ष / Assessment Year : 2018-19

Income Tax Officer

Ward-8(1), Pune

..... अपीलार्थी / Appellant

बनाम / V/s.

Shamsundar Kaliram Agarwal,

Balaji Niwas, Alandi Rd.,

Bhosari, Pune-411039

PAN: ALZPA2906R

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Mr C T Tiwari & J Tiwari ['Ld. AR']

Revenue by : Mr Ajay Kumar Kesari ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 14/03/2024

घोषणा की तारीख / Date of Pronouncement : 14/03/2024

आदेश / ORDER

**PER G. D. PADMAHSHALI, AM;**

By present appeal the Revenue challenged DIN & order No. ITBA/NFAC/S250/2023-24/1053281614(1) dt.29/05/2023 of the National Faceless Appeal Centre [for short 'NFAC'] passed u/s 250 of the Income-tax Act, 1961 [for short 'the Act'], which in turn ascended out of an order of assessment passed u/s 143(3) of the Act by the National e-Asstt Centre [for short 'AO'] vide its order DIN & Order No. ITBA/AST/S/143(3)2021-22/1032558337(1) dt. 20/04/2021.

2. The long and short of the case is that; the assessee is an individual whose return of income [for short 'ITR'] filed for assessment year 2018-19 was subjected to limited



scrutiny u/s 143(2) of the Act to verify huge cash deposits. For the assessee's failure to effectively substantiate the very source & its nature and offer satisfactory explanation regarding cash deposit of ₹50,77,58,790/- made into his two bank accounts viz; 35574446021 & 34408217589 held with State Bank of India, the Ld. AO added the aforesaid amount of deposits to his total income and brought to tax by an order of assessment framed u/s 143(3) of the Act.

3. Aggrieved assessee carried the matter before first appellate authority on a solitary ground that the Ld. AO erred in facts and law in making an addition on the basis of bank account statement/credit. The Ld. NFAC quoting from various judicial precedents without adjudicating the merits of the case in terms of 250(6) of the Act remanded the matter back to Ld. AO for recomputing respondent's total income in accordance with the direction laid at para 5 of the impugned order which is placed at page 21/22 as;

*"During the appeal proceedings, the appellant has submitted the agreement with Oxigen Services India Pvt. Ltd., certificate of appointment of customer service point, request for opening of current account from Oxigen Services India Pvt. Ltd. to the Branch Manager, State bank of India, Bhosari, a part of the statements of the said bank account. From perusal of the submission and evidence produced by the appellant, it is apparent that the appellant is appointed as customer service point by Oxigen Services India Pvt. Ltd., which is duly authorized by the State Bank of India as business correspondent to appoint customer service point. From perusal of the bank accounts, it is found that these current accounts bearing account no. 35574446021 and 34408217589 of State Bank of India are exclusively used for the purpose of collecting cash and deposit in his bank account on behalf of bank's customer and issue payments to bank customers. These accounts are opened on the request from Oxigen Services India Pvt. Ltd. to the Branch Manager, State bank of India, Bhosari.*

*The appellant has failed to produce true working of the commission earned through the Customer service point. He merely produced the clauses of the agreement with*



*Oxygen Services India Pvt. Ltd. In the profit and loss account, the appellant has shown commission receipt of Rs. 1,45,457/- only which is only 0.03% of the total cash deposit. The rate of the commission shown by the appellant is very low. These bank deposits contained both deposits and subsequent withdrawals and adding back the entire deposits would be arbitrary and harsh. In absence of the true working of commission income, peak credit in both the accounts would be taken as the income of the appellant. Reference is made to the decision of the Hon'ble ITAT, Ahmedabad in the case of ITO Ward 9(2), Surat v/s Shri Indrajeet Zandu Singh Tomar (ITA No. 1926/Ahd/2011) and Income Tax Officer, Ward 9(4), Ahmedabad v/s Shri Kaushik Kanti Lal Soni ITA No. 160/Ahd/2006 2006 where it was observed that the whole cash deposits cannot be added back as the income of the appellant. It is only the peak credit in the bank account, which can be treated as the income of the assessee.*

*The A.O. is, **hereby, directed to recompute the total income** considering the peak credit in both the accounts after verifying both the accounts bearing account no. 35574446021 and 34408217589 of State Bank of India.*

*This ground of appeal partly succeeds and is therefore partly allowed.”*

4. We have heard the rival contentions of both the parties; and subject to the provisions of rule 18 of ITAT-Rules, 1963 perused material placed on record and case laws relied.

5. We note that, all three grounds raised in the present appeal by the Revenue are solitarily revolves alleging around the action for setting-aside the original assessment to recompute the taxable income in accordance with directions, being violative of section 251(1)(a) r.w.s. 250(6) of the Act. We are heedful to quote here the, the restriction placed by clause (a) of sub-section (1) of section 251 of the Act obligates the first appellate authority to adjudicate the issue either by confirming or annulling the addition or reducing or enhancing the addition made by the assessing officer without the right to remand the



matter back to Ld. AO. Further while exercising the jurisdiction u/s 251(1)(a) of the Act, the first appellate authority is also required clearly to state (i) *point of determination*, (ii) *its decision thereon* and (iii) *reasons therefore* in terms of section 250(6) of the Act.

6. *Per contra* in the instant case, we find that the Ld. NFAC after considering the issue at length failed to adjudicate the issue conclusively in terms of section 250(6) of the Act but directed the Ld. AO for recomputing the total income in accordance with direction it appended therein. This directions to the Ld. AO in our considered view have effect of setting aside the original assessment therefore has suffered from clause (a) of s/s (1) of section 251 r.w.s. 250(6) of the Act. For the reasons without offering our comments on the merits of the case, we deem it fit to quash the directions by setting-aside the impugned order under challenge and remand the matter back to the file of Ld. NFAC for *de-nova* adjudication after according not more than three opportunities to the respondent assessee and pass a speaking order in terms of section 250(6) of the Act, ergo ordered accordingly. Thus, the grounds of the Revenue stands allowed.

**7. In result, the appeal is allowed for statistical purpose in above terms.**

U/r 34 of ITAT Rules, the order pronounced in the open court on this Thursday 14<sup>th</sup> day of March, 2024.

-S/d-

**SHRI S. S. GODARA**  
**JUDICIAL MEMBER**

-S/d-

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

पुणे / PUNE ; दिनांक / Dated : 14<sup>th</sup> day of March, 2024.

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

1. अपीलार्थी / The Appellant.  
4. The CIT Concerned

2. प्रत्यर्थी / The Respondent.  
5. DR, ITAT, Pune Bench 'B', Pune

3. The Pr. CIT Concerned.  
6. गार्डफाइल / Guard File.

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