

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT  
AND  
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA Nos.42 & 43/PUN/2024  
Assessment Year : 2018-19**

ITO, Ward – 7(3), Pune	<b>Vs.</b>	Iranna Bhujang Nadgam Sr.No.13, Behind Hyundai Showroom, Kalubai Nagar, Thite Vasti, Pune – 411014
		<b>PAN: AFVPN0229C</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : None  
Department by : Shri Keyur Patel, CIT-DR  
Date of hearing : 22-05-2024  
Date of pronouncement : 22-05-2024

**ORDER**

**PER BENCH :**

ITA No.42/PUN/2024 filed by the Revenue is directed against the order dated 26.10.2023 of the CIT(A) / NFAC, Delhi relating to assessment year 2018-19 challenging the deletion of addition of Rs.28,37,83,357/- made by the Assessing Officer u/s 69 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') being unexplained cash deposit in the bank account. ITA No.43/PUN/2024 filed by the Revenue is directed against the order dated 26.10.2023 of the CIT(A) / NFAC, Delhi in deleting the penalty of Rs.2,19,22,260/- levied u/s 271AAC(1) of the Income Tax Act, 1961. For the sake of convenience, both these appeals were heard together and are being disposed off by this common order.

2. These appeals were first fixed for hearing on 25.04.2024. Since nobody appeared on behalf of the assessee on the date of hearing, fresh notice of hearing was issued to the assessee through DR fixing the hearing for 22.05.2024. Despite service of notice on the assessee through the Revenue, copy of which is placed on record, none appeared on behalf of the assessee. Even notice was also served on the assessee through e-mail as per Form No.36. Since none appeared on behalf of the assessee at the time of hearing when the name of the assessee was called and since no application for adjournment was received on behalf of the assessee, therefore, these appeals are being decided on the basis of the material available on record and after hearing the Ld. DR.

#### **ITA No.42/PUN/2024**

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 31.10.2018 declaring total income of Rs.15,69,080/-. The case was selected for limited scrutiny for the reason “large cash deposits in bank accounts”. Accordingly, statutory notices u/s 143(2) and 142(1) of the Act were issued to the assessee. However, despite number of opportunities granted by the Assessing Officer, none appeared on behalf of the assessee. The Assessing Officer, therefore, proceeded to complete the assessment u/s 144 of the Act. Since the assessee has made cash deposit of Rs.28,37,83,357/- in his Current Account held with Mahanagar Co-operative Bank Ltd., Chandannagar Branch, Pune and has declared meager income from business and profession of Rs.15,89,057/-, the

Assessing Officer made the addition of Rs.28,37,83,357/- u/s 69 of the Act by recording as under:

**“Cash Deposit:**

2. As the assessee has not responded till date, the reason for selection in CASS is verified on the basis of information available with this office. On going through the ITR, it is seen that the assessee has shown income from Business or Profession of Rs.15,89,057/- and claimed deduction of Rs.19,981/- under chapter VIA of the Act. As per information available he has deposited cash of Rs.28,37,83,357/- in his current account No.00004047 held in the Mahanagar Co-Operative Bank Ltd., Chandannagar Branch, Pune but it is not shown by him in ITR. Therefore Rs.28,37,83,357/- is treated as unexplained credit within the meaning of section 69 of the IT Act and added to the total income. Penalty proceedings u/s. 271AAC is separately initiated.

[Addition: Rs.28,37,83,357/-]”

4. In appeal, the Ld. CIT(A) / NFAC deleted the addition by observing as under:

**“6. Decision:**

The appellant in its ground of appeal assailed the AO in adding the total of cash sales of Rs.283783357/- in the assessment order framed by the AO-NeAC in the absence of the submission filed by the assessee. The appellant in the appellate proceedings submitted that it is in the business of cigarettes and the sales are in cash which is deposited in the bank account and the payment is made to the company against the purchases. The appellant filed the details of cash sales, the bank account statement. The assessment order revealed that the appellant is a regular income tax assessee and has filed its ROI declaring total income at Rs.1569080/-.

6.1 The submission of the appellant is examined; the bank statement is perused. The bank statement revealed that the cash is deposited and majority of the payment is made to ‘Godphrey Philips’ a cigarette company. The appellant submitted that the net sales as declared in Profit and Loss A/c is Rs. 14,66,22,406/-. On this Net Sale VAT is collected extra up to June 2017 and GST/ Cess is collected extra from July 2017 to March 2018. So Gross Sale is Rs 29,07,84,071. Further the accounts were audited as per the provision of the Act. The contention of the appellant is found to be tenable. Further the appellant is a regular filer and has filed the ROI at Rs.1569080/-. Taking into account the factual matrix of the case the addition made by the AO is deleted. The ground of appeal is allowed.

7. In the result the appeal is allowed.”

5. Aggrieved with such order of CIT(A) / NFAC, the Revenue is in appeal before the Tribunal by raising the following grounds:

- 1) *The learned CIT(A) (NFAC) has erred in not giving sufficient opportunity for submission of remand report, passed the Appellate Order on 26/10/2023. On submission of additional evidence the Ld. CIT(A)(NFAC) had called for a remand report vide dated 10/07/2023 for making compliance. However, appellate order was passed on 26/10/2023 without getting remand report from jurisdictional Assessing Officer. Thus, the appellate order was passed in violation of principle of natural justice. Therefore, the same should be quashed or set aside.*
- 2) *The learned CTT (A)(NFAC) has erred in decision that the net sales as declared in P&L A/c was Rs.14,66,22,406/- and on this Net Sale VAT is collected extra up to June 2017 and GST/Cess is collected extra from July 2017 to March 2018 so Gross Sale is Rs.29,07,84,071/-, whereas, on going through the ITR as well as the Audit Report, it is seen that nowhere the assessee had mentioned/specified the amount of VAT and GST / Cess extra collected of Rs.14,41,61,665/- (29,07,84,071-14,66,22,406), The assessee had also not shown the Gross Sales of Rs.29,07,84,071/- as mentioned in the Appellate Order, either in the ITR filed or in the Audit Report filed for the year under consideration*
- 3) *The learned CIT(A) (NFAC) has erred by not considering the fact that the assessee has not shown the current account No.00004047 held in the Mahanagar Co-operative Bank Ltd., Chandan Nagar Branch, Pune either in his ITR filed or in Audit Report Form No.3CB & Form No.3CD filed for the year under consideration and not considering the fact that the assessee has not even filed/uploaded the audited Profit & Loss A/c and Balance Sheet for the year under consideration at the time of filing of Audit Report Form No.3CB & Form 3CD and*
- 4) *The learned CIT (A) (NFAC) has erred by not considering the fact that the auditor has marked as "Nil" in response to "Break-up of total expenditure of entities registered or not registered under the GST" at serial number 44 of form 3CD and also not considering the recorded opinion of the Auditor, at serial number 5 of form no.3CB, which is succinctly stated that the assessee being a wholesaler/distributor, the assessee has not maintained any transaction details, stock register/records, gross sales/turnover, the details of individuals parties and has not even generated any sale invoice. The assessee has also failed to furnish form no.61 A though he is liable for the same since all the sales were in cash.*

6. The Ld. DR submitted that the assessee did not appear before the Assessing Officer during the course of assessment proceedings to explain the nature and

source of the deposits in the bank account. The assessee filed certain details before the CIT(A) / NFAC and the Ld. CIT(A) / NFAC without calling for any remand report from the Assessing Officer or without giving any opportunity to the Assessing Officer, simply accepted the various details filed by the assessee and deleted the addition in a very cryptic order. He accordingly submitted that either the addition made by the Assessing Officer be sustained or the matter may be restored to the file of CIT(A) / NFAC with a direction to call for a remand report from the Assessing Officer and decide the issue as per fact and law.

7. We have heard the Ld. DR and perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC. It is an admitted fact that due to non appearance of the assessee before the Assessing Officer despite number of opportunities granted, the Assessing Officer made the addition of Rs.28,37,83,357/- being the cash deposit in the bank account as unexplained credit u/s 69 of the Act. We find the Ld. CIT(A) / NFAC deleted the addition made by the Assessing Officer, reasons of which are already reproduced in the preceding paragraph. It is the submission of the Ld. DR that despite number of opportunities granted by the Assessing Officer, the assessee did not appear before him for which he passed the *ex-parte* order. Further, when the net sale is Rs.14,66,22,406/- and the deposit in the bank account is Rs.28,37,83,357/-, the CIT(A) / NFAC without calling for a remand report from the Assessing Officer, simply accepted the submissions made by the assessee before him and deleted the addition, which is not justified. We find force in the above arguments of the Ld. DR. Admittedly, the assessee did not file the details

before the Assessing Officer justifying the huge cash deposits in bank account, which was the reason for selection of the case for limited scrutiny. However, the Ld. CIT(A) / NFAC without calling for a remand report from the Assessing Officer, accepted the submissions made before him and deleted the addition on the ground that the contention of the assessee is found to be tenable. In our opinion, the Ld. CIT(A) / NFAC should have called for a remand report from the Assessing Officer. However, he deleted the addition simply on the basis of various submissions made before him for the first time especially when the assessment was made u/s 144 of the Act due to non appearance of the assessee before the Assessing Officer. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of CIT(A) / NFAC with a direction to forward all the details filed before him to the Assessing Officer for his verification and obtain the remand report and then decide the issue as per fact and law and after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

**ITA No.43/PUN/2024**

8. The Revenue in the grounds of appeal has challenged the order of CIT(A) / NFAC in deleting the penalty of Rs.2,19,22,260/-.

9. After hearing the Ld. DR, we find the Assessing Officer in the instant case levied penalty of Rs.2,19,22,260/- u/s 271AAC(1) of the Act on account of

addition of Rs.28,37,83,357/- u/s 69 r.w.s. 115BBE. We find the Ld. CIT(A) / NFAC deleted the penalty so levied by observing as under:

“6. *Decision:*

*The appellant in its ground of appeal has assailed the AO in initiating and levying penalty u/s 271(1)(c) of the Act of Rs.2,19,22,260/-. The AO initiated and levied penalty on the basis of the addition made in the assessment order for the impugned A.Y. The appeal for the impugned A.Y. against the substantive addition has been adjudicated in Appeal No.10164774 in favour of the appellant. **Hence the penalty so imposed is deleted. The ground of appeal is allowed.**”*

10. Since the quantum appeal has already been restored to the file of CIT(A) / NFAC for fresh adjudication, therefore, the order deleting the penalty by the CIT(A) / NFAC is also set aside and restored to his file for fresh adjudication. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

11. In the result, both the appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced in the open Court at the time of hearing itself i.e. 22<sup>nd</sup> of May, 2024.

**Sd/-**  
(ASHTA CHANDRA)  
JUDICIAL MEMBER

**Sd/-**  
(R. K. PANDA)  
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 22<sup>nd</sup> May, 2024  
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे  
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	22.05.2024		Sr. PS/PS
2	Draft placed before author	22.05.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			