

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.169/Nag./2024**  
(Assessment Year : 2013-14)

**and**

**ITA no.170/Nag./2024**  
(Assessment Year : 2014-15)

Bhawana Hariram Lavhale  
C/o Hariram Lavhale, Cotton Market  
Amravati 444 601 PAN – ADTPL9118J

..... Appellant

v/s

Income Tax Officer  
Ward-3, Amravati

..... Respondent

Assessee by : Shri K.P. Dewani  
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing – 16/05/2024

Date of Order – 16/05/2024

**ORDER**

**PER K.M. ROY, A.M.**

The instant appeals have been filed by the assessee challenging the impugned orders of even date 07/02/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2013-14 and 2014-15.

2. Since all these appeals pertain to the same assessee involving common issues arising out of identical set of facts and circumstances, except variation in numerical figures, therefore, as a matter of convenience, these appeals

were heard together and are being disposed off by way of this consolidated order. However, in order to understand the implication, it would be necessary to take note of the facts of one appeal. We are, accordingly, narrating the facts, as they appear in the appeal in ITA no.169/Nag./2024, for assessment year 2013–14, the decision of which will apply to the other appeal mutatis–mutandis.

3. The appeals for both the years under consideration, have been filed by the assessee which are in respect of the orders dated 07/02/2024, passed by the learned CIT(A) dismissing the appeals by not condoning the delay of 35 days and holding that the appeals filed are barred by limitation.

**ITA no.169/Nag./2024**  
**Assessee's Appeal : A.Y. 2013-14**

4. In its appeal, the assessee has raised following grounds:–

*"1. The order passed by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre u/s 250 of I.T. Act-1961 is illegal, invalid and bad in law.*

*2. The learned CIT(A) erred in not considering the application for condonation submitted 'Online" on 03/06/2022 and has noted at page 7 that the appeal filed by assessee is dismissed as barred by limitation.*

*3. Order passed by CIT(A) is without providing reasonable opportunity of being heard and is in violation of principles of natural justice and is required to be set aside.*

*4. The learned CIT(A) ought to have condoned the nominal delay as explained in application and affidavit submitted and adjudicated the grounds on merits of the case.*

*5. The learned CIT(A) has dismissed the appeal summarily without considering the merits of grounds on the basis of evidence on record.*

*6. The notice issued u/s 148 of I.T. Act 1961 is illegal, invalid and bad in law thus consequent assessment framed thereupon is liable to be cancelled.*

*7. The addition made by A.O. at Rs.19,88,25,743/- u/s 69A of I.T. Act 1961 in the case of assessee is unjustified, unwarranted and excessive.*

8. *The addition made by A.O. at Rs. 19,88,25,743/- u/s 69A of I.T. Act 1961 is illegal, invalid and bad in law.*

9. *The learned A.O. erred in holding that sum of Rs. 19,88,25,743/- is liable to be assessed u/s 69A of I.T. Act 1961.*

10. *The learned A.O. erred in determining income at Rs. 19,88,25,743/- ignoring the settled legal position of determining assessable income at real income in ex-parte assessment.*

11. *The action of A.O. in treating entire deposit as unexplained without considering withdrawals from same bank account ignoring concept of peak theory is unjustified, unwarranted and excessive.*

12. *The assessee denies liability to pay interest under section 234A, 234B and 234C of I.T. Act 1961. Without prejudice, levy of interest under section 234A, 234B and 234C of I.T. Act 1961 is unjustified, unwarranted and excessive.*

13. *Any other ground that shall be prayed at the time of hearing."*

5. Facts in brief:- The appellant is an individual and has not filed return of income for assessment year 2013-14. The Assessing Officer had information on Insight Portal that the assessee has made credit of ` 19.88 crore during the year under consideration. The source of credit remained unexplained and, therefore, notices under section 148 of Act, was issued on 27/03/2021. However, the assessee did not comply with the various notices issued in the course of assessment proceedings, which resulted in rendering ex-parte assessment order dated 30/03/2022, passed under section 44 of the Act. During the assessment proceedings, the addition was made of ` 19,88,25,743, under section 69A of the Act. In the statement of facts and grounds of appeal, it was explained that activity of assessee during the year under consideration is of Kachha Arahtia (Commission Agent) at APMC Market, Amravati. Agricultural goods are auctioned at APMC market and are sold to highest bidder from whom payments are received by cheque/cash. The transactions in respect to deposits and withdrawals in the bank account

are in the course of activity of commission business. The Assessing Officer had not made any verification from bank or parties from whom cheque is received. Withdrawals made from bank account are not considered by the Assessing Officer even though the deposits have been held to be unexplained money of the assessee. Accordingly, the Assessing Officer assessed the income of the assessee under section 144 / 144B r/w section 147 of the Act at ` 19,88,25,743. He also initiated proceedings under section 271(1)(c) of the Act separately. The assessee being aggrieved by the order so passed by the Assessing Officer, carried the matter before the first appellate authority.

6. Before the learned CIT(A), the assessee filed application for condonation of delay along with affidavit of Advocate Smt. Shruti Joshi, for delay of about 35 days to be condoned. The assessee, pursuant to the notice issued under section 250 of the Act, had filed a detailed submission in support of its claim. The CIT(A) was of the view that since the assessee has not responded and the case before his is time-barred on 31./03/2022., there was no alternative but to complete the assessment under section 144 of the Act and on the basis of material available on record, credit of ` 19,88,25,743, made by the as remained unexplained and therefore, the same is considered to be his income from undisclosed sources for the year under consideration under section 69A of the Act which was added to the total income of the assessee. The learned CIT(A) dismissed the appeal of the assessee by concluding that the condonation of delay is not allowed as the assessee has a lackadaisical approach and in a nonchalant manner the assessee is attempting to seek condonation of delay and, hence, CIT(A) has not dealt with merits of

addition in the appellate order. Aggrieved, the assessee is in further appeal before the Tribunal.

7. Before us, the learned Counsel for the assessee submitted that an Affidavit, duly sworn by Smt. Shruti Joshi, was accompanied by application for condonation of delay was filed before the learned CIT(A) with a view to show the reason in filing appeals belatedly. The learned Counsel submitted that the delay occurred in filing the appeal belatedly, is on account of the mistake on the part of assessee's Counsel in not filing the appeals within due date. He further submitted that the learned CIT(A) has reproduced the contents of affidavit in his order at Page-3 and 4. The application for condonation of delay and its contents are not discussed in the appellate order and are not considered while not accepting the delay in filing of appeal. Perusal of findings noted at para 2.1 of appellate order to refuse condonation of delay is not in respect to facts and evidence on record of assessee. It appears to be in relation to sum other case and not the case of assessee. It is submitted that the learned CIT(A), at Page-7, has noted that one line application for condonation, which is not supported by documentary proof and remain unsubstantiated. The learned Counsel further submitted that it is factually incorrect and contrary to evidence on record. He further submitted that there is non-application of mind while refusing to condone the nominal delay of 35 days in the appeals filed. The learned Counsel further explained that notice under section 148 and further notices mentioned in the assessment order are not received physically and, therefore, ex-parte assessment was made in the case of appellant. The assessee is Kaccha Adatiya (Commission

Agent) at Amravati for agricultural produce. Appellant is eligible for nominal amount as commission for sale of agricultural produce at APMC market. Amount is received from traders in bank account which is withdrawn and given to agriculturist. In assessment year 2015-16, the re-assessment was initiated for the same reason of explaining deposit in bank account by notice u/s 148 on 27/07/2022. Reassessment has been framed by Assessing Officer accepting the income as shown in the return of income at ` 3,65,640, Bank deposit to the tune of ` 12.12 crore in the same bank account is held to be of parties from whom assessee was in receipt of commission. Similar deposits are in the bank account of appellant for the year under consideration. Bank account itself indicates deposits are from various traders indicating details of names and bank accounts from where amount is transferred. Addition has been made without making any verification of the parties from whom credit entries are appearing in the bank account. Income determined in the case of appellant is bad in law. Addition made by Assessing Officer in the assessment is thus prima facie unjustified and unsustainable. The learned Counsel for the assessee further submitted that in the interest of justice, the assessment be restored to the file of Assessing Officer with direction to give fair opportunity to adduce evidence and to make a denovo assessment.

8. The learned Counsel for the assessee drew our attention to the judgment of Hon'ble Jurisdictional High Court rendered in Ashok Chaganlal Thakkar, in Writ Petition No.3099 of 2022, wherein one of the respondents was NFAC along with the Jurisdictional Assessing Officer &

Others. He submitted that the assessment was remanded to file of Jurisdictional Assessing Officer to grant personal hearing and make the assessment afresh. The learned Counsel for the assessee, while concluding his arguments prayed that considering the facts and evidence on record, in view of ex-parte assessment framed and substantial evidence having been adduced in the course of appellate proceedings, in the interest of justice, it would be appropriate to remand the assessment to be framed with Jurisdictional Assessing Officer.

9. Per contra, the learned Departmental Representative submitted that assessee was non-compliant before the Assessing Officer, which resulted in passing the ex-parte order passed by the learned CIT(A). He relied upon orders of authorities below and submitted that the appeal of assessee be dismissed.

10. We have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. At this juncture, the learned Counsel for the assessee made a specific request before the Bench that the matter should be restored to the file of the Jurisdictional Assessing Officer instead of remanding the matter back to the National Faceless Assessment Centre. He referred to certain judgment of the Hon'ble Bombay High Court and the decision of the Co-ordinate Bench of the Tribunal, Ahmedabad Bench, to prove his point that the matter can be set aside to the Jurisdictional Assessing Officer upon fresh verification. At this stage, we thought it appropriate to seek the suggestions from the learned Departmental Representative and he took us to the provisions of amended

section 144B of the Act w.e.f. 01/04/2022. He particularly invited the attention of the Bench to sub-section (2) to section 144B of the Act where it has been mentioned that the faceless assessment shall be made in respect of such territorial area "*persons*" or "*class of persons*" or "*incomes*" or "*class of incomes*" or "*cases*" or "*class of cases*" as may be specified by the Board. ON being questioned about whether there is any guidelines for carrying out fresh assessment in pursuance to the provisions of section 254 of the Act, both the parties were not in a position to present any guidelines rightly before the Bench. However, we are of the view that both, the faceless Assessing Officer and the Jurisdictional Assessing Officer have a concurrent jurisdiction and under sub-section (8) of section 144B of the Act, the Principal Commissioner of Income Tax or the Principal Director General, as the case may be in-charge of National Faceless Assessment Centre, may, at any stage of the assessment, if considered necessary, transfer the case the case to the Assessing Officer having jurisdiction over such case with the prior approval of the Board. We have also examined the Faceless Jurisdiction of the Income Tax Authority Scheme, 2022, brought in statute w.e.f. 28/03/2022. In our humble understanding, both the authorities have co-terminus power to carry out the functions of the Assessing Officer. There is no prejudice caused to the Department if the assessment is carried out by any of the authorities. The supervisory jurisdiction of section 263 of the Act is also available in both these types of assessment whether by National Faceless Assessment Centre or Jurisdictional Assessing Officer. We take note of the decision rendered by the Co-ordinate Bench of the Tribunal, Mumbai, rendered in RDC Ventures v/s PCIT, ITA no.1915/Mum./2023, order dated 09/02/2024, the Hon'ble

Bench had carefully perused the decision of the Hon'ble Calcutta High Court in Sanghi Steel Udyog Pvt. Ltd. v/s Union of India, wherein the Hon'ble High Court has categorically held that the Act does not distinguish between the Jurisdictional Assessing Officer or National Faceless Assessment Centre with respect to jurisdiction over the case guided by eloquent observations, we set aside the impugned order passed by the learned CIT(A) and we deem it fit and appropriate to remand the matter back to the file of the Jurisdictional Assessing Officer for carrying out the assessment afresh in accordance with law. All the grounds of appeal raised in the appeal for the assessment year 2013-14 are allowed for statistical purposes.

11. In the result, assessee's appeal for the assessment year 2013-14 is allowed for statistical purposes.

**ITA No.170/Nag./2024**  
**Assessee's Appeal – A.Y. 2014-15**

12. In this appeal, the assessee has raised the grounds of appeal which are identical to the grounds of appeal decided by us in the assessee's appeal for the assessment year 2013-14 as aforesaid, consistent with the view taken therein, we set aside the impugned order passed by the by the learned CIT(A) in this appeal also and restore the matter back to the file of the Jurisdictional Assessing Officer for denovo assessment in the light of the directions given in Para-10 above.

13. In the result, assessee's appeal for A.Y. 2014-15 is allowed for statistical purposes.

14. To sum up, assessee's appeal for A.Y. 2013-14 and 2014-15 are allowed for statistical purposes.

Order pronounced in the open Court on 13/05/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 13/05/2024**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

By Order

Sr. Private Secretary  
ITAT, Nagpur