

BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

AND

SHRI SUBHASH MALGURIA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 147/LKW/2024

निर्धारण वर्ष / Assessment Year : 2015-16

M/s Vindhyavasini Automobile
Haidergarh Road, Kothi,
Barabanki, UP-255119
PAN: AALFV1251B

..... अपीलार्थी / *Appellant*

बनाम / V/s.

Dy./Asstt. Commissioner of Income Tax-3,
Lucknow

..... प्रत्यर्थी / *Respondent*

द्वारा / Appearances

Assessee by : Mr PK Kapoor ['Ld. AR']

Revenue by : Ms Adita Singh ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 08/07/2024

घोषणा की तारीख / Date of Pronouncement : 11/07/2024

आदेश / ORDER

Per G. D. Padmahshali, AM;

Against the *ex-parte* DIN & Order ITBA/NFAC/S/250/2023-24/1059887486(1) dt. 18/01/2024 passed u/s 250 of the Act by the National Faceless Appeal Centre, Delhi ['NFAC/CIT(A)' hereinafter] the assessee company came in appeal u/s 253(1)(a) of the Income Tax Act ['the Act' hereinafter].

2. At the physical hearing without touching the merits of the case, advertent to affidavit placed on record in terms of rule 10 of ITAT Rules, 1963 the Ld. Senior AR Mr Kapoor submitted that, owing to non-receipt notices to the email-address communicated to Ld. NFAC in the From No 35



the assessee could neither attend any of such notices nor could it make any effective representation/submission in support of grounds of appeal, which resulted into ex-parte dismissal of appeal for non-prosecution. It is however canvassed by the Ld. AR that given an opportunity of regress the assessee would sincerely prosecute and represent its case on merits by adducing requisite material. Adverting to ground number 2 of the appeal on the other hand the Ld. DR Smt Adita Singh dismantled the appellant's former excuse. It averred on behalf of the Revenue that, on one hand the assessee seeking remand confirming the fact that that *'owning to non-compliance of notices caused due to illness of partner of the firm, the assessee could not represent its case'* and on other hand it claims it wasn't in receipt of any such notices on the given email address. The assessee seemingly is blowing hot & cold at a time on the subject matter of service of notice, which indeed were served upon the assessee and which were remained unattended by it. However, since the Ld. NFAC has not dealt with the appeal on merits, the impugned order may at the discretion of the Tribunal be remanded to the first appellate authority with a direction to the assessee to prosecute the same sincerely without seeking unreasoned adjournment.

3. We have heard rival parties' submissions on limited issue of remand and subject to rule 18 of ITAT Rules, 1983 perused the material placed on record.



4. The record *prima-facie* reveals that, the notices from the Ld. NFAC were not sent to email-address mentioned in the Form No 35. In absence of information of on-going proceedings, these notices remained unattended. In the absence of any reply and written communication in support of grounds of appeal the Ld. NFAC dismiss the appeal *ex-parte* for non-prosecution without adjudicating it on merits by placing reliance on '*CIT Vs B. N. Bhattacharjee*' [1997, 118 ITR 461 (SC)], '*Estate of Late Tukojiro Holkar Vs CWT*' [1997, 223 ITR 480 (MP)] and '*CIT Vs Multiplan India (P) Ltd.*' [1991, 38 ITD 320].

5. We are heedful to the restriction placed by clause (a) of sub-section (1) of section 251 of the Act which obligates the Ld. CIT(A) 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. However, while exercising the jurisdiction u/s 251(1)(a) of the Act, the Ld. CIT(A) is mandated to ***state point of determination, its decision thereon and clear reasons therefore*** in terms of section 250(6) of the Act. This exercise by the Ld. CIT(A) is a pre-requisite and invariably necessary for each assessment year in each case irrespective of its repetition. This is because in taxation each assessment year *per-se* is a separate unit as is governed by its own peculiar facts & features and as such the principle of *res-judicata* is inapplicable in fiscal laws. It is a trite law as laid down by Hon'ble Supreme Court in case '*Chandra Kishore Jha Vs Mahavir Prasad*' reported



in 8 SCC 266 (SC), that ‘if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner’. Therefore the Ld. NFAC has no power to dismiss the appeal ex-parte for non-prosecution without dealing with the merits therefore. This view stands fortified in ‘CIT Vs Premkumar Agundas Luthra HUF’ [2017, 297 CTR 614 (Bom)]. Therefore, in our considered view, in the absence of clear authorisation in the statute permitting the Ld. NFAC to culminate proceedings without touching merits even in *ex-parte* proceedings is violative of provision of sub-section (6) of section 250 of the Act.

6. The impugned order passed sidestepping the dictate is since not in consonance with provision of s/s (6) of section 250 of the Act, is set aside and remanded back to Ld. NFAC with a direction to deal therewith *de-novo* after according two effective opportunities to the appellant assessee and pass a speaking order in terms of section 250(6) of the Act.

7. The appeal in result is ALLOWED FOR STATISTICAL PURPOSES.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Thursday, 11th day of July, 2024

-S/d-

SUBHASH MALGURIA
JUDICIAL MEMBER

Lucknow ; दिनांक / Dated : 11th day of July, 2024

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

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

2. प्रत्यर्थी / The Respondent.
5. DR, ITAT, Bench ‘SMS’, Lucknow

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

3. The CIT(A)-NFAC, Delhi (India)
6. गार्डफाइल / Guard File.

आदेशानुसार / By Order,
Asstt. Registrar
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Lucknow