

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.861/PUN/2024  
निर्धारण वर्ष / Assessment Year : 2016-17

|   |     |                        |
|---|-----|------------------------|
| Avinash Rajendrakumar<br>Gholap,<br>A/P Gholapwadi, Uddhat<br>Taluka Indrapur,<br>Pune- 413103.<br>PAN : ABJPG2776M | Vs. | ITO, Ward-14(5), Pune. |
| Appellant   |     | Respondent             |

Assessee by : Shri S. S. Gudhate  
Revenue by : Shri Ramnath P. Murkunde

Date of hearing : 10.07.2024  
Date of pronouncement : 26.07.2024

**आदेश / ORDER**

**PER VINAY BHAMORE, JM:**

This appeal filed by the assessee is directed against the order dated 03.04.2024 passed by Ld CIT(A)/NFAC for the assessment year 2016-17.

2. The appellant raised the following grounds of appeal :-

- "1. Under the facts and circumstances of the case and in law, Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC) erred in passing order wherein specific request of adjournment was made by assessee and same was not rejected by Ld Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC).*

2. *Ld Assessing Officer erred in law in making addition amounting to Rs. 1,44,43,541/- as unexplained money u/s 69A in the given facts and circumstances of the case.*
3. *The Ld Assessing Office erred in law in passing the Final Assessment Order without considering the submission made against Draft Assessment Order, thereby not complying with provisions of section 144B(1)(xxiv).*
4. *The Ld Assessing Officer erred in law in not providing personal hearing through video conferencing, even after specific request made by the Appellant.*
5. *The Ld Assessing Officer erred in law in not providing the copy of Recorded Reasons approved u/s 151, even after specific request made by the Appellant.*
6. *The Ld Assessing Officer failed to appreciate that cash deposits out of earlier cash withdrawals cannot be treated as unexplained money u/s 69A.*
7. *The Ld Assessing Officer erred in law in issuing Show Cause Notice (Draft Assessment Order) on 29/03/2022 and requiring Appellant to reply on same day thereby not providing sufficient time to the Appellant to respond.*
8. *The Ld Assessing Officer erred in not following principles of natural justice while completing the Assessment proceedings.*
9. *The appellant craves the permission to add, amend, modify, revise, substitute, delete or alter any/all of the above grounds of appeal if deemed necessary at the time of hearing of the appeal.”*

3. The facts, in brief, are that the assessee is an individual engaged in the business of Gas Agency and Poultry Farming. The case of the assessee was reopened and notice u/s 148 of the IT Act was issued on 30.03.2021 calling for the assessee to file his return of income. Subsequently, notice u/s 142(1) was issued on 02.12.2021. But assessee failed to comply with the above said notices. Based on the information available with the Department, the Assessing Officer found that the assessee had made cash

deposits amounting to Rs.1,40,48,000/- during the period of June to October, 2015. Therefore, the Assessing Officer issued show-cause notice on 29.03.2022 and the assessee filed his reply in response to the said show-cause notice. The Assessing Officer did not accepted the reply of the assessee and completed the assessment vide order dated 30.03.2022 passed u/s 147 r.w.s. 144B of the IT Act determining the total taxable income of the assessee at Rs.1,44,43,541/- as unexplained money u/s 69A of the IT Act. The Assessing Officer also initiated the penalty proceedings u/s 271(1)(c) and section 271F of the IT Act.

4. Being aggrieved with the above assessment order, an appeal was filed before the ld. CIT(A)/NFAC, who vide impugned order dated 03.04.2024 dismissed the appeal of the assessee for want of prosecution.

5. Being aggrieved with the decision of the ld. CIT(A)/NFAC, the appellant is in appeal before this Tribunal.

6. We have heard the ld. Counsels from both the sides and perused the material available on record. We find that the ld. CIT(A)/NFAC without going into the merits of the case as well as without considering the request for adjournment of the assessee had dismissed the appeal of the assessee *in limine* for non-prosecution.

Now, the law is settled to the extent that the Commissioner of Income Tax (Appeals) is bound to dispose of the appeal on merits even in the case of *ex-parte* orders. The settled positions of law i.e. as per section 250(6) of the IT Act, 1961 mandates the Commissioner of Income Tax (Appeals) to dispose of the appeal by adjudicating the issue raised in appeal on merits. In the circumstances, we are of the considered opinion that the ld. CIT(A)/NFAC should go into to the merits of the issue in appeal and dispose the appeal. Since the ld. CIT(A)/NFAC had not disposed off the matter on merits, we remand the matter to the file of the ld. CIT(A)/NFAC for fresh adjudication of the appeal on merits after providing reasonable opportunity of hearing to the assessee. Ld CIT(A)NFAC shall pass the order as per law after providing reasonable opportunity of being heard to the assessee. The assessee is also hereby directed to respond to the notice issued by ld. CIT(A)/NFAC and submit the requisite details on the appointed date without seeking any adjournment under any pretext, failing which ld. CIT(A)/NFAC is at liberty to pass appropriate order as per law. We hold and direct accordingly. Thus, the grounds of appeal raised by the assessee are partly allowed.

7. In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open Court on 26<sup>th</sup> day of July, 2024.

Sd/-  
(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

Sd/-  
(VINAY BHAMORE)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26<sup>th</sup> July, 2024.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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