



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

AND

SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No. 678/PUN/2024

Assessment Year : 2009-10

Mahendra Mohanlalji Jaiswal,  
Besides Tulja Mata Mandir,  
Near Power House, Darga Base, Jalna.  
PAN: AMZPJ5075F

..... *Appellant*

V/s

The Income Tax Officer,  
Ward-1(2), Jalna.

..... *Respondent*

*And*

ITA No. 730/PUN/2024

Assessment Year : 2016-17

Ganesh Ayodhyaprasad Jaiswal,  
At Mandvi Mandvi, Kinwat, Nanded.  
PAN: AUSPJ5624P

..... *Appellant*

V/s

The Income Tax Officer,  
Ward 1, Nanded.

..... *Respondent*

**Appearances**

Assessee by : Ms Deepa Khare & Mr Hari Krishan ['Ld. AR']

Revenue by : Mr Umesh Phade ['Ld. DR']

Date of conclusive Hearing : 01/08/2024

Date of Pronouncement : 07/08/2024

**ORDER**

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

These two appeals of different assessee filed against DIN & Order No. ITBA/NFAC/S/250/2021-22/1037975185(1) dt. 21/12/2021 & ITBA/NFAC/S/250/2023-24/1056525970(1) dt. 26/09/2023 respectively passed u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] by the National Faceless Appeal Centre ['NFAC' hereinafter].



2. At the outset, after vouching sufficiency of reasons beyond undeliberate delay in instituting these appeals, we find the cause of the delay falls well within four corners of '*sufficient cause*' hence regardless of length we deem it fit to condone the same proceed to adjudicate the issues on merits. After placing reliance on '*Mool Chandra Vs UOI*' [2024, CA 8435-8436/2024], '*Vijay Vishin Meghani Vs. DCIT & Anr*' reported 398 ITR 250 (Bom) and '*Collector, Land Acquisition, Anantnag and Anr. Vs Ms Katiji and Others*' reported at 167 ITR 5 (SC), we condone the same & proceed to adjudicate the issues on merits, as 'none should be deprived of an adjudication on merits **unless**; (a) reasons falls out '*sufficient cause*' bowls and (b) there is lightest insignia that litigant has deliberately delayed the filing of appeals.

3. Since facts & substantive issues arisen in these two appeals is common & identical, on the request of rival parties and for the sake of succinctness these appeals are heard together for consolidated & common order.

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4. We note that, against the order of assessment passed u/s 143(3) r.w.s. 147 of the Act by the Income Tax Officer, Ward-2, Jalna ['Ld. AO' hereinafter] for assessment year 2009-10 ['AY' hereinafter], the assessee instituted an appeal before the Ld. NFAC on 13/04/2016. During the appellate proceedings, the appellant vide twin notices dt. 28/01/2021 & 12/10/2021, was



called upon to make submission in support of grounds raised by him. In the event of no-response/reply the appeal of the assessee was dismissed by the Ld. NFAC for non-prosecution. We further note that, while disposing of the said appeal, the Ld. NFAC did fail to adjudicate the issue on merits in terms of section 251(1)(a) of the Act and also failed to pass a speaking order in the manner required by s/s (6) of section u/s 250 of the Act.

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5. We observed that, against the order of assessment passed u/s 147 r.w.s. 144 r.w.s. 144B of the Act by National Faceless Assessment Centre, Delhi [‘NeAC’ hereinafter] for assessment year 2016-17 [‘AY’ hereinafter] the assessee filed an appeal before Ld. NFAC on 20/08/2022. After instituting the appeal the appellant however could make no submission in support of grounds of appeals raised in Form No 35. In the event of the Ld. NFAC was constrained to disposed-off the appeal *ex-parte* reiterating the findings of the Ld. AO. We further note that, while disposing of the appeal, the Ld. NFAC did fail to adjudicate the issue on merits in terms of section 251(1)(a) of the Act and also failed to pass a speaking order in the manner prescribed by s/s (6) of section u/s 250 of the Act.

6. Heard rival common submission and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short ‘ITAT, Rules’] perused the material placed on records. Having regards to explanation &



narration echoed during the course of hearing, we are satisfied that these assessee's for the sufficient reasons were prevented from prosecuting the appeals on merits after they were instituted before the Ld. NFAC. We also observed that, in both these cases the impugned orders were passed *ex-parte* sidestepping from the mandate of s/s (6) of section 250 of the Act. In view of this factual findings, in our considered opinion these appellants deserves one more opportunity to represent their respective cases & be heard on merits and this can only be achieved if we set-aside these impugned orders for their *de-novo* adjudication on remand. We therefore set-aside these impugned orders and remand the same to the files of Ld. NFAC who shall adjudicate them separately in accordance with law after according three effective hearings and pass separate speaking order in terms of section 250(6) of the Act. The grounds of appeal thus stands partly allowed for statistical purposes.

**7. In result these two appeals stands PARTLY ALLOWED FOR STATISTICAL PURPOSES.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Wednesday, 07th August, 2024.

**-S/d-**

**VINAY BHAMORE**  
**JUDICIAL MEMBER**

**-S/d-**

**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

पुणे / PUNE ; दिनांक / Dated : 07th August, 2024.

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

- |                               |                                 |                            |
|-------------------------------|---------------------------------|----------------------------|
| 1. अपीलार्थी / The Appellant. | 2. प्रत्यर्थी / The Respondent. | 3. The Pr. CIT Concerned.  |
| 4. The CIT(A)/NFAC Concerned. | 5. DR, ITAT, 'SMC' Bench, Pune  | 6. गार्डफाइल / Guard File. |

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