

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

BEFORE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1435/PUN/2023
निर्धारण वर्ष / Assessment Year : 2013-14

Ram Vinod Agrawal, Plot No.5, Sagar, Agrawal Nagar, Malegaon Road, Dhule- 424001. PAN : AAJPA4917D	Vs.	CIT, Central Circle-1, Dhule.
Appellant		Respondent

Assessee by : Shir Rohit Tapadiya
Revenue by : Shri Umesh Phade

Date of hearing : 29.07.2024
Date of pronouncement : 05.09.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 26.10.2023 passed by Ld CIT(A)/NFAC for the assessment year 2013-14.

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

- "1. On the basis of facts and in the circumstances of the case and as per law, the Appellant order passed u/s.250 of I T Act DT.26/10/2023 by the Ld the Commissioner of Income Tax (NFAC), Delhi is without application of mind, though admitted and stated in the appellate order that" The appeal is decided on*

merit on based on documents uploaded", which was in fact nowhere at all considered while deciding appeal. Therefore, impugned order passed u/s.250 dt. 16/10/2023 bad in law and void ab inito and hence it may please be quashed.

2. *On the basis of facts and in the circumstances of the case and as per law, the Appellant order passed u/s.250 of I T Act DT.26/10/2023 being passed arbitrarily without considering statement of facts, ground of appeals, & uploaded written arguments filed with additional legal ground- vide e-proceedings Response Acknowledgement Number: 435313991241023 dt.24/10/2023. Therefore, impugned order passed u/s.250 dt.16/10/2023 may please be quashed*
3. *On the basis of facts and in the circumstances of the case and as per law, as the Appellant order passed u/s.250 of I T Act DT.26/10/2023 shows that CIT(A) has failed to address and decide each and every grounds & additional ground raised considering written/arguments uploaded by the appellant and merely relied upon the assessment order and dismissed the appeal. As it is not in conformity of provision of section 250 of the I T Act, impugned order passed u/s.250 dt.16/10/2023 may please be quashed.*
4. *On the basis of facts and in the circumstances of the case and as per law, the proceedings initiated u/s.147 by issue of impugned notice u/s.148 dt.29/03/2019 is bad in law and void ab initio, on following several counts as in applicable words or clauses required to be struck off or not following office procedure for issued by CBDT to issue notices ; or doing fishing inquiries or proceedings requires to be initiated u/s. 153C of the I.T. Act and not u/s. 147 / 148 of the Act and hence deserve to be quashed and also impugned notice u/s. 148 dtd. 29-03-2019 may please be also quashed.*
5. *On the basis of facts and in the circumstances of the case and in Law; the Ld. CIT(A) NFAC has erred in confirming the addition of Rs. 20,62,000/- though, it was no subject matter of reasons recorded for issue of notice u/s. 148 of the Act and the Ld. CIT(A) NFAC failed to follow binding decisions relied by the appellant of Jurisdictional High Court and Jurisdictional ITAT Pune. And therefore, impugned Assessment Order may please be quashed and impugned addition may please be deleted.*
6. *On the basis of facts and in the circumstances of the case and as per law The Ld CIT(A) NFAC has neglected the additional legal ground pertains to that Impugned Asst, order u/s.143(3) rws 147*

of I T Act dt.16/12/2019 bad in law and deserves to be quashed as it was issued under common DIN as informed vide letter dt.16/12/2019, which is in violation of Board Circular dated 14/08/2019. The CIT(A) NFAC has also not followed the binding instruction /circular and decisions relied by the appellant as under in this regards-

Therefore, considering entire facts and ratio laid down in the binding decisions and circular cited supra and relied by the appellant, it is requested that the impugned assessment order u/s.143(3) rw s 147 dated 16/12/2019 may please be quashed for want of DIN and hence it is invalid and bad in law and it is not valid order in the eyes of law.

7. On the basis of facts and in the circumstances of the case and as per law- as the Ld CIT as well as Ld A.O failed to provide copies alleged Reports and statements of third persons and not giving any opportunity to examine them and hence there is violation of natural justice and hence Assessment Order is bad-in-Law and void ab initio and it may please be quashed.

8. On the basis of facts and in the circumstances of the case and as per law- the Ld CIT(A)NFAC erred in confirming the addition of Rs.20,52,148/-made in respect of sale proceeds of impugned share transaction, whereas case was reopened for the reasons that investment of Rs.25,12,500/- has escaped assessment. Appellant has also filed all supporting documentary evidence in this regards on record , which was not disproved by the lower authorities, Thus, addition cannot be sustained and hence requested that addition may please be deleted.

9. The Appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of the appeal, if deemed necessary at the time of hearing of the appeal.”

3. The facts of the case, in brief, are that the assessee is an individual filed its original return of income on 01.01.2014 disclosing total income of Rs.8,88,181/-. The return was processed u/s 143(1) of the IT Act. Later on, on the basis of information

received from DDIT (Inv.), Unit-1(3), Ahmedabad that the assessee is one of the beneficiary who has traded in penny stock company M/s Safal Herbs Ltd., a notice u/s 148 was issued to the assessee on 26.04.2019. The return of income in response to above notice was furnished by the assessee, disclosing an income of Rs.11,99,552/- as against the total income of Rs.8,88,181/- shown in the original return of income. This revised enhanced income includes short term capital gain of Rs.3,11,371/- on sale of shares of M/s Parikh Herbals Ltd./Safal Herbs Ltd. for Rs.20,52,148/-. The Assessing Officer did not accept the income shown in the revised return, instead added the complete sale of shares amounting to Rs.20,52,148/- and assessed the total income at Rs.29,40,329/- by assessment order dated 16.12.2019 passed u/s 143(3) r.w.s. 147 of the IT Act.

4. Against the above said assessment order, the assessee preferred first appeal before the ld. CIT(A)/NFAC. After considering the reply of the assessee, by an order dated 26.10.2013, The ld. CIT(A)/NFAC dismissed the appeal filed by the assessee.

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

6. The ld. AR submitted before us that the assessee has raised as many as 7 grounds before the ld. CIT(A)/NFAC wherein first 3 grounds were legal grounds. But, while deciding the appeal of the assessee, the ld. CIT(A)/NFAC has not dealt with the first 3 grounds of appeal which were legal in nature. It was further submitted by the ld. AR that the ld. CIT(A)/NFAC committed grave error in not deciding the legal grounds raised by the assessee and it is a mistake apparent on the face of the record. It was therefore prayed before the Bench to set-aside the order passed by the ld. CIT(A)/NFAC with direction to decide the legal grounds along with other grounds.

7. The ld. DR supported the orders passed by the subordinate authorities and requested to confirm the same.

8. We have heard learned counsel from both the sides and perused the material available on record. During the period under consideration the assessee has purchased 10,000 shares of M/s Parikh Herbals Ltd./Safal Herbs Ltd. for Rs.25,24,504/- and in the same year 7,000 shares were sold for Rs.20,52,148/- and remaining

shares were held as stock on 31.03.2013. In the above transaction, the assessee has disclosed short term capital gains of Rs.3,11,371/- in the revised return filed in response to notice u/s 148 of the IT Act. This short term capital gain of Rs.3,11,371/- was shown in addition to the income of Rs.8,88,181/- declared in the original return of income. The reason for not disclosing this short term capital gain of Rs.3,11,371/- in the original return of income was stated to be a non-receipt of statement/details from the broker. But, the Assessing Officer on the basis of statements/documents of Shri Sanjay Shah and Shri Jignesh Shah in whose place search u/s 132 was conducted treated the whole of the transactions/sale of shares of Safal Herbs Ltd. of Rs.20,52,148/- as bogus/penny stock transactions and added Rs.20,52,148/- to the income of the assessee. In this regard, the assessee contended that all the transactions were through banking channels and STT was also paid, the share was listed in stock exchange, but nothing was accepted by the Assessing Officer and the addition was made. Before the Id. CIT(A)/NFAC along with other grounds three legal grounds were also raised, which read as under :-

“1. On the facts and in the circumstance of case and in law, the assessment proceedings initiated under the provision of section 147 rws 148 is bad in law and void ab initio on several counts. Thus, it may please be quashed.

2. On the basis of facts and in the circumstances of the case and in law, ld A.O has erred in making impugned addition of Rs.2062000, which is sans jurisdiction as it was not the subject matter of reasons recorded for issue of notice u/s.148. Thus assessment order is bad in law and void ab initio and thus it may be quashed.

3. The assessment order passed without providing the copies allege Reports and statements of third persons and giving an opportunity to cross examine them and hence there is natural violation of justice. Thus assessment order is bad in law and void ab initio and thus it may be quashed.”

9. We find that the ld. CIT(A)/NFAC has dismissed the appeal of the assessee but in the body of the appellate order, the adjudication of these three grounds does not appear. As per section 250(6) of the IT Act, the ld. CIT(A)/NFAC is duty bound to decide each and every ground raised by the assessee in the appeal, either legal or factual. From perusal of the first appeal order, it is apparent that the above-mentioned three legal grounds were not adjudicated which is a mistake apparent on the face of the record. We, therefore, find force in the arguments of the ld counsel of the assessee that the order passed by the ld. CIT(A)/NFAC is not correct. We, therefore, deem it appropriate to set-aside the order passed by the ld. CIT(A)/NFAC and remand it back to his file with direction to

decide all the grounds including legal grounds raised by the assessee in his appeal, afresh after providing reasonable opportunity of hearing to the assessee. The Id. CIT(A)/NFAC shall pass the order as per fact and law after providing reasonable opportunity of being heard to the assessee. The assessee is also directed to comply with the notices issued by Id. CIT(A)/NFAC. Thus, the grounds of appeal raised by the assessee are partly allowed.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on 05th day of September, 2024.

Sd/-
(G. D. PADMAHALI)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05th September, 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, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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