



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

AND

HON'BLE SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No. 1430/PUN/2024

Assessment Year : 2013-14

Shailesh Parshuram Pavar

At:30211 Uttexhol, Post: Nijampur Rd.,

Tal.: Mangaon, Raigad-402104

PAN: BVAPP5679L

..... *Appellant*

V/s

The Income Tax Officer,

Ward -5, Panvel.

..... *Respondent*

Appearances

Assessee by : None for Assessee

Revenue by : Mr BS Rajpurohit ['Ld. DR']

Date of conclusive Hearing : 11/09/2024

Date of Pronouncement : 11/09/2024

ORDER

PER G. D. PADMAHSHALI, AM;

This appeal of the assessee challenges the DIN & Order No. ITBA/NFAC/S/250/2024-25/1064681450(1) dt. 07/05/2024 passed u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] by the National Faceless Appeal Centre, Delhi ['Ld. NFAC/CIT(A)' hereinafter] which in turn arisen out of order of assessment passed u/s 147 r.w.s. 144 of the Act by the Income Tax Officer, Ward-5, Panvel ['Ld. AO' hereinafter] for assessment year 2013-14 ['AY' hereinafter];



2. The case was called twice; neither any one appeared at the behest of appellant assessee nor the records reveals of assessee having filed any application seeking adjournment. On the primary briefing from the Revenue and having considered the limited issue we deem it fit advance *ex-parte* u/r 24 of the ITAT-Rules, 1963 and adjudicate the issue. Advanced accordingly.

3. **Facts of the case briefly stated as;** the assessee is an individual who was identified as non-filer and in whose case an information of cash deposits was received, pursuant to which the case of the assessee after recording reasons & obtaining prior approval re-opened by notice u/s 148 of the Act. In the event of assessee's effective failure to explain the nature of source of cash deposit of ₹34.01Lakhs and unoffered interest of ₹1.475Lakhs were added u/s 69A as unexplained and brought to tax u/s 115BBE of the Act vide *ex-parte* assessment order framed u/s 147 r.w.s. 144 of the Act.

4. When aforesaid best judgment assessment is assailed in an appeal before first appellate authority, the Ld. NFAC accorded three opportunities of hearing vide notice dt. 19/07/2022, 18/03/2023 & 01/04/2024 which were responded with a request to adjourn granting reasonable time to comply with the requirements sought by such notices. However without further await, the Ld. NFAC proceeded *ex-parte* and dismissed for non-prosecution by placing reliance on '*CIT Vs BN Bhattacharya*' [1997, 118 ITR 461 (SC)] and '*CIT Vs Multiplan India Pvt. Ltd.*' [1991, 38 ITD 320 (Del)]



5. Having regards to facts of the case and after invoking rule 24 of ITAT-Rules, 1963 we have heard Ld. DR in absence of appellant and subject to rule 18 (supra) perused material placed on records.

6. We are heedful to the restriction placed by clause (a) of sub-section (1) of section 251 of the Act which obligates the Ld. NFAC/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. NFAC/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. Further a plain reading of section 250 of the Act reveals that, it is incumbent upon the Ld. NFAC/CIT(A) to make necessary enquiries before passing an order and while doing so it demands it to decide each of the points arising out of the appeal i.e. grounds on merits even in an *ex-parte* order.

7. In view of Section 250(4) r.w.s. 250(6) of the Act, Ld. NFAC/CIT(A) has no power to dismiss an appeal for non-prosecution, without discussing the merits of the case, and this proposition finds supported in the decision of ‘CIT Vs Premkumar Arjundas’ [(2016) 240 TAXMAN 0133 (Bom)]. 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’.

8. Per contra in the instant case, we find that the Ld. NFAC in the event of non-prosecution confirmed the addition in line with the assessment without adjudicating it in terms of sub-section (6) of section 250 of the Act, thus the rights & liabilities of the rival parties remain undetermined effectively. This adjudication in our considered view is not in consonance with the provision of sub-section (6) of section 250 of the Act. On this score too we deem it proper to set-aside the impugned order and remit the matter back to the file of Ld. NFAC for *de-novo* adjudication in accordance with law with a direction to accord not more than three effective opportunities and pass a speaking order in terms of section 250(6) of the Act, ergo ordered accordingly.

9. In result, the appeal is ALLOWED FOR STATISTICAL PURPOSES.

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

-S/d-

VINAY BHAMORE
JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 11th day of September , 2024

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

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|-------------------------------|---------------------------------|----------------------------|
| 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.