

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

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.118/PUN/2024
Assessment Year : 2014-15**

| | | |
|---|------------|-----------------------|
| Ketan Arvind Deshpande Flat No.03, First Floor, Divya Apartments, Borban, Main Road, Nanded – 431602 | Vs. | ITO, Ward (1), Nanded |
| PAN: AWRPD8842Q | | |
| (Appellant) | | (Respondent) |

Assessee by : Shri Pramod S Shingte
Department by : Shri Ramnath P Murkude
Date of hearing : 03-07-2024
Date of pronouncement : 19-09-2024

ORDER

PER ASTHA CHANDRA, JM :

This appeal filed by the assessee is directed against the order dated 29.11.2023 of the CIT(A) / NFAC relating to assessment year 2014-15.

2. Facts of the case in brief, are that the assessee is an individual and had not filed his return of income. Since, as per information, the assessee had made fictitious profit in commodity trading of Rs.1,32,21,100/- while buying and selling of commodity in National Spot Exchange Ltd. (NSEL), the Assessing Officer, after recording the reasons, reopened the assessment and accordingly issued notice u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 14.06.2021. The Assessing Officer completed the assessment determining the total

income of the assessee at Rs.1,34,30,760/- u/s 147 r.w.s. 144 of the Act by making various additions, the details of which are as under:

| <i>Sl. No.</i> | <i>Description</i> | <i>Amount (in INR)</i> |
|----------------|---|------------------------|
| <i>1</i> | <i>Income as per Return of Income filed</i> | <i>Rs.212330</i> |
| <i>2</i> | <i>Variation of income on account of fictitious loss treated as unexplained money u/s 69A</i> | <i>Rs.2718430</i> |
| <i>3</i> | <i>Variation of income on account of gift treated as unexplained money u/s 69A</i> | <i>Rs.1500000</i> |
| <i>4</i> | <i>Variation of income on account of loan treated as unexplained money u/s 69A</i> | <i>Rs.9000000</i> |
| | <i>Total income determined</i> | <i>Rs.13430760</i> |

3. In appeal, the CIT(A) / NFAC dismissed the appeal filed by the assessee on the ground that the assessee has not filed return as well as not paid an amount equal to the payment of advance tax which was payable by it. The relevant observations of the CIT(A) / NFAC read as under:

“Since the appellant has failed to contradict the information given at sl. No.9 of Form-35 and to prove that it has made payment of amount equal to the advance tax which was due on its income it is, therefore, clear that information, given at sl. No.9 of Form-35 is correct and the appellant has not made payment of amount equal to the advance tax which was due on its income.

4. Since the appellant has not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is infructuous and it, therefore, dismissed.

5. The appeal is dismissed.”

4. Aggrieved with such order of CIT(A) / NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

1. *On the facts and the circumstances of the case and in law, Learned CIT Appeal erred in treating the appeal filed as infructuous and dismissing the same for the reason that Appellant has not filed return of income and not paid and amount equal to Advance Tax by invoking the provisions of section 249(4) of IT Act without considering the fact that assessee has already filed his return of income and was not liable for payment of Advance tax. In view of this prayer is made that current appeal may kindly be restored back to the file of Learned CIT Appeal for adjudication on merit*
2. *On the facts and in the circumstances of the case and in law the learned Assessing officer erred in initiating reassessment proceedings as per the new provisions inserted by Finance Act 2021, thereby ignoring the first proviso to section 149, by applying the same assessment for A.Y 2014-15 could not have been reopened therefore the action of learned AO is bad in law and accordingly consequential order is invalid.*
3. *On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in passing an order under section 147 rws 144 rws 144B by not considering the return of income filed by the appellant, objections taken for issuing notice under section 147, and replies made during the course of assessment proceedings. Therefore, the order passed is bad in law and deserves to be struck down.*

Without prejudice to the above ground following grounds are taken on merit:

4. *On the facts and in the circumstances of the case and in law Learned Assessing Officer erred in making and addition of Rs.27,18,430 under section 69A by treating the alleged fictitious loss as unexplained money*
 5. *On the facts and in the circumstances of the case and in law the learned Assessing erred in making and addition of Rs. 15,00,000 under section 69A by treating Gift receipt of father as unexplained money.*
 6. *On the facts and in the circumstances of the case and in law the learned Assessing erred in making and addition of Rs. 90,00.000 under section 69A by treating the loan amount as unexplained money*
5. The assessee has also filed the following additional grounds:
1. *On the facts and in the circumstances of the case and in law, the impugned notice u/s 148 dated 27/02/2023 is invalid and bad in law being issued by the Jurisdictional Assessing Officer as the same was not in accordance with Section 151A of the Income Tax Act.*
 2. *On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in issuing the notice u/s.148 dated 27/02/2022, without specifying the DIN & Notice No as envisaged in CBDT circular No. 19/2019 dated 14/08/2019 and therefore the order is invalid.*

6. Referring to the decisions of Hon'ble Supreme Court in the cases of National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC) and Jute Corporation Of India Ltd. vs. CIT (1991) 187 ITR 688 (SC), the Ld. Counsel for the assessee submitted that all the necessary facts are already available on record, therefore, the additional grounds are required to be admitted for adjudication.

7. The Ld. DR on the other hand strongly opposed the additional grounds raised by the assessee.

8. After hearing both the sides and considering the fact that the additional grounds raised by the assessee are purely legal in nature and all the material facts are already available on record and no new facts are required to be investigated, therefore, following the decisions of the Hon'ble Supreme Court in the cases of National Thermal Power Co. Ltd. Vs. CIT (supra) and Jute Corporation Of India Ltd. (supra), the additional grounds raised by the assessee are admitted for adjudication.

9. The Ld. Counsel for the assessee at the outset submitted that the assessee has filed the return of income on 18.06.2015 declaring the total income of Rs.2,12,330/- on which no tax is payable. This fact is also admitted by the Assessing Officer in the assessment order at the time of final computation of assessed income, therefore, the findings of the CIT(A) / NFAC that the assessee has not filed the return of income and failed to pay the advance tax is wrong. He

submitted that in view of the various decisions even the re-assessment proceedings initiated by the Assessing Officer are also not in accordance with law.

10. The Ld. DR on the other hand heavily relied on the order of the CIT(A) / NFAC.

11. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) / NFAC and the paper book filed on behalf of the assessee. We find from the paper book filed on behalf of the assessee that the assessee has in fact filed the return of income on 18.06.2015 declaring the total income of Rs.2,12,330/-, which the Assessing Officer in the assessment order has also acknowledged at page 8 clause 4. Therefore, the findings of the CIT(A) / NFAC that the assessee has not filed the return of income and failed to pay the advance tax is wrong. Since the Ld. CIT(A) / NFAC has dismissed the appeal precisely on account of non filing of the return and not paid the amount equal to the amount of advance tax which was payable by it, therefore, we deem it proper to restore the issue to the file of the CIT(A) / NFAC with a direction to adjudicate the appeal on merit including the additional grounds challenging the validity of the re-assessment proceedings in accordance with law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to participate in the appeal proceedings before the CIT(A) / NFAC on the appointed date without seeking any adjournment under any pretext, failing which the CIT(A) / NFAC is at liberty to pass appropriate order as per law. We

hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 19th September, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 19th September, 2024
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

| S.No. | Details | Date | Initials | Designation |
|-------|--|------------|----------|-------------|
| 1 | Draft dictated on | 13.09.2024 | | Sr. PS/PS |
| 2 | Draft placed before author | 17.09.2024 | | Sr. PS/PS |
| 3 | Draft proposed & placed before the Second Member | | | JM/AM |
| 4 | Draft discussed/approved by Second Member | | | AM/AM |
| 5 | Approved Draft comes to the Sr. PS/PS | | | Sr. PS/PS |
| 6 | Kept for pronouncement on | | | Sr. PS/PS |
| 7 | Date of uploading of Order | | | Sr. PS/PS |
| 8 | File sent to Bench Clerk | | | Sr. PS/PS |
| 9 | Date on which the file goes to the Head Clerk | | | |
| 10 | Date on which file goes to the A.R. | | | |
| 11 | Date of Dispatch of order | | | |