

**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.1169/PUN/2024
Assessment Year : 2015-16**

Harmony Realty Shop No.1, Godrej Avanti, Shankarseth Road, Near Hotel 7 Loves, Pune – 411042	Vs.	DCIT, Circle 5, Pune
PAN : AAFH9111C		
(Appellant)		(Respondent)

Assessee by : Shri Suhas P Bora
Department by : Shri Amol Khairnar, CIT-DR
Date of hearing : 25-09-2024
Date of pronouncement : 30-09-2024

ORDER

PER R.K. PANDA, VP :

This appeal filed by the assessee is directed against the *ex-parte* order dated 19.04.2024 of the CIT(A) / NFAC relating to assessment year 2015-16.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the *ex-parte* order of the CIT(A) / NFAC in confirming the order of the Assessing Officer in determining the taxable income at Rs.34,56,11,355/- as against the earlier assessed income of Rs.97,21,100/- determined by the Assessing

Officer in the order passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. Facts of the case in brief, are that the assessee is a firm and had filed its return of income on 24.09.2015 declaring total income at Rs.65,63,520/-. The Assessing Officer had passed the order u/s 143(3) on 20.12.2017 determining the total income at Rs.97,21,100/-. Subsequently, the order passed by the Assessing Officer was held to be erroneous and prejudicial to the interest of Revenue by the PCIT for which, the assessment order was set aside. During subsequent proceedings consequent to the order passed u/s 263 of the Act, the Assessing Officer issued notice u/s 142(1) of the Act which was served on the assessee. However, due to partial compliance and subsequent non-compliance to the statutory notices issued by the Assessing Officer, he proceeded to complete the assessment u/s 144 of the Act and determined the total income of the assessee at Rs.34,56,11,355/- by making the following additions:

- a) Difference between ITR and service tax return of Rs.1,05,16,831/-
- b) Sales made to M/s. Millennium Engineers and Contractors Ltd. during the year but not offered for taxation of Rs.4,73,35,203/-.
- c) Non-submission of details in respect of advances received of Rs.8,45,52,647/-
- d) Non-submission of details in respect of elite development charges of Rs.5,87,52,099/-
- e) Machinery and equipment charges of Rs.33,38,308/-
- f) Non reconcile of difference in work-in-progress of Rs.13,13,95,169/-

4. Since the assessee did not respond to the statutory notices issued by the CIT(A) / NFAC, therefore, the CIT(A) / NFAC confirmed the various additions made by the Assessing Officer.

5. Aggrieved with such order of CIT(A) / NFAC, the assessee is in appeal before the Tribunal.

6. The Ld. Counsel for the assessee at the outset submitted that the assessment proceedings had taken place during the Covid period and therefore, full details as required by the Assessing Officer could not be filed. However, the assessee had filed substantial details. Further, due to defunct of the e-mail given in Form 35, notices issued by the CIT(A) / NFAC could not be seen by the assessee for which, the appeal remained un-represented before the CIT(A) / NFAC. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate its case by filing the requisite details before the Assessing Officer.

7. The Ld. DR on the other hand strongly opposed the arguments advanced by the Ld. Counsel for the assessee and submitted that despite number of opportunities granted, the assessee did not make full submissions either before the Assessing Officer or before the CIT(A) / NFAC. He accordingly submitted that the order of the CIT(A) / NFAC should be upheld and the grounds raised by the assessee should be dismissed.

8. We have heard the rival arguments made by both the sides and perused the orders of the Assessing Officer and the Ld. CIT(A) / NFAC. We find that due to non-submission of various details as called for by the Assessing Officer, he made the addition of Rs.33,58,90,255/-. We find due to non-submission of the details before the CIT(A) / NFAC, he confirmed the additions made by the Assessing Officer in the *ex-parte* order passed by him. It is the submission of the Ld. Counsel for the assessee that due to the prevailing Covid situation prevailing at that time when the Assessing Officer passed order on 21.09.2021, full details could not be filed. It is also his submission that due to the defunct e-mail of the assessee, notices issued by the CIT(A) / NFAC could not be seen by the assessee for which, the matter remained un-represented. It is also his submission that given an opportunity, the assessee is in a position to substantiate its case with evidences to the satisfaction of the Assessing Officer regarding the various discrepancies noticed by him. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue back to the file of the Assessing Officer with a direction to grant one more opportunity to the assessee to substantiate its case by filing requisite details. The Assessing Officer shall decide the issue as per fact and law after providing due opportunity of being heard to the assessee. The assessee is also hereby directed to participate in the assessment proceedings on the appointed date without seeking any adjournment under any pretext, failing which the Assessing Officer 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.

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

Order pronounced in the open Court on 30th September, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 30th 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	25.09.2024		Sr. PS/PS
2	Draft placed before author	30.09.2024		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			