



IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH PUNE
BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER
AND
HON'BLE SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No. 1431/PUN/2024
Assessment Year : 2017-18

M/s Hotel Soniya
Gut No. 83, Zhalta Phata,
Beed Rd., Ch. Sambhaji Nagar.
PAN: AAKFH1989D.

..... Appellant

V/s

The Income Tax Officer,
Ward-1(5), Ch. Sambhaji Nagar.

..... Respondent

Appearances

Assessee by : Mr Ramesh Thete ['Ld. AR']
Revenue by : Mr BS Rajpurohit ['Ld. DR']
Date of conclusive Hearing : 11/09/2024
Date of Pronouncement : 01/10/2024

ORDER

PER G. D. PADMAHSHALI, AM;

This appeal agitates DIN & Orders ITBA/APL/S/250/2024-25/1064475124(1) dt. 30/04/2024 passed by the first appellate authority ['Ld. NFAC/ CIT(A)' hereinafter] u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] which in turn confirms the *ex-parte* order of assessment passed u/s 144 of the Act by the Income Tax Officer, Ward-1(12), Ch. Sambhaji Nagar ['Ld. AO' hereinafter] for assessment year 2017-18 ['AY' hereinafter];



2. Succinctly stated facts of the cases are that, the assessee is a partnership firm carrying on veg-restaurant business on which a survey action u/s 133A of the Act on 06/10/2017 was carried out. During the survey on the basis of documents impounded a statement was recorded u/s 131A of the Act whereby the assessee declared certain income. The assessee filed its return of income for the year under consideration on 19/03/2018 declaring NIL income. The return was subjected to scrutiny wherein the assessee was called upon to explain as to why the income declared in survey proceedings should not be added to total income. When notices issued u/s 143(2), 142(1) of the Act remained unresponded, the Ld. AO after putting assessee to show cause notice culminated the proceedings to the best of judgement by treating the amount of ₹35,00,00/- as unexplained investment u/s 69 of the Act which represented the portion of unexplained expenditure incurred by the assessee on construction of its hotel building and framed the assessment accordingly u/s 144 of the Act.

3. The first appeal challenging the former addition was dismissed *ex-parte* in absence of evidential documents in support of claims/grounds raised in appeal before the Ld. NFAC.



4. Without touching merits of the case, we have heard rival parties on the limited issue of *ex-parte* dismissal of first appeal and subject to rule 18 of ITAT-Rules, 1963 perused material placed on record. We observed that, during survey a notebook '3D-Art' was found & impounded u/s 133A(3)(ia) of the Act. The said notebook revealed that the appellant in constructing its hotel building had incurred a total expenditure of ₹1,25,00,00/-. When confronted one of its partners while confirming the expenditure & sources on statement recorded u/s 133A(1) of the Act stripped its sources as funded out of (a) bank loan of ₹90,00,00/- and (b) balance ₹35,00,00/- out of additional investment, which was admitted for taxation. In scrutiny assessment when it has come to the notice that the portion of income admitted/declared in the recorded statement was not offered to tax by the appellant and no explanation vis-à-vis material placed in refuting the taxability of such unexplained source, the Ld. AO treated the same as unexplained investment u/s 69 of the Act and made the addition while framing the *ex-parte* assessment. On the other hand, in the event of non-prosecution of appeal the Ld. NFAC reiterated the Ld. AO's findings in confirming the addition *ex-parte* vide para 12 of the impugned order.



5. We note that, neither during assessment nor during first appellate proceeding the appellant could produce any convincing documents in support of its claim that such amount is not exigible to tax. *Per contra*, there was complete non-representation / non-prosecution before both the tax authorities below and the appellant is indifferent even in present proceedings. In these circumstances it would lead to unjust to either party if we advance the adjudication ducking the verification of corroborative & cogent evidences by tax authorities below first. In view thereof without offering any comments on merits of the case, we deem it fit to accord one more opportunity to the appellant for effective representation *vis-à-vis* compliance so as to enable the Ld. NFAC on remand to adjudicate this issue *de-novo* in accordance with law. Ordered accordingly.

6. 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 Tuesday 01st Day of October, 2024

-S/d-

VINAY BHAMORE
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 01st Day of October, 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.

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER