



BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER
AND
HON'BLE SHRI VINAY BHAMORE, JUDICIAL MEMBER
ITA No.1523/PUN/2024
Assessment Year : 2014-15

M/s Nisarg Developers
SR No. 84/3B, Gund Wasti,
Manjari Farm, Tal. Haveli,
Pune-412307

PAN: AAG FN9326G

.....अपीलार्थी / *Appellant*

V/s

The Income Tax Officer,
Ward-14(5), Pune.

..... प्रत्यर्थी / *Respondent*

Appearances

Assessee by: Mr Pramod Singte ['Ld. AR']

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

Date of conclusive Hearing : 12/09/2024

Date of Pronouncement : 01/10/2024

ORDER

PER G. D. PADMAHSHALI, AM;

By present appeal, the assessee challenges DIN & order No. ITBA/APL/S/250/2023-24/1061408272(1) dt. 23/02/2024 passed u/s 250 of the Income-tax Act, 1961 ['the Act' onwards] by the first appellate authority ['Ld. CIT(A)/NFAC' onwards] which in turn confirmed the order of assessment dt. 16/12/2016 passed u/s 143(3) of the Act by the Income Tax Officer, Ward-14(5) Pune ['Ld. AO' onwards] for assessment year 2014-15 ['AY' onwards];



2. At the outset, after vouching sufficiency of reasons beyond undeliberate delay of 90 days occurred in instituting the present appeal, in the larger interest of justice and after placing reliance on '*Vijay Vishin Meghani Vs. DCIT & Anr*' reported 398 ITR 250 (Bom) and '*Collector, Land Acquisition, Anantnag and Anr. Vs Ms Katiji and Others*' reported at 167 ITR 5 (SC), we deem it fit to condone the same and advanced accordingly.

3. We have heard the rival submission on the limited issue *ex-parte* dismissal of appeal by the first appellate authority; and subject to provisions of rule 18 of 'ITAT Rules' perused material placed on record. We note that, the assessee is a partnership firm engaged in construction activity which filed its return of income u/s 139(4) of the Act declaring loss of ₹2,58,144/- was initially processed summarily u/s 143(1) of the Act. Subsequently the case of the assessee was selected for scrutiny to verify the limited issues viz; (i) low capital gain with respect to sale consideration and (ii) sale consideration of property reported in ITR less than reported in AIR. During the course of assessment it was noticed that in respect of seven property sale transactions entered by the assessee the sale consideration was adopted less than the stamp duty valuation of the



property. The difference of such sale consideration was confronted to the assessee and in the event of its failure to substantiate the lower value the difference was added to total income u/s 43CA of the Act and framed the assessment accordingly u/s 143(3) of the Act.

4. Aggrieved assessee instituted an appeal against such assessment before Ld. NFAC on 02/02/2017 wherein the first appellate authority provided as many as six opportunities of hearing to the assessee right from February, 2020 till February, 2024, much of which fell during the subsistence of COVID-19 pandemic hence unattended, which resulted into *ex-parte* dismissal of appeal by the Ld. NFAC.

5. However, the affiliate dt. 11/09/2024 executed & filed by the assessee explaining the reasons of delay occurred in instituting the present appeal and reasons behind his non-compliance before first appellate authority capable of suggesting that such non-compliance was accidental & undeliberate. After vouching the reasons behind such accidental & undeliberate non-compliance, in the larger interest of justice we are of the view that the assessee for sufficient reasons prevented from representing himself before Ld. NFAC.



6. Relying on Hon'ble High court of Patna judgement in 'St. Paul's Anglo Indian Education Society' (2003) 262 ITR 377 (Pat)', we are mindful to hold that the appellant assessee was deprived of reasonable opportunity and time to produce all relevant documents to substantiate his claims therefore any adjudication without such evidential documents would be violative of principle of natural justice and rendered itself irregular, thus deserving to be set-aside. In the event and in view of the aforestated discussion we deem it proper to accord one more opportunity to the assessee to place evidential material before the Ld. NFAC. In view hereof, without commenting on merits, we set-aside the impugned order and remit the matters back to the file of Ld. NFAC with a direction to adjudicate the subject matter a fresh in accordance with law after providing three effective opportunities to the appellant assessee.

7. **The appeal in result is ALLOWED FOR STATISTCIAL PURPOSES.**

U/r 34 of ITAT Rules, order pronounced in 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.

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
4. The CIT-Concerned(MH-India)
5. DR, ITAT, Bench 'SMC', Pune

-S/d-

G. D. PADMAHALI
ACCOUNTANT MEMBER

3. The Pr.CIT Concerned.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / By Order
वरिष्ठनिजीसचिव / Sr. Private Secretary
आयकरअपीलीयन्यायाधिकरण, पुणे / ITAT, Pune.