



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

AND

HON'BLE SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 1528/PUN/2024

निर्धारण वर्ष / Assessment Year : 2014-15

Unmesh Balkrishna Patil  
Plot No-5, Gat No-198/1A  
At post: Kargaon, Dhule Rd.,  
Chalisgaon, Dist.:Jalgaon-424101  
PAN: AJIPP7508B

..... अपीलार्थी / Appellant

बनाम / V/s

Income Tax Officer,  
Ward-2(2), Jalgaon

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Mr Abhay Avchat ['Ld. AR']

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

सुनवाई की तारीख / Date of conclusive Hearing : 12/09/2024

घोषणा की तारीख / Date of Pronouncement : 01/10/2024

आदेश / ORDER

**Per G. D. Padmahshali, AM;**

The assessee by the present appeal challenges DIN & Order No. ITBA/APL/S/250/2024-25/1065664179(1) dt. 14/06/2024 passed u/s 250 of Income-tax Act, 1961 ['the Act' hereafter] by first appellate authority ['Ld. NFAC/CIT(A)' hereafter] which in turn arisen out of order of assessment dt. 23/08/2016 passed u/s 143(3) of the Act for assessment year 2014-15 ['AY' hereafter] by the Income Tax Officer, Ward-2(2), Jalgaon ['Ld. AO' hereafter].



2. At the outset of hearing, the Ld. AR Mr Avchat inviting our attention to paper book filed on record submitted that, against the assessment order the assessee filed an appeal physically before jurisdictional Ld. Commissioner of Income Tax Appeals-II, Nashik on 29/09/2016 and the same case was admitted vide Appeal No. 'CIT(A)-Nashik-2/10197/2016-17. In relation to such pending appeal the assessee filed written submission in physical mode on 27/03/2017 and further on 07/03/2020. These written submissions were duly admitted for the purpose of adjudication. Subsequent to migration of appeal to the faceless regime the assessee filed form no 35 on 02/03/2020 which was assigned to the Ld. Addl./Jt. CIT(A) who dismissed the appeal *in-limine* as barred by limitation. While dismissing the appeal of the assessee the Ld. NFAC did not take into account the evidences of filing of appeal in physical/manual mode within the permissible time limit of 30 days from the receipt of assessment order. For the reason the Ld. AR sought to set-aside the order for remand with a direction for adjudication on merits.

3. *Per contra* the Ld. DR Mr Rajpurohit without disputing the former facts, has contended that under faceless regime the appellant did neither respond to any of the notices served to it nor had brought to the notice of Ld. NFAC that in its case physical submissions on earlier occasions were made before the Ld. CIT(A-II), Nashik. Consequently the Ld. NFAC had



no choice but to proceed on the basis of material before it. Such conscious failure on the part of appellant is attributable to the conduct of non-persuasion, hence on this ground alone the appeal merits for dismissal.

4. After hearing rival contentions, perused the material placed on record in light of Rule 18 of ITAT-Rules 1963. We find that, against the order of assessment dt 23/08/2016 framed u/s 143(3) of the Act the appellant assessee filed manual appeal forwarded registered post which was dispatched on 30/09/2016 accompanying therewith the appeal memo/set, copy of assessment order, statement of facts, grounds of appeal, appeal fees challan etc. Upon the receipt admittedly the jurisdictional Ld. CIT(A-II), Nashik admitted the appeal on record vide '**Appeal No. CIT(A)-Nashik-2/10197/2016-17**'. In pursuance of such admitted appeal the appellant as and when called had adduced evidential documents before then Ld. CIT(A-II), Nashik based on which the appeal of the assessee was partially heard in physical mode prior to its migration to faceless regime. However, while making available the copy of appeal memo & submission made before erstwhile Jurisdictional Ld. CIT(A-II) in prescribed Form No-35 online to Ld. NFAC the system picked-up present date the date of filing inadvertently. This headed to belated filing of appeal by 1243 days delay. The assessee's submission explaining the inadvertency could not inspire the Ld. NFAC, as a result the appeal of the assessee was treated as



filed beyond the time limit prescribed u/s 249(2) of the Act, and in consequence witnessed the dismissal *in limine* as barred by limitation.

5. On the other hand on migration of proceedings to faceless regime the Revenue also failed to take any step in uploading the erstwhile submission made by the appellant in physical/manual mode before then jurisdictional Ld. CIT(A-II) and making it available for the Ld. NFAC. This led to sheer confusion and dismissal of appeal without effectively determining the rights and liabilities of either party on merits.

6. Having considered the facts in wholesome, in the larger interest of justice we deem it fit to set-aside the impugned order and remand the file back to the Ld. NFAC with a direction to (a) treat the appeal as filed within the time limit prescribed u/s 249(2) of the Act and (b) adjudicate the issue on merits in accordance with law after according at least three effective opportunities of hearing to the assessee. Ordered accordingly.

**7. In result, the appeal of the assessee stands ALLOWED FOR STATISTICAL PURPOSES.**

In terms of rule 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 : Tuesday 01st day of October, 2024.

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

1.अपीलार्थी / The Appellant.

4. The NFAC, Delhi, New Delhi

Ashwini

2. प्रत्यर्थी / The Respondent.

5. DR, ITAT, SMC Bench, Pune

-S/d-

**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

3. The Pr.CIT, -Concerned

6. गार्डफाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.