



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

AND

HON'BLE SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No. 0037/PUN/2024

Assessment Year : 2017-18

Vinita Jagdesh Aswani

C-Block, 1/21, Opp. Gurudwara,

Pimpri, Pune-411017.

PAN: AZRPA6822E.

..... *Appellant*

V/s

The Income Tax Officer,

Ward-8(1), Pune.

..... *Respondent*

Appearances

Assessee by : Ms Vibha Gulabani ['Ld. AR']

Revenue by : Mr Arvind Desai ['Ld. DR']

Date of conclusive Hearing : 25/09/2024

Date of Pronouncement : 01/10/2024

ORDER

PER G. D. PADMAHSHALI, AM;

This appeal of the assessee challenges the DIN & Order No.

ITBA/NFAC/S/250/2023-24/1057730966(1) dt. 06/11/2023

passed u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter]

by the National Faceless Appeal Centre, Delhi ['NFAC'

hereinafter] which in turn arisen out of order of assessment dt.

23/12/2019 passed u/s 144 of the Act by the Income Tax Officer,

Ward-8(1), Pune['AO' hereinafter] for assessment year 2017-18

['AY' hereinafter];



2. We have heard the rival submission on limited issue of ex-parte dismissal of appeal by Ld. NFAC and subject to rule 18 of ITAT-Rules 1963 perused material placed on record, considered the facts in the light of settled legal position. We note that, the assessee is an individual and was identified as non-Filer. On the basis of information that the assessee deposited huge amount of specified bank notes/cash [‘SBN’ hereinafter] of ₹64,13,000/-into her current bank account maintained with ‘Indrayani Co-op. Bank, Ltd. Pimpri-Chinchwad Branch’ [‘ICBL’ hereinafter], the Ld. AO by notice issued 142(1) of the Act the assessee was called upon to furnish return of income by 31/03/2018. In response thereto the assessee filed her return of income declaring total income of ₹10,08,510/- which for the purpose of assessment was turndown as it was not filed within the time limit allowed u/s 142(1) of the Act. In the event of non-production of cash book, ledger extracts and reconciliation statements etc., explaining cash trails & balances held as at the opening of demonetisation, the Ld. AO invoking the provisions of section 145(3) of the Act rejected the books of the assessee and framed the assessment u/s 144 of the Act by treating entire SBN deposits as unexplained cash credit u/s 68 of the Act and brought the same to tax u/s 115BBE of the Act.



3. Aggrieved assessee assailed the aforestated rejection of books and determination of income in an appeal before first appellate authority. During the course of first appellate proceedings, it came to the notice of the Ld. NFAC that, the assessee decided to settle the tax dispute through Vivad Se Vishwas Scheme [‘VSVS’ hereinafter] and in pursuance thereof the assessee filed Form no 1 & 3 with the competent authority. However the disputed taxes determined by the competent authority were remained unpaid. In the event the Ld. NFAC vide letters dt. 19/05/2023 & 26/06/2023 was put the assessee to notice and called upon to clarify her stand regarding pursuing the pending VSVS or prosecuting the pending appeal on merits by filing cogent evidences in support of grounds raised. However, due to confusion created by erstwhile tax consultant who advised to opt for VSVS in place of prosecuting pending appeal, the appellant could neither pressed evidential documents filed by her in support of grounds raised nor could communicate her choice to continue VSVS. In the event the Ld. NFAC proceeded ex-parte overlooking the appellant’s submission and reiterating findings of Ld. AO upheld both rejection of books and addition made.



4. The burden of proof that the SBN deposited into bank account do not represent the income was on the claimant assessee and failure to discharge such burden with convincing & entrenched evidence may in view of Hon'ble Apex Court decision in '*Shashi Garg Vs PCIT*' [2020, 113 taxmann.com 93 (SC)] entitles the Revenue to assess the same as unexplained income.

5. However, we note that owing to bonafied confusion the appellant could cause no appearance & on other hand disregarding the appellant's written submissions Ld. NFAC dismissed the appeal ex-parte. Having considered the facts of the case holistically, in the larger interest of justice, we deem it to grant one more opportunity to the assessee by remitting the file to the Ld. NFAC for de-novo adjudication & decide the issue in accordance with law on merits in three effective hearings and pass a speaking order in terms of s/s (6) of section 250 of the Act. We order accordingly.

6. The appeal in result ALLOWED FOR STATISTICAL PURPOSES.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Tuesday, 01st October, 2024.

-S/d-

VINAY BHAMORE
JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : Tuesday, 01st October, 2024.

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

1. अपीलार्थी / The Appellant.
4. The CIT(A)/NFAC Concerned.

2. प्रत्यर्थी / The Respondent.
5. DR, ITAT, 'B' Bench, Pune

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

आदेशानुसार / By Order
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलार्थी न्यायाधिकरण, पुणे / ITAT, Pune.