



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

AND

HON'BLE SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No. 1363/PUN/2024

Assessment Year : 2020-21

Shashikant Yashwant Chaudhari,  
Block-8, Behind Gurudatta Mandir,  
Jijau Nagar, Nr. Wagh Nagar,  
Jalgaon-425001  
PAN: AHOPC8437E

..... *Appellant*

V/s

The Income Tax Officer,  
PNE-W-[25]-[3], Jalgaon.

..... *Respondent*

**Appearances**

Assessee by : None for Assessee

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

Date of conclusive Hearing : 26/09/2024

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/250/2024-25/1064960479(1) dt. 17/05/2024 passed u/s 250 of the Income-tax Act, 1961 ['the Act' from now] by the National Faceless Appeal Centre, Delhi ['Ld. NFAC/CIT(A)' from now] which in turn arisen out of order of assessment passed u/s 143(3) r.w.s. 144B of the Act by the National Faceless Assessment Centre, Delhi ['Ld. AO' from now] for assessment year 2020-21 ['AY' from now];



2. The case was called twice; none appeared at the behest of assessee nor there is any letter of adjournment on record. On the primary briefing from the Ld. DR Mr Desai, we deem it fit to proceed u/r 24 of ITAT-Rules, 1963 in the absence of the appellant and adjudicate grounds relating ex-parte dismissal of appeal by the Ld. NFAC.

3. **Facts emanating from the case records are that;** the assessee is an individual who was engaged in the proprietary business of loan recovery agency for various non-banking financial companies in the name & style as '*Himani Associates*'. The return of income filed by the assessee declaring total income of ₹15,57,630/- on 09/01/2021 was selected for scrutiny by service of statutory notice u/s 143(2) of the Act. During the course of assessment, the Ld. AO vide six separate notices issued u/s 142(1) of the Act called upon the assessee to substantiate & explain as genuineness of huge expenditure incurred by him against the gross commission of ₹1,01,42,998/- earned towards (a) salary ₹50,20,500/- (b) vehicle expenses ₹1,66,200/- (c) Travelling ₹2,65,030/- (d) Petrol ₹16,56,350/- & (e) Meeting & Mngt Expenses ₹1,82,090/-. The written submission in support of expenditure incurred by the assessee did not inspire the Ld. AO, who after putting the assessee to show cause notices dt. 22/03/2022 & 22/08/2023 culminated the proceedings by disallowing (a) 50% of salary expenditure claimed owing to non-production of 31 out of 59 employee details including staff I-card,



Aadhar Card etc. (b) 20% of remaining expenditure claimed on account of non-production of cogent & corroborative evidences, and thus framed the assessment with a total additions of ₹34,61,489/- vide order dt. 12/09/2022.

4. When aforesaid assessment was assailed in appeal before first appellate authority, the Ld. NFAC accorded two opportunities vide notice dt. 01/05/2024 & 09/05/2024 which were remained un-responded. In absence of any representation or written submission, the Ld. NFAC dismissed the appeal *ex-parte* for non-prosecution by relying on the catena of decisions including '*Estate of Late Tukojirao Holkar Vs CWT*' [1979, 223 ITR 480 (MP)].

5. Aggrieved assessee brought up this appeal challenging the action of Ld. NFAC on as many as four grounds which collective directed against *ex-parte* dismissal of appeal for non-prosecution.

6. Invoking rule 24 of ITAT-Rules, we have heard the Ld. DR on substantive limited issue of *ex-parte* dismissal of appeal by the Ld. NFAC and subject to rule 18 (*supra*) perused material placed on record and we observed that, during the course of first appellate proceedings the Ld. NFAC vide two bullet notices dt. 01/05/2024 & 09/05/2024 issued one after another instantaneously called upon the assessee to comply & produce requisite details in less than a period of seven days. Ostensibly, these two



opportunities of hearing granting the appellant allowing less than a reasonable period of fifteen days in each case in our considered view clearly suggest these were only a paper opportunity granted to create audit trail and not with an intent to seek real compliance. This period of seven days allowed to appellant to comply in our considered opinion is not a reasonable period, because the opportunity of being heard should be real, reasonable and effective, the same should not be for namesake, it should not be a mere paper opportunity. This is so held in '*CIT Vs Panna Devi Saraogi*' [1970, 78 ITR 728 (Cal.)] We also mindful to quote here that, in the case of '*Smt. Ritu Devi v. CIT*' [2004, 141 Taxman 559 (Mad.)] their Hon'ble lordships have held that, time of just few days was given to the assessee to furnish reply which was also held as denial of real opportunity.

7. It shall be worthy to underlined that the opportunity of being heard should be real, reasonable and effective and same should not be empty formalities, it should not be a paper opportunity, the doctrine of natural justice is a facet of fair play in action and no person shall be saddled with a liability without being heard. In view of the aforestated discussion, we are of considered view that, the action of the Ld. NFAC *prima-facie* suffered from sufficiency of reasonable opportunity to the appellant to adduce necessary evidential material in support of his claim made and to represent effectively vis-à-vis to comply with the requirements sought.



8. Placing reliance 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 impugned adjudication is unjustified as the appellant was deprived of reasonable opportunity and time to produce all relevant documents to substantiate his claims as made in the returns of income filed vis-à-vis grounds of appeals raised. In the event we deem necessary to accord one more real opportunity to the appellant to comply with notices and contest these cases on merits. On this ground alone the impugned order deserves to be set-aside for remand to the Ld. NFAC with a direction to observe the principle of '*Audi alteram partem*' in letter & in its true spirit.

9. On the other hand, we also note that, in absence written submission/representation etc., the Ld. NFAC dismissed the appeal *in-limine* for non-prosecution. However, while dismissing the appeal *ex-parte*, the Ld. NFAC did fail to adjudicate the dispute on merits on the basis of material already made available on record by the appellant. We are heedful to the restriction placed by clause (a) of sub-section (1) of section 251 of the Act which obligates the Ld. CIT(A) to adjudicate the issue either by confirming or annulling the addition or reducing or enhancing the addition made by the assessing officer without the right to remand the matter back. However, while exercising the jurisdiction u/s 251(1)(a) of the Act, the Ld. CIT(A) is mandated to state point of determination, its decision thereon and clear



reasons therefore in terms of section 250(6) of the Act. It is a trite law as laid down by Hon'ble Supreme Court in case '*Chandra Kishore Jha Vs Mahavir Prasad*' reported in 8 SCC 266 (SC), that 'if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner'. Therefore, in the absence of clear authorisation in the statute permitting the Ld. NFAC to culminate proceedings without touching merits is inconsonance with sub-section (6) of section 250 of the Act, hence the impugned order on very terms qualifies to be set-aside on this score too.

10. For the aforesaid two reasoning, without touching merits of the case, we set aside the impugned order and remand it back to the Ld. NFAC with a direction to deal therewith *de-novo* in accordance with law on merits after according not less than three effective opportunities of hearing to the assessee and pass a speaking order in terms of section 250(6) of the Act. The grounds accordingly stands partly allowed.

**11. In result, the appeal is PARTLY 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.

4. The CIT(A)/NFAC Concerned.

5. DR, ITAT, 'B' 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 अपीलालय न्यायाधिकरण, पुणे / ITAT, Pune.