

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.1760 & 1761/PUN/2024

निर्धारण वर्ष / Assessment Years : 2015-16 & 2016-17

Ramdas Vishnu Markute S.No.1242, Murkute Vasti, D.P. Road, Baner, Pune-411007 Maharashtra PAN : AANPM8750C	Vs.	ITO, Ward-2(2), Pune
Appellant		Respondent

Assessee by : Shri Tushar Varma  
Revenue by : Shri B.S.Rajpurohit

Date of hearing : 10.10.2024  
Date of pronouncement : 10.10.2024

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

These are the two appeals filed by the assessee directed against the separate orders of National Faceless Appeal Centre (NFAC), Delhi dated 26.06.2024 for the assessment years 2015-16 & 2016-17.

2. Since the identical facts and common issues are involved in the above captioned appeals of the appellant, I proceed to dispose of the same by this common order. For the sake of convenience and clarity, the facts relevant to the appeal of the appellant in ITA No.1760/PUN/2024 for the assessment year 2015-16 are stated herein.

3. Brief facts of the case are that the appellant is an individual and stated to be deriving 'income from business' and 'income from other sources'. The appellant filed the return of income for the A.Y. 2015-16

on 20.09.2016 declaring total income of Rs.30,310/-. The said return was processed u/s.143(1) on 10.12.2016. Subsequently, based on the information received from DDIT (I &CI), Pune that the appellant made cash deposits of Rs.23,76,410/- with Bank of India, Aundh Branch, the case was reopened and a notice u/s.148 was issued on 31.03.2021. Notices u/s.142(1) were also issued to the appellant calling to file submissions along with documentary evidences in respect of cash deposits made. The appellant neither complied with notice u/s.148 nor notice u/s.142(1). In the circumstances, the Assessing Officer (AO) vide order dated 23.03.2022 was constrained to pass best judgment assessment u/s.147 r.w.s.144 r.w.s.144B of the Act. While doing so, the AO brought to tax the said cash deposits of Rs.23,76,410/- as unexplained money u/s.69A of the Act.

4. Being aggrieved by the above assessment order, an appeal was filed before the NFAC, who vide impugned order dismissed the appeal of the appellant for non-prosecution, without going into merits of the issue.

5. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

6. I heard the rival submissions and perused the material on record. It is a fact borne out from record that the assessment order as well as first appellate order was passed *ex parte* owing to non-compliance from the side of the appellant. From the perusal of Para No.5 of the impugned order, it would be clear that the notices were sent to the appellant through ITBA portal. In my considered opinion, it is not a valid method and manner of service of notice as specified under the provisions of section 282(1) of the Income-tax Act, 1961 Act and Rule 127(1) of the Income-tax Rules, 1962. Therefore, it is crystal clear that

the notices were not served upon the appellant. To fortify my view, I would like to make a reference to a decision rendered by the Hon'ble Punjab & Haryana High Court in the case of *Munjal BCU Centre of Innovation and Entrepreneurship Vs. CIT (Exemptions) (2024) 463 ITR 560 (P&H)*, wherein the Hon'ble High Court after making reference to provisions of 282(1) held that service of notice through ITBA portal is not valid service and remanded the matter to AO for *denovo* disposal of case. The relevant paragraphs of the judgment are reproduced below :

*“7. We are afraid that we cannot subscribe to the submissions as advanced by the learned counsel for the Revenue-respondent. The provisions of section 282(1) of the Act of 1961 and rule 127(1) of the Income-tax Rules, 1962 provides for a method and manner of service of notice and orders which read as follows :*

.....  
 .....

*8. In view of the above, it is essential that before any action is taken, communication of the notice must be done in terms of the provisions as enumerated hereinabove. The provisions do not mention communication to be “presumed” by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc. The principles of natural justice are inherent in the income-tax provisions and the same are required to be necessarily followed.*

*9. Having noticed as above, this court is of the firm view that the petitioner has not been given sufficient opportunity to put up its plea with regard to the proceedings under section 12A(1)(ac)(iii) of the Act of 1961 and as it was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter.*

*10. In view of the above, the writ petition is allowed and the order dated January 16, 2023 (annexure P-5) is quashed and set-aside. The Department would provide an opportunity of hearing to the petitioner and they will also allow the petitioner to appear personally for the purpose and pass a speaking order independent of the order passed earlier by them on January 16,2023. The same shall be done*

*expeditiously provided the petitioner file his reply within a period of three weeks.”*

In view of the above legal position, I am of the considered opinion that the notice(s) of hearing were not served properly to the appellant.

7. In the present case, it can also be presumed that the NFAC had passed the impugned order without giving a reasonable opportunity of being heard to the appellant to represent the matter before him and this approach of the NFAC is in gross violation of principles of natural justice. Further, the NFAC had fell in serious error by not adjudicating the issue in appeal on merits. The settled position of law mandates the NFAC to dispose of the appeal by adjudicating the issue raised in appeal on merits. In this regard, reference is being made to a decision of the Hon'ble Bombay High Court in the case of *Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF) Bombay/[2017] 297 CTR 614 (Bombay)* wherein it was held that CIT(A) is obliged to dispose of the appeal on merits. Therefore, I deem it proper to remit the matter to the file of CIT(A)/NFAC for *de novo* disposal of the issue in appeal on merits afresh after allowing reasonable opportunity to the appellant, in accordance with law. I order accordingly.

8. In the result, the appeal filed by the appellant is partly allowed for statistical purposes.

9. The facts stated in ITA No.1760/PUN/2024 for the A.Y. 2015-16 are identical even in appeal bearing ITA No.1761/PUN/2024 for the A.Y. 2016-17. The finding given in ITA No. 1760/PUN/2024 equally holds good for the appeal ITA No. 1761/PUN/2024.

10. In the result, the appeal filed by the appellant is partly allowed for statistical purposes.

11. To sum up, both the appeals filed by the appellant are partly allowed for statistical purposes.

Order pronounced on this 10<sup>th</sup> day of October, 2024.

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 10<sup>th</sup> October, 2024.

*Satish*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.