



IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH PUNE



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

AND

HON'BLE SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No. 733/PUN/2024

Assessment Year : 2019-20

Shri Venkateshwara Panmasala Industries Pvt Ltd,
335, Sangli Kolhapur Bypass Road,
Dharangutti Via Jaysingpur – 416 203.
PAN: AACCS5553P.

..... Appellant

V/s

The Asstt Commissioner of Income Tax,
Central Circle-1(1), Kolhapur

..... Respondent

Appearances

Assessee by : Mr Hari Krishan ['Ld. AR']

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

Date of conclusive Hearing : 25/09/2024

Date of Pronouncement : 26/11/2024

ORDER

PER G. D. PADMAHSHALI, AM;

The present appeal of the assessee is instituted u/s 253(1) of the Income Tax Act, 1961 ['the Act' hereinafter] which impugns first appellate order dt. 06/03/2024 passed by National Faceless Appeal Centre, Delhi ['Ld. CIT(A)/Ld. NFAC' hereinafter] u/s 250 of the Act which emerged in relation to & out of assessment order dt. 24/11/2023 passed by Ld. Assessment Unit, NFAC ['Ld. AO' hereinafter] u/s 147 r.w.s 144B of the Act for assessment year 2019-20 ['AY' hereinafter].



2. Briefly stated facts emanating from case records are that;

2.1. The assessee is a company engaged in the business of Pet care services which for assessment year under consideration had filed its Income Tax Return ['ITR' hereinafter] on 11/09/2019 declaring 'NIL' taxable total income. The said ITR was processed summarily u/s 143(1) of the Act.

2.2. The Revenue was in receipt of 'High Risk CRIV/VRU information through its INSIGHT portal regarding a high value financial transaction undertaken/entered by the assessee in the form unsecured loan advanced `3,60,00,000 to a borrower company M/s Westend Investment & Finance Consultancy Pvt Ltd ['WIFCPL' hereinafter] which revealed to be a sister concern/associated enterprise of an Asset Reconstruction Company operating in the name of 'M/s Invent Assets Securitisation & Reconstruction Pvt Ltd' ['IASR' hereinafter] whereupon a search action was conducted u/s 132 of the Act on 08/12/2021. The supplementary information emanating from the search action is that, the revenue enquired with Mr GK Sharma ['CEO' hereinafter] the then CEO of IASR & set down in writing his statement u/s 132(4) of the Act recording *inter alia* the nature of business conducted by ARC, wherein the CEO confirmed that the IASR was engaged in the business of purchasing Non-Performing Assets ['NPA' hereinafter] from the banks and for this purpose, the IASR raised funds in its own account and/or through its group entities in the form of unsecured loans through a co-ordinator/middle man, Mr Manish Lalwani ['Co-ordinator' hereinafter] who in turn customarily



received requisite amount of funds from the borrower group sister concerns and/or associated entities having such distressed NPA accounts with banks. Based on the information available on record, the revenue proceeded further to conduct search operation u/s 132 of the Act at the premises of company owned by Co-ordinator viz. SSDM Trading Pvt Ltd on 23/12/2021 and seized parallel books of account maintained by co-ordinator which revealed that the routed funds were in turn received from borrower entities as unsecured loans which were backed by prior cash transactions. and thus utilized his statement recorded u/s 132(4) of the Act as corroborative evidence for making addition u/s 68 of the Act treating it as an *unexplained cash credit* fit for invoking the provisions of section 147 of the Act. The Ld. AO made addition of entire amount of unsecured loan in his order passed u/s 147 r.w.s 144B of the Act.

2.3. Aggrieved assessee company unsuccessfully assailed the aforestated addition and assessment in first appeal before the first appellate authority wherein the Ld. CIT(A) upheld the order of Ld. AO for assessee's failure to prove to his satisfaction the stipulations of section 68 of the Act. Aggrieved by the action of the tax authorities, with the following grounds the assessee appellant came in present appeal;

1. " The order passed by the Assessing Officer on 29-03-2023 u/s 148A(d) of the IT Act is not sustainable as it has been passed without properly considering the submissions and the evidence filed by the assessee. Accordingly, the consequent assessment order dated 24-11-2023 passed u/s 147 of the IT Act is also not sustainable in law. The order u/s 148A(d) of the Act and the assessment order may be quashed.



2. The Ld. Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre, has erred in holding that the contention of the assessee, that the assessment order has been passed without following the principles of natural justice, is not sustainable in this case.

3. The Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has erred in confirming the addition of Rs. 3,60,00,000/- made by the Assessing officer u/s 68 of the IT Act as unexplained cash credits on account of the loan of Rs. 3,60,00,000/- given by the assessee to M/s West End Investment & Finance Consultant. The addition may be deleted.

4. The addition of Rs.3,60,00,000/- made to the income of the assessee is unsustainable in law, as it has been made without providing the copies, to the assessee, of the documents and the statements recorded by the department, based on which the said addition has been made,. The addition may be deleted.

5. The addition of Rs.3,60,00,000/- made to the income of the assessee is unsustainable in law, as it has been made without allowing to the assessee, the cross examination of the parties in respect of their statements recorded by the department on which the addition of Rs. 3,60,00,000/- is based. The addition may be deleted.

3. During the course of hearing, advertng to additional evidences submitted on 16/07/2024 for scheduled hearing on 01/08/2024 the appellant raised an additional ground challenging jurisdiction of assessing officer who invoked jurisdiction & framed assessment. Advertng to very first ground it was contended that, since the assessment in this case framed without considering the submission & evidences placed before the Ld. AO, therefore the assessment proceedings deserves to be vitiated. Per contra, the Ld. DR submitted that, the Ld. AO before culminating the assessment proceedings meticulous perused all the submissions and evidences placed on record by the appellant, however by application of mind only relevant material facts



and findings are noted in the assessment to support his final conclusion. Pinpointing the missing facts, material text etc., the appellate cannot challenge the process & proceedings. The assessee cannot dictate as to what should be mentioned in assessment order to come to the conclusion, the claim of the appellant is devoid of any force, hence deserves to be rejected.

4. We have heard the rival parties submission on this limited issue and subject to rule 18 of ITAT Rules, 1963 perused the material placed on records and considered the limited issue as well as the facts in the light of settled position of law and case laws relied by rival parties and forewarned to the parties present. We have given thoughtful consideration to the documents and evidences placed by the appellant before the Ld. AO in the course of assessment proceedings and the find that, the while coming to conclusion about invocation of jurisdiction u/s 147 of the Act and in drawing conclusion about his satisfaction over threefold stipulation inscribed in section 68 of the Act, the Ld. AO failed to take the cognition of convincing material placed on records and (a) the written submission made by the assessee vide his reply dt. 21/03/2023 & 13/07/2023 whereby audited financial statements alongwith the computation of income, banking transaction statements and the copies of ledger account of WIFCPL were produced, (b) the reply furnished in response to notice dt. 31/07/2023 u/s 142(1) of the Act which was in addition to aforestated documents also accompanied by Form 26AS issued to the appellate by the Revenue confirming the transaction relating to interest etc.,



statement of both unsecured loans taken/obtained and unsecured loan given/advanced thereagainst, banking transaction representing repayment thereof, confirmation of parties, KYC documents and other ledger accounts (c) reply dt. 25/08/2023 made by Mr Rajendra Malu the Karta of his HUF and (d) submission made on 04/09/2023 whereby transaction undertaken by HUF were confirmed with their audited financial statements and evidences in relation to interest income vide form no 26AS issued by the Revenue. The cursory look of these documents and conjoint reading of assessment order with that of additional evidences clear suggests that, the proceedings hassled without taking due cognizance of former submission/evidences including additional evidences etc., before forming an opinion about the failure of appellant to explain the threefold stipulations of section 68 of the Act. Thus, the proceedings in our considered view is suffered for natural justice.

5. The assessing officer & first appellate authority are quasi-judicial authorities and respective proceedings they undertake are quasi-judicial proceedings. The section 136 of the Act however relishes that 'Proceedings before Income-tax Authorities to be judicial proceedings'. As per the said provision, the proceedings before the Income-tax Authorities are deemed to be judicial proceedings for the purposes of section 196 of Indian Penal Code as laid in '*Chickanna Silk House Vs State of Madras*' [1974, 95 ITR 422 (Mad.)]. Now the term 'proceedings', in stricter sense signifies a set of actions undertaken in relation to subject. Accordingly, the proceedings relate



to the methods in which they are conducted and concluded judicially in accordance with statute/law, thus proceedings are prescribed course of action and sum of all the steps taken by either party for the enforcement of their respective legal rights & obligations. The proceedings under the Act includes proceedings at original assessment, re-assessment stage, appellate stages and/or such other stages till the matter attains finality under provisions of the Act. In nutshell under the Act the proceedings thus represents either the steps taken by taxpayer assessee or the acts of Income-tax Authorities. Any action/step of Income Tax Authorities which creates obligation on the part of taxpayer assessee needs to be validated from its contents. The action/step of Revenue if taken without cognizance of taxpayers step/action i.e. reply, response or submission, would in effect overturn their action as unlawful.

6. In recent times, the Hon'ble Jurisdictional High Court in '*Pankaj Vs Ne-AC*' [2022, 286 Taxman 228 (Bom)] in similar circumstances annulled the order passed by the Revenue ignoring the reply filed by the assessee holding that, the validity of the order would have to be judged from its contents, therefore any order passed without considering the reply filed by the assessee in response to show cause notice is bad in law and deserves to be set-aside. The matter in result remanded back to the file of assessing officer for fresh consideration. On a similar line the Hon'ble Madras High Court in '*Chennai Silk VS Asstt Commissioner (ST-FAC)*' [2023, 157 Taxmann.com 65 (Mad)] occasioned to considered the validity of assessment



where the Revenue failed to considered the reply or submission of the assessee. Their Hon'ble Lordship therein held that, failure on the part of the Assessing Officer to address the reply of the assessee by a speaking order, would vitiate the impugned proceedings. A similar ratio can also be squinted in 'Bhagyam Exports Vs AC-ST' [2024, 160 Taxmaan.com 521 (Mad)], 'PBL Transport Corp. Pvt. Ltd. Vs AC-ST' [2024, TaxPub(GST) 210 (AP)].

7. In instant case, the assessment proceedings were culminated without duly & fully considering/addressing all the submissions, response & evidences, thus suffered from judicial process; hence in view of the former judicial precedents (supra) set-aside for remand with a direction to reframe the assessment *de-novo* after according reasonable opportunity to the appellant assessee to explain through three effective virtual hearings. The ground no. 1 thus stands partly allowed and all other grounds & arguments thereagainst render academic.

8. In result, the appeal stands partly allowed for statistical purposes.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on date of conclusive hearing.

-S/d-

VINAY BHAMORE
JUDICIAL MEMBER

PUNE ; Dated : 26th November, 2024.

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
4. The CIT(A) Concerned.
5. DR, ITAT, 'B' Bench, Pune

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

Panaji/Dated : 15th November, 2024.

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

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