

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.2022/PUN/2024
Assessment year : 2013-14**

Naveed Hasan Murtuza Dive Agar Road, Borli Panchatan, Shriwardhan, Raigad – 402403 PAN: BMPTM7001B (Appellant)	Vs.	ITO, Ward 1, Panvel (Respondent)
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Assessee by : None
Department by : Shri R.Y. Balawade, Addl.CIT
Date of hearing : 30-12-2024
Date of pronouncement : 30-12-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the *ex-parte* order dated 09.08.2024 of the Ld. CIT(A) / NFAC, Delhi relating to assessment year 2013-14.

2. None appeared on behalf of the assessee at the time of hearing. Since both the orders passed by the lower authorities are *ex-parte* orders, therefore, this appeal is being decided on the basis of material available on record and after hearing the Ld. DR.

3. Although a number of grounds have been raised by the assessee, however, these all relate to the *ex-parte* order of the Ld. CIT(A) / NFAC in upholding the

validity of re-assessment proceedings and in confirming the various additions made by the Assessing Officer.

4. Facts of the case, in brief, are that the assessee is an individual and a non-filer of income tax return. On the basis of data available through ITBA module it was seen that the assessee has made financial transactions during the period pertaining to financial year 2012-13, the details of which are as under:

<i>Agreement entered with Builder / Co-operative society for property transaction</i>	<i>Rs.3,78,600/-</i>
<i>Contract of Rs.10,00,000/- or more in the Commodities Exchange</i>	<i>Rs.14,55,92,336/-</i>
<i>Sale of futures (derivative) in a recognized stock exchange.</i>	<i>Rs.85,46,311/-</i>
<i>Purchase of equity share in a recognized stock exchange</i>	<i>Rs.32,43,348/-</i>
<i>Sale of equity share (settled by the actual delivery or transfer) in a recognized stock exchange</i>	<i>Rs.35,21,008/-</i>

5. The Assessing Officer therefore, after recording reasons as per provisions of section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), reopened the assessment and notice u/s 148 of the Act was issued on 19.03.2020. However, the assessee did not file any return in response to the notice u/s 148 of the Act. Notice u/s 142(1) of the Act issued by the Assessing Officer was un-complied with. Therefore, he proceeded to complete the assessment u/s 144 of the Act and made addition of Rs.57,02,233/- to the total income of the assessee.

6. The assessee filed an appeal before the Ld. CIT(A) / NFAC. However, since despite three opportunities granted by the Ld. CIT(A) / NFAC, the assessee did not appear before him, the Ld. CIT(A) / NFAC dismissed the appeal filed by the assessee and sustained the addition made by the Assessing Officer.

7. Aggrieved with such order of the Ld. CIT(A) / NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

- 1 *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order, without granting sufficient opportunity of being heard to the appellant.*
- 2 *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing in reopening the case u/s. 147 of the Income Tax Act, 1961, without considering the facts and circumstances of the case.*
- 3 *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing in making an addition of Rs.3,78,600/- by treating the immovable property purchased as alleged Unexplained Investment, without considering the facts and circumstances of the case.*
- 4 *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing in making an addition of Rs.8,73,554/- as alleged gain earned @ 0.6% on the transaction of Rs.14,55,92,336/- carried out by the assessee in Commodity exchange, without considering the facts and circumstances of the case.*
- 5 *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing in making an addition of Rs.3,52,100/- as alleged gain earned @10% on sale of equity shares of Rs.35,21,008/-, without considering the facts and circumstances of the case.*
- 6 *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing in making an addition of Rs.32,43,348/- u/s 69 of the Income Tax Act, 1961 by treating the purchase of equity shares as alleged Unexplained Investment, without considering the facts and circumstances of the case.*

- 7 *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the actions of the Learned Assessing in making an addition of Rs.8,54,631/- as alleged gain earned @10% on sale of futures (derivative) of Rs.85,46,311/-, without considering the facts and circumstances of the case.*
- 8 *The appellant craves leave to add, amend, alter or delete the said ground of appeal.*

8. We have heard the Ld. DR and perused the orders of the Assessing Officer and the Ld. CIT(A) / NFAC. It is an admitted fact that due to non-response of the assessee to the notices issued u/s 148 and 142(1) of the Act, the Assessing Officer completed the assessment u/s 147 r.w.s. 144 of the Act determining the total income of the assessee at Rs.57,02,233/-. We find despite three opportunities granted by the Ld. CIT(A) / NFAC the assessee did not participate in the appeal proceedings for which the Ld. CIT(A) / NFAC dismissed the appeal. However, a perusal of the order of the Ld. CIT(A) / NFAC shows that on 28.06.2024 the assessee sought adjournment and the Ld. CIT(A) / NFAC without granting any adjournment to the assessee, dismissed the appeal, which in our opinion, is against the principles of natural justice. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Ld. CIT(A) / NFAC with a direction to grant one final opportunity to the assessee and decide the issue as per fact and law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to make its submissions, if any, before the Ld. CIT(A) / NFAC on the appointed date without seeking any adjournment under any pretext, failing which the Ld. CIT(A) / NFAC is at liberty

to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court at the time of hearing itself on 30th December, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated :30th December, 2024
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	30.12.2024		Sr. PS/PS
2	Draft placed before author	30.12.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			