

**IN INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI. WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI. KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1553/Bang/2024
Assessment Year : 2012-13

Shri. Ranjeet Jain, Prop ashok Cotton Traders Apmc Yard, Ranebennur, Haveri – 581 115. PAN : ABNPG 9286 E	Vs.	ITO, Ward – 2, Haveri.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Sudheendra B. R, Advocate
Revenue by	:	Shri. V. Parithivel, JCIT(DR)(ITAT), Bangalore.

Date of hearing	:	10.10.2024
Date of Pronouncement	:	07.01.2025

ORDER

Per Keshav Dubey, Judicial Member :

This appeal at the instance of the assessee is directed against the Order of Id. CIT(A)/NFAC vide DIN and Order No. ITBA/NFAC/S/250/2024-25/1065958285(1) dated 24.06.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’), for the Assessment Year 2012-13. The assessee has raised the following grounds of appeal:

1. General Ground

1.1. The order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as CIT(A), NFAC) under section 250 of the Act dated 24.6.2024 is bad in law and liable to be quashed.

2. CIT(A) order passed in violation of ITAT directions

2.1. The learned CIT(A), NFAC erred in dismissing the appeal for statistical purposes by treating the appeal as infructuous.

2.2. The learned CIT(A), NFAC erred in not appreciating that the ITAT, Bangalore vide order dated 2.8.2017 in ITA No 1606/Bang/2016 had restored the appeal to the files of CIT(A) for fresh examination and denovo adjudication of all the grounds raised in appeal before him after affording the AO adequate opportunity of being heard and to file details/rebuttals etc required in the matter in respect of the fresh/additional evidences entertained by the Id. CIT(A) as pointed out by the Id. DR (supra).

2.3. The learned CIT(A), NFAC erred in not appreciating that the ITAT, Bangalore vide order dated 2.8.2017 in ITA No 1606/Bang/2016 had also directed that the rebuttals of the AO in the matter shall be duly considered before deciding the issues in appeal.

2.4. The order passed by the CIT(A), NFAC in dismissing the appeal as infructuous without following and implementing the above directions is bad in law and liable to be quashed.

3. Additions as per assessment order are bad in law

3.1 Without prejudice, the learned AO erred in making

(i) addition of Rs. 2,81,870 and Rs. 2,37,947 in respect of sundry creditors,

(ii) addition of Rs. 2,08,18,838 in respect of sundry debtors and

(iii) disallowance under section 40(a)(ia) amounting to Rs. 3,29,875 in respect of the lorry freight expenditure incurred by the appellant.

3.2 On facts and circumstances of the case and law applicable, the impugned additions as per the assessment order is bad in law and liable to be deleted.

4. Levy of interest under section 234B and 234C

5.1 The learned AO and the CIT(A), NFAC have erred in confirming the levy of interest under section 234B and 234D.

5. Prayer

5.1. In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the order passed under section 250 of the Act by the learned CIT(A), NFAC to the extent prejudicial to the appellant be quashed or in the alternative the above grounds and the appeal be allowed.

The Appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.

2. The brief facts of the case are that the assessee being a proprietor is in the business of trading in Kappas and Cotton running under the name and style of M/s. Ashoka Cotton Traders. The Assessment Order under section 143(3) of the Act was passed on 27.03.2015 on a total assessed income of Rs.2,21,93,680/- by making total addition amounting to Rs.2,16,68,530/- under the following heads-

i)	Sundry Creditors difference	Rs.2,81,870/-
ii)	Sundry Creditors served but not replied	Rs.2,37,947/-
iii)	Sundry Debtors unserved/not replied	Rs.2,08,18,838/-
iv)	Lorry Freight paid disallowed u/s 40(a)(ia)	Rs.3,29,875/-

		Rs.2,16,68,530/-
		=====

The AO accordingly determined the balance tax payable including interest amounting to Rs.90,67,000/- after giving credit of prepaid taxes.

3. Aggrieved by the Assessment completed under section 143(3) of the Act dated 27.03.2015, the assessee preferred an appeal before the Id. CIT(A), Davangere. The CIT(A) vide his Order dated 27.05.2016 had partly allowed the appeal of the assessee. Thereafter, aggrieved by the Order of the Id.

CIT(A) dated 27.05.2016, the Revenue has filed an appeal before the Hon'ble ITAT, Bangalore. The "C" Bench of the Bangalore ITAT vide Order dated 02.08.2017 had set aside the impugned Order of the CIT(A) dated 27.05.2016 and restored the same to his file for examination and denovo adjudication of all the grounds after affording adequate opportunity of being heard. The relevant para / observations are reproduced before for ease of reference and convenience:

3.4.3 In the light of the above, we find that the Id CIT(A) failed to any adequate opportunity to the AO to rebut the evidence/material placed before him by the assessee in appeal. The conditions enumerated in Sub Rule-3 of the Rule 46A. remained uncomplined with, by the Id CIT(A). In this view of the matter we, set aside the impugned order of the Id CIT(A) and restore the same to his file for fresh examination and denovo adjudication of all the grounds raised in the appeal before him after affording the AO adequate opportunity of being heard and to file details/rebuttals, etc. required in the matter in respect of the fresh/additional evidence entertained by the Id CIT(A) as pointed out by the Id DR (Supra). The rebuttals of the AO in the matter shall be duly considered before deciding the issues in appeal. It is accordingly ordered.

4. In the result, the Revenue's appeal for asst. year 2012-13 is treated as allowed for statistical purposes.

4. Thereafter, the Id. CIT(A)/NFAC vide Order dated 24.06.2024 has held that as the Hon'ble ITAT, Bangalore Bench had disposed the Revenue's appeal relevant to the above CIT(A), Davangere, on 02.08.2017. Hence, the present appeal of the assessee is treated as infructuous and as such is dismissed for statistical purposes. The assessee again being aggrieved by the Order of the Id. CIT(A)/NFAC dated 24.06.2024, has filed the present appeal before this Tribunal.

5. Before us, the learned AR of the assessee vehemently submitted that Id. CIT(A)/NFAC without understanding the factual aspect has been pleased to dismissed the appeal by treating the same as infructuous and accordingly prayed to restore the matter back to the file of the Id. CIT(A)/NFAC again and to decide the case as per the direction of this ITAT, Bangalore Bench vide Order dated 02.08.2017.

6. Learned DR on the other hand also are in concord with the view of the learned AR of the assessee and submitted that the issue may be remanded back to the file of CIT(A) as per the direction of this Hon'ble Bench vide Order dated 02.08.2017.

7. We have heard the rival submissions and perused the material available on record. On going through the Order of the Tribunal dated 02.08.2017, we find that this Tribunal categorically set aside the impugned Order of the Id. CIT(A) and restored the same to the file to him for fresh examination and denovo adjudication of all the grounds raised in the appeal after affording the assessee adequate opportunity of being heard. Being so, we are of the opinion that Id. CIT(A) without understanding the factual aspects and even without going through to the Order of the Tribunal had treated the appeal of the assessee as infructuous and accordingly dismissed the same. This is nothing but a clear non-application of mind on the part of the CIT(A)/NFAC. With no fault the assessee, he is suffering just for the inconsiderate approach of the Id. CIT(A)/NFAC. Therefore, we have no hesitation to again restore the matter back to the file of CIT(A) / NFAC and direct that the direction as given in paragraph 3.4.3 of the Oder dated 02.09.2017 may be followed after giving both the parties a reasonable opportunity of being heard. It is ordered accordingly.

8. In the result, appeal filed by the assessee is treated as allowed.

Pronounced in the court on the date mentioned on the caption page.

Sd/-

(WASEEM AHMED)
Accountant Member

Sd/-

(KESHAV DUBEY)
Judicial Member

Bangalore,
Dated : 07.01.2025.
/NS/*

Copy to:

1. Appellant 2. Respondent 3. Pr.CIT 4.CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.