



**IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI**



**BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**AND**

**SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER**

**ITA Nos. 208/PAN/2024**

**Assessment Year : 2017-18**

Gangappa Dundappa Agasar  
At Post: Badali,  
Tal.: Saundatti, Dist.: Belgaum  
PAN:APZPA2849H.

*..... Appellant*

**V/s**

NFeAC/Jt. Commissioner of Income Tax,  
Belgaum.

*..... Respondent*

**Appearances**

Assessee by : Mr Manjunath Dodamani ['Ld. AR']

Revenue by : Mr Narendra Reddy ['Ld. DR']

Date of conclusive Hearing : 06/02/2025

Date of Pronouncement : 12/02/2025

**ORDER**

**PER G. D. PADMAHSHALI, AM;**

The present appeal is instituted u/s 253(1) of the Income Tax Act, 1961 ['the Act'] challenging the DIN & Order No ITBA/NFAC/S/250/2024-25/1065971966(1) dt. 24/06/2024 passed by the National Faceless Appeal Centre, Delhi ['Ld. NFAC'] u/s 250 of the Act which in turn upheld the order of penalty dt. 15/02/2022 passed u/s 271D of the Act by the National Faceless e-Assessment Centre, Delhi ['Ld. NFeAC'] anent to assessment year 2017-18 ['AY']



2. **Briefly stated the facts of the case are that;** the assessee is an individual and identified as non-filer. Upon the information that the assessee had deposited a sum of ₹11.55Lakhs into his saving bank account, the case of the assessee was taken up for scrutiny for verification of nature & source of such cash deposit. The assessee's explanation that such cash represents a sale consideration received by him from the purchaser to who the assessee sold a piece of land (open plot) situated at Dharwad District vide registered sale-deed executed 02/11/2016 did not inspire any confidence to the learned assessing officer. In consequence, the entire amount of cash deposits were added to the total income of the assessee as unexplained money u/s 69A r.w.s. 115BBE of the Act. On the other hand, upon a reference about the contravention of provisions of section 269SS r.w.e. (iv) thereto, a penalty proceedings u/s 271D r.w.s. 274 of the Act were initiated by issue of notice dt. 10/08/2021 by the Jt. Commissioner of Income Tax, Belgaum ['Ld. AO']. In the event



of failure on the part of assessee to respond to aforesaid show case notice [‘SCN’], the Ld. NFeAC issued multiple opportunity vide notices dt. 18/08/2021, 09/09/2021, 16/09/2032, 07/10/2021 which however remained unattended. In absence of any material dissuading the case from imposition Ld. NFeAC culminated the proceedings by imposing a penalty equal to 100% of specified sum accepted by the assessee in cash.

3. Aggrieved by the order of penalty dt. 15/02/2022 the assessee filed an appeal before the Ld. NFAC, which came to be dismissed. Further aggrieved by the first appellate order, the assessee came in present appeal alleging the action of tax authorities below as erroneous, bad in law and devoid of merits.

4. At the time of hearing, the Ld. AR submitted that, the notices of hearing issued in penalty proceeding to the assessee requiring compliance could not unattended due to nationwide lockdown owing to COVID-19 pandemic. The evidences produce in support of claim of the assessee that the transaction falls out from



the applicability of section 269SS of the Act and resultantly from 271D of the Act in the view of the Ld. NFAC was insufficient, however without providing further opportunity the first appellate proceedings were culminated by upholding the imposition. In the case of the appellant assessee that, for the lack of reasonable opportunity to adduce the evidential material the order imposing the penalty and order of first appellate authority suffered from the natural justice, hence deserving to be set-aside for *de-novo* consideration. *Per contra*, the Ld. DR Mr Reddy solidified the facts narrated by the appellant and expressed his no-objection for according one more opportunity to the assessee to represent his case on merit before the Ld. AO.

5. We have heard the rival party's submission and subject to rule 18 of ITAT-Rules, 1963 perused the material placed on record and we note that, though the imposition of penalty was assailed before Ld. NFAC in first appeal, the appellant assessee however for a reasonable opportunity failed effectively to place



the evidential material in support of his claim that the impugned cash transaction falls within the category of exception provided by the second proviso to section 269SS of the Act. On the other hand, while upholding the imposition of penalty the Ld. NFAC not only failed to provide reasonable opportunity to the assessee but also failed to deal with twofold substantive grounds viz; (i) as to whether in the facts and circumstances of the assessee's case the provisions of section 269SS have any application? and (ii) if the transaction considered as falling within the ambit of section 269SS, then as to whether there exist reasonable cause in terms of section 273B of the Act. We are also not oblivious from the fact that, in the absence of any evidential material brought on record the impugned adjudication failed to comply with the provisions of section 250(6) of the Act which obligates the first appellate authority to provide clearly the (a) point of determination with (b) independent findings and (c) reasoning in denying the assessee's claim or upholding the imposition in line



with the Ld. NFeAC. Be that as it may, the impugned adjudication since failed to adjudicate the dispute providing clearly the threefold ingredients in our considered view therefore is inconsonance with provision of s/s (6) of section 250 of the Act, thus deserving to be set-aside. Order accordingly.

6. On the other hand, we also note that, during the penalty proceedings the Ld. NFeAC issued as many four notices viz dt. 18/08/2021, 09/09/2021, 16/09/2032, 07/10/2021 calling upon the assessee to comply therewith by 23/08/2021, 15/09/2021, 21/09/2032, 12/10/2021 respectively. These four notices issued one after another instantaneously during the subsistence of COVID-19 pandemic allowed less than a period of seven days to comply, failing to which the proceedings without further notice were culminated by imposing a penalty equal to the amount of specified sum accepted in cash. Ostensibly, these opportunities of hearing 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. An opportunity with much less reasonable time unintended to grant real opportunity therefore it is mindful to quote here that, in the case of '*Smt. Ritu Devi Vs CIT*' [2004, 141 Taxman 559 (Mad.)] their Hon'ble lordships have held that, time of just few days was given to furnish reply suffers from natural justice it inherently denies real opportunity of hearing.

7. In the instant case, the period of seven days allowed to appellant assessee to comply by the Ld. NFeAC in our considered opinion is not at all a reasonable period. The said opportunity allowing the assessee less than a reasonable period of fifteen days was mere paper & namesake opportunity and much less than real, reasonable and effective, therefore the entire proceeding has severely suffered from natural justice. In view of the '*CIT Vs Panna Devi Saraogi*' [1970, 78 ITR 728 (Cal.)] the proceedings culminated without according real, reasonable and effective



opportunity of hearing cannot be allowed to stand in the eyes of law as it violates the principle of natural justice. In view of the aforestated judicial precedents, the penalty proceedings since conducted without adhering to the principle of '*audi alteram partem*' has rendered irregular, hence warranting us to set-aside for its remand to meet end of justice. In view thereof, we set-aside the order of penalty as irregular and remand the file back to the Ld. Jurisdictional AO with a direction to deal therewith *de-novo* in accordance with law after according not less than three effective opportunities to the appellant assessee to prove his claim on merits.

**8. In result, the appeal stands partly allowed for statistical purposes in aforestated terms.**

In terms of rule 34 of ITAT Rules, 1963 the order is pronounced in the open court on date mentioned herein before.

**-S/d-  
PAVAN KUMAR GADALE  
JUDICIAL MEMBER**

**-S/d-  
G. D. PADMAHSHALI  
ACCOUNTANT MEMBER**

Panaji/Dt: 12th February, 2025.

**Copy of the Order forwarded to :**

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|-------------------|-----------------------------------|------------------------------|
| 1. The Appellant. | 2. The Respondent.                | 3. The CIT(A)/NFAC Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Panaji | 6. Guard File                |

By Order,  
Sr. Private Secretary / AR ITAT, Panaji.