



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

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA Nos. 312/PAN/2024

Assessment Year : 2016-17

Abdulkareem Mohaddin Bagwan

Vegetable Market,

Tal.: Chikodi, Dist.: Belgavi.

PAN:AESPB0271J

..... *Appellant*

V/s

The Income Tax Officer,

Ward-1, Nippani

..... *Respondent*

**Appearances**

Assessee by: Mr Pramod Vaidya ['Ld. AR']

Revenue by : Mr Vimalraj Periyagounden ['Ld. DR']

Date of conclusive Hearing : 27/03/2025

Date of Pronouncement : 02/04/2025

**ORDER**

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

The DIN & Order No. 1069923346(1) dt. 24/10/2024 passed u/s 250 of the Income-tax Act, 1961 [for short 'the Act'] by the National Faceless Appeal Centre, Delhi [for short 'Ld. CIT(A)/NFAC'] which in turn ascended out of order of assessment passed u/s 143(3) of the Act for assessment year 2016-17 [for short 'AY'] is u/s 253(1) of the Act challenged by the assessee.



**2. Briefly stated facts of the case are that;**

2.1 The assessee is an individual who for the year under consideration filed his return of income on 01/08/2016 declaring total income of ₹3,45,440/- which was revised by him on 29/03/2017 by declaring total income to ₹5,25,490/-. The return of the assessee by service of notice dt. 13/07/2017 issued u/s 143(2) of the Act was selected for the scrutiny. During the course of assessment, from the submission/records it revealed that the assessee had deposited total cash of ₹2,82,19,642/- into his bank accounts maintained with Bank of Maharashtra and Canara Bank. In view thereof the assessee was called upon to explain the nature & source of such cash deposits. In response thereto it was submitted that, the assessee was a kuchha arahitia and acting as an agent on commission basis. The entire amount of cash deposits represents realisation from sale of vegetables on behalf of his principal and he was paid commission @4% of such cash sales effected by him. When it was revealed that, the assessee failed to maintain effective books of account in terms of u/s 44AA and failed to get those books audited u/s 44AB of the Act, then the Ld. AO rejected the books and return of the assessee for their veracity



and in consequence thereof determined the total income of the assessee at ₹37,47,179/- owing to following viz;

(i) *addition of commission income of ₹23,83,318/- [Computed @6% of gross commission on gross sales receipts determined ₹4,41,35,520/- and allowing therefrom 10% expenditure]*

(ii) *addition ₹10,56,061/- on account of change in receivable balance reported in the revised return over original return*

(iii) *addition of ₹2,86,434/- & ₹21,366/- on account of change in balance of fixed deposit & receivable balance respectively as reported in the revised return over original return.*

2.2 Aggrieved by order of assessment, the assessee preferred an appeal before the Ld. NFAC, which came to be partly allowed by remanding the issue of determination of net commission for allowing therefrom expenses after their verification. Still dissatisfied with the impugned order, the assessee is in present appeal alleging the action of Ld. NFAC as erroneous for sustaining the addition on account of change in receivables & fixed deposits and further remanding the issue of computation of net commission for verification of expense to the file of the Ld. AO.



3. We have heard the rival submission on limited issue and subject to rule 18 of ITAT Rules, 1963 perused material placed on record and we note that, incomplete documentary details and incompleteness of books of accounts failed to explain the true nature & sources of cash deposits, change in the balance of receivables & fixed deposits etc. In the event the Ld. AO invoked the provisions of section 145(3) of the Act for rejecting the books of accounts. In consequence thereof the income of the assessee was determined by estimating the net commission and making the addition towards difference in the balances reported in revised return. When the matter travelled in appeal, Ld. NFAC has simply countenanced the additions made on account of change in receivable & bank balances and ceased issue of determination of commission by remanding the file to the Ld. AO for verification of expenses to be allowed therefrom.

4. We are heedful to the restriction placed by clause (a) of s/s (1) of section 251 of the Act which obligates the Ld. NFAC to adjudicate issue conclusively either by ***confirming or annulling the addition or reducing or enhancing*** the addition made by the



assessing officer without the power to remand. And in exercising the jurisdiction u/s 251(1)(a) of the Act, the Ld. NFAC is also required to state point of determination, its decision thereon and clear reasons therefore in terms of section 250(6) of the Act. This twin exercise by the Ld. NFAC is a pre-requisite and invariably necessary for each assessment year in each case irrespective of its repetition. The former provisions of Act also empowers Ld. NFAC to remand the case or issue back to the file of Ld. AO only where the original assessment is framed u/s 144 of the Act and not where the assessment is framed otherwise than u/s 144 of the Act. It is a trite law as laid down by Hon'ble Supreme Court in the case of '*Chandra Kishore Jha Vs Mahavir Prasad*' reported in 8 SCC 266 (SC), that 'if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner'.

5. In the present case the assessment was framed u/s 143(3) of the Act therefore the Ld. NFAC had no explicit power to remand any issue back to the Ld. AO for effective determination. *Per*



*contra* in the present case Ld. NFAC turning blind eye to rejection of books remanded the first issue of determination of net commission. Insofar as the addition towards change in balance of fixed deposits & receivables are concerned the Ld. NFAC simply echoed the findings of Ld. AO without any independent findings. The former actions of the Ld. NFAC are not only inconsonance with the provisions of s/s (6) of section 250 of the Act but contradictory to the provisions of section 251 of the Act, hence cannot be continued to stand. In view thereof, without offering our comments on merits of the case, we set-aside impugned order and remit the file back to the Ld. NFAC at the stage of its institution before it with a direction to deal with all the issues raised in Form no 35 *de-novo* in accordance with law.

**6. The appeal in result is allowed for statistical purposes.**

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

**-S/d-**

**PAVAN KUMAR GADALE  
JUDICIAL MEMBER**

Panaji/Dt: 02nd April, 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                |

**-S/d-**

**G. D. PADMAHSHALI  
ACCOUNTANT MEMBER**

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