



IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA

BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA Nos. 289/PAN/2024

Assessment Year : 2017-18

The Income Tax Officer,
Ward-2(3), Panaji.

..... *Appellant*

V/s

Anil Raghuvir Sirsat
1, Salis Waddo, Parra Bardez,
North Goa, Goa-403510.
PAN:BXHPS9851E

..... *Respondent*

Appearances

Assessee by: Mr D E Robinson ['Ld. AR']

Revenue by : Mr Manikandan ['Ld. DR']

Date of conclusive Hearing : 23/04/2025

Date of Pronouncement : 24/04/2025

ORDER

PER G. D. PADMAHSHALI, AM;

Against the DIN & Order No. 1069238252(1) dt. 28/09/2024 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 144 of the Act for assessment year 2017-18 [for short 'AY'] is challenged by the Revenue u/s 253(2) of the Act.



2. Briefly stated the facts of the case that;

2.1 the assessee an individual and was identified as non-Filer. On the basis of information that the assessee deposited huge amount of specified bank notes/cash [‘SBN’ hereinafter] the transactions of the assessee was identified for verification of Specified Financial Transactions [‘SFT’ hereinafter] under Operation Clean Money [‘OCM’ hereinafter] and consequently by service of notices dt. 13/03/2018 & 16/09/2018 issued u/s 142(1) of the Act the assessee was called upon to deliver a return of income. When the assessee failed to comply with aforesaid notices, the Ld. AO vide notice dt. 20/09/2019 put the assessee to show-cause [‘SCN’ hereinafter] before advancing to determine taxable income *ex-parte* to the best of his judgment u/s 144 of the Act. There was neither any response nor any compliance from the assessee. The failure on the part of assessee to explain nature & source of (a) SBN deposited during the demonetisation period and (b) the sums credited to banks accounts eventually persuaded the Ld. AO to proceed *ex-parte* and frame the assessment to the best of judgement u/s 144 of the Act whereby the Ld. AO treated former both the bank credits as unexplained money



u/s 69A r.w.s. 115BBE of the Act and made two additions viz; (a) ₹12,23,000/- SBN deposits and (b) ₹90,29,251/- sums credited into bank accounts maintained with Punjab National Bank.

2.2 The assessee impugned the aforestated additions in first appeal before Ld. NFAC. Wherein both the additions were deleted and appeal filed by the assessee was allowed. The Revenue aggrieved by the deletion of additions challenged the impugning the action of Ld. NFAC on merits as well as on the point of violation of provisions of rule 46A of the Income Tax Rules, 1962.

3. Without touching the grounds of appeal, we have heard the rival party's submission on limited issue of violation of rule 46A of Income Tax Rules, 1962 and subject to rule 18 (supra) perused the material placed on record and considered the facts in the light of settled position of law. We note that in the course of assessment proceedings, the respondent assessee not only failed to file his return of income but also failed to respond to notices issued to him. Owing to such failure on the part of respondent assessee, the nature & source of sums credited and SBN deposits remained



unsubstantiated & unexplained. In the event the Ld. AO summoned the information from banker u/s 133(6) of the Act and after putting the assessee to show cause notice u/s 144 of the Act culminated the proceedings to best of his judgement by treating SBN deposits & sums credited to respondent's bank accounts as the 'unexplained money' u/s 69A of the Act and brought same to tax u/s 115BBE of the Act. When the matter travelled in appeal, the Ld. NFAC, proceeded without return of income and allowed same on the basis of additional evidences submitted by the assessee. While doing so, the Ld. NFAC neither recorded his satisfaction u/r 46A(2) (supra) as to why such additional evidences qualifies admission nor confronted the same to the Ld. AO for verification/comments.

4. The former unceremonious action in allowing the additional evidences and in turn the appeal the Ld. NFAC sidestepped the provisions of rule 46A of the Act. For the reasons, in our considered view the impugned adjudication rendered irregular, in the eye of law. As a result we see strong force in the contention of the appellant Revenue to set-aside the impugned order for its remand to Ld. AO for due verification of facts and evidences.



5. We note that, in the case of '*Prabhavati Shah Vs CIT*' [1998, 100 Taxman 404 (Bom)] their Hon'ble Lordship had occasion to consider whether Rule 46A is intended to put fetters on the right of the assessee to produce before NFAC/CIT(A) any additional supporting evidence. After considering section 250 r.w.r 46A their lordships have held that if certain evidences are necessary for deciding controversy, the CIT(A) has all rights calling for additional evidence, however before admitting the same he is duty bound to give opportunity to AO to consider & cross examine or rebut such additional evidence. Failure on the part of first appellate authority to do so was held violative of rule 46A (supra). Similarly in the case of '*CIT Vs Gani Bhai Wahab Bhai*' [1998, 97 Taxman 310 (MP)], it was also held by their Hon'ble Lordships that, though additional evidence can be admitted at appellate stage but while admitting the CIT(A) was required/mandated to ensure compliance with rule 46A and further such admission should be subject to comments of AO. Going a step further the Hon'ble Delhi High Court in '*CIT Vs Jansampark Advertising & Marketing (P) Ltd.*' [2015, 231 Taxman 384] has held that, where assessment is



completed without adequate verification, enquiry or in the absence of evidences or submissions etc., the appellate authorities as having noticed such inadequacy in inquiries, written submission or evidences etc., are duty bound to remit the issue for proper verification to the file of assessing officer.

6. In view of former stated reasons and respectfully following the judicial precedents (supra), we deem it fit to set-aside the impugned order passed sans of rule 46A (supra) and remand the file to the Ld. AO with a direction to consider all the evidences and return of income which shall be filed by the assessee on remand and reframe the assessment de-novo in accordance with law. The grounds thus stands party allowed.

7. 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: 24th 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. PADMAHALI
ACCOUNTANT MEMBER**

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