



**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 No: 308/PAN/2024

Assessment Year : 2017-18

Aniceto Anacleto Pereira

Through L/H Palmira Isabella Pereira

B1-102, House of Lords, Opp. Marriot Hotels,

Miramar, Panaji, Goa - 403001

PAN : AIMPP2711M

..... *Appellant*

V/s

The Income Tax Officer,

Ward-1(4), Panaji, Goa

..... *Respondent*

Appearances

Assessee by: Ms Eesha Dukle ['Ld. AR']

Revenue by: Ms Rijjula Uniyal ['Ld. DR']

Date of conclusive Hearing: 24/07/2025

Date of Pronouncement : 29/07/2025

ORDER

PER G. D. PADMAHSHALI;

This appeal is instituted u/s 253(1) of the Income-tax Act, 1961 ['the Act'] which challenges DIN & Order No 1069726991(1) dt. 17/10/2024 passed by National Faceless Appeal Centre, Delhi ['Ld. CIT(A)/NFAC'] u/s 250 of the Act which in turn originated from order of assessment dt. 25/09/2019 passed u/s 144 of the Act for the assessment year 2017-18 ['AY'].



2. The primary grievance in present appeals twirls around dismissal of first appeal without adjudicating the legal ground raised therein thus in contravention of s/s (6) of 250 of the Act.

3. As we note that, the assessee is an individual who was identified as non-filer. The case of the assessee by notice 142(1) dt. 28/12/2017 was picked for verification special bank notes [‘SBN’] deposited during demonetisation period. When assessee including legal heir failed to explain the nature & source of sum of ₹1,85,78,077/- SBN deposited into bank account maintained with ‘Bank of India, Mapusa Branch, Goa, the Ld. Income Tax Officer, Ward 1(4), Panaji Goa [‘Ld. AO’] vide best judgement order dt. 25/09/2019 treated the sums so deposited as unexplained money u/s 69A and brought the same to tax u/s 115BBE of the Act.



4. Aggrieved by aforestated assessment the assessee through legal heir filed an appeal before Ld. NFAC on 25/10/2019. In view of the proviso to section 251(1) of the Act, the Ld. NFAC without going into the merits of the case, at the threshold culminated the proceedings by setting aside the *ex-parte* assessment passed u/s 144 of the Act for *de-novo* assessment.

5. Further aggrieved by the impugned first appellate order, the appellant legal heir is in appeal following grounds;

1. On facts and under the circumstances of the case, the Commissioner of Income Tax (Appeals) erred in not Quashing the assessment order passed u/s 144 rWs 144A of I.T. Act by the Income Tax Officer, Ward 1(4), Panaji Goa although the notice issued u/s 142(1) of I.T. Act in the name of dead person i.e. Late Shri Aniceto Pereira by the above Income Tax officer before the commencement of the Income Tax Assessment proceedings of the year as well as the



assessment order passed by him after the completion of the said income tax assessment proceedings were bad in law.

2. On facts and under the circumstances of the case, the Commissioner of Income Tax (Appeals) erred in setting aside the assessment order passed by the Income Tax Officer, Ward 1(4), Panaji Goa for his making fresh assessment de novo instead of quashing the said assessment order passed by the said Income Tax Officer in view of the fact that the said assessment order was totally invalid.

3. On facts and under the circumstances of the case the Commissioner of Income Tax (Appeals) was not justified in not declaring in his appellate order that the assessment proceedings initiated for the year by the Income Tax Officer, Ward 1(4), Panaji Goa as void ab initio and therefore the assessment order passed for the year by him as bad in law although it is settled law that no income tax assessment proceedings could be initiated by any Income Tax officer by issuing notice u/s 142(1) of I.T. Act in the name of dead person.



6. Admittedly Ground No 1 to 3 of the present appeal as were raised in first appellate proceedings remained to be adjudicated, hence we have heard rival party's submissions on limited issue which *inter-alia* concerning non-adjudication of legal ground raised by the appellant in first appeal and subject to rule 18 of ITAT-Rules, 1963 perused material placed on record and considered facts in the light of settled position of law, which are forewarned to the parties for their rebuttal.

7. At the outset we note that, against the order of assessment, the appellant filed first appeal before the Ld. NFAC wherein the appellant through Form No 35 admittedly raising therein like legal grounds for adjudication thus thereby sought to reverse the ex-parte assessment framed by the Ld. AO u/s 144 of the Act;



"1. In the facts and circumstances of the case the notice dated 28122017 issued us 142(1) of Income Tax act by the ITO, Ward 1(4) Panaji Goa in the name of dead person i.e. Late Mr. Aniceto Pereira is bad in law.

2. In the facts and circumstances of the case as the notice issued by ITO, Ward 1(4) Panaji Goa us 142(1) of Income Tax Act as well as the assessment proceedings initiated and continued by him for the year are bad in law the assessment order dated 25092019 passed by him us 144 r.w.s. 144A of the Income Tax Act is null and void..

3. In the facts and circumstances of the case as the assessment proceedings conducted by the I TO Ward 1(4) Panaji for the year are void ab initio the assessment order passed us 144 r.w.s. 144A of the Income Tax Act for the year is non est and therefore the tax demand of Rs. 2 2818983 raised by him in the name of dead person i.e. Late Shri Aniceto Pereira is totally unenforceable.

4. Without prejudice to Ground Nos. 1 to 3 above the assessment order passed by ITO Ward 1(4) of the Income tax act is bad in law since he commenced the assessment proceedings for the year without issuing any prior notice us 143(2) of the Income Tax Act.



5. Without prejudice to Ground Nos. 1 to 4 above in the facts and circumstances of the case the ITO Ward 1(4) Panaji Goa erred in passing the assessment order us 144 r.w.s 144A of the Income Tax Act in the name of dead person i.e. Mr. Aniceto Pereira without making prop er enquiries with the legal heirs of said dead person thereby denying them the principles of natural justice..''

6. Without prejudice to ground nos. 1 to 5 above in the facts and circumstances of the case the ITO Ward 1(4) Panaji Goa erred in taxing an a mount of rs. 18578077 in the hands of late Mr. Aniceto Pereira by wrongly presuming that said Pereira deposited above amounts in his Bank Account after his death.

7. Without prejudice to Ground nos. 1 to 6 the assessment order passed by the ITO Ward 1(4) Panaji Goa for the year is invalid since as per the said order he has taxed the amount of Rs. 18578077 for the reason that the said amounts were deposited by late Aniceto in his bank account after the death although ITO mentioned the said amount of deposits as Rs. 7556370/- in his proposal dated 20092019 for making ex parte assessment of late Shri Aniceto us 144 of the Income tax Act.



8. From the rival party's submission & the perusal of impugned order *prima-facie* revealed that, the legal ground raised in form No 35 were neither touched nor adjudicated by the Ld. NFAC, however in view of the proviso to section 251(1) of the Act, the Ld. NFAC set-aside the *ex-parte* assessment for de-novo assessment. Further we also note that, while arriving to such conclusion in relation to remanding the assessment proceeding for fresh assessment the Ld. NFAC did neither appreciate the facts of the case independently nor could adjudicate legal ground beforehand.

9. The question as to whether the Tribunal can adjudicate such ground which did not pass through the first appellate forum finds negatively answered in the recent decision of Hon'ble Delhi High Court in case of '*Divine Infracon Pvt Ltd. Vs PCIT*' [2025, 171



taxmann.com 92 (Del)], wherein their Hon'ble Lordship have categorically held that, the ground which did not adjudicated by first appellate authority or the ground not originating from the first appellate order cannot be the subject matter of adjudication in second appeal. The Tribunal therefore duty bound to remit the matter to first appellate authority where ground raised therein did not give rise to rights & liabilities to the rival parties.

10. Following the former judicial precedents(supra) the Ld. Co-ordinate bench in the similar facts & circumstance in the case of '*Maga Ram Choudhary Vs ITO*' [004/PAN/2025 dt. 20/03/2025] while dealing with similar facts & circumstances remanded the case back to the file of Ld. NFAC/CIT(A) with a direction to adjudicate the misplaced ground.



11. In view therefore, without multiplying the authority on the issue, it is necessary to hold in the present case that, Tribunal has much less jurisdiction to adjudicate the grounds challenged before it unless it is adjudicated first by the Ld. NFAC/CIT(A). Since the impugned order is suffered by non-adjudication of ground challenged therein, we therefore set-aside the same on this limited score and remit the file to the Ld. NFAC with a bullet direction to adjudicate the legal ground and pass a speaking order in accordance with law preferably in three hearings.

12. The appeal thus is partly allowed for statistical purpose.

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

-S/d-
PAVAN KUMAR GADALE
JUDICIAL MEMBER

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

Panaji/Dt: 29th July 2025.

Copy of the Order forwarded to :

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

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