



सत्यमेव जयते



**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: 012/PAN/2024

Assessment Year : 2016-17

Mahendra Purushottam Naik Gaunekar
Shivoham, Ribeiro Enclave,
Behind ITI, Altinho, Panaji, Goa.
PAN : ABDPN5971F

..... *Appellant*

V/s

The Income Tax Officer,
Ward-1(3), Panaji, Goa

..... *Respondent*

Appearances

Assessee by: Mr Rahul Sarda ['Ld. AR']

Revenue by: Mr Capt. Pradeep Arya ['Ld. DR']

Date of conclusive Hearing: 25/06/2025

Date of Pronouncement : 02/07/2025

ORDER

PER G. D. PADMAHSHALI;

This assessee's appeal is instituted u/s 253(1) of the Income-tax Act, 1961 ['the Act'] which challenges DIN & Order No 1058438333(1) dt. 04/12/2023 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. 29/09/2021 passed u/s 147 r.w.s. 144B of the Act by National Faceless e-Asstt. Centre, Delhi ['Ld. AO'].



2. The primary grievance in present appeals twirls around *ex-parte* dismissal of appeal in contravention of s/s (6) of 250 of the Act.

3. As we note that, the assessee is an individual who filed his return of income on 04/08/2016 declaring income of ₹5,75,17,590/-. The case of the assessee, after recording reasons and obtaining approval from competent authority by notice dt. 19/02/2020 u/s 148 of the Act, was reopened for re-assessing difference of capital gain arising out of deviation in the value of sale consideration recorded/shown *vis-à-vis* stamp duty valuation adopted in relation sale of immovable property by the assessee. Invoking the provisions of section 50C of the Act the Ld. AO brought difference of capital gain of ₹2,93,33,256/- to tax as undisclosed income vide an assessment order dt. 29/09/2021 framed u/s 147 of the Act.



4. Aggrieved by aforestated assessment the assessee filed an appeal before Ld. NFAC on 20/10/2021, which came to be dismissed *ex-parte*. Aggrieved thereby the assessee came in present appeal on following grounds;

Non applicability of section 50C(1) of the Act on account of the First & Second Provisos introduced by Finance Act, 2016

1. *The National Faceless Appeal Centre (NFAC) failed to appreciate that the first and second provisos to section 50C(1) of the Act introduced by Finance Act, 2016, being curative in nature, are retrospective and applicable for AY 2016-17.*

2. *The NFAC erred in ignoring the fact that the date of the agreement fixing the amount of consideration preceded the date of registration of the agreement. Therefore, the stamp duty value as on the date of such agreement ought to have been considered for the purpose of section 50C(1) of the Act.*

3. *Since the Appellant had already offered sale consideration which was in excess of the stamp duty valuation as on the date of the agreement fixing the amount of consideration, no addition in terms of section 50C could have been made.*



No income has escaped assessment and hence, reopening of assessment is bad in law.

4. The NFAC failed to appreciate that the Assessing Officer erred in reopening the assessment of the Appellant by issuance of notice dated 19.02.2020 u/s 148 of the Act on the alleged ground that section 50C of the Act was applicable when the provisions of section 50C(1) of the Act were not applicable on account of the two provisos introduced by Finance Act, 2016.

Failure to adhere to mandatory procedure for reopening of assessment vitiates the assessment order

5. The NFAC failed appreciate that the AO had issued the notice u/s 143(2) of the Act and proceeded with the assessment proceedings even before providing the recorded reasons and without disposing of the objections of the Appellant. Therefore, the reopening of assessment is bad in law and the order of the dated 29.09.2021 is liable to be quashed and set-aside.

Not dealing with the submissions of the Appellant

6. The NFAC erred in not dealing with the submissions of the Appellant and further failed to appreciate that even the Assessing Officer had failed to consider the detailed submissions made by the Appellant. Hence, the impugned order is violative of principles of natural justice and the addition sustained by the NFAC is liable to be deleted.



5. Ground No 1 to 3 of the appeal relates to merits of impugned addition sustained in first appeal, whereas ground no 4 to 5 are legal grounds and ground no 6 of the appeal alleges violation of principle of natural justice. We have heard rival party's submissions on ground number 6 first which *inter-alia* concerning violation of principle of natural justice beside non-adjudication of legal ground raised by the assessee 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.

6. 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 raised following grounds for adjudication thereby sought to reverse the assessment;



1. In the facts and circumstances of the case the notice issued u/s 148 of the IT. Act by the assessing officer to the appellant for reopening of his assessment for the Assessment year under consideration is bad in law and hence the assessment order passed by the assessing officer after completing the invalid assessment proceedings for the year is also bad in law,

2. In the facts and circumstances of the case the Assessing officer erred in issuing notice u/s 148 of IT. Act to the appellant for the year without having any credible Information which would establish that some part of the income of the appellant has escaped assessment for the year,

3. In the facts and circumstances of the case the Assessing officer erred in reopening the assessment of the appellant on the ground that provisions of section 50C of IT. Act were applicable to the case of the appellant despite the fact that said section was not applicable to his case in view of the first and second proviso of section 50C(1) of I.T. Act.

4. In the facts and circumstances of the case the assessment order passed for the year by the assessing officer in the case of the appellant is bad in law in view of the Invalidity of notice Issued u/s 143(2) of I,T. Act by him for the purpose of commencing of the assessment proceedings for the year.



5. In the facts and circumstances of the case the Assessing officer erred in Issuing notice u/s 143(2) of IT, Act prior to his passing of the order for disposing off the objections raised by the appellant against the reopening of his assessment for the year u/s 147 of IT. Act although the assessing officer was required as per law to issue the aforesaid notice u/s 143(2) of I.T. Act for commencing the assessment proceedings for the year only after his passing of the order disposing of the aforesaid objections raised by the appellant against the reopening of his assessment

6. Without prejudice to grounds no 1 to 5 above in the facts and circumstances of the case the Assessing officer erred in adopting the stamp duty value of land of Rs. 14,32,37,500 (50 percent of Rs. 20,64,75,000) sold by appellant during the year Instead of actual sale consideration of Rs. 11,30,04,244 (50 percent of Rs. 22,70,08,408) received on sale of said lands for the purpose of recomputing the capital gains (Long Term) in his assessment order passed for the year and in adding the difference of Rs. 2,03,33,256 (50 percent of 5,86,66,512) between the above stamp duty value and actual sale consideration to the returned Income of the appellant in his assessment order by wrongly Invoking the provisions of section 50C of IT Act although the said section was not at all applicable to the case of the appellant for the year in view of first and second proviso of section 50C(1) of IT. Act.



7. Without prejudice to ground nos 1 to 5 above in the facts and circumstances of the case the Assessing officer erred in invoking the provisions of section 50C of the IT Act for the purpose of taxing artificial capital gains (Long Term) of Rs. 2,93,33,256 being the difference between the stamp duty value of Rs. 14,32,37,500 adopted by him and actual sale consideration of Rs. 11,39,04,244 although it was legally impermissible for the assessing officer to adopt the above stamp duty value of Rs. 14,32,37,500 in view of applicability of first and second proviso to section 50C(1) of IT Act to the case of the appellant for the year.

8. Without prejudice to ground no 1 to 5 above in the facts and circumstances of the case the assessing officer erred in making addition of Rs. 2,93,33,256 u/s 50C of I. T. Act to the returned income of the appellant in his assessment order passed for the year without offering any comments in his said assessment order in the matter of detailed submissions made by the appellant before the assessing officer with regard to non applicability of above section 50C of I. T. Act to the case of the appellant for the year in view of first and second proviso of said section

9. Any other ground that may be urged at the time of hearing the appeal.'



7. From the rival party's submission & the perusal of impugned order *prima-facie* revealed that, the legal ground raised in form No 35 (i.e. ground number 1, 4 & 5) were neither touched nor adjudicated by the Ld. NFAC. The remaining ground raised on merits (i.e. ground number 2, 3, 6, 7 to 9) were undeniably found adjudicated together and dismissed blanketly without assigning reasons in support thereof. Further we also note that, while arriving to such conclusion in relation to dismissing of former meritorious grounds the Ld. NFAC did neither appreciate the facts of the case independently nor could lay reasoning in support conclusion so drawn by it.

8. The issue of Tribunal's power to adjudicate the ground raised before it in second appeal which did not pass through first appeal came for consideration before the Hon'ble Delhi High Court in the case of



'Divine Infracon Pvt. Ltd. Vs PCIT' [2025, 171 taxmann.com 92 (Del)], wherein their Hon'ble Lordship vide para 13 have categorically held that, the Tribunal has no jurisdiction to proceed to decide the ground which did not arise from the impugned order passed by first appellate authority, irrespective of such ground was raised in first appeal or not.

9. The Hon'ble Jurisdictional High Court in the case of *'CIT Vs Premkumar Arjundas Luthra (HUF)'* [2016, TIOL 2573 HC Mum IT (Bom)] had dealt with an issue of *ex-parte* dismissal of appeal without adjudicating the issues/grounds raised in first appeal. Wherein it was held that, while exercising power u/s 251(1) r.w.s. 250(6) of the Act it shall be obligatory on the part of first appellate authority to deal with merits in the manner provided in the statute even in case of non-prosecution of appeal by appellant assessee. *It is*



therefore neither open for assessee to withdraw or not press any of the ground raised in first appeal nor it is within the power & jurisdiction of the first appellate authority to do away with adjudication of any of the ground raised in such appeal memo filed before it.

10. In the present case, since the legal grounds raised in Form No 35 before Ld. NFAC remained unadjudicated, in view of the former judicial precedents we are of considered opinion that, the impugned proceedings to the extent non-adjudication of legal grounds suffered from the compliance of s/s 251(1) r.w.s. 250(6) of the Act. For the reason and on that score, we set-aside the impugned proceeding for its remand with a direction to be dealt therewith separately in accordance with law and for passing a speaking order. The ground No 5 thus stands partly allowed for statistical purposes.



11. Now coming to dismissal of other grounds together blanketly without appreciating facts and conducting independently inquiries thereinto. We are heedful to restriction placed by clause (a) of s/s (1) of section 251 of the Act which obligates the Ld. NFAC/CIT(A) to adjudicate issue either by confirming or annulling an addition or reducing or enhancing such addition without an absolute right to remand. However, while exercising jurisdiction u/s 251(1)(a) of the Act, the Ld. NFAC/CIT(A) is mandated to **state point of determination, its decision thereon** and **clear reasons therefore** in terms of section 250(6) of the Act. Any order to be regular & legal, it must comply with former threefold dictates, nonadhering thereto in our considered view ceases to be a valid & lawful order. Thus sufferers from compliance of s/s (6) of section 250 of the Act, therefore *in limine* deserves to be set-aside without going into merits.

12. It is a trite law as laid down by Hon'ble Supreme Court in *Chandra Kishore Jha Vs Mahavir Prasad* [1999, 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*'. In view of the Ld. co-ordinate bench decision in '*Computer Science Corp. India (P) Ltd. Vs DCIT*' [2024, 163 taxmann.com 693] order dismissing all ground based on single issue by disobeying the mandates of s/s (6) of section 250 of the Act ceases to be lawful adjudication, therefore renders itself irregular.

13. In the present case, since all grounds of merits adjudicated & dismissed together by the Ld. NFAC were much less adhered to the stipulation of s/s (6) (supra), therefore such adjudication has suffered from the compliance and thus rendered irregular, for the reasons said adjudication is also hereby set aside.



14. Now coming to ground number 6 which alleges that the submission of the appellant assessee were neither considered nor dealt with in adjudicating the issues raised in appeal before Ld. NFAC. We note that vide para 4 of impugned order the Ld. NFAC noted that in the course of first appellate proceeding assessee laid no additional evidence in support of grounds raised and claims made in dismantling the impugned additions. *Per contra*, the assessee's submission vide letters dt. 13/03/2020, 16/02/2021 and 12/08/2021 made available before tax authorities were perused, the contents & contentions raised therein are noted. Admittedly, these submissions were neither referred nor considered in drawing adverse conclusion while adjudicating the grounds by the Ld. NFAC. The impugned adjudication thus is devoid counter submission and key evidences claimed therein & adduced thereby.



15. In ‘*Grasim Industries Ltd. Vs CCIT*’ [2024, 302 Taxman 194 (Bom)], their Hon’ble lordship dealt with an issue of non-consideration of assessee’s primary submission seeking waiver of interest have held that, any adverse order passed disregarding assessee’s primary submission deserves to be set-aside for *de-novo* consideration as it violates of principle of natural justice. The Hon’ble Jurisdictional High Court in the case of ‘*Vijay S Kulkarni Vs ITAT, Pune*’ [2025, 171 Taxmann.com 696], reiterating the principle laid by Hon’ble Apex Court in ‘*Delhi Transport Corp. Vs DTC Mazdoor Union*’ [1999, AIR 564 SC] and ‘*CIT Vs Chenniyappa Mudiliar*’ [1969, 1 SCC 591] have categorically held that, adjudication by appellate authorities without due cognizance to material *vis-à-vis* submission made there before would be violative of basic principle of natural justice & devoid of representation, therefore deserves to be set-aside.



16. Without multiplying the judicial precedents on the former issue, we placing reliance on the former ratio (supra) deem it fit to set-aside the impugned order in tandem for its remittance to the file of Ld. NFAC with a direction to deal therewith a fresh accordance with law in the light of material, evidences and submission already placed on record by the appellant assessee and pass a speaking order in consonance with s/s (6) of section 250 of the Act. Ordered Accordingly. The ground thus stands allowed for statistical purposes.

17. 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: 2nd July 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, Goa | 6. Guard File |

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