



सत्यमेव जयते



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 No. 085/PAN/2025

Assessment Year : 2017-18

The Shree Daivadnya Urban
Co-op. Credit Society, Ltd.
Office No. 211, 2nd Flr.,
Cosmos Centre, Mapusa, Goa-403507
PAN:AABAT3738J

..... Appellant

V/s

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

..... Respondent

Appearances

Assessee by : None ['Ld. AR']

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

Date of conclusive Hearing : 05/08/2025

Date of Pronouncement : 05/08/2025

ORDER

PER G. D. PADMAHSHALI, AM;

The present appeal is filed by the assessee against the DIN & Order No. ITBA/NFAC/S/250/2023-24/1056376506(1) dt. 21/09/2023 passed u/s.250 of the Income-tax Act, 1961 [for short 'the Act'] by the National Faceless Appeal Centre [for short 'NFAC'] which in turn has ascended out of order of assessment passed u/s.144 by the ITO, Ward-2(3), Panaji [for short 'AO'] in relation to assessment year 2017-18 [for short 'AY']



2. Briefly stated facts of the case are that; the assessee is a Cooperative Society carrying on the business of accepting deposits from members and providing credit facilities, supplying fertilizers, pesticides etc., to its members. The assessee failed to file return of income as required u/s 139 of the Act. In view thereof vide notice dt. 06/12/2017 issued u/s 142(1) of the Act the assessment proceedings in the case of the assessee were initiated. In the event of assessee's failure to file return and respond to former notice, vide notice dt. 13/09/2019 the Ld. AO another opportunity but same went futile. In the absence of return of income, taking cognizance of assessee's non-cooperation the Ld. AO after putting the assessee to show cause notice dt. 21/09/2019 concluded the proceedings to the best of his judgement u/s 144 of the Act wherein two additions were made viz; (i) addition of entire special bank note [for short 'SBN'] ₹29,94,500/- deposited by the assessee during the period of declared demonetisation into his two accounts maintained with 'RBL Bank at Calangute & Mapusa' as unexplained u/s 69A of the Act and (ii) addition of ₹25,08,283/- sums credited into former two accounts which remained unexplained in the course of proceedings u/s 69A of the Act.



3. Aggrieved assessee approached the Ld. NFAC. The Ld. NFAC issued notice dt. 21/12/2020, 05/03/2023 & 28/08/2023 to the assessee through ITBA portal to which there was no compliance by the assessee. In the event of assessee's failure to respond to such notices, the Ld. NFAC countenanced the additions made by Ld. AO, thereby dismissed the appeal *ex-parte* for non-prosecution. Further aggrieved, the assessee came in present appeal before the Tribunal.

4. The case was called twice; none appeared at the behest of the appellant assessee, the letter of adjournment in view of the proceedings conducted by both the Ld. Tax authorities below considered and thought fit to be rejected. In view thereof, on the request & able assistance of the Ld. DR we deem it proper to proceed in the absence of the appellant *ex-parte* u/s 24 of ITAT rules, 1963 and adjudicate the limited *ex-parte* dismissal by the Ld. NFAC.

5. Without touching merits & grounds, we noted that, during the course of first appellate proceedings the Ld. NFAC issued three notices all according less than fifteen minimum/reasonable days to respond. Of which the first notice was issued during the subsistence COVID-19 pandemic hence went unattended. In the event of failure



on the part of appellant to respond other two notice, the appeal was dismissed by the Ld. NFAC *ex-parte* for non-prosecution without going into merits of the case. The record apparently capable of suggesting that, post pandemic when proceedings were resumed, the two notices issue to appellant were just meant to accord no real opportunity but to create an audit trail to showcase adherence to natural justice.

6. It shall be worthy to underline that the opportunity of being heard should be real, reasonable and effective and same should not be empty or paper formalities, it should not be a paper opportunity. In this context of reasonable period/opportunity, the Hon'ble High court of Patna judgement in '*St. Paul's Anglo Indian Education Society*' [2003, 262 ITR 377 (Pat)]' has categorically held that, an adjudication is unjustified if an assessee was deprived of reasonable opportunity and reasonable time to produce all relevant documents to substantiate claims made in the return of income.

7. We are heedful to the restriction placed by clause (a) of sub-section (1) of section 251 of the Act which obligates the Ld. CIT(A) to adjudicate issue either by confirming or annulling an addition or reducing or enhancing such addition made by assessing officer



without a blanket right to remand. However, while exercising such jurisdiction u/s 251(1)(a) of the Act, it is prerequisite for the Ld. CIT(A) to clearly **state point of determination, its decision thereon** and **clear reasons therefore** as stipulated in section 250(6) of the Act. Any order to be regular & legal, it must comply with former threefold dictates.

8. An order passed in first appeal without adhering to former threefold stipulations *de-facto*, in our considered view 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.

9. The Hon'ble Jurisdictional High Court in the case of '*CIT Vs Premkumar Arjundas Luthra (HUF)*' [2016, 240 Taxman 133 (Bom)] had dealt with an issue of non-speaking *ex-parte* order, wherein it was held that; it shall be obligatory on first appellate authority to deal with merits in a manner provided in statute strictly even if not prosecuted.

10. In summation, on one hand the appellant was deprived of reasonable opportunity and reasonable time to produce all relevant documents/evidence in support of grounds of appeal raised,



therefore the first appellate proceedings suffered from natural justice, and on the other hand the proceedings culminated outdoing the provisions of section 251 of the Act has also suffered from compliance of s/s (6) of section 250 of the Act, for the reasons the impugned order cannot be continued to stand. The aforestated circumstances necessitated us to grant one more opportunity to the appellant to comply with notices and contest the appeal on merits which can only be possible on remand of this case to Ld. NFAC.

11. In view thereof, without offering any comments on merits, we set-aside the impugned order and remand it to the stage of its institution before Ld. NFAC with a direction deal therewith *de-novo* and pass speaking order in terms of section 250(6) of the Act.

7. In result, the appeal is allowed for statistical purposes.

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

-S/d-

**PAVAN KUMAR GADALE
JUDICIAL MEMBER**

Panaji/Dt.: 05th August, 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.