



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 Nos. 110/PAN/2022

Assessment Year : 2017-18

Vishwanath Venkatesh Kamat
PB Road, Kolhapur Cross,
Nehru Nagar, Belgaum.
PAN : ADCPK7548Q

..... *Applicant*

V/s

Income Tax Officer
Ward-2, Belgaum.

..... *Respondent*

Appearances

Assessee by : None for the Assessee

Revenue by : Mr Narendra Reddy ['Ld. DR']

Date of conclusive Hearing : 04/02/2025

Date of Pronouncement : 04/02/2025

ORDER

PER G. D. PADMAHSHALI, AM;

The assessee is in appeal against DIN & Order No.

ITBA/NFAC/S/250/2022-23/1045183404(1) dt. 05/09/2022

passed u/s 250 of the Income-tax Act, 1961 ['the Act'

hereinafter] by the National Faceless Appeal Centre, Delhi

['Ld. CIT(A)/NFAC' hereinafter] which in turn arisen out of

best judgement assessment order dt. 25/12/2019 passed u/s

144 of the Act by the Income Tax Officer, Ward-2, Belgaum

['Ld. AO' hereinafter] for assessment year 2017-18 ['AY'

hereinafter].



2. The case was called twice for hearing; none appeared at the behest of the appellant, nor there is any letter of adjournment found on record. After glimpses of issue involved in the present appeal, with the able assistance from respondent we deem it fit to proceed in the absence of appellant *ex-parte* u/r 24 of Income Tax Appellate Rules, 1963 [in short 'ITAT-Rules'] and advanced accordingly.

3. Briefly stated the facts of the case that;

3.1 the assessee is 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 notice dt. 04/12/2017 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 aforestated notice, the Ld. AO put the



assessee to show-cause notice [‘SCN’ hereinafter] u/s 144 of the Act pursuant to which the assessee filed rough profit & loss account, balance sheet, copies of State VAT returns etc., along with ledger account extracts of creditors etc.

3.2 From the incomplete submissions, it revealed to the Ld. AO that, the assessee was dealing in edible oil and as per State VAT returns the assessee for the year under consideration had annual business turnover of ₹912.74Lakhs. The Ld. AO noted that in-spite of having taxable turnover exceeding the limit specified, the assessee not only failed to gets books audited u/s 44AB of the Act but also failed to maintain regular books of accounts in terms of section 44AA of the Act. The non-production of audited books and financial statements and further failure on the part of assessee to explain nature & source SBN deposited during the demonetisation period eventually persuaded the Ld. AO to proceed *ex-parte* and frame the assessment to the best of judgement u/s 144 of the Act with two additions viz; (a)



₹36,50,952/- as profit estimated @4% of business turnover and (b) ₹4,73,000/- as unexplained money u/s 69A r.w.s. 115BBE of the Act out of SBN deposits made..

4. The assessee impugned the aforestated additions in first appeal before Ld. NFAC. Without disturbing the addition made u/s 69A r.w.s. 115BBE of the Act the Ld. NFAC has partly allowed the appeal of the assessee by trimming the profit estimation to @1.5% of business turnover as against @4% estimated by the Ld. AO. Still aggrieved by the part relief, the assessee instituted the present appeal u/s 253(1) of the Act with two substantive grounds *vis-à-vis* prayer viz; (a) to restrict the addition to net profit @0.3% of sales achieved instead of gross profit @1.5% computed/estimated by Ld. NFAC and (b) to delete the addition made u/s 69A as the same was devoid of merits and as baseless.

5. We have heard the Ld. DR Mr Reddy and subject to rule 18 (supra) perused the material placed on record and



considered the facts in the light of settled position of law and we note that, the assessee admittedly did not file return for the year under consideration, further he does neither maintained any books for his business nor such were audited u/s 44AB of the Act. On the other hand, when the appellant called upon to explain the nature & source of SBN deposits made by him into his bank account during the demonetisation, the appellant opted out from responding the same to the satisfaction of Ld. AO. Thus, in the absence of any convincing documents in support of appellant's claim of not requiring to file return of income for the year under consideration and further failure to explain nature & source of SBN deposits, the Ld. AO proceeded *ex-parte* u/s 144 of the Act and determined the total income to the best of his knowledge by aforesaid two additions, which *prima-facie* cannot be faulted with except for violation of principle of natural justice owing to lack of reasonable opportunity to the appellant to negate the observations and prove it otherwise with cogent evidences.



6. When matter travelled to first appellate authority, the Ld. NFAC restricted the profit estimation to @ 1.5% of turnover as against profit estimation of 4% computed by the Ld. AO. In adjudicating this issue, the Ld. NFAC not only failed in carrying out necessary independent enquiries but also failed to ascertain the correctness of profit estimation arrived by the Ld. AO. While doing so, the Ld. NFAC simply turn blind eye to the submissions of the appellant and founded its decision on a thin-ice of facts narrated before Ld. AO. Further while trimming the rate of profit estimation on the business turnover as per the State VAT return, the percentage of estimation of profit adopted by the Ld. NFAC was neither confronted to the appellant and nor was subjected to verification by him or by Ld. AO u/r 46A of IT-Rules, 1962. The said action of the Ld. NFAC in our considered view thus, not only suffered from reasonable opportunity (i.e. natural justice) but also suffered from the compliance of provisions of rule 46A (supra), hence deserves to be set-aside on this score alone.



7. Insofar as the addition u/s 69A r.w.s. 115BBE of the Act is concerned, it remained undisputed that, neither during the course of assessment nor in first appellate proceedings the appellant could effectively prove his claim that the amount SBN deposits were solitarily representing his surplus cash balance arisen to him out of regular business activities. On the other hand, in the absence of records showcasing the grant of reasonable opportunity to the appellant to establish the same in aforesaid terms, we see no strong reasons to displace appellant's prayer for one more opportunity to prove the claim with supporting evidences including audited cash book, bank book, financial statements and necessary reconciliation statement (if any) prepared and maintained for his business.

8. We also note that, in arriving the impugned adjudication, the Ld. NFAC did also fail to provide clearly the point of determination, his independent findings and reasoning in (a) denying the appellant claims to restrict profit estimation to 0.30% of sales turnover and (b) confirming the addition made



u/s 69A of the Act. The impugned adjudication in our view is therefore in consonance with provision of s/s (6) of section 250 of the Act, thus also deserving to be set-aside to meet the end of justice.

9. In view of the aforesaid findings, we are constrained to set-aside the impugned order and remand the file back to the Ld. NFAC for de-novo adjudication in accordance with law after obtaining remand report from the Ld. AO. Needless to mention that, the appellant shall at both the stages of remand proceedings be accorded separate & effective opportunity to represent his case on merits.

10. In result, the appeal of the assessee is partly allowed for statistical purposes in aforesaid terms.

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

**-S/d-
PAVAN KUMAR GADALE
JUDICIAL MEMBER**

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

Panaji/Dt: 04th February, 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 |

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