



BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA Nos. 090/PAN/2024

Assessment Year : 2017-18

Kishor Vasant Chougule
Prop. Om-Ganesh cloth &
Utensils Centre, Chougule Building,
261, Bazar Lane, Benadi, Belgavi.
PAN:AURPC144Q

..... *Appellant*

V/s

The Income Tax Officer,
Ward-1, Nippani

..... *Respondent*

Appearances

Assessee by: None for the Assessee

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

Date of conclusive Hearing : 05/02/2025

Date of Pronouncement : 06/02/2025

ORDER

PER G. D. PADMAHSHALI, AM;

The DIN & Order No. ITBA/APLS/S/250/2023-24/1060781139(1)
dt. 12/02/2024 passed u/s 250 of the Income-tax Act, 1961 [for short
'the Act'] by the Addl./Jt. Commissioner of Income Tax, Appeals-2,
Mumbai [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 under challenge by the assessee u/s 253(1)
of the Act.



2. The case was called twice for hearing; none appeared at the behest of the appellant. After glimpses of issue involved in the present appeal, with the able assistance from respondent we deem it fit to reject the application for adjournment and 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 facts of the case are that;**

3.1 The assessee is an individual and was identified as Non-Filer. On the basis of information that the assessee deposited huge 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. 21/02/2018 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 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 details of SBN deposited in HDFC bank, Form 26AS, Computation of Income for the year under consideration, Earlier years ITR etc.



3.2 From the incomplete submissions, it revealed to the Ld. AO that, the assessee was dealing in cloth & utensil business and as per State VAT returns for the year under consideration the assessee had annual business turnover of ₹63,11,489/-. The Ld. AO noted that in-spite of having taxable income computed @8% of aforesaid turnover the assessee failed to furnish the return under the Act. The non-furnishing of ITR and failure on the part of assessee to explain nature & source of ₹5,88,500/- out of the total SBN of ₹10,13,500/- deposited into his HDFC bank account maintained with Nippani Branch 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) ₹5,04,919/- as profit estimated @8% of business turnover and (b) ₹5,88,500/- as unexplained money u/s 69A r.w.s. 115BBE of the Act out of SBN deposits made.

3.3 Aggrieved only by the addition made u/s 69A the assessee preferred an appeal before the Ld. CIT (A), which came to be dismissed for the want of evidential documents in support of the claim of the assessee.



4. We have heard the rival submission and subject to rule 18 of ITAT Rules, 1963 perused material placed on record. We note that for the year under consideration, the appellant had deposited total sum of ₹15,63,500/- into his HDFC bank account (supra). Of the deposits a sum of ₹10,13,500/- were deposited in the form of SBN. The Ld. AO accepted the appellant explanation regarding nature & source of part SBN deposits that it was out of surplus of cash balance from his business activities. The explanation regarding balance SBN deposits that it was belonging to his family members did not inspire any confidence to the Ld. AO, which resulted into addition u/s 69A r.w.s. 115BBE of the Act. Though the matter travelled in first appeal before the Ld. NFAC, but the assessee was indifferent in explaining the nature & source of balance SBN deposits with credible evidences. In the absence of cogent evidence in support of appellant's explanation, the Ld. NFAC upheld the addition and dismissed the appeal of the assessee. Thus, the effective failure on the part of the appellant to discharge onus by adducing necessary & cogent evidences in support of his claim that the balance SBN was indeed belonging to his family members, resulted into impugned addition and its sustenance.



5. From the impugned order on the other hand, we observed that, during the course of first appellate proceedings the Ld. NFAC vide two bullet notices issued one after another instantaneously called upon the assessee to comply & produce requisite details in less than a reasonable period which clearly suggest these were only a paper opportunity granted to create audit trail and not with an intent to seek real compliance. In view of ratio laid in ‘CIT Vs Panna Devi Saraogi’ [1970, 78 ITR 728 (Cal.)] the opportunity of being heard should be real, reasonable and effective, the same should not be for namesake, it should not be a mere paper opportunity. In the case of ‘Smt. Ritu Devi Vs CIT’ [2004] 141 Taxman 559 (Mad.), time of just few days granted to assessee to furnish reply was also held as denial of real opportunity and proceedings were set-side.

6. In view of the aforestated discussion, we are of considered view that, the action of the Ld. NFAC is suffered from sufficiency of reasonable opportunity to the appellant to adduce necessary evidential material in support of his claim. Therefore, placing reliance on Hon’ble High court of Patna judgement in ‘St. Paul’s Anglo Indian Education Society’ (2003) 262 ITR 377 (Pat)’, we are mindful to hold



that the impugned adjudication is unjustified as the appellant was deprived of reasonable opportunity and time to produce all relevant documents to substantiate his claims that the balance SBN was belonging to his family member. In the event we deem in all the fairness and in larger interest of justice necessary to accord one more real opportunity to the appellant to comply with notices and contest the impugned addition on merits.

7. In view of hereof, without offering any comments on merits of the case, we set-aside the impugned order and remit it back to the file of the Ld. NFAC with a direction deal therewith *de-novo* and pass speaking order u/s 250(6) of the Act preferable in three effective hearing opportunities.

8. 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: 06th February, 2025

Copy of the Order forwarded to :

1. The Appellant.
4. PCIT Concerned

2. The Respondent.

5. DR, ITAT, Panaji Bench, Panaji

-S/d-

**G. D. PADMAHSHALI
ACCOUNTANT MEMBER**

3. The CIT(A)/NFAC Concerned

6. Guard File

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