



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**

Sr	ITA No	Assessment Year	Appellant	Respondent	PAN
1	139/PAN/2024	2011-12	Uday Anant Kamat	Asstt. Commissioner of Income Tax, Circle-1(1), Panaji, Goa	ADQPK0025Q
2	140/PAN/2024	2012-13			
3	223/PAN/2024	2009-10			
4	224/PAN/2024	2010-11			

**Appearances**

Assessee by: Mr Nishant Thakkar ['Ld. AR']

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

सुनवाई की तारीख / Date of conclusive Hearing : 26/06/2025

घोषणा की तारीख / Date of Pronouncement : 30/06/2025

**ORDER**

**PER G. D. PADMAHSHALI;**

This bunch of assessee's appeals filed u/s 253(1) of the Income-tax Act, 1961 ['the Act'] challenges respective orders passed by the National Faceless Appeal Centre, Delhi ['Ld. NFAC'] u/s 250 of the Act involving four assessment years 2009-10 to 2012-13 ['AY'] which stemmed respectively from separate penalty orders passed u/s 271AAA/217(1)(c) of the Act by Asstt. Commissioner of Income Tax, Circle-1(1), Panaji ['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. Since facts involved in this bunch of appeals and issue dealt therein are common & identical and since arising out of a common search, on rival party's request these appeals for the sake of brevity & convenience are heard together for being disposed-off by this common & consolidated order.

4. In adjudicating these matters together, the first appeal listed at Sr No 1 viz; ITA No. 139/PAN/2024 is taken as lead case; resultantly our adjudication laid in succeeding paragraphs shall *mutatis-mutandis* apply to remaining appeals listed at Sr. No 2 to 4.

### **ITA No. 139/PAN/2024**

5. As we note that, a search action on '**M/s Kamat Construction Pvt. Ltd.**' was carried out on



31/01/2012 wherein certain incriminating materials were found. On the basis of such materials re-assessment proceedings against the assessee was initiated and consequential assessment u/s 153C r.w.s. 143(3) of the Act was framed. Pursuant thereto a penalty proceedings u/s 271AAA of the Act in relation to addition made on account of 'deemed dividend' was initiated. The said penalty proceedings by order dt. 30/10/2017 ultimately culminated where a penalty @10% of undisclosed amount was levied.

6. Aggrieved by aforestated imposition of penalty, the assessee filed an appeal before Ld. NFAC on 28/11/2017, which came to be dismissed *ex-parte*. Aggrieved thereby the assessee came in present appeal on as many as nine grounds, which since inconsonance with rule 8 of ITAT-Rules-1963, hence reproduction thereof in verbatim is dispensed with.



7. Without going into legal & meritorious grounds of appeal, we have heard rival party's common submissions on the ground concerning (ground number 8) not passing a speaking order by the Ld. NFAC and subject to rule 18 (supra) 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.

8. We note that, by the impugned order the Ld. NFAC confirmed the penalty levied u/s 271AA of the Act on a solitary premise that, the quantum addition made while framing the assessment u/s 153C r.w.s. 143(3) of the Act was upheld & confirmed by the Ld. Co-ordinate bench of the Tribunal. While coming to such conclusion and decision, the Ld. NFAC did neither appreciate the facts of the case independently nor could lay reasoning in support such conclusion.



9. No doubt the penalty proceeding derive its genesis from the assessment proceedings, however the proceedings for the levy of a penalty are independent and thus they are altogether distinct & separate from assessment proceedings. There is much less identity & connectivity between assessment proceedings and penalty proceedings. The latter are self-determining proceedings, that may, in some cases, follow as a consequence of the assessment proceedings. The tax authorities while dealing with later proceedings cannot base their decision merely by extrapolating their findings & observations from assessment order. Neither the imposition of penalty nor its approval in first appeal can solitarily be founded on Tribunal's quantum adjudication, as the fate of quantum addition in second appeal *per-se* in our considered view could hardly form a basis for imposing a penalty or confirming such penalty in first appeal.



10. Further we are also heedful to the restriction placed by clause (b) of sub-section (1) of section 251 of the Act which obligates the Ld. NFAC/CIT(A) to adjudicate the appeal against an order imposing a penalty, either to **confirm** or **cancel** such order or **vary** it so as either to enhance or to reduce the penalty without the right to remand the matter back *except* in the circumstance provided in law. While exercising the jurisdiction u/s 251(1)(b) r.w.s. 250(6) of the Act, the Ld. NFAC/CIT(A) is mandated to **state point of determination, its decision thereon** and **clear reasons therefore**. Any order to be regular & legal, it must comply with the former threefold dictates. An order passed in first appeal without adhering to former threefold stipulations *de-facto*, in our considered view suffers from the compliance of s/s (6) of section 250 of the Act, therefore *in limine* deserves to be set-aside without going into merits.



11. The Hon'ble Jurisdictional High Court in the case of '*CIT Vs Premkumar Arjundas Luthra (HUF)*' [2016, 240 Taxman 133 (Bom)] had occasion to deal with the issue of non-speaking *ex-parte* order passed by the first appellate authority. Therein Hon'ble Lordships have held that; it shall be obligatory on the part of first appellate authority to deal with the merits in the manner provided in the statute even in case of non-prosecution of appeal by the assessee. While adjudicating the issue under appeal an obligation thus is on the first appellate authority to identify the issue assailed, draw a conclusion based on material with a clear reasons therefore. It is a trite law as laid down by Hon'ble Supreme Court in case '*Chandra Kishore Jha Vs Mahavir Prasad*' reported in 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'.



12. In the present case, since impugned adjudication is merely based on Tribunal's quantum appeal adjudication and further since not dealt in a manner provided in s/s (6) (supra) therefore rendered itself irregular. For the reasons and in view of juridical precedents (supra), we set-aside the impugned order for its remittance to the file of Ld. NFAC with a direction to deal therewith a fresh in accordance with law and pass a speaking order in consonance with s/s (6) of section 250 of the Act. The ground thus stands allowed for statistical purposes.

**13. These appeals in result stands partly allowed for statistical purpose in aforesaid terms.**

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: 30th June 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.