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
1	175/PAN/2025	2018-19	Dy./Asstt. Commissioner of Income Tax, Central Circle, Belagavi	M/s Potdar Brothers PAN : AABFP5440N 3125, Khade Bazar, Belagavi-590001.
2	176/PAN/2025	2019-20		
3	177/PAN/2025	2020-21		
4	179/PAN/2025	2021-22		
5	180/PAN/2025	2022-23		

Appearances

Assessee by: Mr Pramod Vaidya ['Ld. AR']
Revenue by: Mr M Satish ['Ld. DR']
Date of conclusive Hearing: 17/11/2025
Date of Pronouncement : 18/11/2025

ORDER

PER BENCH(3:2);

This bunch of five appeals instituted u/s 253(2) of the Act by the appellant Revenue impugns separate orders all dt. 03/03/2025 passed u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter]

by the learned Commissioner of Income Tax Appeals-2, Panaji Goa [‘Ld. CIT(A)’ hereinafter] which in turn correspondingly arisen out of separate orders of assessment passed u/s 143(3) r.w.s. 147 of the Act by captioned assessing officer [‘Ld. AO’ hereinafter] all dt. 29/03/2023 in relation to assessment years 2018-19 & 2022-23 [‘AYs’ hereinafter].

2. Since interwoven issue counselled in this bunch of appeals is common & identical in nature, on rival party’s request and for the sake of brevity, they are heard together for being disposed off by a common & consolidated order. For adjudication ITA No 175/PAN/2025 (Sr-1) is taken as lead case, resultantly the adjudication laid in succeeding paragraphs of this order in lead case (supra), shall *mutatis mutandis* apply to all the remaining captioned appeals (Sr-2 to 5) and be read & treated accordingly.

3. **Pithily stated facts of the lead case are that;**

3.1 The assessee partnership firm engaged in the trading business of gold & silver jewellery & bullion etc. For AY 2018-

19 the assessee filed its return of income [‘ITR’ hereinafter] on 26/10/2018 declaring total income of ₹1,54,36,889/- which was summarily processed u/s 143(1) of the Act.

3.2 On Potdar Group of cases a search & seizure action u/s 132 of the Act on 08/11/2021 was carried out and alongside a survey action u/s 133A of the Act on connected group cases was also carried on 09/11/2021. Pursuant to former action and incriminating material found & seized therein and statement recorded during therefore, the case of the assessee was subjected to reassessment by issue of notice u/s 148 and consequential assessment u/s 147 of the Act completed wherein a solitary addition of 30% of total payments made to karigars (artisan labours) during the year was made.

3.3 Aggrieved assessee filed an appeal u/s 246A of the Act before first appellate authority which was allowed vide para 4.9 to 4.12 which reads as under;

4.9 The Hon'ble Supreme Court in the case of Mehta Parikh & Co. Vs CIT 30 ITR 181 held as under;

"ITA No.1375 to 1378/Bang/2016 "In the instant case a mere calculation of the nature indulged in by the ITO or the AAC was not enough, without any further scrutiny, to dislodge the position taken up by the assessee, supported as it was, by the entries in the cash book and the affidavits put in by the assessee before the AAC"

Thus, in law, cross-examination is the interrogation of a witness called by one's opponent. Section 138 of the Indian Evidence Act 1872 provides that a witness will be first examined in chief, and then if the adverse party deems fit, cross-examined and if the party calling him so desires, be re-examined. Therefore, the corollary to the rule of fairness and justness is that statement of those witnesses referred to relied upon by the Revenue should be subjected to be cross-examined by the assessee to ascertain the truth or veracity of the statement. Thus, we can say that one of the corollaries of the rule of hearing is the rule regarding the cross-examination of witnesses.

Likewise, oral argument, the legitimacy of inferences to be drawn from facts and circumstances on records etc. are subsidiary to the rule of hearing. The opportunity to afford cross-examination is the sine qua non of due process of taking

evidences and no adverse inference can be drawn against a party unless the party put on a notice of the case made out against it.

The appellant also filed details pertaining to employees whose statement was recorded regarding paying back of 30% to appellant. The appellant vehemently contested that the amount paid by the appellant was subjected to TDS and the Karagir had considered the same amount for taxation in his person income tax return.

Thus, no cash was paid back to appellant. The chart below depicts the said contention of the appellant. The appellant also filed copies of ITR of these Karigars for year under consideration.

4.10 In view of the above discussion, I am of the considered opinion that the AO has not considered the documentary evidences furnished by the appellant to establish the labour charges are genuine.

The genuineness of payments are substantiated by the appellant with documentary evidences viz confirmation letters of the karigars, their IT Returns showing entire payments shown as their income, bank account statement wherein, payments were credited and as such, the AO has not brought any single instance of inflation of payment as discussed by him except reliance on statement of karigars ignoring the retraction made by them duly supported by documentary

evidences. Moreover, the statement recorded shall have impact on payment made to a particular Karigar only. In the impugned case, the Ld. AO recorded statement of few Karigars and applied disallowance ratio on entire labour charges. Such assumption is not an appropriate yardstick to compute disallowance.

4.11 Besides above, the AO also failed to provide opportunity to the appellant to examine the Karigars who had deposed against the appellant. It is well settled preposition of law that the law provide for cross examination opportunity before using any adverse material against the appellant. The AO has denied such opportunity on the ground that they had admitted that they return 30% of payments to Shakeel Torgal, accountant of the appellant. Therefore, the AO has grossly erred in law depriving the appellant from cross examination and hence, the addition made by the AO is unsustainable. Moreover, the amount received by Karigars is fully offered to tax by them, thus there is no revenue leakage to department.

4.12 In the light of the above legal pronouncements and the facts of the appellant's case, it is observed beyond doubt that the additions made on account of inflation of expenditure to Karigars is not sustainable in law and the same is deleted. Accordingly, the addition of Rs.1,48,29,452/- made by the AO is deleted.

(Emphasis supplied)

4 Aggrieved by like action adopted by the Ld. CIT(A) in granting the relief to respondent assessee for the assessment years 2018-19 to 2022-23, the Revenue came in present bunch of appeals on following common grounds;

> ***1. Whether, on the facts and in the circumstances of the case, the CIT(A) was right in Law in allowing the appeal of the assessee ignoring the fact that the receipt of 30% of the payment made to Karigars was admitted by Karigars in their statements recorded on oath u/s 131 of the Income Tax Act 1961. The admission was not only made by the Karigars but also by the partners of the assessee-firm in their respective statements recorded on oath u/s 132(4) of the Income Tax Act, 1961 as well as u/s 131 of the Act on various occasions during the course of search and post search proceedings.***
>
> ***2. Whether, on the facts and in the circumstances of the case, the CIT(A) erred in allowing the appeal of the assessee without appreciating the fact that the retraction statements were filed by the Karigars and Shri Shakeel Torgal after a period of more than 300 days that too without any documentary evidence.***
>
> ***3. Whether, on the facts and in the circumstances of the case, the CIT(A) erred in allowing the appeal of the assessee without considering the fact that the assessee did not furnish the bank statements and I.T.***

Returns of the Karigars during the course of assessment proceedings and this fact was mentioned in the assessment order itself. The bank statements and ITRs of the Karigars if at all filed during the course of appellate proceedings, ought to have not taken into account as additional evidence by the CIT(A) as he has not allowed the Assessing Officer a reasonable opportunity to examine the evidence OR document; OR to produce any evidence OR document in rebuttal of the additional evidence produced by the assessee.

4. Whether, on the facts and in the circumstances of the case, the CIT(A) erred in allowing the appeal of the assessee without appreciating the fact that the opportunity of cross examination with the Karigars was denied based on the facts of the case. The Karigars who are working in the premise of the assessee-firm are highly obliged to the partners and the assessee-firm for the business. Therefore, the cross examination will not serve any purpose.

5 In the course of hearing, the Ld. DR at the very outset has commonly alleged that; the impugned orders not only suffered from compliance of rule 46A of Income Tax Rules, 1962 [‘IT-Rules’ hereinafter] but transgressed the provisions of s/s (1) of section 251 and s/s (6) of section 250 of the Act.

6 Sticking ground number 3 of appeal, the Revenue argued that, from the incrementing material seized during the course of search it revealed to the Ld. AO that, the assessee debited excessive & incommensurable labour charges towards in-house as well as contracted (outsider) karigars/labours for cashback arrangements from them. The Ld. AO called upon the assessee and the respective karigars/artisans to adduce bank accounts statements where such payments were credit to disprove the findings. Upon assessee's failure to dismantle the unwavering findings with key evidences like 'bank statements' of karigars/artisans, the Ld. AO had no option but to disallow such disproportionate labour charges. However while making additions the Ld. AO was very reasonable to disallow only 30% of such labour charges paid to karigars/artisans as excessive. *Au contraire*, in first appellate proceedings, these additions were deleted in tandem for all the years without vouching key evidences & merits of the cases but by outdoing the provisions of rule 46A (supra) and section 250(6) of the Act.

7 The sum & substance of Revenue's common contention for these appeals is that, the impugned first appellate adjudications were culminated; (a) without verification of facts narrated or brought before him by the responded assessee, (b) without satisfying the litmus test of rule 46A (supra) in admitting the fresh evidences(if any) placed before him (c) without carrying out or causing any enquiry into the claims of respondent assessee made on the basis of such admitted fresh evidences (d) without granting an opportunity to the Ld. AO to repute the claims made and (e) without calling for remand reports from the field etc. and more imperatively (f) without the key evidences like bank statements of karigars/artisans to whom alleged excessive payment were made for cashback arrangements, which founded the very reasons for disallowance/addition. In cementing that the impugned orders infracted the provisions of s/s (1) of section 251 of the Act and the provisions of rule 46A (supra), the Ld. DR submitted alleged that purported action of the Ld. CIT(A) in deleting the entire addition is devoid of evidence, merits hence unsustainable in law.

8 ***Per contra,*** while crisscrossing the vehement argument of the Revenue the Ld. Senior counsel Mr Vaidya also commonly submitted that, though such banks statements of alleged karigars/artisan would conclusively prove the case of the respondent assessee that, there was complete absence of any such cashback arrangements, but such bank statements were never asked during the assessment proceedings by the Ld. AO nor the Ld. CIT(A) called upon the assessee or artisans to adduce them in the course of first appellate proceedings. Without prejudice to rightful claim of the respondent against the other grounds, the Ld. Vaidya conceded to request of Ld. DR that such bank statements may be allowed to be placed for verification before the Ld. CIT(A) who after admitting them u/r 46A (supra) vouch the issue *de-nova* after seeking remand from the Ld. AO. The Ld. Vaidya however coaxed the bench for restricting Ld. CIT(A)'s power for enhancement of income on remand but strictly for a limited purpose of alleged dispute and with an appropriate direction for speedy disposal on remand.

9 We have heard the rival party's submission and subject to rule 18 of ITAT-Rules perused the material placed on record and considered the facts of the case in the light of settled position of law and noted that, there is much less dispute between rival parties that, the impugned orders suffered from the compliance of provisions of rule 46A of IT-Rules, s/s (1) of section 251 and s/s (6) of section 250 of the Act.

10 As we note from the index of respondent's paper book that, in the course of proceedings before both the tax authorities the respondent assessee had only filed copy/copies of (a) ITR, Computation of income of respondent assessee (b) reply in response to notice issued 142(1) of the Act, (c) written submission before AO, (d) statement of labour charges payment made to in-house & other karigars/artisans for the year under consideration (d) ITR, computation of income and affidavits of karigars/artisans and (e) ledger of account of karigars from the audited books of account of the assessee firm.

11 It remain admitted fact by the respondent assessee that, neither during the assessment proceedings nor in the first appellate proceedings the respondent assessee could adduce 'bank statements' of karigars/artisans to whom the disproportionate labour charges alleged to have been made/paid by the respondent assessee verification of which could have established or otherwise dismantled the alleged cashback arrangement. However without verification of such cogent material evidences, the first appellate proceedings were culminated on the basis other additional evidence placed before him. Further while doing so, the Ld. NFAC neither recorded his satisfaction u/r 46A(2) (supra) as to why such additional evidences qualifies admission nor confronted the same to the Ld. AO for verification/comments. The former unceremonious action in allowing the additional evidences and in turn the appeal the Ld. NFAC sidestepped the provisions of rule 46A of the Act. For the reasons, in our considered view the impugned adjudication rendered irregular, in the eye of law.

12 We note that, in the case of *'Prabhavati Shah Vs CIT'* [1998, 100 Taxman 404 (Bom)] their Hon'ble Lordship had occasion to consider whether Rule 46A is intended to put fetters on the right of the assessee to produce before NFAC/CIT(A) any additional supporting evidence. After considering section 250 r.w.r 46A their lordships have held that if certain evidences are necessary for deciding controversy, the CIT(A) has all rights calling for additional evidence, however before admitting the same he is duty bound to give opportunity to AO to consider & cross examine or rebut such additional evidence. Failure on the part of first appellate authority to do so was held violative of rule 46A (supra).

13 Similarly in the case of *'CIT Vs Gani Bhai Wahab Bhai'* [1998, 97 Taxman 310 (MP)], it was also held by their Hon'ble Lordships that, though additional evidence can be admitted at appellate stage but while admitting the CIT(A) was required/mandated to ensure compliance with rule 46A and further admission of such evidence came on board first time should be subject to comments of AO for their consideration.

14 Going a step further the Hon'ble Delhi High Court in *'CIT Vs Jansampark Advertising & Marketing (P) Ltd.'* [2015, 231 Taxman 384] has held that, where assessment is completed in the absence of evidences or submissions etc., the appellate authorities as having noticed such lack of evidences etc., are duty bound to remit the issue for proper verification to the file of assessing officer.

15 Indisputably in the present appeals, the incriminating material seized in the course of search action coupled with statement of karigars/artisans and the firm recorded thereat founded the very basis for disallowance for alleged cashback arrangement. The rival party's concurrence that, this very basis of could have been pulled to pieces with the help of banks statements of such karigars/artisans. However, the respondent assessee could place no or at least not shown to have adduced a shred of evidence before Ld. CIT(A) to prove that the labour charges debited/paid both in-house artisans and contracted artisans were neither disproportionate to the services rendered or work carried out by them nor there was any cashback flown to the assessee.

16 In view thereof we complete in agreement with the Ld. DR that, the impugned adjudications are devoid of evidence, lacks merits, thus suffered from infirmity. Further, clinching factual position that the additional evidences considered by the Ld. CIT(A) in first appellate were since neither dealt in accordance with rule 46A (supra) nor were put for Ld. AO's comment, the impugned therefore deserves to be set-aside for their remand to the files of Ld. CIT(A) at the stage of their institutions for *de-nova* adjudications with a direction to deal the disputed disallowances/additions alone in accordance with law and pass separate speaking orders in terms of s/s 250(6) of the Act. Ordered Accordingly. The ground number 3 thus stands partly allowed.

17 In result, these appeals of the Revenue are PARTLY ALLOWED for statistical purposes in aforestated terms.

U/r 34 of ITAT-Rules, this order is pronounced in the open court on date mentioned herein before.

-S/d-	-S/d-
PAVAN KUMAR GADALE	**G. D. PADMAHSHALI**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Panaji/Dt: 18th November, 2025. (3AM:JM2)

Copy of the Order forwarded to :

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.