

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No.1589/PUN/2024
Assessment Year : 2013-14

Tanaji Parilal Gawade Gawadewadi, Wadebolhai, Wagholi, Pune – 412207	Vs.	ITO, Ward 12(4), Pune
PAN: AJIPG9156G		
(Appellant)		(Respondent)

Assessee by : Shri Bharat Shah
Department by : Shri Arvind Desai, Addl. CIT-DR
Date of hearing : 15-01-2025
Date of pronouncement : 10-02-2025

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 27.05.2024 of the Ld. CIT(A) / NFAC, Delhi relating to assessment year 2013-14.

2. This is the second round of litigation before the Tribunal. Facts of the case, in brief, are that the assessee is an individual and proprietor of M/s. Hindavi Developers engaged in business of development and sale of plots in rural areas to the needy customers. He filed his return of income on 30.09.2013 declaring total income of Rs.12,82,228/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) on 16.01.2014. The case was selected for scrutiny as per norms under the ‘CASS’. Accordingly, statutory

notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee along with the questionnaire, in response to which, nobody attended. However, a copy of return of income along with Profit and Loss Account and copy of bank statement and deed of purchase and sale agreements furnished on 03.11.2015. The Assessing Officer thereafter issued another notice u/s 142(1) of the Act along with a detailed questionnaire asking the assessee to file the relevant details on or before 24.11.2015. In response to this, the assessee filed part submissions like copy of bank statements, expenses vouchers, etc. However, the requisite details were not filed. The Assessing Officer thereafter issued a final show cause letter dt 23.02.2016 asking the assessee to furnish the relevant details on or before 29.02.2016 giving last opportunity. It was also mentioned that in absence of furnishing the requisite details before the specified date the assessment will be completed u/s 144 of the Act. Since the assessee did not file any details in response to the same, the Assessing Officer proceeded to complete the assessment on the basis of relevant details furnished which are available on record.

3. From the details filed by the assessee, the Assessing Officer noted that the assessee has shown gross profit of Rs.64,54,018/- on total sales of Rs.2,23,77,000/- which is around 28.85% of gross sales and net profit declared at Rs.15,25,227/- is about 6.80% of the total sales. He noted that although the turnover of the assessee exceeds Rs.1 crore, however, the assessee had not filed the tax audit report during the course of assessment proceedings as requisitioned as per notice dated 01.09.2015.

4. The Assessing Officer noted that the assessee has claimed deduction u/s 80C of the Act at Rs.1,50,000/- being the interest paid on housing loan obtained from Janata Sahakari Bank Ltd. However, the assessee has furnished the certificate for the period from 01.04.2014 to 31.03.2015 which is not for the relevant period of assessment in question i.e. relevant to assessment year 2015-16. Further, the certificate does not contain the details of property for which the loan is granted. In absence of all these details, the claim of assessee u/s 80C of the Act of Rs.1,50,000/- being interest paid for self occupied property was disallowed by the Assessing Officer.

5. The Assessing Officer further noted from the bank statement of Saraswat Co-operative Bank Ltd., Kharadi Branch, Pune that the assessee has made cash deposit of Rs.113,23,000/- during the relevant assessment year. He therefore, asked the assessee to produce proof and source of cash deposits made in the said account. The assessee in response to such notice submitted vide letter dated 11.12.2015 that cash deposited into the bank account is against the payments received towards booking amount and installment, advances received from selling of plots from various customers mainly from rural areas. In order to substantiate his claim of cash deposits in the bank account, the assessee did not furnish cash book along with receipt books from whom cash has been received. Further, according to the Assessing Officer, the assessee has not substantiated as to whether the cash was available on the date when the deposits were made. In absence of any details before him, the Assessing Officer made addition of the entire amount of

Rs.113,23,000/- to the total income of the assessee treating the same unexplained cash deposits. The Assessing Officer further noted that the assessee has shown Rs.62,29,700/- as sundry creditors under the head “Current liabilities” in the balance sheet. He therefore, asked the assessee vide notice dated 10.11.2015 to furnish full details of the parties along with balance confirmation outstanding as on 31.03.2013 incorporating the details such as name, address, PAN in the prescribed format. In absence of furnishing of the same, the Assessing Officer made addition of Rs.62,29,700/-.

6. The Assessing Officer similarly disallowed interest paid to SREI Finance of Rs.48,754/-, excess depreciation claimed on JCB at Rs.3,12,419/- and printing & stationary expenses of Rs.1,97,968/- and entertainment expenses of Rs.3,75,124/- in absence of proper details. Thus, the Assessing Officer determined the total income of the assessee at Rs.1,97,65,230/- as against the returned income of Rs.12,82,228/-.

7. The assessee filed an appeal before the Ld. CIT(A) / NFAC, who dismissed the appeal for want of prosecution. The assessee filed the appeal before the Tribunal and the Tribunal vide order dated 28.07.2021 restored the issue to the file of the Ld. CIT(A) / NFAC with a direction to decide the issue afresh.

8. The Ld. CIT(A) / NFAC upheld the action of the Assessing Officer in completing the assessment u/s 144 of the Act in absence of any evidence filed before him. So far as the various other grounds are concerned, the Ld. CIT(A) /

NFAC rejecting the explanation and submissions made by the assessee, held that the assessee could not substantiate with evidence to his satisfaction regarding the various additions made by the Assessing Officer. He accordingly upheld the action of the Assessing Officer.

9. Aggrieved with such order of the Ld. CIT(A) / NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

- 1) *The Commissioner of Income Tax Appeals erred in passing an order of dismissing the appeal when it was requested for personal hearing through VC mode. Although VC notice was issued the assessee being non-conversant with procedure could not communicate with the notice and hence VC remained unattended. The order passed without giving proper opportunity to the assessee of being heard deserves to be cancelled and just and proper relief be granted to the assessee.*
- 2) *The Commissioner of Income Tax Appeals erred in passing an order of dismissing the appeal when the detailed submission was made for legal Ground of Appeal and Appeal was adjudicated without considering the submission on the legal Ground of Appeal. Just and proper relief be granted to the assessee.*
- 3) *The learned assessing officer erred in exercising jurisdiction u/s 144 of the Income Tax Act when the required submissions were made during the course of assessment proceedings before completing the assessment and the assessment was completed on 23/03/2016 without appreciating the submissions made and hence the assessment so completed u/s 144 be cancelled and just and proper relief be granted to the assessee.*
- 4) *Without prejudice to the above legal Grounds of Appeal deduction of Rs.150000/- on account of interest paid on bank loan for self occupied residential house property be allowed. Just and proper relief be granted to the assessee in this respect.*
- 5) *Without prejudice to the above legal Grounds of Appeal learned assessing officer has erred in appreciating the fact that the cash deposits of Rs.11323000/- in the bank account is the cash received from customers and is included in the audited sales of his proprietorship and still this sum was added to the returned income under the guise that cash deposits made into bank account are unexplained. Hence the addition so made be kindly deleted.*
- 6) *The learned assessing office has erred in adding a sum of Rs.6229700/- on account of sundry creditors when this sum was payable to the land owner*

for purchase of land and is already paid in the next financial year. The addition made by the assessing officer under the guise that the sundry creditors are unexplained be deleted.

- 7) *The addition of Rs.197968/- made on account of disallowance of expense for printing and stationery when entire expense is incurred for business purpose. The addition so made be deleted.*
- 8) *The assessing officer has erred in treating the entertainment expenses of Rs.375124/- as in genuine when entire expenses are incurred for business purpose. The addition so made be deleted.*
- 9) *The appellant prays to be allowed to add, amend, modify, rectify, delete, raise any ground of appeal before or at the time of hearing.*

10. The Ld. Counsel for the assessee strongly challenged the order of the Ld. CIT(A) / NFAC in confirming the additions made by the Assessing Officer. He submitted that the assessee is engaged in plotting business in rural areas. He purchases land and after plotting the same, sells to the customers. The books of account of the assessee were audited u/s 44AB of the Act and the auditors have not pointed out any defects in the accounts. Referring to the paper book containing 13 pages, the Ld. Counsel for the assessee drew the attention of the Bench to the various details filed before the Assessing Officer on 03.11.2015, 11.12.2015 and 08.03.2016 which were uploaded in the portal of the Assessing Officer. Similarly, referring to the various pages of the paper book, he drew the attention of the Bench to the submissions made before the Ld. CIT(A) / NFAC on 25.04.2024. He submitted that without considering the submissions of the assessee made from time to time, the Assessing Officer completed the assessment u/s 144 of the Act without rejecting the books of account. He submitted that since the entire cash deposited in the bank account is out of sale proceeds either by way of advance or on account of sale, the Assessing Officer was not justified in making the addition as unexplained

cash. So far as the sundry creditors are concerned, he submitted the copies of agreements from whom the land was purchased along with the amount payable were given to the Assessing Officer. The agreements contain the full details of the creditors. The Assessing Officer could have verified the same by using the powers vested with him. He accordingly submitted that the addition on account of sundry creditors is not warranted.

11. So far as the various other additions made by the Assessing Officer are concerned, he submitted that the same are exorbitantly high considering the nature of business of the assessee.

12. So far as the denial of deduction u/s 80-C of the Act on account of interest on housing loan is concerned, the Ld. Counsel for the assessee drew the attention of the Bench to the certificate issued by the bank on 02.11.2017 which was submitted before the Ld. CIT(A) / NFAC but which has not been considered by him. He accordingly submitted that the order of the Ld. CIT(A) / NFAC be set aside and the grounds raised by the assessee be allowed.

13. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the Ld. CIT(A) / NFAC. He submitted that the assessee despite given the opportunity by the Assessing Officer, did not file the requisite details for which the Assessing Officer has completed the assessment on the basis of material available on record and the part compliance given by the assessee. He submitted that in an *ex-parte* order the Assessing Officer need not to reject the books of

account and go for specific addition. He submitted that since the Assessing Officer in the instant case has passed a very reasonable order the same should be upheld and the grounds raised by the assessee should be dismissed.

14. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. It is an admitted fact that the assessee during the course of assessment proceedings has filed certain details but not filed the details as required by the Assessing Officer. The assessee in his submission has explained the source of such cash deposits as amounts received towards booking amount, installment amount and advances received from selling of plots from the various customers mainly from the rural areas. The assessee has also filed the copy of sundry creditors against the land purchase and the copy of purchase agreements as per its submission on 11.12.2015. Similarly, vide letter dated 08.03.2016 filed before the Assessing Officer, the assessee has again explained the cash deposited in the bank account as against the payments received on booking amount, installment amount, advances received from selling of plots from the various customers, etc. The assessee has also filed Xerox copy of certain major expenses such as advertisement, development expenses, petrol and diesel expenses, machinery hiring charges vide letter dated 11.12.2015 filed before the Assessing Officer. At the same time, the requisite details in the format as asked by the Assessing Officer were not filed to the satisfaction of the Assessing Officer.

15. We find this is the second round of litigation before the Tribunal and the assessment year involved in the present appeal is assessment year 2013-14. The assessee has filed various details before the Assessing Officer though not according to his satisfaction. In our opinion and considering the nature of business carried on by the assessee and the turnover disclosed which is mainly received in cash and since it is also not the case of the Assessing Officer that total deposits in the bank account both cash and through cheques / DD etc. far exceeds the turnover disclosed by the assessee, the addition of the entire cash deposited in the bank account appears to be on the higher side. So also, the disallowance of sundry creditors especially when the assessee has given Ledger copy of various parties from whom land was purchased. At the same time, by not furnishing the full details as per the satisfaction of the Assessing Officer, the claim of the assessee that no addition is called for cannot be accepted. Since the assessee in the instant case is engaged in plotting business and full details were not given before the Assessing Officer in the manner in which it should have been given as per the direction of the Assessing Officer and since the assessment year involved is assessment year 2013-14 which is very old and litigation must come to an end, therefore, considering the totality of the facts of the case and in the interest of justice, we are of the considered opinion that the estimation of income @ 10% of the total turnover of Rs.2,23,77,000/- as mentioned by the Assessing Officer in the assessment order will meet the ends of justice. We, therefore, direct the Assessing Officer to estimate the income @ 10% of sale of Rs.2,23,77,000/- which comes to Rs.22,37,700/-. Since the assessee has filed a copy of the interest certificate from

the bank showing the repayment of principal amount of Rs.72,643/- and interest amount of Rs.3,59,357/- totaling to Rs.4,32,000/- for the period between 01.04.2012 to 31.03.2013 which was also filed before the Ld. CIT(A) , we direct the Assessing Officer to allow the consequential deduction as per the provisions of section 80-C of the Act and interest on self occupied house property. The grounds raised by the assessee are accordingly partly allowed.

16. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 10th February, 2025.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER
पुणे Pune; दिनांक Dated : 10th February, 2025
GCVSR

Sd/-
(R. K. PANDA)
VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	16.01.2025		Sr. PS/PS
2	Draft placed before author	16.01.2025		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			