

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

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

आयकर अपील सं. / ITA No.1036/PUN/2025
निर्धारण वर्ष / Assessment Year : 2018-19

Shamrao Gopal Benake, Survey No.1484, M. No.363, At Post Mangao, Chandgad, Kolhapur- 416509. PAN : AQUPB8361K	Vs.	ITO, Ward-1(1), Kolhapur.
Appellant		Respondent

Assessee by	:	Shri Deepak Chintaman Gadgil
Revenue by	:	Shri Akhilesh Srivastva

Date of hearing : 23.07.2025
Date of pronouncement : 12.08.2025

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 21.02.2025 passed by Ld. CIT(A)/NFAC for the assessment year 2018-19.

2. The assessee has raised the following grounds of appeal :-
- “1. Learned AO was not correct in proceeding further with the impugned assessment proceedings as the whole proceedings were lacking in legality.
 - 2. Hon'ble Appellate Authority was not justified in remitting back the case to the file of the AO, as the same has been done in complete disregard to the CBDT Instructions to the contrary, as

well as in complete disregard to the serious issues raised by the appellant with respect to legality of the case, which needed attention of the Appellate Authority on priority basis.

- 3. The appellant wishes to make a detailed submission on these issues of legality of the case at the time of hearing of the case, which may please be allowed.*
- 4. The Appellant craves leave of Your Honors to add / alter / delete any of the above cited grounds on or before the date of hearing of this appeal.*
- 5. The appellant makes a humble request to please grant a personal hearing on the case.*

3. Facts of the case, in brief, are that the assessee is an individual engaged in the business of purchasing, processing and selling of cashews. As per the information available with the Department that the assessee has made huge withdrawals and deposits in cash into his bank account maintained with Canara Bank & The Ajara Urban Co-operative Bank Ltd. and the income tax return for the relevant period has not been furnished, a show cause notice dated 19.03.2022 u/s 148A(b) of the IT Act was issued to the assessee. However, the assessee did not comply with the above notice and order dated 31.03.2022 u/s 148A(d) was passed. The case of the assessee was reopened u/s 147 of the IT Act and notice dated 31.03.2022 u/s 148 of the IT Act was issued to the assessee. Subsequently, the statutory notices u/s 142(1) of the IT Act and show cause notice u/s 144 of the IT Act were also

issued to the assessee. Since the assessee did not furnish any reply the copy of bank statements were called u/s 133(6) of the IT Act from the banks. In response to notice u/s 148 of the IT Act the assessee furnished his return of income on 27.04.2022 declaring income of Rs.7,44,520/-, however the same was not verified and it was treated as invalid return. Vide order dated 01.03.2023 Assessing Officer completed the assessment u/s 147 r.w.s. 144 r.w.s. 144B of the IT Act determining total income of Rs.2,09,06,834/-. The above assessed income includes unexplained money u/s 69A of the IT Act of Rs.1,58,85,877/- (29,89,877 + 1,28,96,000) and business income of Rs.50,20,957/- calculated at the rate of 10% of remaining credits of Rs.5,02,09,578/- of Canara Bank (6,31,05,578 - 1,28,96,000).

4. Being aggrieved with the above assessment order an appeal was furnished before Ld. CIT(A)/NFAC. After considering the written submissions of the assessee, Ld. CIT(A)/NFAC without adjudicating the grounds of appeal, set-aside the case to the Assessing Officer for fresh adjudication by observing as under :-

“6.0 Decision & Reason.

6.1 In this instant case the appellant had not filed his return of Income for the relevant Assessment Year 2018-19. Further, on the basis of information received by the A.O., it was found that during the relevant previous year the appellant has made cash deposit amounting

to Rs.29,89,877/- in the bank account maintained by him. Further, the appellant had made cash withdrawal of Rs. 1,28,96,000/- during the F.Y.2017-18, relevant to the A.Y.2018-19. Therefore, the case of the appellant was selected for scrutiny.

6.2 Accordingly, the notice u/s. 148 of Income Tax Act was issued to the appellant requesting the appellant to file the return of income for the A.Y.2018-19. In response, the appellant filed his return of income declaring total income at Rs.7,44,520/- for the A.Y.2018-19.

Further, during the re-assessment proceedings the appellant had not complied to the notices and show-causes issued to the appellant.

Therefore, the Assessing Officer had passed Assessment Order which u/s. 147 r.w.s.144 r.w.s. 144B of the Income Tax Act making addition of Rs. 29,89,877/- on account of unexplained cash deposit u/s 69A of the IT Act and addition of Rs. 1,28,96,000/- on account of unexplained money u/s.69A of the IT Act. Further, the A.O. has observed that there were total credits of Rs.6,31,05,578/- in the account of the appellant, out of Rs. 1,28,96,000/- has already been considered as unexplained money u/s.69A of the IT Act. Therefore, the A.O. had treated the remaining amount of Rs.5,02,09,578/- (6,31,05,578 1,28,96,000) as business receipts and estimated profit from business & profession 10% of Rs.5,02,09,578/- which comes to Rs.50,20,957/- and added the same to the total income of the appellant while completing the assessment proceedings u/s.147 r.w.s.144 r.w.s.144B, dt. 01.03.2023 for the A.Y.2018-19.

6.3. During the instant appellate proceedings, the appellant has submitted some additional arguments which were not made before the Assessing Officer. These arguments require consideration by the Assessing Officer.

6.4 As per the newly inserted proviso to section 251(1)(a) of the Act. Commissioner (Appeals) in case of order of assessment made u/s. 144 of the Act, may set aside such assessment and refer the case back to the AO for making a fresh assessment. This proviso has been inserted in the Act w.e.f. 01.10.2024. The said proviso to section 251(1)(a) of the Act is reproduced as under:

"251. (1) In disposing of an appeal, the Commissioner (Appeals)] shall have the following powers-

1. in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

[Provided that where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment;]

6.5 Thus, as per the new provisions coming into effect from 01.10.2024, the CIT(A) has been granted powers to set-aside an assessment to an Assessing Officer in a case where the assessment order has been issued u/s. 144 of the Income Tax Act. As in the present case the assessment order has been issued u/s. 147 r.w.s.144 r.w.s.144B of the IT Act by the Assessing Officer and there are issues which need to be further examined and scrutinized by the Assessing Officer, it is a fit case for set-aside of assessment made by the Assessing Officer.

6.6 Therefore, the assessment order passed by the Assessing Officer u/s . 147 r.ws. 144 r.w.s. 144B of the Act dated 01.03.2023 is hereby set aside for making fresh assessment, de-novo. Needless to say that the Assessing Officer should, while conducting the set aside proceedings, give proper opportunities of representation to the appellant. The appellant is also directed to comply with all the notices/correspondences issued by the Assessing Officer.

6.7 The grounds raised by the appellant are not adjudicated. The case is set-aside for re-adjudication afresh by the Assessing Officer.

7.0. The appeal is allowed for statistical purpose.”

5. It is the above order against which the assessee is in appeal before this Tribunal.

6. Ld. AR appearing from the side of the assessee submitted before us that the order passed by Ld. CIT(A)/NFAC is unjustified. Ld. AR submitted before us that he has furnished two written submissions before Ld. CIT(A)/NFAC, first on 16.04.2024 and second on 16.05.2024 respectively, however Ld. CIT(A)/NFAC passed the order u/s 250 on 21.02.2025 i.e. after a gap of nearly 8 months which is in complete disregard of CBDT Instruction No.20 of 2003 dated 23.12.2003 and CBDT Instruction No. F.No. 279/MISC/53/2003-ITJ dt. 19-06-2015 respectively. Ld. AR

explained that in both the above instructions CBDT has directed Commissioner of Income Tax (Appeals) to pass orders within 15 days of the last hearing. Accordingly, it was contended that the delay of nearly 8 months by Ld. CIT(A)/NFAC in passing the appellate order, despite written submissions being filed on 16.04.2024 and 16.05.2024, is in clear violation of binding administrative instructions issued by the Central Board of Direct Taxes.

7. Ld. AR further submitted that the assessee has raised legal grounds before Ld. CIT(A)/NFAC against the validity of the notices as well as assessment, however Ld. CIT(A)/NFAC without adjudicating the above legal grounds set-aside the assessment order and remanded the case back to the file of Assessing Officer to reframe the assessment afresh *de novo*. Ld. AR contended that Ld. CIT(A)/NFAC was bound to adjudicate all the grounds including legal grounds raised before him and therefore the order passed by Ld. CIT(A)/NFAC is bad in law. Ld. AR explained before us that the assessee has raised total 8 grounds before Ld. CIT(A)/NFAC and ground nos. 1 to 4 were legal grounds wherein validity of issue of notice for reassessment itself was challenged. Ld. AR submitted that the assessee furnished written submissions with regard to

above grounds of appeal however Ld. CIT(A)/NFAC failed to adjudicate the above legal grounds which is illegal and bad in law. In support of above contention, Ld. AR relied on various decisions passed by coordinate benches of this Tribunal wherein the appeal of the assessee was allowed and the matter was remanded back to the file of Ld. CIT(A)/NFAC to decide each and every grounds separately including the legal grounds. Accordingly, Ld. AR requested before the bench to set-aside the order passed by Ld. CIT(A)/NFAC and further requested to remand the matter back to the file of Ld. CIT(A)/NFAC with a direction to decide all the grounds including legal grounds as per the mandate of provisions of section 250(6) of the IT Act.

8. Ld. DR appearing from side of the Revenue relied on the orders passed by subordinate authorities however no serious objection was raised by him on the request of the Counsel of the assessee to set aside the matter back to the file of LD CIT(A) for deciding all the grounds including legal grounds raised by the assessee .

9. We have heard Ld. counsels from both the sides and perused the material available on record including the paper book consisting of 103 pages furnished by the assessee. In this regard,

we find that the case of the assessee was reopened on the basis of huge deposits and withdrawal from bank accounts maintained by the assessee, however no return was furnished by the assessee. Notice u/s 148A(b) was issued and order u/s 148A(d) was also passed. During the reassessment proceedings, the assessee furnished income tax return in response to notice issued u/s 148 of the IT Act, however the return could not be verified and was treated as an invalid return. During the reassessment proceedings, various notices were issued to the assessee but he remained absent and consequently the assessment order was passed *ex-parte*. In first appeal the assessee challenged the validity of notices as well as the validity of reassessment along-with other grounds. However, we find that Ld. CIT(A)/NFAC without adjudicating any grounds has simply remanded the matter back to the file of Assessing Officer to pass the assessment order afresh *de novo*. In this regard, we may refer section 250(6) of the IT Act which reads as under :-

“Section 250

(6) The order of the [Joint Commissioner (Appeals) or the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”

10. Considering the totality of the facts of the case, we find force in the above arguments of Ld. counsel of the assessee that in the light of section 250(6) of the IT Act, Ld. CIT(A)/NFAC is mandatorily required to pass a reasoned order addressing each ground of appeal raised by the assessee. And failure to adjudicate all grounds, specifically legal grounds, violates this statutory mandate and principles of natural justice. Accordingly, we hold that Ld. CIT(A)/NFAC was duty bound to decide each and every ground separately by a speaking order, and specifically when legal grounds against the validity of notice and reassessment are raised, it was compulsory for Ld. CIT(A)/NFAC to decide the legal grounds raised before him. Since the matter was simply remanded back for reframing the assessment without adjudicating any of the ground including the legal grounds, the order of Ld. CIT(A)/NFAC cannot be sustained and deserves to be set-aside.

11. In view of our above discussion, we deem it appropriate to set-aside the order passed by Ld. CIT(A)/NFAC and remand the matter back to his file with a direction to decide the appeal afresh, adjudicating all the grounds including legal grounds raised by the assessee before him, after providing reasonable opportunity of

hearing to the assessee. Accordingly, ground no.2 raised by the assessee is partly allowed.

12. Since the matter has been remanded back to the file of Ld. CIT(A)/NFAC to decide the appeal afresh by adjudicating all the ground raised before him by the assessee, we are not adjudicating ground no.1 raised before us. Ground nos.3, 4 & 5 are general in nature hence not adjudicated.

13. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 12th day of August, 2025.

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

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12th August, 2025.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “B” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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