

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.29/Asr/2022
Assessment Year: 2012-13**

Late Sh. Ashok Kumar Goel Legal Heir Sh. Sahil Goel Hoshiarpur. [PAN:-AGZPG4222D] (Appellant)	Vs.	National Faceless Appeal Centre (NFAC), Ministry of Finance, Delhi. (Respondent)
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Appellant by	None.
Respondent by	Sh. Nakul Aggarwal, Sr. DR

Date of Hearing	07.06.2023
Date of Pronouncement	15.06.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’], order passed u/s 250of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y.

2012-13. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-4, Hoshiarpur, [in brevity 'the AO'] order passed u/s 144r.w.s. 147 of the Act.

2. The assessee has taken the following grounds:

“1. That in the facts and circumstances of the case and in law, the order passed by NFAC is arbitrary, whimsical, intractable and without any substance therefore deserves to be quashed/sat-aside to the file of NFAC (CIT-A).

2. That in the facts and circumstances of the case and in law, the NFAC erred in confirming the order passed by learned AO without paying heed to the fact that adjournment was sought owing to unfortunate demise of the assessee concerned which was ignored.

3. That in the facts and circumstances of the case and in law, the order passed by NFAC deserves to be set-aside on the footing that request for adjournment was on record but was negated for reasons best known to the authority concerned.

4. That in the facts and circumstances of the case and in law, the NFAC erred in confirming additions without peeping deep into the facts and categorically ignored the ratio of decisions falling in line with extending opportunity of being heard.

5. That in the facts and circumstances of the case and in law, the NFAC erred in confirming additions without considering the aspect of fair-hearing, intention to act in a judicial manner, proceed with the judicial spirit and come to a judicial conclusion.

6. That without prejudice to any adverse consequences that may follow, the assessee in the facts and circumstances of the case and in law presses into force for due adjudication of the matter all grounds pressed in appeal before the NFAC i.e. CIT(A) for due consideration of the Hon'ble Bench.

7. The assessee reserves his right to add, amend, waive, substitute, delete any additional ground of appeal prior to its adjudication by the Hon'ble Bench.

8. Any other relief as the Bench may feel appropriate in the facts & circumstances of the case and in law.”

3. Brief fact of the case is that the assessee was running a business in the name of M/s Goel Ice Mills, Una Road, Near Shimla Pahari Chowk, Hoshiarpur. The Id. AO after due verification ascertained that the undeclared income was Rs.2,84,438/- related to the assessee's business. After an order of the Civil Judge, Junior Division, Hoshiarpur dated 09.10.2017 in the case of Vipan Kumar vs. Ashok Kumar pronounced the decree in favour of the plaintiff by giving the final finding

that M/s Goel Ice Mill is partnership firm and not a proprietorship firm. The assessee declared his income as Rs.2,84,438/- as proprietor of M/s Goel Ice Mill. The ld. AO added back the income u/s 144 in the hands of the assessee. Being aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld. AO. Being aggrieved the assessee filed an appeal before us.

4. The appeal was called for hearing but none was present on behalf of the assessee. Accordingly, the ld. AR for the assessee filed an adjournment petition before the bench and prayed for adjournment. The ld. AR informed that the assessee is in process of obtaining some documents from the department which has not been released so far. But the ld. AR had not mentioned in proper documents related to nexus with the appeal. The bench rejected the adjournment petition and proceeded to dispose the appeal after hearing the ld. counsel.

5. The ld. DR first invited our attention in appeal order page 2 to 4 para 3 the relevant para is extracted as below:

“3. Facts of the case

1.As per information available with A.O.’s office a TEP category UIN No. 18066955 was received in ward-1 Hoshiarpur. Further a CPGRAM No. DORVU/E/2018/01206 Dated 15.06.2018 was also received from CA Flimanshu Goel,

S/o Sh. Vipran Kumar Goel, R/o Mall Road, Hoshiarpur which was transferred from ITO, Ward-1, Hoshiarpur as per order of Pr. Commissioner of income Tax-1, Jalandhar vide No. Pr. CIT/JAL-1/Tech/order u/s 127/2018-19/2312 dated 25.10.2018 to ward-4, Hoshiarpur in the case of Sh. Ashok Kumar S/o Sh. Rounaki Ram, M/s Goel Ice Mills, Una Road, Near Shimla Pahari Chowk, Hoshiarpur in which main allegation was that the assessee said mill is avoiding tax (both income tax as well as sales tax). After obtaining approval u/s 133(6) of the Income Tax Act, 1961 assessee was asked on 17.01.2019, to "furnish a certified copy of PAN alongwith the ITRs of the firm for the last six year i.e. 2012-13 to 2017-18 and if not filed then why the income of M/s God ice Mills, Prop Sh. Ashok Kumar Una Road, Hoshiarpur was to be treated as the Income the firm, Sh. Ashok Kumar claimed to be proprietor of Goellce Mills, Una Road, Hoshiarpur and filed his ITR for the A.Y. 2012-13 on 08.06.2012. He replied in the individual capacity but he could not produce any satisfactory reply during the year that he was proprietor of firm. Therefore, the returned declared income at Rs. 2,84,438/- by him as proprietor of Goel Ice Mills, Una Road, Hoshiarpur was deemed to be the income of the assessee firm. As no return had been filed by the assessee firm hence income amounting to Rs. 2,84,438/- is deemed to have escaped

assessment within the meaning of clause(a) to explanation 2 to section 147 of the income Tax Act, 1961, for the A.Y, 2012-13.

2. Assessee firm in response to query letter u/s 133(6) vide No.4489 dated 17.01.2019 filed a written reply.

On verification it was found that the assessee had filed his return of income for the A.Y. 2012-13 on 08.06.2012 in the individual capacity and claimed as proprietor of the firm. But, according to para 19 of the order dated 09.10.2017, passed by the Civil Judge (Junior division.) in the Case of Vipin Kumar Vs. Ashok Kumar, received from the office of the Pr. Director of Income Tax (Inv.), Ludhiana through the office of Joint Commissioner of Income Tax, Hoshiarpur Range, Hoshiarpur wherein the Hon'ble Civil judge (Junior Divisions) Hoshiarpur held, as follows: -

“it follows that Goyal Ice Factory is partnership firm and is not a sole proprietorship as it has been admitted by DCI Ashok Kumar (defendant No.I) himself in his cross examination that Surinder Nath and Ashok Kumar became partners of the Goyal Ice Mill in the year 1977 and a partnership deed, dated 01.04.1977 was executed. He also admitted that as per partnership deed dated 01.04.1977 he alongwith Surinder Nath was having 35% share each and Vijay Kumar was having 30%

share in said firm. He has also admitted that till date the said partnership has not been changed."

2. After going through the reply and facts on record, it was found that Sh. Vipin Kumar son of Surinder Nath son of Raunki Ram filed a suit in the court of Civil Junior Judge; Hoshiarpur on 15.03.2019 against Sh. Ashok Kumar involving two issues which are asunder:

1. Whether M/s Goel Ice Mill is a partnership firm and whether applicant is partner of the said firm.

2. Whether plaintiff is entitled for rendition of accounts.

An order dated 09.10.2017 by the Civil judge (Junior Division), Hoshiarpur in the case of Vipin Kumar versus Sh. Ashok Kumar pronounced the decree in favour of the plaintiff by giving the final finding that Goel Ice Mill was a partnership firm and not a proprietorship concern in which Surinder Nath having 35% share each and Vijay Kumar having 30% share in said firm. Thus, it was clear that Goel Ice Mill was a firm and the contention of the assessee that our partnership firm stood dissolved w.e.f. 2002 on the death of one of the partner was not accepted as it was clear from the order of Civil judge (Junior Division), Hoshiarpur. A number of notices u/s 148 dated 31.03.2019, u/s 142(1) dated 22.08.2019, 11.10.2019 and 08.11.2019 were issued. In response to these notices, assessee

firm did not file its return of income, therefore, there was no alternative left behind than to frame the assessment u/s 144 of the Act to the best of A.O's my judgment and on the basis of material available on record, the returned income declared at Rs. 2,84,438/- by him as proprietor of Goel Ice Mills, Una Road, Hoshiarpur was treated to be the income of the partnership firm. As assessee has not filed return of income for the firm salary and interest paid to partners were not allowable."

6. We heard the rival submission and considered the documents available in the record. The assessee's case is adjudicated in *ex parte* in both the appeal and assessment. The assessee has placed an adjournment petition before the Id. CIT(A) but the Id. CIT(A) was never treated and had not allowed the adjournment.

6.1 The assessee specifically mentioned about the denial of reasonable opportunity. We find that the assessee should get another opportunity to submit his documents before the revenue authorities. The Id. DR had not made any strong objection against the view of the bench. In our considered view, we remit back the matter to the Id. CIT(A) for further adjudication *de novo*. Needless to say, the assessee should get a reasonable opportunity of hearing in set aside proceeding.

7. In the result, the appeal of the assessee bearing **ITA No. 29/Asr/2022** is allowed for statistical purposes.

Order pronounced in the open court on 15.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

Sd/-

(ANIKESH BANERJEE)
Judicial Member

True Copy
By order