

Shri Prakash Yadav v. ITO, Ward 2(4), Ballia, U.P.

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CIRCUIT BENCH "SMC", VARANASI**

**BEFORE RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.51/VNS/2022  
Assessment Year:2012-13

Shri Prakash Yadav, Rampur, Boha, Akhar, Ballia-277401, Uttar Pradesh PAN:AGVPY3320Q (Appellant)	v.	Income Tax Officer, Ward-2(4), Ballia-277401, U.P. (Respondent)
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Appellant by	Shri O. P. Shukla, Advocate & Shri Abdhesh Dubey, Advocate
Respondent by	Shri A. K. Singh, Sr. D.R.
Date of hearing	11/01/2023
Date of pronouncement	11/01/2023

**ORDER**

This appeal in I.T.A. No.51/VNS/2022 for assessment year 2012-13 has arisen from the appellate order dated 28/09/2022 (DIN & order No. ITBA/NFAC/S/250/2022-23/1046072529[1]) passed by learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre(NFAC), Delhi (Hereinafter called "CIT(A)" ) under section 250 of the Income-tax Act, 1961(hereinafter called "the Act"), the appellate proceedings before Id. CIT(A) had arisen from assessment order dated 12.12.2019 passed by Id. Assessing Officer(hereinafter called "the AO") u/s 144 read with Section 147 of the 1961 Act(ITBA/COM/F/17/2019-20/1022201265(1)).

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2. The grounds of appeal raised by assessee in memo of appeal filed with Income-Tax Appellate Tribunal, Varanasi Circuit Bench, Varanasi (hereinafter called “the tribunal”) reads as under:

“1. Because the Ld. Commissioner of Income Tax (A) was not justified to dismiss the appeal by invoked the provision of section 249(4)(b) of the income tax Act through **the appellant is a agriculturist and except the agricultural income having no any other source of income.Hence the agricultural income has exempt from the tax, hence the assessee has not filed the return of income.** Therefore the liability for admitted tax could not be arise. The decision of CIT(A) non admission in contrary to facts and law and therefore his order of not admitting the appeal is liable to be set aside.

2. Because the Ld. Commissioner of Income Tax (A) was not justified by invoked the provision the assessee has not paid advance tax, it is worthwhile to mention that as per the provision of income tax Act the advance tax liabilities is being determined as per provision as per section 210 by the previous income not for the income earn during the year.

3. Because the Ld. Commissioner of Income Tax (A) was not justified that the reason recorded u/s 148 for reassessment were not provided to the appellant before completion of assessment and only on the basis of AIR information regarding cash deposited in the bank Rs.1130000.00 has reopen the assessment u/s 148 which in unlawful and consequently the reassessment order framed on the basis of such notice is unlawful and is liable to the quashed.

4. Because the Ld. Commissioner of Income Tax (A) was not justified that on the account of non admitting the appeal, did not decided any ground of merit which is unlawful and therefore the CIT(A) order is liable to be setaside.

5. Because the Ld. Commissioner of Income Tax (A) was not justified that the addition made by the assessing officer Rs.1130000.00 on account of **cash deposited in the bank against sale proceeds of agricultural incomewhich is non taxable** under the provision of law. The addition made by the A.O. is unlawful and is deserve to be quashed.

6. Because the Ld. Commissioner of Income Tax (A) was not justified to dismissed the appeal u/s 249(4)(b) of the income tax Act, the appellant place reliance on the judgment of Hon'ble ITAT New Delhi in case of **Paramanand Sharma Vs ITO vide ITA no. 3292/DEL/2019** whether the Hon'ble ITAT has held that,

“The appellant income is not taxable, during the provision of the Act, there can not be any obligation upon the assessee to pay advance tax. I find that the first appellate authority has not decided the appeal on merit of the case. Therefore in

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*the interest of justice and fair play I deemed it fit to restore the appeal to the file of CIT(A). The CIT(A) is directed to decide the appeal fresh on the ground before him after affording a reasonable and fair opportunity of being heard to the assessee."*

7. *Because the Ld. Commissioner of Income Tax (A) was not justified to dismissed appeal by invoking the provision of section 249(4)(b) of the income tax Act, **The appellant has only the agricultural income**, hence the said provision may not be applicable in the appellant case. And order passed by the Commissioner of Income Tax (A) is deserve to be quashed.*

8. *Because, the appellant craves for a right to raise any additional ground during the course of hearing of the case before Hon'ble ITAT.*

9. *Because the order passed by the Commissioner of Income Tax (A) is erroneous, bad in law and on facts and is liable to be quashed."*

3. At the outset, it is observed that this appeal is filed by assessee with tribunal late by 29 days beyond the time prescribed under the provision of Section 253(3) of the 1961 Act. The assessee has filed an application for condonation of delay requesting to condone the delay in filing this appeal with tribunal late beyond the time prescribed under the provisions of Section 253(3) of the 1961 Act, and claim is made that the assessee is agriculturist and was not aware about limitation period for filing the appeal before the tribunal, and it is claimed that the assessee also took time to find new counsel who can argue the matter before the tribunal, and hence delay in filing this appeal with tribunal. It is also claimed that the assessee was having income only from agriculture and hence there was no liability to pay income-tax and file return of income. The assessee did not filed return of income , and also the assessee did not enter appearance before the Assessing Officer in the assessment proceedings as well the assessee did not enter appearance before learned CIT(A) in the appellate proceedings , and both the authorities below have passed ex-parte orders . The Learned counsel for the assessee made prayers for condoning the delay, by narrating the aforesaid background

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of the assessee as well facts and circumstances of the case. Learned Sr. D.R. submitted that this appeal is filed late by the assessee beyond time prescribed under statute, but fairly submitted that keeping in view facts and circumstances of the case the Bench may take a decision about condoning delay of 29 days in filing this appeal by assessee with tribunal. After hearing both the parties, I observe that the assessee has claimed itself to be a farmer and claim is made that the assessee has no other income apart from agricultural income , and hence the assessee has claimed that he was not liable to pay income-tax and filereturn of incomewith the department. The assessee has stated the factum of being agriculturist in statement of fact filed with ld. CIT(A) as well in grounds of appeal raised in memo of appeal filed with the tribunal.The assessee has filed written submissions before tribunal and similar claim of being agriculturist and having income only from agriculture is reiterated. It is claimed that the assessee being agriculturist was not aware of limitation period as is provided u/s 253(3) for filing of the appeal with tribunal. There is a delay of 29 days in filing this appeal. I have also observed that the assessment order passed by the Assessing Officer u/s 144/147 was an ex-parte order, and further that the appellate order passed by learned CIT(A) was also an ex-parte order , as the assessee did not enter appearance before both the authorities. Ignorance of law is no excuse , but at the same time there is no presumption that every citizen of this country know all the laws of this country. The presumption of imputing knowledge of law to a person depends upon facts and circumstances of case. The assessee has now submitted application for condoning delay of 29 days in filing the appeal before the tribunal , and prayer were made to condone the delay as the delay took place because of lack of knowledge about limitation period in filing the appeal before tribunal as well to

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locate the counsel to file the appeal, and also claim is being made of being agriculturist having only source of income from agriculture and hence not required to pay tax and file return of income. Keeping in view the facts and circumstances of the case in totality as well in the interest of substantial justice, I am of the view that delay of 29 days in filing this appeal belatedly by the assessee need to be condoned. When substantial justice is pitted against technicalities, the Courts will lean towards substantial justice, unless malafide on the part of litigant is at writ large in filing the appeal belatedly. In the instant case, I have observed that prima facie there is no malafide on the part of the assessee in filing this appeal late beyond the period prescribed under the Act and the assessee is not likely to gain anything by filing this appeal late by 29 days beyond the time prescribed u/s 253(3) of the 1961 Act. Reference is drawn to the judgment and order of Hon'ble Supreme Court in the case of ***Collector, Land Acquisition v. Mst. Katiji & Ors. , reported in 1987 AIR 1353(SC) ; 1987 SCR(2) 387.*** Thus, keeping in view the ratio of above decision and facts & Circumstances of the case, I observe that the assessee has shown sufficient cause and I condone 29 days delay in filing this appeal with tribunal belatedly by the assessee beyond the time prescribed u/s 253(3) of the 1961 Act. I, now, proceed to hear the appeal on merits.

4. The assessee did not file return of income with the Revenue for impugned assessment year. Notice u/s 148 dated 27.03.2019 was issued by AO, which was duly served on the assessee. Later on the Assessing Officer issued notice u/s 142(1) alongwith questionnaire , dated 01.08.2019 which was claimed by AO to have been duly served on the assessee. The assessee did not enter appearance before the Assessing

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Officer nor adjournment application was filed, and further no reply on merit was furnished by the assessee before the AO, to the notices issued by the Assessing Officer. Show cause notice was issued by AO u/s 144 of the Act, dated 08/11/2019 which was duly served by AO on the assessee, but the same was not complied with by the assessee as the assessee did not appear before the AO nor sought adjournment and even no reply was filed. The Assessing Officer observed that the assessee has deposited cash of Rs.11,30,000/- in his saving bank account maintained with IDBI Bank Limited, Ballia Branch, Ballia, and despite several opportunities granted to the assessee, the assessee has not come forward to submit any explanations with respect to aforesaid cash deposits of Rs. 11,30,000/- in his bank account, which led AO to make additions to the income of the assessee to the tune of Rs.11,30,000/- , vide assessment order dated 12/12/2019 passed by AO u/s 144/147 of the 1961 Act.

5. Aggrieved by assessment framed by AO, the assessee filed first appeal before learned CIT(A) , who observed that there is a violation of provision of Section 249(4) of the 1961 Act, as the assessee has not filed return of income and no advance tax was deposited by the assessee on income of Rs. 11,30,000/- assessed by the AO. Deficiency memos were issued by learned CIT(A) dated 23/05/2022 and 21/09/2022 , but the assessee did not submit any reply before ld. CIT(A), who dismissed the appeal of the assessee in limine on the ground that there is a violation of section 249(4)(b) of the Act and hence the appeal filed by the assessee is not maintainable and cannot be admitted, vide appellate order dated 28.09.2022.

6. Aggrieved by appellate order dated 28.09.2022 passed by ld. CIT(A), the assessee has filed second appeal before the tribunal. Learned counsel for

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the assessee submitted before the Bench that the assessee is a farmer and is having agricultural income and there is no other income received by the assessee . It was submitted that since receipts of the assessee are fully exempted from income-tax , the assessee is not liable to pay any income tax on such amount and further the assessee is not liable to file return of income. The assessee has filed paper book along with the written submissions before the tribunal, which are placed on record. The ld. Counsel submitted that cash was deposited in IDBI bank , out of sale proceeds of agricultural produce. It was submitted that Khasra and Khatauni of the agricultural land owned by the assessee are filed in the paper book filed with the tribunal, along with other evidences to substantiate that the assessee is agriculturist . It was submitted that ld. CIT(A) erred in dismissing the appeal of the assessee on the ground that no advance tax was paid by the assessee, while there was infact no liability to pay advance tax on agricultural income earned by the assessee. It was prayed by learned counsel for the assessee that if one more opportunity is granted to the assessee by setting aside the matter to the file of ld. CIT(A) for denovo adjudication of appeal filed by the assessee, then the assessee will appear before ld. CIT(A) , and submit all relevant explanations/evidences to substantiate its contentions which can be verified by ld. CIT(A).

6b. Learned Sr. D.R. fairly submitted that the matter can go back to ld. CIT(A) to re-adjudicate the appeal of the assessee after considering the replies of the assessee.

7. I have considered rival contentions and perused the material on record. I have observed that the assessee has not filed return of

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income for the impugned assessment year. The case of the assessee was reopened by Revenue by invoking provisions of Section 147, and notice dated 27.03.2019 u/s 148 was issued by the AO and served on the assessee. The assessee did not file any return of income in pursuance to notice issued by AO u/s 148. The AO issued notice u/s 142(1) of the Act along with questionnaire, dated 01.08.2019, but the same remained un-complied with by the assessee. The Assessing Officer issued notice dated 08.11.2019 u/s 144 which was duly served on the assessee by AO, which also remained un-complied with by the assessee. The Assessing Officer made addition of Rs.11,30,000/- on account of cash deposited by assessee in his saving bank account maintained with IDBI Bank Limited, Ballia Branch, Ballia. The assessee filed first appeal before Id. CIT(A) which was dismissed by learned CIT(A) on the ground that the assessee has not filed return of income and has not paid advance tax, and hence there was violation of Section 249(4)(b) of the 1961 Act. The deficiency memo was earlier issued by Id. CIT(A), dated 23.05.2022 and 21.09.2022 bringing to notice of the assessee as to violation of Section 249(4)(b) and asking assessee to give explanation on the same, but both the deficiency memos issued by Id. CIT(A) remained un-complied with by the assessee. The learned CIT(A) dismissed the appeal of the assessee on the grounds that the appeal is not maintainable and cannot be admitted, in view of violation of Section 249(4)(b) of the 1961 Act. Now, the assessee has come in appeal before the tribunal and claim has been made that the assessee is a farmer having income only from agriculture. It is claimed that the assessee has no other sources of income apart from agricultural income. It is also claimed that cash of Rs. 11,30,000/- was deposited in the saving bank account of the assessee with IDBI Bank Limited, Ballia Branch, Ballia, from sale proceeds of agricultural produce. It is claimed

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that the assessee's agriculture income is not subject to income-tax and hence there was no liability to pay advance tax and to file return of income with Revenue. The assessee has placed on record copy of Khasra and Khatauni and other relevant material/evidences to prove that he is a farmer and claim is made that the income is not chargeable to income-tax and hence the assessee was not filing return of income. These are additional evidences which are filed by the assessee before tribunal for the first time, and in my view goes to the root of the matter to adjudicate the dispute between rival parties. These additional evidences are to be tested for their correctness, genuineness and authenticity, before being accepted. I am refraining to comment on merits of the issue as well on merits of evidences so filed. Thus, without Commenting on the merits of these evidences filed by the assessee which need proper verification and enquiry as to their authenticity, genuineness and correctness before their acceptance, I am of the view that the matter needs to be remitted back to the file of CIT(A) for fresh adjudication of the appeal filed by the assessee including the issue of maintainability of appeal keeping in view provisions of section 249(4)(b) of the Act. It is a matter of record that the assessee never appeared before the AO as well Id. CIT(A) nor filed any reply/submission to substantiate its stand in the first round of litigation, and hence I am of the considered view that the appeal of the assessee filed with Id. CIT(A) is to be restored to its original position. Thus, it is an open remand and all contentions are kept open. The onus is squarely on the assessee to satisfactorily explain sources of deposits and other transactions entered into by the assessee. Needless to say that powers of Id. CIT(A) are co-terminus with powers of the AO. The Id. CIT(A) shall admit evidences/explanations filed by the assessee in its defense in set aside remand proceedings. Needless to say that Id. CIT(A) shall provide

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proper and adequate opportunity of being heard to the assessee in set aside remand proceedings, in second round of litigation. I once again clarify that I have neither commented on the merits of the issue nor on the evidences so filed by the assessee. The Id. CIT(A) shall adjudicate the appeal on merit in accordance with law, un-influenced by any of the observations made by me in this order. If the assessee do not co-operate in the set aside remand proceedings before Id. CIT(A), then the Id. CIT(A) shall be free to pass appellate order on merit based on material on record and based on such further enquiries as may be made by Id. CIT(A). I order accordingly.

8. In the result, the appeal of the assessee in ITA No. 51/VNS/2020 for assessment year 2012-13 stands allowed for statistical purposes.

Order pronounced in open court on 11/01/2023 at Varanasi, U.P. at the conclusion of hearing in the presence of both the parties and reduced to writing and signed on 12.01.2023

**Sd/.**  
**(RAMIT KOCHAR)**  
**Accountant Member**

Dated:12/01/2023

\*Singh

**Copy of the order forwarded to :**

1. Appellant: Shri Prakash Yadav, Rampur, Boha, Akhar, Ballia, U.P.
2. The Respondent – Income Tax Officer, Ward 2(4), Ballia, U.P.
3. Concerned CIT
4. The Guard File
5. The Sr. D.R., I.T.A.T., Circuit Bench, Varanasi
6. The CIT(A), NFAC, Delhi/CIT(A), Ballia, U.P.