

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

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.1173/PUN/2023
Assessment Year: 2012-13**

Vilas Dinkar Paigude,
At P. Mandavi Bk,
Tal. Haveli, Pune 411 023
Maharashtra

PAN : AAUPP2955M

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 6(2), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Sourabh Nayak

सुनवाई की तारीख / Date of Hearing : 12-03-2024

घोषणा की तारीख / Date of Pronouncement : 13-03-2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the appellant directed against the order of National Faceless Appeal Centre (NFAC), Delhi, dated 14.09.2023 passed u/s 250 of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) for the Assessment Year 2012-13.

2. Briefly, the facts of the case are as under:

The appellant is an individual and no regular return of income was filed under the provisions of section 139 of the Act. On verification of the

data available on Actionable Information Monitoring System (AIMS), the AO had come to know that appellant had deposited Rs.2,36,70,000/- in the bank account and therefore, formed an opinion that income escaped assessment of tax. Accordingly, the AO issued notice u/s.148 of the Act on 30.03.2019. No return of income was filed in response to notice u/s.148 of the Act. The assessment came to be completed by the AO vide order dated 26.12.2019 u/s.143(3) r.w.s.147 at a total income of Rs.1,55,04,783/-.

3. Against the said assessment order, the appellant filed an appeal before the CIT(A), who vide impugned order dismissed the appeal as not maintainable invoking the provisions of section 249(4)(b) of the Act by holding that the appellant had not paid the advance tax on the returned income.

4. Being aggrieved, the appellant is in appeal before us in the present appeal.

5. The ld. Counsel submits that the provisions of section 249(4)(b) has no application to the facts of the case inasmuch as there is no obligation on the part of the appellant to pay advance tax.

6. On the other hand, the ld. DR has no objection to remand the matter to the file of CIT(A) for *denovo* disposal.

7. We heard the rival submissions and perused the relevant material on record. The ld. CIT(A) had dismissed the appeal *in limine* invoking the

provisions of section 249(4)(b) of the Act. The said provisions are attracted in a situation, where the appellant had neither filed return of income nor paid the advance tax. On mere reading of the assessment order, it would suggest that returned income is only Rs.1,35,209/- which means that there was no tax due on the returned income and therefore, question of paying advance tax does not arise. In such a situation, provisions of section 249(4)(b) of the Act have no application to the facts of the present case. In our considered opinion, the Id. CIT(A) fell in serious error in applying the said provisions for dismissal of appeal *in limine*. Since we have held above that the provisions of section 249(4)(b) of the Act have no application to the facts, the order of the CIT(A) is hereby set-aside and remand the matter to the file of NFAC/CIT(A) for *denovo* disposal in accordance with law after affording due opportunity of being heard to the appellant.

8. In the result, the appeal of the appellant stands partly allowed for statistical purposes.

Order pronounced in the open court on 13th March, 2024.

Sd/-
S.S. GODARA
JUDICIAL MEMBER

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 13th March, 2024
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The concerned Pr.CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
DR 'B', ITAT, Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune