

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 3720/DEL/2023
Assessment Year: 2018-19**

Vikas Hooda S/o Sh. Mukhta Singh Hooda, Pana Medan, Near Government High School, VPO Kilo, Rohtak-124401 PAN- AFMPH7022L	<u>Vs</u>	Income-tax Officer, Ward-5, Rohtak.
APPELLANT		RESPONDENT
Assessee represented by	Sh. Navin Gupta, Adv.	
Department represented by	Sh. Amit Katoch, Sr. DR	
Date of hearing	14.03.2024	
Date of pronouncement	15.03.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NfAC), Delhi, dated 28.11.2023, pertaining to the assessment year 2018-19. The assessee has raised following grounds of appeal:

"1 That the order of the Ld. CIT (A) is against law and facts.

2 That the Ld. CIT (A) erred in dismissing the appeal of the appellant, by holding that since the appellant has not filed the return of income as well as not paid an amount equal to the amount of advance tax which was payable by the appellant on assessed income, the appeal by the appellant is not liable to be admitted.

3 *That the Ld. CIT (A) erred in dismissing the appeal of the appellant, by not providing any proper opportunity of hearing.*

4 *That the Ld. CIT (A) erred in dismissing the appeal of the appellant and thereby confirmed the addition of Rs. 1,01,78,500/- made by the Ld. AO u/s 69A for cash deposited by the appellant in his bank account.*

5 *That the Ld. CIT (A) erred in dismissing the appeal of the appellant, although the Ld. AO erred in assuming jurisdiction over the case as no notice u/s 148A (b) of the Act was ever issued by the Ld. AO, as can be verified from the Income Tax Portal, which is mandatorily required to be issued u/s 148A of the Act.*

6 *That the Ld. CIT (A) erred in dismissing the appeal of the appellant, although the Ld. AO erred in ensuring the proper service of notice/order issued u/s 148A(d), 148 and 142(1) of the Act.*

7 *That the Ld. CIT (A) erred in dismissing the appeal of the appellant and thereby confirming the action of Ld. AO invoking sec. 69A and 115BBE of the Act.*

8. *That the appellant craves leave to add, alter, modify, amend or withdraw any of the ground of appeal at the time of hearing.”*

2. At the outset learned counsel for the assessee Shri Navin Gupta vehemently argued that the learned CIT(A) grossly erred in dismissing the appeal. The learned CIT(A) failed to appreciate the facts of the case in right perspective. Further, he reiterated the submissions as made in the form of ‘Facts Sheet’, submitted during the course of hearing. The submissions of the assessee are reproduced as under:

“Ld. CIT (A) dismissed the appeal filed by the appellant by not admitting it for non payment of Advance Tax u / s 249(4)(b).

Appellant didn't file any Return of Income u/s 139 as his income was below taxable limit. No Return was filed u / s 148 also.

There is no admitted tax or undisputed tax in the present matter.

<i>Total assessed income</i>	<i>1,01,78,500/-</i>
<i>Income disputed in appeal :</i>	<i>1,01,78,500/-</i>
<i>Undisputed income :</i>	<i>Nil</i>

There is no liability of appellant to pay any Advance Tax, as per the provisions of Section 2(1) 208 & 209(1)(a) of the Income Tax Act.

Ld. CIT (A) referred to Section 234B. Section 234B is only to protect the interest of revenue for any possible loss of interest and is wholly irrelevant for admissibility of the appeal.

The scheme of the Act in particular with the provision of Section 249(4), the tax to be paid by the appellant before filing of appeal to the CIT (A) is in the case of cases falling u / s 249(4)(a) where return of income is filed, the tax payable on the amount of returned income and where the case falls u / s 249(4)(b) where no return of income was filed by the appellant, the tax equal to amount of Advance Tax which was payable by him, which clearly refers to undisputed income of the appellant. The scheme of the Act in both the cases, falling in 249(4)(a) or 249(4)(b) to pay the amount of tax payable on undisputed income of the appellant, which in the instant case is Nil, as per Para 3 above. Any other interpretation would lead to forfeiture of 'right to appeal', which is statutory and inherent right of the appellant and will cast an obligation on the appellant to estimate the high pitched assessment which may be framed by the AO and to pay tax thereon, which can never be the intention of the legislature.

Appellant relies upon following judgments:-

T. Govindappa Setty 231 ITR 892 (Karn)

Hotel Sai Siddi P. Ltd 13 taxmann.com 155 (Pune - Trib)''

3. On the other hand, learned DR supported the orders of the authorities below.
4. We have heard rival submissions and perused the material available on record. We find merit into the contention of the assessee that the learned CIT(A) wrongly applied the provisions of Section 249(4)(b) as in this case there is no admitted or undisputed tax. In the case in hand the undisputed income is Nil. Therefore, there was no liability to pay advance tax as per the relevant provisions. Reliance has been placed by the assessee on the decision of coordinate Bench of

the Tribunal in the case of Hotel Sai Siddi (P) Ltd. v. DCIT, Cent. Cir. 1, Nasik [2011] 13 taxmann.com 155 (Pune), wherein in para 2 the Tribunal has held as under:

“2. So, let us deal with the appeals covering the issues of provisions of section 249(4)(a) an 249(4)(b) of the Act. For the sake of brevity, both these sections are reproduced as under:

“249(4) No appeal under this Chapter shall be admitted unless at the time of filing of th appeal:

(b) Where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or

(b) Where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax when was payable by him;”

The provision of section 249 deals with form of appeal and limitation. Sub-section (4) of section 249 deals with admission of appeal. According to the provision of section 249(4)(a), no appea shall be admitted unless at the time of filing of the appeal, the assessee has paid the tax due or the income returned by him. As per provision of section 249(4)(b) the appeal will not be admitted unless at the time of filing the appeal, the assessee has paid an amount equal to the amount of advance tax which was payable by him at the time of filing an appeal. There is also proviso to section 249(4), according to which, on an application made by the assessee in this behalf, the CIT(A) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of clause (b) of section 249(4) of the Act. On plain reading. The proviso to section 249(4) is applicable to a situation where no return has been filed by the assessee and the assessee is supposed to pay an amount equal to the amount of advance tax which was payable by him. It is obvious that Legislature intended that where the assessee has taken advantage of appeal under Chapter XX he should have paid at least admitted tax payable before the appeal is admitted. The opening words are clear enough to cover all kinds of appeal contemplated under Chapter XX and restricted meaning cannot be given or for that matter section cannot be read down. In case there is a dispute with regards to

payment of admitted tax then the matter may be remitted to CIT(A) to decide on merit for verification of payments of tax on admitted income as held by the Madras High Court in the case of CIT v. Smt. Deivamalar [2009] 329 ITR 249.”

4.1 Considering the facts of the present case and the law, we are of the view that the learned view that the learned CIT(A) has wrongly applied the provisions of Section 249(4)(b) on the facts of this case. We, therefore, set aside the impugned order of learned CIT(A) and restore the matter to the file of learned CIT(A) to decide the appeal of the assessee, on merit of the impugned addition, in accordance with law, after affording reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

5. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 15th March, 2024.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER
MP

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI