

**।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**PUNE BENCHES "B" :: PUNE**

**BEFOREMS.ASTHA CHANDRA, JUDICIAL MEMBER**  
**AND**  
**DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.388/PUN/2024**  
**निर्धारण वर्ष / Assessment Year:2018-19**

|   |        |  |
|---|--------|--|
| Vinayak Shivaji Kand,<br>Near Janta Raja Kusti Kendra,<br>Dattanagar, Lonikand, Haveli,<br>Dist.Pune – 412216.<br><br>PAN: CSTPK5082M | V<br>s | The Income Tax Officer,<br>Ward-12(3), Pune. |
| Appellant/ Revenue  |        | Respondent /Assessee                         |

|                       |                                  |
|-----------------------|----------------------------------|
| Assessee by           | Shri Sarang Gudhate – AR         |
| Revenue by            | Shri Sourabh Nayak – Addl.CIT-DR |
| Date of hearing       | 09/05/2024                       |
| Date of pronouncement | 16/05/2024                       |

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by the Assessee against the order of Ld.Commissioner of Income Tax(Appeals)[NFAC], passed under section 250 of the Income Tax Act, 1961 for A.Y.2018-19 dated 28.12.2023 emanating from the assessment order u/s.147 r.w.s 144 read with section 144B of the Income Tax Act, 1961 dated 07.03.2023. The Assessee has raised the following grounds of appeal :

“1. Under the facts and circumstances of the case and in law, Ld. CIT(A) is erred in rejecting the appeal of the assessee on the ground that assessee is not paid the Advance Tax/Self- Assessment Tax though assessee has submitted the challan with Form 35 and despite of the fact that the assessee has made part payment of Rs. 12,80,000/- before the filing of appeal and challan for the same was uploaded with the appeal. Further, both the payments are reflecting in Form 26AS.

2. Under the facts and circumstances of the case and in law, Ld. CIT(A) is erred in treating Rs.1,00,00,000/- as an unexplained investment u/s 69.

3. Under the facts and circumstances of the case and in law, Ld. CIT(A) is erred in treating Rs.6,00,000/- as an unexplained investment u/s 69.

4. Under the facts and circumstances of the case and in law, Ld. CIT(A) is erred in not allowing credit of Rs. 55,270/- as a Self-Assessment Tax.

5. The appellant craves the permission to add, amend, modify, revise, substitute, delete or alter any/all of the above grounds of appeal if deemed necessary at the time of hearing of the appeal.”

**Brief facts of the case :**

2. In this case, assessee is an agriculturalist. Assessee had sold his agricultural land during the year. Assessing Officer(AO) issued notice u/s.148 of the Act on 30.03.2022.In the assessment order, it is mentioned by the AO that assessee had filed invalid Return of Income in compliance to notice u/s.148 of the Act. However, AO has not specified how the Return of Income was invalid! It is further mentioned in the assessment order that since assessee had not filed valid Return of Income, notice u/s.143(2) of the Act was not issued and assessment was completed u/s.144 of

the Act. It is mentioned in the assessment order that assessee had filed reply along with copy of the purchase deed and other documents. AO made an addition of Rs.1,06,00,000/- u/s.69 of the Act. Aggrieved by the assessment order, assessee filed appeal before the Id.CIT(A). The Id.CIT(A) dismissed the appeal of the assessee in limine. The relevant paragraph 4 of the Id.CIT(A)'s order is reproduced here as under :

*“4. Since the appellant has not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is infructuous and is, therefore, dismissed.”*

3. Aggrieved by the order of the Id.CIT(A), assessee filed appeal before this Tribunal.

**Submission of Id.AR :**

4. The Id.AR submitted that assessee had already paid the taxes and hence Id.CIT(A) erred in dismissing the appeal as infructuous. The Id.AR invited our attention to Form No.35, Column No.8(which is part of appeal memo). The relevant Column No.8 is reproduced here as under :

|  |     |
|--|-----|
| 8. Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full | Yes |
|--|-----|

4.1 Ld.AR also invited our attention to the list of documents enclosed with Form No.35, which is also part of appeal memo to demonstrate that copy of self-assessment tax challan has been enclosed along with Form No.35. Form number 35 is the Form in which an appeal is filed before the Ld.CIT(A). Therefore, ld.AR pleaded that assessee had paid the taxes, hence, as per section 249(4), assessee's appeal is maintainable.

**Submission of ld.DR :**

5. The ld.Departmental Representative(ld.DR) for the Revenue relied on the order of ld.CIT(A).

**Findings & Analysis :**

6. We have heard both the parties and perused the records. On perusal of the records, it is observed that assessee had filed Return of Income for A.Y.2018-19 on 30.04.2022 with E-filing Acknowledgment No.604334730300422. As per the assessment order, the notice u/s.148 of the Act was issued to the assessee on 30.03.2022. Therefore, the Return of Income filed by assessee on 30.04.2022 was filed within the one month of date of issue notice

u/s.148 of the Act. Thus, assessee had filed Return of Income within the time mentioned in the notice u/s.148 of the Act.

6.1 In this case, on perusal of the Form No.35, it is apparently clear that assessee had paid self-assessment tax and enclosed copy of the challan. [Form Number 35 is the Form in which an appeal is filed before Id.CIT(A)]. Assessee has paid self-assessment tax of Rs.55,271/-, which was the Tax payable on the returned income. Before filing appeal, assessee had also paid Rs.12,80,000/- as Regular Assessment tax and copy of the said payments was enclosed with Form No.35.

6.3 As per the Return of Income, Part-D tax computation is as under:

|      |  |              |
|------|--|--------------|
| D1.  | Tax payable on total income(C20)                       | 22688        |
| D2.  | Rebate u/s 87A   | 0            |
| D3.  | Tax payable after Rebate (D1-D2)                       | 22688        |
| D4.  | Surcharge, if applicable                               | 0            |
| D5.  | Cess on (D3+D4)  | 681          |
| D6.  | Total Tax, Surcharge and Cess (D3+D4+D5)               | 23369        |
| D7.  | Relief u/s 89  | 0            |
| D8.  | Balance Tax after Relief (D6-D7)                       | 23369        |
| D9.  | Total Interest u/s 234A                                | 10252        |
| D10. | Total Interest u/s 234B                                | 11417        |
| D11. | Total Interest u/s 234C                                | 233          |
| D12. | Fees U/S 234F  | 10000        |
| D13. | <b>Total Tax, Fee and Interest (D8+D9+D10+D11+D12)</b> | <b>55271</b> |

6.4 We have perused the Form No.26AS and copy of the Challan No.66502, it is observed that assessee had paid Rs.55,271/- as self-assessment tax on 30.04.2022. It means, at the time of filing of Return of Income, assessee had paid the self-assessment tax. It is further observed that as per the Challan No.05168 and Form No.26AS, assessee had paid Rs.12,80,000/- on 06.04.2023 under the minor head “400” means Regular Assessment Tax. These documents have been seen by the Ld.DR. The assessee had filed appeal before the Id.CIT(A) on 07.04.2023. It means, at the time of filing of appeal, the assessee had paid self-assessment tax on the returned income and regular assessment tax. The Id.CIT(A) has erred in not appreciating these facts, though all these facts have been mentioned by the assessee in the appeal memo and these facts are visible to the Id.CIT(A) through Form No.26AS as well. The relevant section 249(4) is reproduced here as under :

*249. (4) No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,—*

- (a) 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 which was payable by him:*

6.5 Since in this case, we have verified that assessee had filed Return of Income on 30.04.2022 and had also paid self-assessment tax due on the returned income, the assessee’s case falls

u/s.249(4)(a) of the Act. Section 249(4) states that where a return has been filed by the assessee and paid the tax on returned income. The section 249(4) does not specify whether the return is to be filed u/s.139(1) or in response to notice u/s.148 of the Act!

6.6 The Hon'ble Karnataka High Court in the case of T.Govindappa Setty Vs. ITO [1998] 231 ITR 892(KAR) held as under :

*Quote "I am of the opinion that the view taken by the second respondent that the appeals filed by the petitioner cannot be admitted since the petitioner had failed to pay the tax due on income shown by him in the return filed by him is erroneous in law. Sub-section (4) of section 249 has to be construed in the backdrop of the right to appeal provided to an assessee under section 246 of the Act. Under these circumstances, while interpreting sub-section (4) of section 249 of the Act, the court will have to keep in mind the object of sub-section (4) of section 249 of the Act and also the right to prefer an appeal guaranteed to an assessee. In that view of the matter, sub-section (4) has to be liberally construed to serve the object of the right of appeal provided to an assessee, and not with a view to deprive the right provided to an assessee to prefer an appeal. When the very liability is disputed by the petitioner on the ground that the petitioner could not have been assessed as an Hindu undivided family as on the date of filing of the return and on the date of the assessment there was no Hindu undivided family in existence, the right guaranteed to the petitioner to prefer an appeal cannot be deprived by taking the view that the petitioner has failed to pay the tax due on the income shown in the return filed. Therefore, I am of the view that the order annexure*

*"H" passed by the second respondent is liable to be quashed.*"Unquote.

6.7 Thus, as held by the Hon'ble High Court of Karnataka, the section 249(4) has to be interpreted in such a way keeping in mind the assessee's right to file an appeal. The objective of section 249(4)(a) is to ensure that undisputed tax liability is paid by assessee before filing appeal. Therefore, respectfully following the Hon'ble High Court of Karnataka (supra), the Return of Income filed by the assessee on 30.04.2022 in response to notice u/s.148 of the Act and self-assessment tax paid by the assessee based on the Return of Income is held to be proper compliance of section 249(4)(a) of the Act. Therefore, we are of the considered opinion that Id.CIT(A) has erred in dismissing the appeal of the assessee in limine. Accordingly, we set-aside the appeal of the assessee to Id.CIT(A) for de-novo adjudication on merits of the case. The Id.CIT(A) shall also have to consider the admitted position mentioned in Para-3 of the assessment order that no notice u/s.143(2) of the Act was issued. The Id.CIT(A) shall provide opportunity to the assessee. Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 16<sup>th</sup> May, 2024.

Sd/-  
(MS.ASTHA CHANDRA)  
JUDICIAL MEMBER

Sd/-  
(DR. DIPAK P. RIPOTE)  
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 16<sup>th</sup> May, 2024/ SGR\*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, “बी” बेंच,  
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.