

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri Manjunatha, G. Accountant Member and**  
**Shri K. Narasimha Chary, Judicial Member**

आ.अपी.सं / **ITA No.358/Hyd/2024**  
(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri Bezawada Narayanamurthy Tirupathi PAN:AESPN6071N	Vs.	Income Tax Officer WARD 1(1) Tirupati
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri K.A. Sai Prasad, CA	
राजस्व द्वारा / Revenue by:	Shri Shakeer Ahmed, DR	
सुनवाई की तारीख / Date of hearing:	11/06/2024	
घोषणा की तारीख / Pronouncement:	11/06/2024	

**आदेश/ORDER**

**Per Manjunatha, G. A.M**

This appeal filed by the assessee is directed against the order dated 9.2.2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2013-14.

2. The brief facts of the case are that the assessee is an individual and has not filed return of income for the A.Y 2013-14. As per AIMS information, the Assessing Officer noticed that the

assessee has made cash deposits in excess of Rs.10 lakhs in his savings bank account. Since the assessee has not filed return of income, the assessment has been reopened u/s 147 of the I.T. Act, 1961 and notice u/s 148 of the I.T. Act, 1961 dated 30.03.2021 was issued and served on the assessee. The assessee has not filed return of income in response to notice u/s 148 of the Act. The case was selected for scrutiny and various notices u/s 142(1) of the Act were issued. The assessee neither appeared nor filed any details. Therefore, the Assessing Officer passed the best judgment u/s 144 r.w.s. 147 of the I.T. Act, 1961 on 20.03.2022 and determined the total income at Rs.1,35,23,675/-by making addition towards the cash deposits in bank accounts.

3. The assessee carried the matter in appeal before the first appellate authority but could not succeed. The learned CIT (A) dismissed the appeal filed by the assessee on the ground that the appeal filed by the assessee is not maintainable as per section 249(4)(b) of the I.T. Act, 1961 for non-payment of admitted taxes.

4. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

5. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in dismissing the appeal filed by the assessee by not admitting the appeal in terms of section 249(4)(b)

of the I.T. Act, 1961 without appreciating the fact that when the appellant has not filed return of income, the question of paying admitted taxes does not arise. He further submitted that the assessment before the Assessing Officer is ex-parte and the matter may be set aside to the file of the Assessing Officer to give one more opportunity of hearing to the assessee.

6. The learned DR, on the other hand, fairly agreed that the matter may be set aside to the file of the lower authorities. However, he submitted that the issue may be set aside to the file of the learned CIT (A), but not to the Assessing Officer.

7. We have heard both the parties. perused the material available on record and gone through the orders of the authorities below. Admittedly, the assessee is a non-filer. The Assessing Officer has passed the best judgment assessment order u/s 144 r.w.s. 147 of the Act and made addition towards cash deposits. The assessee claimed before the first appellate authority that he does not have any taxable income which is in excess of minimum amount liable for taxes in the impugned A.Y and the question of making admitted tax or an amount equal to advance tax payable does not arise. The learned CIT (A) dismissed the appeal filed by the assessee on the ground that the appeal filed by the assessee is not maintainable in terms of section 249(4)(b) of the I.T. Act, 1961, because the assessee has not paid the admitted taxes or amount equivalent to the amount of advance tax which was

payable by him. We find no merit in the reasons given by the learned CIT (A) for the simple reason that, when the assessee claims he does not have any taxable income, unless the income of the assessee is finally determined by the Assessing Officer or the appellate authorities, in excess of maximum amount not chargeable not tax, it cannot be said that the assessee is having taxable income on which he is supposed to pay advance tax. Since, the appellant claims that he does not have any taxable income and not required to file return of income, in our considered opinion, the question of payment of admitted tax does not arise and on this ground the findings of the learned CIT (A) in not admitting the appeal is not correct. Thus, we set aside the order of the learned CIT (A) and since the assessment order passed by the Assessing Officer is ex-parte, to give one more opportunity of being heard to the assessee, the issue has been set aside to the file of the Assessing Officer with a direction to reconsider the issue denovo in accordance with law after providing an opportunity to the assessee.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 11<sup>th</sup> June, 2024.

Sd/-

Sd/-

<b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>(MANJUNATHA, G.)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 11<sup>th</sup> June, 2024

*Vinodan/sps*

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3	Pr. CIT – Tirupati
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*