

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.122/Ind/2024
(Assessment Year: 2012-13)

Shri Pushpendra Singh Chouhan, C/o Adv.Hitesh Chimnani, UG-37 Trade Centre, 18 South Tukoganj, Near Hotel Crown Palace, Indore	Vs.	ITO Sehore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: CGGPS1953Q		
Assessee by	Shri Hitesh Chimnani, Ms. Komal Wadhvani & Komal Kataria, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	20.06.2024	
Date of Pronouncement	24.06.2024	

ORDER

Per Vijay Pal Rao, JM :

This appeal by the assessee is directed against the order dated 29.12.2013 of Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Delhi for the Assessment Year 2012-13.

2. The assessee has raised following grounds of appeal:

1. That on the facts and in the circumstances of the case and in law, the impugned order passed by the Ld.A.O under section 144 r.w.s. 147 of the Income Tax Act, 1961 dated 30.11.2019 is non-est as the same was passed without any document identification number (DIN) as mandated by circular No.19/2019 dated 14.08.2019 and thus the said order deserves to be quashed.

2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not granting the assessee proper opportunity of being heard to present its case.

3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal based on the provision of Section 249(4) of the Act without appreciating the fact that the assessee had duly filled his return of income u/s 139(1) and there was no advance tax payable as the total income of the assessee was below basic exemption limit.

4. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs.36,03,600/- made by the Ld. A.O by treating the cash deposits as unexplained income of the assessee without properly appreciating the facts of the case and the evidence on record.

5. The appellant seeks to leave, add, alter, amend, abandon, or substitute any of the above grounds during the hearing of the appeal.

3. The assessee is an individual and stated to have filed his return of income for the year under consideration declaring total income of Rs.1,74,960/- which is below the minimum taxable limit of the income. The A.O received AIR information regarding depositing of Rs.36,06,600/- in the saving bank account of the assessee in SBI. Accordingly the A.O issued a noticed u/s 148 of the Act on 28.3.2019. There was no response on behalf of the assessee to the notice issued u/s 148 as well as notice issued u/s 142(1) of the Act. Consequently the A.O framed assessment as best judgment assessment and assessed the total income of the assessee at

Rs.36,03,600/- . The assessee challenged the action of the A.O before CIT(A) however, the appeal of the assessee was dismissed on the ground that he has not paid the tax as per the provisions of Section 249(4)(b) of the Act. Thus CIT(A) has dismissed the appeal of the assessee in *limine* as the same was not admitted.

4. Before the Tribunal the Ld. AR of the assessee submitted that the CIT(A) has committed an error while dismissing the appeal of the assessee for want of payment of tax as per the provisions of Section 249(4) of the Act. He had submitted that when the assessee did not file any return of income in response to notice u/s 148 then the question of payment of tax due on income returned or payment of advance tax by the assessee does not arise. He has further submitted that the assessee is an agriculturist and the deposit in the bank account is from the agricultural income and therefore, no tax would be payable either on the assessed income or any advance tax payable by him and therefore, the order of the CIT(A) is invalid when the appeal is dismissed for want of payment of advance tax. In support of this contention he relied upon the decision of Mumbai Bench of Tribunal dated 16.4.2024 in case of **M/s Nine Globe Industries Pvt. Ltd Vs. ACIT in ITA No.3889/MUM/2023** and submitted that an identical issue has been considered by the Tribunal in para 4 to 6 whereby the Tribunal has held that clause(b) of Section 249(4) of the Act will not apply as there is no question of payment of advance tax in reassessment proceedings even though assessee did not file return of income. The Ld. AR has then relied upon the decision of the Raipur Bench of this Tribunal dated 10.4.2024 in case of

Vishnusharan Chandravanshi Vs. ITO in ITA No.73/RPR/2024

and submitted that similar view has been taken by the Raipur Bench on this issue. Hence the Ld. AR has submitted that the impugned order of CIT(A) is not sustainable and liable to be set aside. He has then explained the reasons for non appearance of assessee before the A.O and submitted that the assessee has duly explained those reasons before CIT(A) as under:

"1. Firstly, it is submitted that the assessee and his family are all basically farmers residing in village Dobi of Budhni Tehsil in Sehore District in Madhya Pradesh. Assessee's village is 30 kms from Budhni Tehsil and 120 kms from Sehore District. There is no computer in the assessee's house or village. The assessee's village population is around 3800 people.

2. The assessee's family consists of the following:

<i>Shri Jaswant Singh Chouhan</i>	<i>Father</i>
<i>Rajendra Singh Chouhan</i>	<i>Brother</i>
<i>Satendra Singh Chouhan</i>	<i>Brother</i>
<i>Pushpendra Singh Chouhan</i>	<i>Assessee self</i>
<i>Nagendra Singh Chouhan</i>	<i>Brother</i>

3. All the above male members of the assessee family are owning ancestral agricultural lands in village Dobi in Budhni Tehsil and mainly carrying on agricultural activities. Besides, the assessee and his brother are also running small hardware shop, selling agri- pipes, motor pump parts etc. in the village. The assessee lives in a joint family with his parents and brothers in village Dobi.

4. Since the assessee lives in a village, there is a tax practitioner Mr Bhojraj Sharma whose services are being taken to file income tax return, when he visits the village during return filing time.

5. Looking to the facts and circumstances of the assessee's case, it is humbly prayed that the assessee be kindly allowed to represent its case and furnish written submission along with additional evidences during the appellate proceedings. Separate application for admittance of additional evidence is attached.

6. The assessee is not well versed with computer, its software applications and particularly income tax portal. It is for this reason that he could not see and track various assessment notices issued from time to time by the Ld AO in Sehore nor could comply with the same. It is submitted that during the course of assessment proceedings, the assessee being basically a farmer also went to a tax practitioner Mr Bhojraj Sharma who also did not serve and help in the assessee's assessment case. It was only when the ex-parte assessment order was received by him, wherein addition of Rs. 36,03,600/- on account of entire cash deposited in his bank account was made, the assessee approached the Ld AO who advised him to seek professional advice from a CA in Bhopal. The assessee thereafter, post assessment gathered all the following relevant and necessary documents which are additional evidence to justify his claim.

(i) Please find attached herewith duly certified sealed and signed copy of bank statement issued by State Bank of India, Dobi Branch of assessee's bank account no. 00000011518889013 for the period 1-4-2011 to 31-3-2012. Pages 6 to 11

(ii) Summary of assessee's bank account transactions in State Bank of India, Dobi Branch of assessee's bank account no. 00000011518889013 for the period 1-4- 2011 to 31-3-2012 is also attached. From its perusal, it will be seen that during the year under consideration, the assessee had deposited cash aggregating to Rs. 36,03,600/- from time to time. It will also be seen that the assessee has made cash withdrawals aggregating to Rs 37,34,200/- from the same account from time to time. Page 12

Date wise summary of cash flow statement reflecting cash withdrawals and cash deposits transactions in the assessee's bank account in State Bank of India, Dobi Branch of assessee's bank account no. 00000011518889013 for the period 1-4- 2011 to 31-3-2012 is also attached. Page 13-14 (m)

(iv) Copy of Khasra in Form P-II of agricultural lands owned by the assessee and his family members in village Dobi, Tehsil Budhni of District Sehore (M.P.) are attached. Pages 18 to 22

(v) Copy of crop purchase receipt issued by Primary Krishi Sakh Sahakari Samiti in the name of the assessee and his family for agricultural produce are also attached. Pages 23 to 28, 34 to 44

(vi) Copy of Bahi of agricultural lands owned by the assessee and his family members are also attached. Pages 29 to 33

(vii) Copy of Letter of offer cum acceptance issued by Aadhar Housing Finance Ltd towards housing loan to assessee is also attached. Copy of registered purchase deed for house for Rs. 14,10,000/- on 25-7-2011 is enclosed. Page 45, 46 to 52

(viii) Copy of income tax return filed by assessee's brother Satendra Singh Chouhan for the assessment year 2012-13 declaring income of Rs. 1,93,610/- is also attached. Page 15-17

7. It is submitted that since the assessment year is 2012-13, almost more than 11 years have lapsed, whatever evidence assessee and his family members could gather to prove that they are owning agricultural land and they carry agricultural activities on these lands to earn agricultural income are here by produced as additional evidence. If your goodself require anything further, kindly let me know.

8. Details of agricultural lands owned by the assessee's family in village Dobi is as under:

Name	Relationship	Agricultural Land area
Shri Jaswant Singh Chouhan (mentioned as Yeshwant Singh)	Father	12.56 acres (5.08 hectares)
Rajendra Singh Chouhan	Brother	8.04 acres (3.254 hectares)
Satendra Singh Chouhan	Brother	8.04 acres (3.253 hectares)
Pushpendra Singh Chouhan	Assessee self	8.04 acres (3.253 hectares)
Nagendra Singh Chouhan	Brother	8.04 acres (3.253 hectares)

9. The total agricultural land owned by the assessee and his joint family members is about 45 acres in village Dobi. The assessee and his joint family earn agriculture income of about Rs. 25 Lakhs per annum from carrying on agricultural activities. It is submitted that the agricultural land of assessee

and his family in village Dot is very fertile giving 2 crops wheat Rabi and Rice Khanf in a year. The assessee's father Shri Jaswant Singh, 2 brothers Rajendra Singh and Nagendra Singh are only farmers and carry out agricultural activities. Their agricultural income sened is not taxable under the Income tax Act, therefore, no income tax return is filed by them One brother Satendra Singh who also carries business has filed income tax return."

5. The Ld. AR has reiterated these submissions and submitted that when the assessee has explained the source of deposit with supporting evidences then the CIT(A) ought to have decided the appeal of the assessee on merits. He has thus pleaded that since the Assessing Officer has passed an ex-parte order and CIT(A) has also dismissed the appeal in *limine* therefore, the matter may be remanded to the record of the Assessing Officer for fresh adjudication.

6. On the other hand the Ld. DR has fairly submitted that since the assessment order is passed ex-parte and CIT(A) has also not adjudicated the appeal on merits therefore, he has no objection if the matter is remanded to the jurisdictional Assessing Officer for fresh adjudication.

7. We have considered the rival submissions as well as relevant material on record. The Assessing Officer initiated proceedings u/s 147 on the basis of the AR information regarding the cash deposit of Rs.36,03,600/- in the savings bank account of the assessee. Since there was no response on behalf of the assessee to the notices issued by the Assessing Officer, therefore, the assessment was framed ex-parte as best judgment assessment thereby the Assessing Officer has

assessed total income of the assessee at Rs.36,03,600/-. The assessee has explained the reasons for non appearance before the Assessing Officer as the assessee belongs to a rural area and having no computer or internet facility in the village and therefore, the assessee was not having access to the notice issued by the Assessing Officer and consequently could not furnish any reply or submissions as well as evidence during the assessment proceedings. Further the CIT(A) has dismissed the appeal of the assessee in *limine* for want of payment of tax as per the provisions of Section 249(4)(b) of the Act. This is a case of reassessment framed by Assessing Officer u/s 147 r.w.s. 144 of the ACT and therefore, there is no obligation of payment of advance tax as per Clause(b) of Section 249(4) as held by the **Mumbai Benches of the Tribunal in case of M/s. Nine Globe Industries Pvt. Ltd Vs. ACIT (supra)** in para 4 to 6 as under:

“4. In that view of the matter, the appeal came to be dismissed on the ground that the appellant has not filed Rol as well as not paid an amount equal to the amount of advance tax, which was payable by it. It can thus be seen that the CIT(A) had no occasion to examine the merits of the impugned additions.

5. We have heard parties. Perused record. It can be seen that the case was Initially selected for scrutiny, which was completed on 29.03.2015, and there was no change in the returned income of Rs.51.80.800/- in the absence of any additions being made. It is a matter of record that originally the return was filed for the relevant year under consideration on 29.09.2012. It was not disputed during the course of hearing that the advance tax has per the assessed income of Rs. 51,80,800/- has been paid. Here is the case of reassessment which is done for the benefit of Revenue. Hence, in our view, clause (b) of Section 249(4) of the Act will not apply as there is no question of paying advance tax in reassessment proceedings, even though assessee did not file Rol.

6. In the said circumstances, we find that the impugned order dismissing the appeal on the ground of non-compliance of Section 249(4) of the Act cannot be sustained and deserves to be set-aside”.

In the case in hand the assessee has filed return of income and thereafter, the Assessing Officer has initiated reassessment proceedings and passed reassessment order. Therefore, for filing the appeal before CIT(A) the question of payment of advance tax by the assessee as per clause(b) of Sub Section 4 of Section 249 does not arise. Similarly the Raipur Bench of the Tribunal in case of **Vishnusharan Chandravanshi Vs. ITO in ITA No.73/RPR/2024 order dated 10.04.2024** has also considered the identical issue in para No.10 to 15 as under:

10. Admittedly, it is a matter of fact borne from record that the assessee had neither filed his return of income u/s 139 of the Act nor in compliance to notice issued to him u/s. 142(1) of the Act, dated 10.03.2018. As the assessee had failed to file his return of income, the CIT(Appeals) had brought his case within the meaning of Clause (b) of sub-section (4) of Section 249 of the Act. For the sake of clarity, Section 249(4) of the Act is culled out as under:

"(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:

Provided that, in a case falling under clause (b) and on an application made by the appellant in this behalf, the Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause."

The CIT(Appeals) observed that as the assessee who had not filed his return of income had neither paid an amount equal to the amount of advance tax which was payable by him; nor filed any application seeking exemption from operation of the aforesaid statutory provision for any good and sufficient reason, therefore, he had failed to comply with the statutory requirements

contemplated u/s 249(4)(b) of the Act. Accordingly, the CIT(Appeals) dismissed the appeal on the said count itself.

11. Controversy involved in the present appeal lies in a narrow compass, i.e. sustainability of the view taken by the CIT(Appeals) that the appeal of the assessee who had not filed his return of income for the subject year was not maintainable for the reason that he had failed to satisfy the conditions contemplated in Section 249(4) of the Act.

12. Admittedly, as per section 249(4)(b) of the Act, in a case where no return of income has been filed by the assessee, then his appeal shall be maintainable before the CIT(Appeals) only if he had paid an amount equal to the amount of advance tax which was payable by him. At the same time, the legislature had carved out an exception to the applicability of the aforesaid statutory requirement by way of a "proviso" to Section 249(4) of the Act, as per which, on an application made by the appellant, the CIT(Appeals) may, for any good and sufficient reason to be recorded in writing exempt him from the operation of the aforesaid statutory provision.

13. At this stage, I may herein observe that the statutory requirement contemplated in Clause (b) of sub-section (4) of Section 249 of the Act would stand triggered only where any obligation was cast upon the assessee to pay "advance tax". As stated by the Ld. AR, and rightly so, in absence of any taxable income for the year under consideration [as was stated by him in the "SOF" filed before the CIT(Appeals)] no obligation was cast upon him to compute and pay any advance tax u/ss. 208 & 209 of the Act. Considering the fact that as no obligation was cast upon the assessee to compute/deposit any amount towards "advance tax" for the subject year, I am unable to concur with the view taken by the CIT(Appeals) who dismissed the appeal as not maintainable for the reason of non-compliance off mandatory condition contemplated in Clause (b) of sub-section (4) of Section 240 the Act. Although, at the first blush, I was of the view that the amount assessee the A.O vide his order u/s. 144 of the Act dated 23.11.2019 of Rs. 10 lacs would saddle the assessee with an obligation to pay "advance tax", but stood corrected a careful perusal of Section 208 and Section 209(1)(a) of the Act, which contemplates determination of the said tax liability at the behest of the assessee.

14. As in the present case, the assessee had not only before me but had in the "Statement of facts" stated before the CIT(Appeals) that he had no tax income, therefore, in my view in absence of any obligation cast upon the ass to compute/pay "advance tax" u/ss. 208 and 209 of the Act for the subject year first appellate authority could not have held that he had failed to comply with statutory conditions contemplated in Sec. 249(4)(b) of the Act. My aforesaid we fortified by the orders of the ITAT, Bengaluru in the case of Shamama Reddy Vs. ITO, ITA No.1120/Bang/2023 dated 20.02.2024 and

that of ITAT, Delhi in the of Vikram Singh Vs. ITO, ITA No.6559/Del/2019, dated 21.02.2023

15. I, thus, in terms of my aforesaid observations, set aside the order of the CIT(Appeals) and restore the same to his file with a direction to dispose appeal after considering the merits of the case. Needless to say, the CIT(Appeals) shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee."

8. Accordingly, to maintain the rule of consistency we follow the earlier decisions of the Tribunal cited above and consequently the impugned order of CIT(A) is set aside being contrary to the provisions of law.

9. Since the assessment order was also passed ex-parte due to non-appearance on behalf of the assessee therefore, in the facts and circumstances of the case and in the interest of justice the matter is remanded to the record of the jurisdictional Assessing Officer for fresh adjudication after considering the relevant details/evidences and explanation of the assessee. Needless to say that the assessee be given an opportunity of hearing before passing the fresh order.

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

Order pronounced in the open court on 24.06.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 24.06.2024

Dev/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore