

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
ITA No. 1254/Mum/2024 (A.Y.2017-18)**

**M/s. Citispeed Courier Pvt. Ltd.**

G-75, Mahindra Park,  
LBS Marg, Narayan Nagar,  
Ghatkopar West,  
Mumbai – 400 086  
PAN: AAEC1788J

..... Appellant

Vs.

**ITO 14(1)(1)**

Aayakar Bhavan,  
M. K. Road,  
Mumbai- 400 020

..... Respondent

Appellant by	:	None
Respondent by	:	Shri H. M. Bhatt, Ld. DR
Date of hearing	:	12/06/2024
Date of pronouncement	:	12/06/2024

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 28.12.2023 u/s. 250 of the Income Tax

Act, 1961 (in short 'the Act') for A.Y. 2017-18. The assessee has raised the following grounds of appeal:-

*1) The Ld. CIT (A) has erred in law and on the facts of the case in not admitting the appeal u/s. 249(4) of the Act. The action is unjustified and unwarranted.*

*2) Without prejudice the Id. CIT(A) has erred in law and on the facts of the case in confirming the action of assessing officer in determining net profit at 30% of the gross contract receipts of R.s. 2,1375,087/- thereby making an addition of Rs. 64,12,526/- the action is unjustified and unwarranted and bad in law. Without prejudice the addition is excessive.*

*3) The Ld. CIT (A) has erred in law and on the facts of case in case in confirming the action of assessing officer in treating the entire stamp duty value of Rs. 80, 10,500/- as capital gains without allowing deduction of cost of acquisition and other benefits. The action is unjustified and unwarranted.*

*4) Your Petitioner crave leave to add, amend, alter and or withdraw all or any of the aforesaid grounds of appeal.*

2. The brief facts of the case are that the assessee company was in the category of non-filer of return as per section 139 of the Act. Information received from various Sub-Registrars in Mumbai regarding sale of immovable properties and it was observed in the light of information received that individual purchasers and individual sellers have registered property transactions with the assessee for a consideration lower than the market value of the property. In view of above, AO issued a notice u/s. 148 of the Act dated 29.07.2022 along with an order u/s. 148A (d) of the Act. In addition to the above transactions of property, AO also observed that the assessee has collected various amounts from the parties as mentioned in para 3.3. of the assessment order amounting to Rs. 2,13,75,087/- as business receipts.

3. As per para 2 of the assessment order, following opportunities were given to the assessee for its explanation /replies as under:-

Type of notice/communication	Date of notice/communication	Date of compliance given	Date of Response of assessee if received/not received	Date of response if received	Response type (Full/part/adjournment)	Remarks if any.
Notice u/s 148	29/07/2022		Not received			
Intimation us 144B	02/11/2022		Not received			
Notice u/s 142(1)	13/01/2023	30-Jan-2023	Not received			
Letter	31/01/2023	05/02/2023	Not received			
Show cause notice u/s 144	13/02/2023	28-Feb-2023	Not received			
Final Showcause Notice	16/03/2023	31/03/2023	Not received			VC facility not availed
Centralised Communication from NaFAC	10/4/2023					Letter served by speed post

4. As can be observed from the above table, the assessee neither filed any return in compliance to section 148 of the Act nor participated in the proceedings

before the AO. Ultimately, an ex-parte order was passed u/s. 144 r.w.s. 147 and 144B of the Act and income was assessed at Rs. 1,44,23,025/-.

4. The assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT (A) who in turn dismissed the appeal of the assessee on the ground of non-compliance of section 249(4) of the Act.

5. We have gone through the order of AO, order of the Ld. CIT (A) and submissions of the assessee alongwith grounds raised before us. It is observed vide paras 3.2 onwards of the Ld. CIT (A)'s order as under:

*3.2. As per provisions of section 249(4) (b) of the Act, where no return has been filed by the assessee, the assessee has to pay an amount equal to the amount of advance tax which was payable by him otherwise appeal shall not be admitted. The provisions of section 249 (4) of the Act are reproduced as under -*

*Section 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: Provided that, 2 in a case falling under clause (b) and] on an application made by the appellant in this behalf, the 3 Deputy Commissioner (Appeals)] or, as the case may be, the Commissioner (Appeals)] may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of 5 that clause].]*

*3.3 As per provisions of section 234B(1), read with provisions of section 208 of the Act, the liability to pay advance tax, in a case where returned income is less than the assessed income, is calculated on the basis of assessed income. The provisions of section 234B (1) and provisions of section 208 of the Act are reproduced below -*

*Section 234B (1)*

*"(1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of two per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year<sup>3</sup> to the date of determination of total income under sub-section (1) of section 143A and where a regular assessment is made, to the date of such regular assessment, on an amount]] equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax. 5 Explanation 1-In this section, " assessed tax" means,*

*(a) for the purposes of computing the interest payable under section 140A, the tax on the total income as declared in the return referred to in that section, TAX DEPAR other case, the tax on the total income determined under sub-section (1) of section*

*(b) in any 143 or on regular assessment, as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.] Explanation 2.- Where in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section. 6 Explanation 3.- In Explanation 1 and in sub- section (3)," tax on the total income determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.J*

#### *3.4. Section 208*

*"208. Conditions of liability to pay advance tax Advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of this Chapter, is one thousand five hundred rupees or more.*

*3.5. Though the appellant has not offered 'YES' comments at sl. No. 9 of Form-35, it was asked vide DIN & letter no. ITBA/NFAC/F/APL1/2023-24/1058768899(1) dated 14.12.2023 to intimate whether it has made payment of tax-which includes element of advance tax also in compliance to notice of demand u/s 156 of the Act and date of compliance was fixed for 21.12.2023 but the appellant failed to contradict the information given at sl. no. 9 of Form-35 and to prove that it has made payment of amount equal to the advance tax which was due on its income. The appellant instead of furnishing 'Yes' or 'No' comments along-with evidence has stated that his counsel is busy in filing returns.*

*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.*

6. We have considered the order of Ld. CIT (A) in the light of the provisions of section 249 of the Act and in our opinion, order of Ld. CIT (A) requires no interference from our side. Based on above, we direct the assessee to pay the amount equal to advance tax as per the provisions of section 208 of the Act and the Ld. CIT (A) is directed to heard the matter afresh after giving a proper opportunity of being heard to the assessee subject to production of challan by the assessee.

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

Order pronounced in the open court on 12<sup>th</sup> day of June, 2024.

Sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 12/06/2024

*Dhananjay, Sr. PS*

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai