

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, AHMEDABAD

समक्ष श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य एवं श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य के समक्ष।  
BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं/ ITA No. 123/Ahd/2024  
निर्धारण वर्ष/Assessment Year : 2018-19

Darpan Kanubhai Shah C/o. Darpan Travels, Near Ramji Mandir, Madanzampa Road, Vadodara-390001 PAN : AGIPS 3405 P	<b>बनाम</b> Vs.	The Income-tax Officer, Ward-3(1)(4), Vadodara
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

निर्धारित की ओर से / Assessee by :	Shri Samir Parikh, AR
प्रत्यर्थी की ओर से / Revenue by:	Dr. Darsi Suman Ratnam, CIT-DR

सुनवाई की तारीख /Date of Hearing : 22/04/2024  
घोषणा की तारीख /Date of Pronouncement: 05/07/2024

**आदेश/ORDER**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

Present appeal has been filed by the assessee against order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 22.11.2023 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2018-19.

2. Grounds raised are as under :-

*"(1) The Learned CIT(Appeal) is not correct in holding that the assessee has not filed return of income u/s 148. Consequently the Learned CIT (Appeal) is not correct that the appeal is not liable to be admitted.*

*(ii) Alternatively appeal is allowed by set aside the order and matter referred back to the desk of Hon. CIT for reconsideration.*

*(iii) Without prejudice to the above, The Learned Assessing Officer is not correct in holding agriculture land as Capital Asset and not correct in adding sum of Rs. 52,41,028/- as Long Term Capital Gain on Sale of Agriculture Land.*

*(iv) Without prejudice to the above, the Learned Assessing Officer is also not correct to disallow claim of section 54B of the Act as the assessee has purchased Agriculture Land within two years."*

3. The facts of the case are that assessment u/s 147 of the Act was framed in the case of the assessee, noting that the assessee had sold an immovable property (land) for Rs.57,55,000/- and no return of income had been filed by the assessee. The assessee's explanation that the land sold by it was not a capital asset being rural agricultural land was rejected by the Assessing Officer. The assessee's alternate contention that he was entitled to benefit of exemption u/s 54B of the Act for investing the capital gains so earned in the purchase of another agricultural land was also rejected by the Assessing Officer and in turn Long Term Capital Gain earned by the assessee was computed by the Assessing Officer at Rs.52,41,028/- and, subjected to tax, adding it to the income of the assessee.

4. The matter was carried in appeal before the Id. CIT(A) who dismissed the assessee's appeal as infructuous and non-maintainable, noting that the assessee had failed to fulfil the mandatory conditions specified u/s 249(4) of the Act for entertainment of appeal. More specifically he found the assessee to have not fulfilled the condition specified in sub-clause (b) of the section wherein in the circumstance when no return of income has been filed by the assessee, the assessee ought to have paid an amount equal to the amount of advance tax which was payable by him. Finding the assessee to have not filed any return of income and to have not complied with the conditions specified

u/s 249(4)(b) of the Act of having paid advance tax on his income, he dismissed the assessee's appeal as being infructuous and non-maintainable.

5. Aggrieved by this order of the Id. CIT(A), the assessee has come up in appeal before us by raising the aforementioned grounds.

6. In Ground Nos. 1 & 2, the assessee has challenged the order of the Id. CIT(A) holding that the assessee's appeal is infructuous for not having paid advance tax as required in terms of Section 249(4)(b) of the Act.

6.1 The relevant provisions of Section 249(4)(b) of the Act are reproduced by the Id. CIT(A) in page No.4 of his order as under:-

*"(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 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 that clause]."*

7. The contention of the Id. Counsel for the assessee is that there are two-fold conditions to be satisfied for not entertaining the appeal in terms of clause (b) of Section 249(4) of the Act:-

- (i) that no return has been filed by the assessee; and
- (ii) that no advance tax has been paid by the assessee

7.1 The Id. Counsel for the assessee contended that neither of the conditions were satisfied in this case. He pointed out that the Assessing Officer had noted at page No.2 of his order that return of income in response to notice u/s 148 of the Act on 15.04.2022 had been filed by the assessee. He, therefore, stated that admittedly the assessee had filed his return of income

and the first condition for invoking the provisions of Section 249(4)(b) of the Act, therefore, was not satisfied.

7.2 He, thereafter, stated that the Id. CIT(A) had found the assessee to have not paid advance tax considering the assessed income of the assessee noting the provisions of section 234B of the Act, while the liability for payment of advance tax had was to be determined in terms of Section 209 of the Act.

7.3 He drew our attention to the order of the Id. CIT(A) at paragraph No.3.3, wherein he had referred to the provisions of Section 234B(1) of the Act and Section 208 of the Act, and held that the assessee's liability to pay advance tax was to be determined in terms of its assessed income, and since the liability of tax to be paid by the assessee on his assessed income amounted to approximately Rs.11 lakhs, the assessee was liable to pay advance tax. Our attention was drawn to paragraph Nos. 3.3 to 4 of his order as under:-

*"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 to the date of determination of total income under sub-section (1) of section 143 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. 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;

(b) in any other case, the tax on the total income determined under sub-section (1) of section 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.*

*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.]"*

#### 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/APL\_1/2023-24/1057762204(1) dated 07.11.2023 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 15.11.2023 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. It is, therefore, clear that information, given at sl. no. 9 of Form-35 is correct and the appellant has not made payment of amount equal to the advance tax which was due on its income.

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.

8. The Id. Counsel for the assessee pointed out that the computation of advance tax was provided in Section 209 of the Act, to which our attention was drawn as under:-

***“Computation of advance tax.***

**209.** (1) *The amount of advance tax payable by an assessee in the financial year shall, subject to the provisions of sub-sections (2) and (3), be computed as follows, namely : –*

- (a) *where the calculation is made by the assessee for the purposes of payment of advance tax under sub-section (1) or sub-section (2) or sub-section (5) or sub-section (6) of section 210, he shall first estimate his current income and income-tax thereon shall be calculated at the rates in force in the financial year;*
- (b) *where the calculation is made by the Assessing Officer for the purpose of making an order under sub-section (3) of section 210, the total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment or the total income returned by the assessee in any return of income furnished by him for any subsequent previous year, whichever is higher, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year;*
- (c) *where the calculation is made by the Assessing Officer for the purpose of making an amended order under sub-section (4) of section 210, the total income declared in the return furnished by the assessee for the later previous year, or, as the case may be, the total income in respect of which the regular assessment, referred to in that sub-section has been made, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year;*
- (d) *the income-tax calculated under clause (a) or clause (b) or clause (c) shall, in each case, be reduced by the amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income (as computed before allowing any deductions admissible under this Act) which has been taken into account in computing the current income or, as the case may be, the total income aforesaid; and the amount of income-tax as so reduced shall be the advance tax payable:”*

9. He contended that Section 234B of the Act, on the other hand, provided for payment of interest for defaults in payment of advance tax and in terms of the said provisions where the advance tax was found to be short paid to the extent of 90% of the assessed tax, the assessee was liable to pay simple interest on the shortfall. Our attention was drawn to the provisions of Section 234B of the Act as under:-

*“234B. (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 one 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 to the date of determination of total income under sub-section (1) of section 143 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.*

9.1 It was contended, therefore, that in terms of the provisions of Section 234B of the Act also the assessed tax was not the basis for arriving at the advance tax liability of the assessee. Ld. Counsel for the assessee stated that therefore, the matter needs to be restored back to the ld. CIT(A) since he had dismissed the assessee's appeal as infructuous, on an incorrect interpretation of law.

10. The ld. DR, however, supported the order of the ld. CIT(A).

11. We have heard both the parties carefully and have also gone through the order of the ld. CIT(A). The short issue for consideration in the grievance raised by the assessee in Ground Nos. 1 & 2 is whether the ld. CIT(A) had rightly invoked Section 249(4)(b) of the Act for dismissing the appeal as infructuous.

11.1 As rightly pointed out by the ld. Counsel for the assessee, as per the provisions of said section, two conditions need to be satisfied for invoking the same. First, no return of income is filed by the assessee and second, advance tax is not paid by the assessee.

11.2 As far as the contention of the assessee that the first condition was not satisfied since the assessee had filed return of income, we are not in agreement with the same. The findings of the Assessing Officer to which our

attention was drawn to the effect that the assessee had filed return of income in response to notice u/s 148 of the Act is an incomplete finding to which the Id. Counsel for the assessee has drawn our attention. The Assessing Officer goes on to note this return of income filed by the assessee in response to notice u/s 148 of the Act, had not been e-verified – which means that the necessary validation of the return filed by the assessee had not been done by it; and for all purposes, therefore, no return of income had been filed by the assessee. Therefore, this contention of the assessee that it had filed its return of income and therefore Section 249(4)(b) of the Act could not be invoked is dismissed.

11.3 However, the second argument of the Id. Counsel for the assessee that the Id. CIT(A) had incorrectly interpreted the provisions of law holding that the assessed tax liability was to be treated as an advance tax liability, we find merit in the same. Admittedly, the Id. CIT(A) has referred to the provisions of Section 234B of the Act for holding that the assessed tax liability is the advance tax liability of the assessee. We have gone through the provisions of the said section reproduced above in our order, and we find that the said section nowhere states so. It only states that where the advance tax paid by the assessee falls short of the assessed tax by 90%, the assessee has to pay interest for the entire period of the shortfall at the specified rate. The Section itself identifies a difference between the advance tax liability and the assessed tax liability. Therefore, reliance placed by the Id. CIT(A) on the provisions of Section 234B(1) of the Act for holding that the assessed tax liability was the advance tax liability of the assessee is incorrect. The Id. Counsel for the assessee has, on the contrary, drawn our attention to the provisions of Section 209 of the Act which provided for computation of advance tax liability as reproduced above in the earlier part of our order. Since we have noted that the Id. CIT(A) has, on an incorrect interpretation of law, held the assessee to have not discharged his advance tax liability, for the purposes of dismissing

the appeal as infructuous in terms of provisions of Section 249(4)(b) of the Act, we consider it fit to restore the issue back to the Id. CIT(A) for reconsideration of both the aspect of admitting the appeal in terms of the provisions of Section 249(4) of the Act and, if considered fit for admission, to deal with the merits of the grounds raised by the assessee.

11.4 In view of the above, the appeal of the assessee is allowed for statistical purposes.

All the grounds raised by the assessee are allowed for statistical purposes.

12. In effect, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 05/07/2024 at Ahmedabad.**

Sd/-

**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**  
(श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य)

Ahmedabad, dated 05/07/2024

BTK\*

Sd/-

**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
(श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य)

**आदेश की प्रतिलिपि □ प्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./ Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad