

[IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'H' BENCH,
NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 3911/DEL/2023[A.Y 2012-13]

M/s Aishani Consultants Pvt. Ltd
G - 52, Bali Nagar
New Delhi

Vs.

The I.T.O
Ward - 2(1)
New Delhi

PAN: AAFCA 6383 G

(Applicant)

(Respondent)

Assessee By : Smt Rano Jain, Adv
Department By : Shri Amit Katoch, Sr. DR

Date of Hearing : 03.07.2024
Date of Pronouncement : 05.07.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of
the NFAC, Delhi dated 31.10.2023 pertaining to A.Y 2012-13.

2. The summary of the grievance of the assessee is that the Id. CIT(A) grossly erred in invoking the provisions of section 249(4)(b) of the Income-tax Act, 1961 [the Act, for short] despite the fact that the provisions of this section are not applicable in the case of the assessee.

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Brief facts of the case are that the Assessing Officer observed that the assessee company despite being active, did not file return of income for the A.Y 2012-13 as per requirement of section 139(1) of the Act. As per information available with the department received through NMS, the assessee received professional or technical services fees amounting to Rs. 1,71,81,392/- during the F.Y. 2011-12 relevant to A.Y 2012-13. However, no return was filed against this income.

5. In view of the above, the Assessing Officer formed a belief and issued notice u/s 148 of the Act and served on 25.03.2019. In compliance of the notice u/s 148, the assessee filed return of income declaring an

income of 7,56,130/- on 04.09.2019. Subsequently, the Assessing Officer disallowed various expenses claimed to the tune of Rs. 50,61,443/- and added it to the income of the assessee. The AO also initiated penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income and u/s 271F for non filing of ITR.

6. Aggrieved, the assessee went in appeal before the ld. CIT(A).

7. After consideration of the facts and submissions, the ld. CIT(A) did not admit the appeal of the assessee u/s 249(4)(b) holding that the assessee had not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it.

8. Aggrieved, the assessee is in appeal before us. The ld counsel of the assessee reiterated what has been stated before the lower authorities. The ld. counsel for the assessee further contended that audited financials have already been submitted and tax audit was not applicable in the case of the company since the turnover was less than Rs. 1 crore. The bank statements and copies of ledger accounts as required have also been furnished. The ld counsel of the assessee submitted that the there was a

refund claim in the return of income filed, hence was no question of payment of advance tax.

9. On the other hand, the ld. DR relied on the orders of the authorities below.

10. We have heard the rival submissions and have perused the relevant material on record. The fact that the ld. CIT(A) has not admitted the appeal referring to provisions of section 249(4) of the Act and has not decided the issue on merits is also not in dispute.

11. We find that the assessee filed a return for AY 2012-13 in response to notice u/s 148 of the Act declaring an income of Rs. 7,56,130/- on 04.09.2019. From the ITR acknowledgment, TDS of Rs. 867316/- has been deducted from the assessee's income and there is a claim of refund of Rs 6,33,680/- arising out of excess TDS deducted. Therefore, this is a case where there is no advance tax payable by the assessee.

12. The ITAT Mumbai in a recent decision in the case of M/s Nine Globe Industries in ITA No. 3889/MUM/2023 decided on 16.04.2024 on similar facts has held as under:

"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 RoI.

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."

13. In view of the discussion as above, we are of the considered view that in the instant case, clause(b) of section 249(4) of the Act will not apply as there is no occasion to pay advance tax in this case as the assessee is claiming refund on account of excess deduction of TDS. Accordingly, we hold that the CIT(A) fell in error in not admitting the appeal by invoking the provision of section 294(4)(b). We further hold

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. We, therefore, set aside the impugned order and restore the matter to the file of the ld. CIT(A) to decide the issues raised by the assessee on merits in accordance with law after allowing reasonable and adequate opportunity of being heard to the assessee. Needless to mention that we have not expressed any opinion on the merits of the impugned addition.

14. In the result, the appeal of the assessee in ITA No. 3911/DEL/2023 is allowed for statistical purposes.

The order is pronounced in the open court on 05.07.2024.

Sd/-

[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Sd/-

[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 05th JULY, 2024.
VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	