IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos.635, 870, 1128 & 1129/Bang/2024
Assessment Years: 2015-16, 2015-16, 2015-16 & 2015-16 respectively

Mr. Ravindra Karadahalli Vivek #11, Karnic Road Shankarapuram Bangalore 560 004 **PAN NO : AFAPV2123E**	**Vs.**	ITO Ward-5(2)(1) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Sri Abhishek Murthy R., A.R.
Respondent by	:	Sri Subramanian S., D.R.

Date of Hearing	:	10.07.2024
Date of Pronouncement	:	10.07.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These appeals by assessee are directed against different orders of CIT(A).

2. Out of these appeals, ITA No.1128/Bang/2024 is related to quantum addition made while passing order u/s 147 r.w.s. 144 r.w.s. 144B of the Income Tax Act, 1961 (in short "The Act"), wherein ld. AO made addition of Rs.94,62,788/-, which is confirmed by ld. AO., who has observed that assessee has not paid the admitted tax u/s 249(4)(b) of the Act.

2.1 The other appeals are relating to levy of penalty u/s 271(1)(b), 271(1)(c) & 271F of the Act, wherein the ld. CIT(A) confirmed the order of ld. AO levying the penalty under these provisions.

3. Facts of the case are that there was information in possession that the assessee had made purchase of immovable property of Rs.

94,62,788/- without explaining the source of the income during the year under consideration. The assessee has not filed the return of income for the relevant assessment year, thereby failed to disclose the said deposit in the return of income for the relevant period. Thus, income chargeable to tax has escaped assessment. Accordingly, notice u/s. 148 of the Act dated 31.03.2022 was passed after obtaining prior administrative approval. Subsequently, notice u/s.142 (1) of the Act was issued and served upon the assessee calling for details required for completion of assessment proceedings.

4. The ld. CIT(A) observed that assessee has not paid income tax due on income returned by him, no appeal under Chapter XX will be admitted and neither the statute does not give any discretion to appellate authority to entertain the appeal nor extend time for paying self-assessment tax except in respect of except filing under clause (b) of section 249(4) of the Act in terms of proviso under said section. According to the NFAC, he dismissed the appeal as the assessee has not made payment of amount equal to the advance tax, which was due on its income. Against this assessee is in appeal before us.

5. We have heard the rival submissions and perused the materials available on record. In our opinion, similar issue came for consideration before this Tribunal in the case of Shri Shamanna Reddy Vs. ITO in ITA No.1120/Bang/2023 dated 20.2.2024, wherein the Tribunal held as under:

> *"7. We have heard the rival submissions and perused the material on record. Assessee is a senior citizen aged 65. Considering the age and education background as well as the procedure under the faceless regime coupled with the fact that notice issued during the course of assessment proceedings were not served as per the prescribed mode, we are of the view that the ex-parte order passed on the assessee under section 147 r.w.s. 144 of the Act is to be condoned.*
>
> *8. However, before the CIT(A), assessee had made detailed submissions. The CIT(A) has dismissed the appeal of the assessee by invoking section 249(4)(b) of the Act. Assessee submitted that he is not liable for long-term capital gains since the property sold was agricultural land. Assessee has also placed on record the computation*

of statement of total income. On perusal of the same, it is seen that the total income for the relevant Assessment Year of assessee is Rs.13,296/- . Therefore, there is no question of payment of admitted tax. In view of the above, section 249(4) of the Act cannot be invoked to dismiss the appeal of the assessee. We also place reliance on the Order of the Tribunal in the case of Annapoorneshwari Investment Vs. DCIT (supra) wherein it has been held that in terms of section 249(4)(a) of the Act, stipulation as to payment of tax ante filing of first appeal is only directory and not mandatory, where appeal is filed without payment of tax but subsequently required amount of tax is paid, appeal shall be admitted on making payment of tax and taken up for hearing on merits.

9. In the present case, as mentioned earlier, we find assessee had not declared any admitted tax. On the facts of the instant case, assessee had claimed the receipt is for sale of agricultural land and not liable for capital gains. Since assessment has been completed under section 147 r.w.s. 144 of the Act, we are of the view that the matter needs to be examined afresh by the AO. Accordingly, the issues raised in this appeal are restored to the files of the AO. Assessee is directed to cooperate with the Revenue and shall not seek unnecessary adjournment in the matter. The AO is directed to afford reasonable opportunity of hearing to the assessee. It is ordered accordingly."

5.1 Similar issue came for consideration before this Tribunal in the case of M/s. Visveswaraya Resham Khadi Industrial Association Vs. ITO in ITA No.361/Bang/2024 dated 31.5.2024, wherein the Tribunal held as under:

6. *"We have heard the rival submissions and perused the material on record. Considering the assessee's background, the its objectives as well as the procedure under faceless regime coupled with the fact that notice issued during the course of assessment proceedings were addressed by filing relevant evidences in support of the claim, we are of the view that the ex-parte order passed on the assessee under section 147 r.w.s. 144 of the Act is to be condoned.*

7. *However, before the CIT(A), assessee had made detailed submissions. The CIT(A) dismissed the appeal of the assessee by invoking section 249(4)(b) of the Act. Assessee submitted that it is not liable for as it is involved in promoting Khadi Udyog and is involved in generating employment to the rural folks by imparting education. It was also submitted that the assessee is sponsored by the state Government by extending various schemes for the purpose of Khadi manufacturing and trading. Therefore, there is no requirement to pay admitted tax. In view of the above, section 249(4) of the Act cannot be invoked to dismiss the appeal of the assessee. We draw support for the decisions relied by the Ld.AR wherein, it has been held that in terms of section*

249(4)(a) of the Act, stipulation as to payment of tax ante filing of first appeal is only directory and not mandatory, where appeal is filed without payment of tax but subsequently required amount of tax is paid, appeal shall be admitted on making payment of tax and taken up for hearing on merits.

8. *In the present case, as mentioned earlier, we find assessee had not declared any admitted tax. On the facts of the instant case, assessee claimed the cash deposited is out of sale. Since assessment has been completed under section 147 r.w.s. 144 of the Act, we are of the view that the matter needs to be examined afresh by the AO. Accordingly, the issues raised in this appeal are restored to the files of the Ld.AO. The assessee is directed to co- operate with the Revenue and shall not seek unnecessary adjournment in the matter. Needless to say that proper opportunity of being heard is to granted to the assessee in accordance with law.*
Accordingly the grounds raised by the assessee stands partly allowed for statistical purposes."

5.2 In view of the above orders of the coordinate bench, the ld. NFAC ought not to have dismissed the appeal holding that assessee has not paid the advance tax due on its income as there was no liability of payment of advance tax as the assessee has disputed the entire addition made by ld. AO and there was no returned income declared by the assessee.

5.3 Accordingly, we remit the issue in dispute to the file of ld. AO with regard to addition sustained by ld. CIT(A) for fresh consideration and to examine the same with a direction to the assessee to prove sources for Rs.94,62,788/- on addition made u/s 69 of the Act.

6. In the result, appeal of the assessee in ITA No.1128/Bang/2024 is partly allowed for statistical purposes.

7. The other appeals herein in ITA No.635, 870 & 1129/Bang/2024 for the AY 2015-16 are relating to levy of interest u/s 271(1)(b), 271(1)(c) & 271F of the Act on the addition made by ld. AO for this assessment year 2015-16.

7.1 Since we have vacated the assessment order itself, the levy of penalty under these provisions is premature. It may be considered by ld. AO, if situation warrants after completing the fresh assessment

consequent to our order in ITA No.1128/Bang/2024. Accordingly, all the three appeals are dismissed.

8. In the result, appeal of the assessee in ITA No.1128/Bang/2024 is partly allowed for statistical purposes and appeals of the assessee in ITA Nos.635, 870 & 1129/Bang/2024 are dismissed.

Order pronounced in the open court on 10th July, 2024

Sd/-	**Sd/-**
(Beena Pillai)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 10th July, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.