

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.1015/Del/2024
Assessment Year 2017-18

Narayani Trading CSC No.3/18, Sector-2 Rohini Naharpur, New Delhi TAN/PAN: AAJFN2461M (Appellant)	Vs.	ITO, Ward-36(1) Delhi (Respondent)
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Applicant by:	Ms. Rano Jain, Advocate Ms. Mani Jain, CA Sh. Pranshu Singhal, CA		
Respondent by:	Sh. Jatender Kumar Kale, Sr.DR		
Date of hearing:	31	07	2024
Date of pronouncement:	06	08	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ('CIT(A)' in short) dated 23.02.2024 arising from the assessment order dated 31.03.2022 passed by the Assessing Officer (AO) under Section 147 r.w. Section 144 of the Income Tax Act, 1961 (the Act) concerning A.Y. 2017-18.

2. As per the Grounds of Appeal, the assessee has challenged the order passed by the CIT(A) denying to admit the appeal of the assessee on the contours of Section 249(4)(b) of the Act and thus declined to adjudicate the appeal on merits.

3. Briefly stated, the case of the assessee was reopened under Section 147 of the Act for A.Y. 2017-18 on the grounds of cash deposits in the bank account. It was further noted by the AO that the assessee has not filed any return of income for the year under consideration. While framing the assessment, the AO eventually observed that income declared by the assessee as per return of income is 'Not available' and assessed the taxable income at Rs.1,12,30,000/- by making an addition of Rs.1,12,30,000/- toward unexplained cash deposits.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) declined to adjudicate the appeal of the assessee on merits on the ground that assessee has failed to make payment of an amount equal to the amount of advance tax which is prerequisite for admission of appeal in the case of non-filer assessee in terms of Section 249(4)(b) of the Act. The CIT(A) accordingly declined to admit the appeal of the assessee and dismissed the appeal *in limine* without adjudication on merits.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

6. When the matter was called for hearing, the Id. counsel for the assessee submitted that the additions have been made on account of unexplained cash deposits. While doing so, the income of the assessee other than cash deposits have been taken at 'N.A.' The liability towards payment of advance tax would arise only where the assessee has earned chargeable income and not filed ROI. The tax liability on controverted issue of taxability of cash deposits is dependent on adjudication of issue on merits and incidence of tax cannot be proponed in the garb of Section 249(4)(b) of the Act. Therefore, no advance tax liability arises to the assessee under the

circumstances when the additions made by the AO under controversy are excluded for the purposes of Section 249(4)(b) of the Act. The additions on account of cash deposits is highly arguable and mere deposits of cash in the bank account would not tantamount to accrual of any chargeable income in the hands of the assessee *per se*. The ambit of sub-clause (b) of sub-Section (4) of Section 249 would not extent to cover such highly subjective additions. Reference was made to several decisions rendered by the Co-ordinate Bench of Tribunal including decision rendered in the case of *Dilip Hiralal Chaudhari vs. ITO, Ward-Nandurbar, ITA No.642/Pun/2024 order dated 05.06.2024*. The ld. counsel thus submitted that in the absence of any statutory obligation fastened under Section 249(4)(b) of the Act, the CIT(A) has fell in error for not adjudicating the issue on merits.

7. The ld. DR for the Revenue, on the other hand, supported the order of the CIT(A).

8. We have carefully considered the rival submissions and perused the first appellate order and the assessment order.

9. The income prior to the addition in the instant case has been taken at 'NA'. The additions have been made on cash deposits on the ground that source of such cash deposits is unexplained and therefore, chargeable to tax. The nature and source of cash deposits in the bank account is a question of fact and the taxability thereof as revenue income depends on appraisal of documents and explanations towards nature and source as may be offered by the assessee. Therefore, the statutory obligations for payment of advance tax on such deposits contemplated under Section 249(4)(b) may not necessarily arise. We thus find merit in the plea of the Assessee for setting aside the action of CIT(A). We thus set aside the order of the

CIT(A) and restore the matter back to the file of the CIT(A) for *de novo* adjudication on merits.

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

Order dictated and pronounced in the open Court on 06 August, 2024.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: August, 2024
Prabhat