

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 899/DEL/2024**  
**Assessment Year: 2012-13**

Jisna John, Appadan House, Trissur, Kerala-680317.	<u>Vs</u>	Income-tax Officer, Ward 68(8), New Delhi.
PAN- AKLPJ 7478 G		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	<b>Shri P.J. Jacob, Adv.</b>	
<b>Respondent by</b>	<b>Shri Sanjay Kumar, Sr. DR</b>	
<b>Date of hearing</b>	<b>12.08.2024</b>	
<b>Date of pronouncement</b>	<b>27.08.2024</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi, dated 28.12.2023, pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

*“1 The order of the learned Commissioner of Income- Tax (Appeals) is erroneous both on facts and in law.*

*2 The learned Commissioner of Income-Tax (Appeals) erred in holding that the appeal filed by the appellant is not maintainable. The learned Commissioner of Income-Tax (Appeals) ought to have seen that according to the appellant no tax is payable and that, therefore, no advance tax liability arises and in view of the same, the provisions contained in Sec.249(4)(b) have no application.*

3. *Ld CIT(A) erred in holding that appellant is liable to pay any advance tax and that there was failure as mentioned in Sec.249(4)(b) of the LT. Act. As an alternate L'd CIT(A) ought to have provided proper opportunity to cure the defect if any. Once appeal is filed, scrutiny of the appeal is undertaken in the office of CIT(A) to find out whether it is fit for admission. If the appeal is found to be deficient or defective, Defect Notice is issued to appellant and on removal of defects, appeal is admitted for hearing.L'd CIT(A) has not issued any defective notice. Rather, it is evident that, appeal was admitted and issued various notices as detailed below:*

*(i) Ld CIT(A) admitted the appeal and issued a notice u/s.250 dated 10/11/2022 and the appellant had replied on the same on 06-06-2023.*

*(ii) Further, another notice u/s.250 dated 25/07/2023, was received by appellant and the reply dated 28-07-2023 was submitted. Copy of notices & replies are attached as Annexure-1 & 2 respectively.*

4. *The Learned Commissioner of Income-tax (Appeals) ought to have considered each of the grounds agitated before him and decided the appeal on merits.*

5. *The Learned Commissioner of Income-tax (Appeals) ought to have considered that, no obligation can be imposed on the assessee to pay advance tax, that his income is not taxable under the provisions of the Income Tax Act, 1961. The appellant drawn the attention of decision in the cases of (i) Vikram Singh Vs ITO (ITAT Delhi) -ITA No. 6559/Del/2019 and (ii) Late Smt. Raful Ghani Vs Asstt. CITITA No. 159/Hyd/2019 (ITAT, Hyderabad).*

6. *The Learned Commissioner of Income-tax (Appeal) ought to have considered that, The Pass Book supplied by the bank to the assessee cannot be regarded as the books of account of the assessee.*

*The Learned AO added an amount of Rs.10,05,000/- as unexplained money u/s.69A of the IT Act, stating that, the assessee has failed to offer any explanation for the bank credit in Union Bank of India, Trichur. The AO has brought in, this amount from the Pass Book maintained by Union Bank. In the case of CIT vs. Bhaichand N. Gandhi 141 ITR 67., the Bombay High Court analysed the provisions of section 68. It took note of the decision of*

*the Supreme Court in the case of Baladin Ram vs. CIT 71 ITR 427, where the court had held that it was only when an amount was found credited in the books of an assessee that the section would be attracted.*

7. *PRAYER The Commissioner of Income-tax (Appeal), the learned First Appellate Authority did not decide the appeal on merits but passed the impugned order by dismissing the appeal for non compliance of mandatory provision of section 249(4) of the Act, which is not applicable to the appellant. Hence, the appellant is in appeal before the Tribunal. The learned Assessing Officer had erred on facts and circumstances of the case and in law in making an addition on account from cash deposited in the savings bank account of Rs. 10,05,000/- and the same be deleted. The appellant craves leave to add, amend, after vary and/or withdraw any or all the ground of appeal.”*

2. Facts, in brief, are that for A.Y. 2012-13 the assessee did not file her return of income. As per AIR/CIB information to the effect that during FY 2011-12 the assessee had deposited cash amounting to Rs. 10,05,000/- in her account the AO reopened the case u/s 147 of the Act. The assessee did not respond to the statutory notices issued by the AO. The AO vide order dated 13.11.2019 completed the assessment u/s 144/147 of the Income-tax Act, 1961 (the “Act”) completed the assessment at a total income of Rs. 19,65,000/- by adding Rs. 10,05,000/- on account of unexplained cash deposit; and Rs. 9,60,000/- under the head ‘Income from salary’. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals) who dismissed the appeal by affirming the action of AO. Aggrieved against it the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee submitted that during AY 2012-13, the assessee was working in a Government hospital and had earned total salary of Rs. 4,80,000/- @ Rs.40,000/- pm. The total salary being below Rs.5,00,000/- and adequate tax having been deducted the assessee bona fide presumed that she was

not under legal obligation to file IT return. Moreover, immediately after the financial year she left the country and hence could not file the Return. The assessee had never filed return through e-filing portal or had a registered E-mail ID till December 2019. During AY 2012-13 the assessee had received cash assistance from parents which was mobilized in her bank account to meet expenses of foreign travel to Australia, hence no element of unexplained investment u/s 69 of the Act was involved. Learned counsel also submitted that no notices as referred in order passed u/s 144 of IT Act were ever served on the assessee. Further, notice u/s 148 was issued on 26/03/2019, just 4 days before the time limit prescribed. This notice was not served on the assessee before the time limit prescribed i.e., before 31/03/2019. He thus submitted that Assessing Authority had not afforded adequate opportunity to the assessee adduce relevant material evidence in support of her case. Learned counsel submitted that in appeal the learned CIT(A) without going into the merits of the case dismissed the appeal, in limine, treating the same as 'unadmitted'. He prayed that orders of authorities below may be set aside and matter may be restored to the file of Assessing Officer for decision afresh after affording adequate opportunity to the assessee of being heard.

4. Learned DR supported the orders of authorities below.

5. I have considered rival submissions and perused the material available on record. The contention of the assessee that learned CIT(Appeals) was not justified in dismissing the appeal ex parte to the assessee purely on the basis that assessee ought to have paid the advance tax before filing the appeal. It is the case of the assessee that during relevant assessment year the total salary of assessee being below Rs.5,00,000/- and adequate tax having been deducted it was bona fide presumed that she was not under legal obligation to file IT return. Looking to the

fact that before the Assessing Authority there was no representation on behalf of the assessee and the learned CIT(Appeals) dismissed the appeal in limine, considering the submissions made by the assessee and the explanation offered about the cash deposit, I am of the considered view that the matter needs to be verified at the end of the Assessing Officer. Accordingly, I hereby set aside the orders of authorities below and restore the matter back to the file of Assessing Authority for assessment de novo after affording adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 27<sup>th</sup> August, 2024.

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI