

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. C. N. Prasad, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 197/Del/2024 : Asstt. Year : 2018-19

Hardev Raj, Gali Bajaj Sweets Wali, Ward-8, Khaipur, Sirsa, Haryana-125055	Vs.	Income Tax Officer, Ward-1, Sirsa, Haryana
(APPELLANT)		(RESPONDENT)
PAN No. BFLPR7825H		

**Assessee by : Sh. Lalit Mohan, CA &
Sh. Parth Singhal, Adv.**

Revenue by : Sh. Vivek Kumar Upadhyay, Sr. DR

Date of Hearing: 01.08.2024

Date of Pronouncement: 28.08.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 22.11.2023.

2. Following grounds have been raised by the assessee:

"1. That the learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), New Delhi dated 22.11.2023 has erred both in law and on facts in dismissing the appeal of the appellant by invoking section 249(4)(b) of the Act is not in accordance with law and therefore invalid, illegal and deserves to be quashed as such.

1.1 That the finding of the learned Commissioner of Income Tax (Appeals) that "the impugned order was passed u/s 147 read with section 144B of the Act, creating demand of Rs.40,70,085/- and the appellant was asked by notice u/s 156 of the Act to deposit the demand but it is noticed that the appellant has not deposited the demand before filing of this appeal" is factually incorrect, legally misconceived and wholly untenable.

1.2 That further finding of the learned Commissioner of Income Tax (Appeals) that "though the appellant has not offered 'YES' comments at sl. No. 9 of Form-35, it was asked vide DIN and letter no. ITBA/NFAC/F/APL1/1023- 24/1057763476(1) dated 7.11.2023 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" is not based on correct appreciation of facts on record and circumstances of the appellant and therefore untenable.

1.3 That finding of the learned Commissioner of Income Tax (Appeals) that "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 appeal is not liable to be admitted. The appeal is infructuous and is, therefore dismissed" is also not based on correct appreciation of facts on record, legally misconceived, misplaced and untenable.

2. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/144B of the Act without appreciating that the same were without jurisdiction and hence deserved to be quashed as such.

2.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that notice issued u/s 148A(b) of the Act, under section 148 of the Act order u/s 148A(d) of the Act are also illegal, invalid and without jurisdiction and deserve to be quashed as such.

2.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no tangible material on record in the form of specified information to suggest that income of the appellant had escaped assessment and in view thereof the proceedings initiated are illegal, untenable and therefore unsustainable.

2.3 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that non supply of information in accordance with clause (i) of Explanation 1 to section 148 of the Act even otherwise vitiates the notice u/s 148A(b) of the Act and order u/s 148A(d) of the Act.

2.4 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that initiation of proceedings was mechanical and without any application of mind much less independent application of mind, therefore the notices issued u/s 148A(b) of the Act; and u/s 148 of the Act are invalid 148

notice; and also order u/s 148A(d) of the Act was an invalid order and thus assumption u/s 147 of the Act was without jurisdiction.

2.5 That learned Commissioner of Income Tax (Appeals) has failed to appreciate that notice u/s 148A(b) of the Act was issued based on factually incorrect assumptions and presumptions and therefore such a notice being highly cryptic vague could not legally and logically be made a basis for assumption of jurisdiction and therefore deserves to be quashed as such.

2.6 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that notice u/s 148A(b) of the Act and, notice dated 28.3.2022 u/s 148 of the Act issued without validly complying section 151 of the Act were also without jurisdiction.

2.7 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that notice u/s 148A(b) of the Act and order u/s 148A(d) of the Act are contrary to section 151A of the Act; and therefore the assumption of jurisdiction was not in accordance with law.

3. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre has also erred both in law and, on facts in upholding an addition an addition of Rs. 84,38,290/- of interest received on enhanced compensation on compulsory acquisition of agricultural land received u/s 28 of Land Compensation Act 1894 and eligible for exemption u/s 10(37) of the Act.

3.1 That while sustaining the aforesaid addition the learned Commissioner of Income Tax (Appeals) has further erred both in law and on fact in not following the binding judgments of Apex Court:

- i) 315 B) ITR 1 (SC) CIT vs. Ghanshyam (HUF)*
- ii) 367 ITR 498(SC) CIT vs. Govindbhai Mamaiya*
- iii) 400 ITR 23 (SC) PCIT vs. Chet Ram (HUF)*
- iv) 302 CTR 458 (SC) UOI vs. Hari Singh and Ors.*
- v) C.A. No. 18475/2017 dated 10.11.2017 ITO vs. Muktanandgiri Maheshgiri*

4. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on fact in sustaining the view taken by learned Assessing Officer of making addition by invoking section 56(2)(viii) read with section 57(iv) of the Act and 145A(b) of the Act to sustain the impugned addition.

5. That even otherwise the learned Commissioner of Income Tax (Appeals) passed the order without granting sufficient

proper opportunity to the appellant and therefore the same is contrary to principle of natural justice and hence vitiated.

6. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding the levy of interest of Rs. 8,91,225/- u/s 234A of the Act, interest of Rs. 11,88,300/- u/s 234B of the Act ad Rs. 10,000/- u/s 234F of the Act which are not leviable on the facts of the appellant.

3. At the outset, both the parties fairly submitted that the appellant failed to submit before the Id. CIT(A) on the date fixed for compliance i.e. 15.11.2023. From para 3.5 of the order of the Id. CIT(A), we find that the appeal has been dismissed as the assessee failed to contract the information given at serial no. 9 of Form 35 with regard to payment of advance tax. On going through the record, we are of the considered opinion that no prejudice would be caused to the revenue if an opportunity of being heard is given to the assessee to represent his case rightly before the Id. CIT(A). Hence, the matter is being remanded to the Id. CIT(A) for adjudication *afresh* after given an opportunity of being heard to the assessee and the assessee shall not mis-use the opportunity given and shall promptly comply to the notices issued from time to time.

4. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 28/08/2024.

Sd/-

(C. N. Prasad)
Judicial Member

Dated: 28/08/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR