

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डॉ. एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 884 & 885/JPR/2024
निर्धारण वर्ष / Assessment Years : 2011-12 & 2017-18

Vidya Samiti Arya Samaj Raja Park, Adarsh Nagar, Jaipur-302004.	बनाम Vs.	ITO, Exemption-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABTV2700P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Khandelwal (C.A.)
राजस्व की ओर से / Revenue by : Shri Anoop Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 06/08/2024
उदघोषणा की तारीख / Date of Pronouncement : 27/08/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These two appeals filed by the assessee, aggrieved from the order of the CIT(A), National Faceless Appeal Centre, Delhi both dated 28.02.2024 & 14.09.2023 [Here in after referred as "CIT(A)/NFAC"] for the assessment years 2011-12 & 2017-18, which in turn arise from the order dated 13.12.2018 passed under section 147/143(3) of the Income Tax Act and order dated 04.09.2019 passed u/s 144 of the Income Tax

Act, [Here in after referred as “Act”] by Income Tax Officer, Ward -1 (Exemption), Jaipur.

Vide this common judgment, both the above-mentioned appeals are being disposed off, as they involve common points, and have been argued together.

2.1 In ITA No. 884/JPR/2024, The assessee has raised the following grounds:-

“1. That the Id. CIT(A), NFAC has erred seriously in dismissing the appeal on the reason that advance tax payable by the appellant had not been paid prior to filing the appeal as per section 249(4) of the Income Tax Act, 1961 ignoring the legal position that said sub section is not applicable in the instant case as an ITR had been filed by the appellant and no tax was due as per ITR so filed. Relief may please be provided by quashing such decision of the Id. CIT(A).

2. That without prejudice to ground No. 1, the Ld. AO erred seriously in law and on facts in considering cash deposit of Rs. 70,13,471/- in the bank account as unexplained cash credit of the appellant.

3. That without prejudice to ground No. 1, the Id. AO erred seriously in law and on facts in considering a sum of Rs. 74,011/- being part amount of interest from bank as undisclosed income of the appellant.

4. That without prejudice to ground No. 1, the Id. AO erred seriously in law in not allowing the claim of the appellant that whole income of the appellant was exempt u/s 10(23C)(iiiad) on the reason that the appellant failed to file its ITR as per section 139(4C) of the Income Tax Act, 1961. He erred further in taxing the net surplus appearing in Income and Expenditure Account separately, in addition to above additions which has resulted into double taxation of the same income.”

2.1 In ITA No. 885/JPR/2024, The assessee has raised the following grounds:-

“2. That the ld. CIT(A), NFAC has erred seriously in dismissing the appeal on the reason that advance tax payable by the appellant had not been paid prior to filing the appeal as per section 249(4) of the Income Tax Act, 1961 ignoring the position that no admitted tax was payable by the appellant. The executives of the appellant were under bona fide belief that no tax was payable as the appellant was engaged solely into education. Further no show cause notice was issued by the Ld. CIT(A) prior to dismissing the appeal. Relief may please be provided by quashing such decision of the Ld. CIT(A).

2. That without prejudice to ground no. 1, the ld. AO erred seriously in law and on facts in considering cash deposit of Rs. 23,33,600/- in the bank account as income from unexplained sources of the appellant and taxing the same as per section 115BBE of the Income Tax Act, 1961.”

3.1 At the outset of hearing, the Bench observed that there is delay of 50 & 217 days in filing of these appeals by the assessee for which the ld. AR of the assessee filed applications for condonation of delay with following affidavit :-

ITA No. 884/JPR/2024

“I, Nand Kishore Son, s/o Late Hari Charn soni, aged 69 year resident of 37/74, Rajat Path, Pukhraj path, Near Spring Field School, Mansarovar, Jaipur (Rajasthan) do hereby solemnly affir and declare as under:-

1. That I am a Trustee of Vidya Samiti Arya Samaj which runs Vedik Balika Senior Higher Secondary School, Raja Park, Adarsh nagar, Jaipur and is competent to executive this affidavit.
2. That the CIT(A), NFAC has passed an order u/s 250 of the Income Tax Act, 1961 vide order dated 28.02.2024 for A.Y. 2011-12 in the case of our institution and as per provisions we were supposed to file appeal before the

Hon'ble ITAT, Jaipur Bench, Jaipur before 29.04.2024 but as per advice received by us we had filed an application before the Ld. CIT(A) u/s 154 of the Income Tax Act, 1961 on 02.03.2024 and were quite hopeful of receiving a favourable order but the application is still pending for decision by CIT(A) and hence we have advised to file this instant appeal which is delayed by around 45 days. The reason for such delay is on account of non passing of any order on our application filed 154 and there is no mala fide intention on our part.

3. It is therefore humbly prayed that the delay so caused may kindly be allowed by the Hon'ble ITAT, Jaipur bench, Jaipur and appeal may please be admitted for hearing.”

ITA No. 885/JPR/2024

“I, Nand Kishore Son, s/o Late Hari Charn soni, aged 69 year resident of 37/74, Rajat Path, Pukhraj path, Near Spring Field School, Mansarovar, Jaipur (Rajasthan) do hereby solemnly affirm and declare as under:-

1. That I am a Trustee of Vidya Samiti Arya Samaj which runs Vedik Balika Senior Higher Secondary School, Raja Park, Adarsh nagar, Jaipur and is competent to executive this affidavit.
2. That the CIT(A), NFAC has passed an order u/s 250 of the Income Tax Act, 1961 vide order dated 14.09.2023 for A.Y. 2017-18 in the case of our institution and as per provisions we were supposed to file appeal before the Hon'ble ITAT, Jaipur Bench, Jaipur before 13.11.2023 but as per advice received by us we had filed an application before the Ld. CIT(A) u/s 154 of the Income Tax Act, 1961 on 22.05.2024 and were quite hopeful of receiving a favourable order but the application is still pending for decision by CIT(A) and hence we have advised to file this instant appeal which is delayed by around 215 days. The reason for such delay is on account of non passing of any order on our application filed 154 and there is no mala fide intention on our part.
3. It is therefore humbly prayed that the delay so caused may kindly be allowed by the Hon'ble ITAT, Jaipur bench, Jaipur and appeal may please be admitted for hearing.”

3.2 The ld. AR of the assessee appearing in these appeals submitted that the assessee is serious on the duties casted upon under the law. As is evident from the record that the appeal of the assessee was dismissed considering the that the assessee has not paid tax as per provision of section 249(4). In fact, as per the return of income no tax was payable and even other wise as per CBDT's guideline assessee has paid the 20 % of the demand. Based on that set of facts, assessee was advised to present these set of facts before the ld. CIT(A) and they were given to understand that their application u/s. 154 will attended by the ld. CIT(A). In expectation of rectification, they have not filed the appeal. But even after a consideration time that 154 applications made is still pending.

In the light of these facts and demand was persisting the assessee pending that application advised to file the present appeal though delayed.

Based on these set of fact the assessee has substantiated that they have valid and sufficient reasons for filling the present appeal though delayed and to support these facts the authorized person by filling the affidavit.

3.3. During the course of hearing, the ld. DR objected to assessee's application for condonation of delay but at the same time did not object to the factual aspect argued by the ld. AR of the assessee.

3.4 We have heard both the parties and perused the materials available on record. The Bench Noted that the assessee for condonation of delay of 50 & 217 days has merit as they were waiting for disposal of their application made for rectification of the factual error in the order of the ld. CIT(A). We concur with the submission of the assessee and therefore, based on these set of facts we condone the delay of 50 & 217 days in filing the present appeals by the assessee. We get support of our view from the apex court order passed in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) wherein the highest court directed the other courts to consider the liber approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk. Thus, we hold that the assessee was prevented by sufficient cause.

ITA No. 884/JP/2024

4. The brief facts of the case of the assessee as emerges from the assessment order is that assessee trust has deposited cash of Rs.

73,17,822/- with Oriental Bank of Commerce during the year under consideration. The assessee also earned interest income of Rs. 75,505/- and the investment made by them. As the assessee has not filed any return of income. Notice u/s 147 of the Act was issued to the assessee on account of fact that the assessee despot cash and has earned interest income and has not filed the return of income. The notices were issued from time to time in this case. The assessee a written reply dated 17.10.2018 filed the return of income in response to notice u/s 148 of the Act. The assessee except return of income, balance sheet and interest & expenditure account, no other details were called for were submitted. Since, there was no sufficient details, the ld. Assessing Officer had added the deposit of cash despot and interest income and surplus report by the assessee in the income and expenditure account, as the assessee of trust for amount of Rs. 82,93,498/-.

5. Aggrieved from the above order of the Assessing Officer, assessee preferred an appeal before the ld. CIT(A). Apropos to the grounds of the appeal so raised by the assessee, the relevant finding of the ld. CIT(A) is reiterated here in below:-

“3.1. I have examined facts of the case as also gone through relevant provisions of Income Tax Act (the Act). In the present case, the

appellant failed to file return of income. The impugned order was passed u/s 147r.ws 143(3) of the Act, creating demand of Rs. 68,26,830/- 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 The appellant has attached challan for payment of Rs. 1000/- along-with Form-35. At sl. No. 9 of Form-35, the appellant has offered 'No' comments. This sl. No. 9 is reproduced below-

9	Where no return has been filed by the appellant for the assessment year. No whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act, 1961 has been paid
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3.2. As per provisions of section 249(4)(b) of the Act, where no return has been filed by the assessee, the assessee has to pay an amount equal to the amount of advance tax which was payable by him otherwise appeal shall not be admitted. The provisions of section 249 (4) of the Act are reproduced as under-

Section 249(4)

"No appeal under this Chapter shall be admitted unless at the time of filing of the appeal-

(a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or

"(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him: Provided that, in a case falling under clause (b) and) on an application made by the appellant in this behalf, the Deputy Commissioner (Appeals)] or, as the case may be, the Commissioner (Appeals)] may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of 5 that clause).]

3.3 As per provisions of section 2348(1), read with provisions of section 208 of the Act, the liability to pay advance tax, in a case where returned income is less than the assessed income, is calculated on the basis of

assessed income. The provisions of section 234B(1) and provisions of section 208 of the Act are reproduced below-

Section 234B(1)

"(1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of two per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of determination of total income under sub-section (1) of section 143A and where a regular assessment is made, to the date of such regular assessment, on an amount]] equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid is aforesaid falls short of the assessed tax. 5 Explanation 1-In this section," assessed tax means,-

(a) for the purposes of computing the interest payable under section 140A, the tax on the total income as declared in the return referred to in that section

(b) in any other case, the tax on the total income determined under sub-section (1) of section 143 or on regular assessment, as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.] Explanation 2.- Where in relation to an assessment year, an assessment is made for the first time under section -147, the assessment so made shall be regarded as a regular assessment for the purposes of this section. 6 Explanation 3- In Explanation 1 and in sub- section (3)." tax on the total income determined under sub- section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.

3.4. Section 208

"208. Conditions of liability to pay advance tax Advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of this Chapter, is one thousand five hundred rupees or more.

3.5. Though the appellant has offered 'No' comments at sl. No. 9 of Form-35, it was asked vide DIN & letter no. ITBA/NFAC/F/APL_1/2023-24/1060787306(1) dated 12.02.2024 to intimate whether it has made payment of tax-which includes element of advance tax also and date of compliance was fixed for 19.02.2024 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. It is, therefore, clear that information, given at sl. no. 9 of Form-35 is correct and the appellant has not made payment of amount equal to the advance tax which was due on its income. The appellant has also not requested for exemption from operation of the provisions of clause (b) of sub-section (4) of section 249 of the Act.

4. 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 by it, present appeal is not liable to be admitted. The appeal is infructuous and is, therefore, dismissed.

5. The appeal is dismissed.”

6. Aggrieved from the order of the ld. CIT(A), the assessee has filed the present appeal on the grounds as stated herein above. To support the grounds so raised the ld. AR appearing on behalf of the assessee has placed reliance on the following written submission:-

“Facts of the case :

ITA No. 884/JPR/2024 pertains to AY 2011-12 wherein the assessment order passed by ld. AO u/s 147/143(3) dated 13.12.2018 was challenged before the ld. CIT (A). The other ITA No. 885/JPR/2024 pertains to AY 2017-18 wherein the assessment order passed by ld. AO u/s 144 dated 04.09.2019 was challenged before the ld. CIT (A). Both the appeals have been dismissed by the ld. CIT (A) on ground of non satisfaction of condition as per section 249(4) of the Income Tax Act, 1961. The ld. CIT (A) says that the appellant has failed to deposit the advance tax as provided in section 249(4) of the

Income Tax Act, 1961 prior to filing of appeals. In this connection the following is submitted :-

AY : 2011-12

The case was reopened on the ground of cash deposit of Rs. 73,17,822 in the bank account with Oriental Bank of Commerce and interest on bank account for Rs. 75,505 and non filing of ITR. The appellant had filed a manual ITR which was submitted to ld. AO along with letter dated 17.10.2018 (**APB 1-2**). However the ld. AO not convinced with the ITR of the assessee finalized the assessment at an income of Rs. 82,93,500 comprising of cash deposit of Rs. 70,13,471, interest income of Rs. 74,011 and surplus as per Income & Expenditure Account of Rs. 12,06,016. A demand for Rs. 68,26,830 was created by the ld. AO. The appellant had deposited a sum of Rs. 13,66,000/- against the said demand for seeking stay on the demand (**APB 5-6**). All these additions were challenged before the ld. CIT (A). The ld. CIT (A) issued a notice on 12.02.2024 seeking explanation of the appellant on non filing of ITR and non deposit of advance tax. Due to some inadvertent error no reply could be furnished on such communication due to which the ld. CIT (A) dismissed the appeal for non satisfaction of condition of section 249(4) of the Income Tax Act, 1961. The appellant wishes to submit that the action of the ld. CIT (A) is wrong on following counts :-

1. The appellant had definitely filed an ITR with the ld. AO which fact was not mentioned by ld. AO in the order. However the same stand proved with the evidence being enclosed at **APB 3-4** and hence section 249(4) does not have any application.
2. The appellant is an educational institution having receipt less than Rs. 1.00 Crore and hence its income was fully exempt u/s 10(23)(iiiad) and hence no tax was payable by the appellant and hence no liability of advance tax can be fastened on it.
3. Since the appellant institution was fully engaged into the field of education having receipts less than Rs. 1.00 Crore and hence the office bearers of the institution were under honest belief that there is no requirement of filing ITR and hence no ITR could be filed u/s 139(1). However same was filed in response to notice u/s 148.
4. Otherwise also the appellant had paid Rs. 13,66,000 against the demand and hence it cannot be said that no payment had been made against advance tax as envisaged in section 249(4) of the Income tax Act, 1961.

It is therefore sincerely prayed that the case may be set aside to the file of the ld. CIT (A) to decide the appeal on merits and oblige.

AY : 2017-18

In this case notice was issued u/s 142(1) seeking details about source of cash deposit of Rs. 14,71,500 in the bank account of the appellant during demonetization period. However no response could be filed and the ld. AO finalized the assessment vide order dated 04.09.2019 considering a sum of Rs. 23,33,600 being amount of cash deposit during the whole year as unaccounted income of the appellant. A demand for Rs. 21,13,499 was created by the ld. AO. The appellant had deposited a sum of Rs. 4,22,700/- against the said demand for seeking stay on the demand (**APB 10-11**). The above said addition was challenged before the ld. CIT (A). The ld. CIT (A) issued a notice on 16.08.2023 seeking explanation of the appellant on payment of tax in compliance to notice of demand. A response to the same was filed on 22.08.2023 giving details about above said payment of Rs. 4,22,700/- (**APB 7-9**). However the ld. CIT (A) dismissed the appeal for non satisfaction of condition of section 249(4) of the Income Tax Act, 1961, without considering the reply of the appellant. The appellant wishes to submit that the action of the ld. CIT (A) is wrong on following counts :-

1. The appellant had definitely filed details about payment of Rs. 4,22,700 to the ld. CIT (A) but he did not consider the reply of the assessee and dismissed the appeal.
2. The appellant is an educational institution having receipt less than Rs. 1.00 Crore and hence its income was fully exempt u/s 10(23)(iiiad) and hence no tax was payable by the appellant and hence no liability of advance tax can be fastened on it.
3. Since the appellant institution was fully engaged into the field of education having receipts less than Rs. 1.00 Crore and hence the office bearers of the institution were under honest belief that there is no requirement of filing ITR and hence no ITR could be filed u/s 139(1).
4. Otherwise also the appellant had paid Rs. 4,22,700/- against the demand and hence it cannot be said that no payment had been made against advance tax as envisaged in section 249(4) of the Income tax Act, 1961.

It is therefore sincerely prayed that the case may be set aside to the file of the ld. CIT (A) to decide the appeal on merits and oblige.”

7. To support the contentions raised in the written submission the ld.

AR of the assessee and has relied upon the following evidences:-

SN	Description	Page No.
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1.	Intimation letter to AO about ITR filed against notice 148	1-2
2.	Consolidated income and Expenditure account and balance sheet for the year ending 31.03.2011.	3-4
3.	Intimation about payment of 20% of demand and challan for the A.Y. 2011-12	5-6
4.	Query by Ld. CIT(A), response of the appellant and acknowledgement of reply in response to clarification letter about payment of demand	7-9
5.	Intimation about payment of 20% of demand and challen for the A.Y. 2017-18.	10-11

8. The ld. AR of the assessee in addition to the written submission vehemently argued that the ld. CIT(A) has dismissed the appeal of the assessee on the ground that the assessee has not made payment of amount equally to the advance tax which was due on its income returned. The ld. CIT(A) also noted that the assessee has not requested for exemption from operation of the provisions of clause (b) of sub-section(4) of Section 249 of the Act and therefore, the ld. CIT(A) has not admitted the appeal of the assessee. Thus, the assessee is before the Bench contending that the assessee has already deposited an amount of Rs. 13,66,000/- demand raised by the Revenue and therefore, the appeal of the assessee required to admitted and to be decided on merit of the case.

9. Per contra, the ld. DR relied upon the order of the lower authorities and prayed that since there was a misconception on facts matter may be set aside to the file of the ld. CIT(A) to be decided on its merits as argued by the ld. AR of the assessee.

10. We have heard the rival contention and perused the material available on record. The Bench noted that in this case, the assessee has filed the return of income but the ld. AO while issuing notice u/s. 147 of the Act as well as while passing the order noted that the assessee has not filed the original return of income. The bench noted that even the ld. CIT(A) has misconceived the fact that the assessee failed to discharge the liability on the returned income as per provisions of section 249(4) of the Act. In fact that as per the return of income filed by the assessee originally no liability to pay exist. Thus, the facts are wrongly recorded in the orders of the lower authority. Considering this facts and has not controverted by the ld. DR bench fees that the matter be set aside to the file of the ld. CIT(A), as he has dismissed the appeal of the assessee contending that the assessee has not paid advance tax on the income reported by the assessee. Based on that fact he has not admitted that appeal

and accordingly was dismissed without dealing with the merits of the case. The Bench noted that in this case, the assessee in the paper book so filed submitted that return of income was filed in form in ITR-7 contending that the assessee has filed the return u/s 139 of the Act declaring total income at Nil. Thus, as per return of income so filed there is no liability to pay the advance tax and therefore, the contention raised in the order of the ld. CIT(A) is against set of facts on record. The ld. AR of the assessee before us, alternatively submitted that the assessee paid an amount of Rs. 13,66,000/- against the said demand so raised and therefore, it cannot be said that no payment of tax has been discharged by the assessee. Thus, we consider the merit in the prayer of the assessee and considering the arguments of the ld. DR we deem it a fit case in the interest of justice to set aside the matter to the file the ld. CIT(A) to be decided afresh in accordance with law. Of course, after providing sufficient opportunity to the assessee. In terms of these observation, the appeal of the assessee in ITA No. 884/JPR/2024 is allowed for statistical purposes.

9. The Bench feels that the fact in the case Vidya Samiti Arya Samaj in ITA No. 885/JPR/2024 is exactly similar to the fact ITA No.

884/JPR/2024 and therefore, it is not imperative to repeat the fact in ITA No. 885/JPR2024. The decision taken us in ITA No. 884/JPR/2024 shall apply mutatis mutandis to ITA No. 885/JPR/2024.

In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 27/08/2024.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 27/08/2024.

***Santosh**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Vidya Samiti Arya Samaj, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO(E)-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 884 & 885/JPR/2024 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar