

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 799 & 800/Ahd/2024
(निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15)

Mr. Kantilal Laxmichand Jain 22 Jakorbal Chamber, Opp. Madhubaug Panchkuwa, Ahmedabad, Gujarat, 380002	बनाम/ Vs.	ITO Ward - 1(2)(3), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABBPJ6013E		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Malay Kalavadia, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri C Dharani Nath, Sr. DR

Date of Hearing	19/09/2024
Date of Pronouncement	03/10/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

These two appeals are filed by the assessee against the orders of the National Faceless Appeal Centre (NFAC), Delhi, (in short 'the CIT(A)'), dated 29.12.2023 & 28.12.2023 for the Assessment Years 2013-14 & 2014-15 respectively.

2. There was a delay of 56 days in filing of these appeals. The assessee has filed an affidavit explaining that he is a senior citizen having severe medical conditions with heart ailments for long time. Further, he was not well conversant with the technical requirements for filing of appeals which led to delay in

consultation with the professional Chartered Accountant. Considering the reason as explained, the delay in filing the appeals is condoned.

3. The issue involved in both the appeals is identical and the two appeals were heard together. Therefore, these appeals are being disposed of vide this common order. We will take ITA No.800/Ahd/2024 for A.Y. 2014-15 as the lead case.

4. The brief facts of the case are that no return of income was filed by the assessee for A.Y. 2014-15. Subsequently, the AO found that the assessee had done certain transactions amounting to Rs.34,18,810/- through NSE during the F.Y.2013-14 relevant to A.Y. 2014-15. Therefore, proceeding under Section 147 of the income Tax Act, 1961 (in short 'the Act') was initiated after recording the reasons. In the course of reopened proceedings, there was no compliance made by the assessee in spite of numerous opportunities provided by the AO. Therefore, the AO completed assessment ex-parte u/s.144 r.w.s. 147 of the Act on 19.03.2022 and the entire transaction amount of Rs.34,18,810/- done through NSE was considered as income of the assessee.

5. Aggrieved with the order of the AO, the assessee had filed appeal before the First Appellate Authority, which has been decided by the Ld. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

6. Now, the assessee is in second appeal before us and has taken following grounds in this appeal:

“1. Ground No. 1-Reopening of assessment under section 147 of the Act is bad in law

1.1 *On the facts and circumstances of the case, the learned AO has erred in law and facts in assuming jurisdiction under section 147 of the Act as there was no reason to believe that the income of the Appellant had escaped assessment.*

1.2 *On the facts and circumstances of the case, the learned AO has erred in law and facts in assuming jurisdiction under section 147 of the Act as the learned AO had not applied his mind before issuing notice under section 148 of the Act.*

1.3 *On the facts and circumstances of the case, the learned AO has erred in law and facts in initiating reassessment proceedings under section 147 of the Act beyond the prescribed time limit of 4 years from the end of the relevant assessment year, i.e AY 2014-15 and hence, reassessment proceedings are bad in law.*

2. Ground No. 2 Incorrect disposal of Appeal by Hon'ble CIT(A) by applying provisions of section 249(4) of the Act

2.1 *On the facts and circumstances of the case and in law, the Appellant respectfully submits that Hon'ble CIT(A) grossly erred in dismissing the appeal filed by the Appellant on the ground that non payment of advance tax renders appeal to be dismissed under section 249(4) of the Act without considering the fact that Appellant was not required to pay advance tax or file his return of income as his total income of the subject year did not exceed the maximum amount not chargeable to tax*

2.2. *On the facts and circumstances of the case and in law, the Appellant submits that provisions of Section 249(4) for dismissing an appeal is applicable only where assessee has failed to deposit tax on undisputed tax liability and not where Appellant has not deposited advance tax or self-assessment tax on disputed tax liability.*

3. Ground No. 3-Hon'ble CIT(A) erred in not adjudicating addition of INR 34,18,810/- under section 69A of the Act.

3.1 *On the facts and circumstances of the case, Hon'ble CIT(A) has erred in not adjudicating additions of INR 34,18,810/- made by learned AO on account of unexplained money under section 69A of the Act.*

- 3.2 *On the facts and circumstances of the case, Hon'ble CIT(A) has erred in confirming addition made by learned AO under section 144 read with section 69A of the Act without considering the fact that addition of INR 34,18,810/- made by learned AO is total sales value of commodities sold on NSEL during captioned year and without reducing corresponding purchase value of those commodities.*
4. **Ground No. 4-Incorrect levy of interest under section 234A and 234B of the Act.**
- 4.1 *On the facts and circumstances of the case, Hon'ble CIT(A) has erred in confirming interest levied under section 234A and 2348 of the Act.*
5. **Ground No. 5-Initiation of penalty proceeding**
- 5.1 *On the facts and circumstances of the case, Hon'ble CIT(A) has erred in confirming initiation of penalty proceedings by learned AO under section 271(1)(b), 271(1)(c) and 271F of the Act."*

7. Shri Malay Kalavadia, Ld. AR appearing for the assessee submitted that the assessee being senior citizen and suffering from various ailments, no compliance could be made before the AO in the course of reopened assessment proceeding. The Ld. AR submitted that the Ld. CIT(A) had dismissed the appeal of the assessee on technical ground without examining the merits of the case. He explained that the Ld. CIT(A) had dismissed the appeal for the reason that no advance tax payment was made by the assessee, in spite of the fact that it was categorically mentioned in Form 35 that the condition prescribed u/s.249(4)(b) of the Act for payment of advance tax was not applicable in the case of the assessee. He, therefore, requested that the matter may be set aside to the file of the Ld. CIT(A) with a direction to decide the appeal on its merit.

8. Per contra, Shri C Dharani Nath, Sr. DR submitted that the Ld. CIT(A) had made specific enquiry regarding fulfillment of conditions as stipulated in Section 249(4)(b) of the Act vide letter dated 20.12.2023, which was not complied by the assessee and, therefore, he had rightly dismissed the appeal.

9. We have carefully considered the rival submissions. It is found that in Column No.-9 of Form 35, the assessee had categorically mentioned that the condition for payment of advance tax as stipulated u/s.249(4)(b) of the Act was "Not applicable". The Ld. CIT(A) has given a finding that the appellant had offered comment as 'Yes' at Sl. No.9 of Form No.35. However, from the copy of Form No.35 as filed along with this appeal, we do not find any such comment of 'Yes' at Sl. No.9; rather comment 'Not applicable' is found appearing. Under the circumstances, the action of the Ld. CIT(A) to dismiss the appeal on the technical ground cannot be held as correct. As per proviso to Section 249(4)(b) of the Act, the Ld. CIT(A) has power to exempt the assessee from operation of the provision of that clause. Therefore, the Ld. CIT(A) should have decided the appeal on its merits, particularly when the assessee had categorically mentioned in Form No.35 that Section 249(4)(b) of the Act was applicable in his case. We, therefore, set aside the matter to the file of the Ld. CIT(A) with a direction to re-adjudicate the appeal of the assessee on its merits. The Ld. CIT(A) should allow proper opportunity of being heard to the assessee. The assessee is also directed to appear before the Ld. CIT(A) and not to seek adjournment without a valid reason. In case of non-compliance

on the part of the assessee, the Ld. CIT(A) will be free to pass the order as deemed fit.

10. Since, Ground No.2 taken by the assessee is allowed by setting aside the matter to the Ld. CIT(A), we do not deem it necessary to adjudicate the other grounds taken by the assessee.

11. In the result, the appeal of the assessee is allowed in part for statistical purposes.

ITA No. 799/Ahd/2024 – A.Y. 2013-14

12. The facts pertaining to this appeal are identical to ITA No.800/Ahd/2024. In this order also, the assessment was completed u/s.144 r.w.s. 147 of the Act on 19.03.2022 and the transaction of Rs.55,26,460/- done by the assessee through NSE was assessed as income. The appeal filed by the assessee was disposed of vide order dated 29.12.2023, the scanned copy of which is as under:



भारत सरकार / GOVERNMENT OF INDIA
वित्त मंत्रालय / MINISTRY OF FINANCE
आयकर विभाग / INCOME TAX DEPARTMENT
राष्ट्रीय पहचानविहीन अपील केन्द्र / NATIONAL FACELESS APPEAL CENTRE (NFAC)
दिल्ली / DELHI

To KANTILAL LAXMICHAND JAIN 22 JAKORBAI CHAMBERS ,OPP. MADHUBAUG PANCHKUWA AHMEDABAD 380002 ,Gujarat India	
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PAN: ABBPJ6013E	AY: 2013-14	Dated: 29/12/2023	DIN & Order No : ITBA/NFAC/S/250/2023-24/1059197174(1)
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Order u/s 250 of Income Tax Act,1961

Instituted on 07/09/2022 from the order of GUJ-W-(101)(93) dated 19/03/2022

Appeal No	NFAC/2012-13/10167799
Status/Deductor Category	Individual
Residential Status	Resident
Nature of Business	N.A.
Section under which the order appealed against was passed	147r.w.s144
Date of Order under which the order appealed against was passed	19/03/2022
Income/Loss Assessed (in Rs.)	5526460
Tax/Penalty/Fine/Interest Demanded (in Rs.)	4781476
Present for the appellant	Not Applicable
Present for the Department	Not Applicable

Commissioner of Income-tax (Appeals)
Income Tax Department

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

Digitally signed by Commissioner
of Income-tax (Appeals), Income
Tax Department
Date 29.12.2023 16:08:05 IST

13. It is found that not a single word is appearing in the order of Ld. CIT(A) and the ultimate outcome of this appeal is also not evident. It appears that there has been some mistake of copy-paste in this appeal, as a result of which the order of the Ld. CIT(A) has remained blank. Since, the facts in this case are identical to A.Y. 2014-15 which has been set aside to the file of the ld.

CIT(A), the appeal of this year also is set aside to the file of the Ld. CIT(A) to examine the matter on its merits and thereafter to pass a reasoned order.

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

15. In the combined result, ITA No.800/Ahd/2024 is allowed in part for statistical purposes and ITA No.799/Ahd/2024 is allowed for statistical purposes.

This Order pronounced on 03/10/2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad; Dated 03/10/2024
S. K. SINHA