

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri TR Senthil Kumar, Judicial Member**

**ITA No. 345/Ahd/2024
Assessment Year 2017-18**

Anmol Developers, Bungalow No. 6, Radhe Bungalows, New CG Road, Chandkheda, Ahmedabad-382424 PAN: ABFFA8655D (Appellant)	Vs	The ITO, Ward-1(1)(1) Ahmedabad (Respondent)
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**Assessee by: Shri Jimi Patel, A.R.
Revenue by: Shri V. Nandakumar, CIT-D.R.**

Date of hearing : 24-10-2024
Date of pronouncement : 11-11-2024

आदेश/ORDER

PER : TR SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the assessee as against appellate order dated 23-02-2024 passed by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi arising out of the assessment order passed u/s. 147 r.w.s. 144 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') relating to the assessment year 2017-18.

2. The case of the assessee is that the appeal was dismissed by the CIT(A) on the ground that assessee failed to pay the advance tax, therefore, as per provisions of section 249(4)(b) of the Act, the appeal is not maintainable.

2.1 Brief facts of the case, the assessee is a firm engaged in real estate business. The assessee has not filed the regular return of income. On the basis of information available with the Department, it was noticed that the assessee has purchased immovable property for a consideration of Rs. 7.22 crores, but the source of income remains unexplained. Therefore, notice u/s. 148 of the Act was issued to the assessee on 18-03-2021. The assessee has not responded to the above notice. Further, notices u/s. 142(1) were issued to the assessee on 29-12-2021, 25-01-2022 and 08-02-2022. Again, the same were not responded by the assessee firm. Therefore, a final show cause notice u/s. 144 dated 23-02-2022 was issued to the assessee as to why not to treat the purchase of immovable property of Rs. 7.22 crores as unexplained investment. Since there was no response to the above show cause notice, the Assessing Officer treated the above investment of Rs. 7.22 crores as unexplained u/s. 69 and added the same to the total income of the assessee and also initiated penalty proceedings u/s. 271F, 271AAC(1) and 271A(1)(d) of the Act.

3. Aggrieved against the ex-parte order, the assessee filed an appeal well within 30 days before ld. CIT(A). The ld. CIT(A) issued a deficiency letter in the prescribed format on 21-12-2023 and 28-12-

2023 that the tax on returned income not paid/particulars of payment not mentioned. In response to the deficiency notice, the assessee furnished its reply on 30-12-2023 stating that the assessee has not filed the return of income, therefore, it has not required to fill the column of particulars of tax payment and the same is applicable only in the case of an assessee who has filed the return of income. The above reply was considered by the Id. CIT(A) and dismissed the appeal as not maintainable observing as follows:-

“3.1 As per the provisions of the section 249(4)(b) of the Act, the appeal shall not be admitted, unless the appellant has paid an amount equal to the amount of advance tax which was payable by it, if no return of income has been filed.

3.2 In the present case, the appellant did not file return of income. As per the assessment order, the tax liability of the appellant was Rs. 12,04,72,920/- which includes the advance tax payable by the appellant as well as the interest on account of delayed payment of advance tax. On or before filing the present appeal, the appellant has failed to make the requisite payment of the amount equal to the amount of advance tax which was required to be paid by it. Further, the appellant neither provided any satisfactory clarification/ explanation in response to the deficiency letter issued by this office nor did he offer any reason, leave alone any good and sufficient reasons as mandated in the proviso to Sec.249(4), seeking exemption from the operation of the sec. 249(4)(b) even though sufficient opportunities were provided to it.”

4. Aggrieved against the same, the assessee is in appeal before us raising following grounds of appeal:-

“1. Ld. CIT (A) erred in law and on facts dismissing appeal by treating the same as inadmissible on account of alleged violation of Section 249(4)(b) of the Income Tax Act, 1961 without appreciating law and facts of the case properly.

2. *Ld. CIT(A) erred in law and on facts in dismissing appeal preferred by the appellant on ground of alleged violation of Section 249(4)(b) of the Income Tax Act, 1961 without issuing any notice intimating defect u/s 249(4)(b) of the Income Tax Act, 1961, which is clear cut violation of principle of natural justice.*
3. *The appellant craves leave to add, amend or alter the grounds of appeal at the time of hearing, if need arise.”*
5. We have heard rival submissions and perused the materials placed on record. It is an admitted case of the assessee that neither original return of income filed u/s. 139 of the Act nor in response to 144 notice issued by the A.O. In spite of various opportunities given by the Ld. A.O., the assessee remained silent and not responded to the statutory notices, which has warranted in passing ex-parte assessment order. Though the assessee was not co-operative before the A.O. but filed the appeal within time limit. When the ld. CIT(A) issued the show cause notice about maintainability of the appeal, the same was replied by the assessee. Based on that, the ld. CIT(A) held that the appeal is not maintainable as per section 249(4)(b) of the Act. For better understanding of provisions of section 249(4) is reproduced as under:-

“(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 [Joint Commissioner (Appeals) or the] [Commissioner (Appeals), may for any good or sufficient reason to be recorded in writing, exempt him from the operation of the provisions of [that clause]]”.

5.1 Reading of the proviso to section 249(4)(b) makes it very clear when no return is filed by the assessee, the assessee should explain why it is not liable to pay advance tax in this behalf and the CIT(A) after going through the same, if found that any good or sufficient reasons therein the contention of the assessee, then, he can exempt the assessee from the operation of provisions of section 249(4)(b) of the Act.

5.2 In this case, admittedly, the assessee has not explained the source of investment of Rs. 7.22 crores in immovable property and also not demonstrated how it is not liable for taxation even before the Assessing Officer in spite of six opportunities given by the Assessing Officer. Further, when CIT(A) issued the deficiency letter that was also not replied legally but only on technical/clerical mistake committed by it.

5.3 Further, in ground no. 2, the assessee raised “the ground that CIT(A) without issuing any notice intimating u/s. 249(4)(b) of the Act, is clear-cut violation of principles of natural justice’ which is totally incorrect statement, whereas CIT(A) had given opportunities on 21-12-2023 and 28-12-2023 which was replied by the assessee on 30-12-2023. Thus, the assessee is misrepresenting its case before this Tribunal and neither filed its return of income u/s.

139(1) or in response to various notices issued by the lower authorities. This clearly shows the irresponsible attitude of the assessee and disrespecting the statutory notices issued by the authorities concerned.

5.4 But on merits only addition made in this case is unexplained investment made in the immovable property of Rs. 7.22 crores u/s. 69 of the Act. Such addition which deemed to be income of the assessee is precluded from the payment of advance tax. Advance tax, as the term denotes has to be paid by the assessee on incomes which the assessee believes and is aware, it would earn during the year. Any income which the assessee does not believe to be income and treated it as such by the Department are not to be considered for the payment of advance tax.

5.5 In view of the same, the dismissal of the appeal for violation of section 249(4)(b) is not correct in law. Moreover, the assessee failed to file regular return of income nor in response to the notices issued by the authorities which has resulted in passing ex-parte assessment. Further, no relevant documentary evidences produced before us.

6. In the above circumstances, we deem it fit to impose a cost of Rs. 10,000/- on the assessee payable within two weeks of receipt of this order, to the Gujarat State Legal Services Authority, Ahmedabad for its failure to response to the notices issued by the authorities. Thus, we set aside the orders passed by the lower

authorities and restore the matter back to the file of Jurisdictional Assessing Officer with a direction to consider the issue afresh after giving due opportunity of hearing to the assessee. Needless to state, if assessee fails to comply with the de-novo assessment proceedings, it is open to the Assessing Officer to pass order in accordance within the provisions of law.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 11-11-2024

Sd/-

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad : Dated 11/11/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद