IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH "SMC", JABALPUR

BEFORE SHRI KUL BHARAT, VICE PRESIDENT

ITA No. 142/JAB/2023
Assessment Year: 2017-18

Vishwanath Singh Rathode Village Chapda Grahan, Seonimalwa, Seonimalwa, Madhya Pradesh-461221.	v.	**Income Tax Officer-1** Income Tax Officer-1, Niyas Coloni Itarsi, Dist Narmadapuram, MP-461111.
PAN:AEZPR6401F		
(Appellant)		(Respondent)

Appellant by:	Shri Abhijeet Shrivastava, Adv.		
Respondent by:	Shri Bharat Sheogankar, Sr. CIT(DR)		
Date of hearing:	08	01	2025
Date of pronouncement:	09	01	2025

O R D E R

PER KUL BHARAT, VICE PRESIDENT.:

This appeal, by the assessee, is directed against the order of the Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) dated 21.09.2023 pertaining to the assessment year 2017-18. The assessee has raised the following grounds of appeal: -

"1. On the facts and circumstance of the case, Honorable Commissioner of Income Tax (Appeal) has erred in not admitting the appeal contrary to relief sought under proviso to section 249(4) which is not justified and bad in law.

2. On the facts and circumstances of the case. The learned Assessing Officer (A O) has not given appropriate opportunity to applicant before passing the order which is not justified and bad in law.

3. On the facts and circumstances of the case, the learned Assessing Officer erred in concluding the exempt receipts deposited in bank accounts as investments u/s 69 which is not justified and bad in law. Tax effect Rs. 2046353.

4. On the facts and circumstances of the case, the learned Assessing Officer has erred in invoking the provision of 147 for reassessment which is not justified and bad in law.

5. The assesse reserves the right to append, alter or delete any ground (S) of appeal upto the time of hearing of appeal."

2. The facts giving rise to the present appeal are in this case the case was taken up for scrutiny on the basis that the assessee had deposited cash in his bank account amount to Rs.13,27,000/- during the demonetization period. Thereafter, the Assessing Officer issued statutory notices but there was no compliance on behalf of the assessee. Therefore, the cash deposited in bank account of Rs.26,49,000/- treated as unexplained cash deposit and he assessed the total income of the assessee u/s 144 of the Income Tax Act, 1961 (hereinafter referred as to "the Act"). Aggrieved by this, the assessee preferred appeal before the Ld. CIT(A) who also dismissed the appeal invoking the provision of Section 249(4)(b) of the Act on the basis that the assessee failed to deposit requisite tax.

3. Now, the assessee is in appeal before this Tribunal.

4. Apropos to the grounds of appeal, the Ld. Counsel for the assessee contended that the assessee is a agriculturist and earns income from agriculture and was not having any taxable income, therefore, the provision of Section 249(4)(b) of the Act would not be applicable. He also submitted that this issue is already covered in favour of the assessee. Ld. Counsel relied on the decision of the ITAT Delhi Bench in the case of Vikas Hooda Vs. ITO in ITA. No.3720/Del/2023 vide order dated 15.03.2024. The relevant contents are reproduced as under for the sake of clarity:-

> *"4. We have heard rival submissions and perused the material available on record. We find merit into the contention of the assessee that the learned CIT(A) wrongly applied the provisions of Section 249(4)(b) as in this case there is no admitted or undisputed tax. In the case in hand the undisputed income is Nil. Therefore, there was no liability to pay advance tax as per the relevant provisions. Reliance has been placed by the assessee on the decision of coordinate Bench of the Tribunal in the case of Hotel Sai Siddi (P) Ltd. v. DCIT, Cent. Cir. 1, Nasik [2011] 13 taxmann.com 155 (Pune), wherein in para 2 the Tribunal has held as under:*

"2. So, let us deal with the appeals covering the issues of provisions of section 249(4)(a) an 249(4)(b) of the Act. For the sake of brevity, both these sections are reproduced as under:

"249(4) No appeal under this Chapter shall be admitted unless at the time of filing of th appeal:

(b) 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 when was payable by him;"

The provision of section 249 deals with form of appeal and limitation. Subsection (4) of sectior 249 deals with admission of appeal. According to the provision of section 249(4)(a), no appea shall be admitted unless at the time of filing of the appeal, the assessee has paid the tax due or the income returned by him. As per provision of section 249(4)(b) the appeal will not be admitted unless at the time of filing the appeal, the assessee has paid an amount equal to the amount of advance tax which was payable by him at the time of filing an appeal. There is also proviso to section 249(4), according to which, on an application made by the assessee in this behalf, the CIT(A) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of clause (b) of section 249(4) of the Act. On plain reading. The proviso to section 249(4) is applicable to a situation where no return has been filed by the assessee and the assessee is supposed to pay an amount equal to the amount of advance tax which was payable by him. It is obvious that Legislature intended that where the assessee has taken advantage of appeal under Chapter XX he should have paid at least admitted tax payable before the appeal is admitted. The opening words are clear enough to cover all kinds of appeal contemplated under Chapter XX and restricted meaning cannot be given or for that matter section cannot be read down. In case there is a dispute with regards to payment of admitted tax then the matter may be remitted to CIT(A) to decide on merit for verification of payments of tax on admitted income as held by the Madras High Court in the case of CIT v. Smt. Deivamalar [2009] 329 ITR 249."

4.1 Considering the facts of the present case and the law, we are of the view that the learned view that the learned CIT(A) has wrongly applied the provisions of Section 249(4)(b) on the facts of this case. We, therefore, set aside the impugned order of learned CIT(A) and restore the matter to the file of learned CIT(A) to decide the appeal of the assessee, on merit of the impugned addition, in accordance with law, after affording reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes."

5. On the other hand, the Ld. Departmental Representative (DR) opposed the submission and supported the orders of the lower authorities.

5. I have heard the Ld. Representatives of the parties and perused the material available on record. Considering the facts and binding decision of ITAT Delhi Bench in the case of Vikas Hooda ((supra), I am of the considered view that the Ld. CIT(A)

has wrongly applied the provisions of Section 249(4)(b) of the Act. I, therefore, set aside the impugned order of Ld. CIT(A) and restore the matter to the file of Ld. CIT(A) to decide the appeal of the assessee, on merit of the impugned addition in accordance with law, after affording reasonable opportunity of being heard to the assessee. The grounds raised in the appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 09/01/2025.

Sd/-
[KUL BHARAT]
VICE PRESIDENT

DATED: 09/01/2025
Vijay Pal Singh, (Sr. PS)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

By order

// True Copy//

Assistant Registrar
ITAT, Jabalpur