

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(HYBRID COURT)

**BEFORE SH. UDAYAN DASGUPTA, JUDICIAL MEMBER
AND SH. KRINWANT SAHAY, ACCOUNTANT MEMBER**

I.T.A. No. 259/Asr/2024
Assessment Year: 2018-19

Javeed Ahmad Lone,
Near Bus Stand, Pahalgam,
Laripora, Pahalgam, Anantnagh,
J & K 192126

Vs.

Income Tax Officer,
Ward 3(1), Srinagar

[PAN: ATCPL 6072G]

(Appellant)

(Respondent)

Appellant by : Sh. Upender Bhat, C.A.
Respondent by : Sh. Davinder Pal Singh, Sr. D.R.
Date of Hearing : 18.12.2024
Date of Pronouncement : 17.01.2025

ORDER

Per Udayan Dasgupta, J.M.:

This appeal is filed by the assessee against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC) Delhi dated 02.02.2024 passed u/s 250 of the Income Tax Act, 1961 which has emanated from the order of the ITO, Ward, Udhampur, passed u/s 147/144 of the I.T. Act, 1961 dated 13.03.2023.

2. Grounds of appeal preferred by the assessee in memorandum of appeal are as under:

- “1. That the worthy cit (appeals) has erred in law and on facts of the case in dismissing the appeal on the technical ground that the amount due towards income tax on the income arrived by the assessing officer has not been paid.*
- 2. That the learned assessing officer has ignored the details filed under para 8 and 9 of form 35 and ignored the clarification submitted regarding the same on 13-01-2023.*
- 3. That as no tax was due as per the assessee no such details were required to be furnished.”*

3. The brief facts of the case are that the ld. CIT(A) has refused to admit the appeal for decision on merits on the grounds that the assessee has failed to fulfill the necessary conditions for admission of appeals before the ld. CIT(A) as per section 249(4) Clause (b) of the I.T. Act, 1961, and has refused to admit the appeal on the grounds of non-payment of advance tax, in this case where no return of income has been filed.

4. The primary facts are that the assessee has sold immovable property (land) on 6th July, 2017, which was held by him as a co-owner with other family members. No return of income has been filed neither in regular course nor in response to notice u/s 148. Thereafter, there has not been any response by the assessee to various notices issued by the Assessing Officer in course of proceedings and in the absence of total non-compliance by the assessee, the Assessing Officer proceeded to complete the

assessment ex-parte by determining the total income at Rs.24,47,084/- (which consisted of income from capital gains amounting to Rs.21,27,452 plus 3,19,632/- on account of salary income). The appeal was filed before the first appellate authority and it is seen from the appellate order that the Id. CIT(A) has issued a deficiency letter on 05.01.2024 and again on 12.01.2024 calling for an explanation for non-payment of advance tax which was the requirement as per provisions of section 249(4)(b) of the Act, 1961 in cases where no return is filed. It is also seen that the assessee has filed a reply before the Id. first appellate authority clarifying that the taxable income of the assessee was less than the maximum marginal limit not chargeable to income tax and his contention was that the land which has been sold, in respect of which taxable capital gains has been determined, is actually agricultural land and no taxable income arises on the sale of such land. However, the Id. CIT(A) did not consider the explanation to be satisfactory and as such refused to admit the appeal for non-payment of advance tax and dismissed the appeal for non compliance of provisions of section 249(4)(b) of the Act, 1961 without adjudicating the appeal on merits.

5. Now before the Tribunal, the assessee has filed a computation of income for the financial year 2017-18 relating to the assessment year under appeal, stating the fact that the assessee is a salaried employee of the Government High School, Laripora, Pahalgam, Anantnagh, Jammu & Kashmir 192126, along with copies of

salary certificate. During the course of argument, the ld. AR of the assessee submitted that the assessee is a salaried employee of the School and as per the computation of income filed the total income for the year is only Rs.2,73,340/- (after deduction under Chapter VI-A). He further submitted that the assessee has sold an agricultural land which was held as co-owner along with other family members and he has filed supporting documentary evidence from the office of Tehsildar, Pahalgam which is in the form of agricultural certificate as proof that the assessee belongs to an agriculturist family u/s 133H of the Land Revenue Act Svt, 1996. Two more certificates has been filed, issued by the Tehsildar, Pahalgam, dated 16.12.2024, and by the Patwari, Halqa, Pahalgam, that the sold land in question is agricultural land. He further submitted a valuation report from the registered valuer M/s IAC Associates, who are registered under CBDT Reg. No. 236/CCIT/ASR/34AB//ITO(J)/2014-15/359 dated 15.07.2014, who has issued a certificate that the land which has been sold was an agricultural land. He has further certified that the land is under Khasra No. 530, 275, Khata No.170, 275 and Khewat No. 65, 281 and has certified that the market value of land as on 01.04.2001 was Rs.20,73,184/-.

6. Referring to all this documents, the ld. AR argued that in the instant case, the assessee has not filed his return of income because as per the computation attached along with the supporting documentary evidences issued by the School Authority, the

taxable income after claiming the deduction under Chapter VI-A would be less than the maximum marginal limit not chargeable to tax and as such no return of income has been filed. He further argued that the sale of land on the basis of which proceedings have been initiated by the AO and capital gains has been computed is actually sale of agricultural land held by the family members, the sale of which cannot be classified as a capital assets and the same is exempted from taxation. He further submits referring to the valuation report and the Tehsildar certificate that the benefit of index cost of acquisition has not been allowed by the Assessing Officer while calculating the capital gains on the sale of land and if the same is allowed then there will not be any taxable gains as such. He further submitted that in course of appellate proceedings, the assessee has replied to the deficiency letter issued by the first appellate authority but unfortunately, the Id. CIT(A) has not given any cognizance to the same and has dismissed the appeal by refusing to admit the same and no decision has been passed on merits of the case.

7. The Id. DR relied on the order of the Id. CIT(A) and argued that in absence of any documentary evidences being filed before the Assessing Office and in absence of any documentary evidences before the Id. CIT(A), it would not be possible to arrive at a proper decision on merits of the case and he requested for sustaining the appeal order.

8. We have heard the rival submissions and considered the materials on record and we find that the appeal has not been admitted by the Id. first appellate authority for decision on merits because of violation of section 249(4)(b) of the Act, 1961. In the instant case, no return of income has been filed in response to notice u/s 148 and no taxes have also been paid and as such in appellate proceedings before the first appellate authority, it was incumbent on the part of the assessee to file an application for waiver as per the proviso to section 249(4)(b) stating sufficient reasons so that the assessee can be exempted from the operation of the provisions of Clause (b), which has not been done in the present case. However, it is seen from the documentary evidences and the certificates issued by the School Authorities and the local Tehsildar, the assessee's income appears to be below the taxable limit and prima-facie relying on the Registered Valuer Certificate, the land sold appears to be agricultural land on which the capital gains will not be attracted. Moreover, payment of advance tax u/s 208 and its computation u/s 210 shall be by the assessee of own accord and in the instant appeal, the assessee has prima-facie presented a case that the advance tax is not payable as per the section 210 of the Act, 1961. However, all the documentary evidences produced before the Tribunal for the first time by the assessee needs to be verified and can only be accepted after proper enquiry. As such we remand the case back to the files of the Id. CIT(A) for admitting the appeal for adjudication on merits of the case on the grounds contained in Form No. 35. It is

hereby mentioned that we have not expressed any opinion on the merits of the case and all documentary evidences produced or to be produced are subject to verification. The assessee is also directed to furnish all documentary evidences and computation of income and all certificates issued by the respective authorities before the Id. CIT(A) and to fully co-operate in the appellate proceedings for hearing and disposal of the case on merits. The assessee is to be allowed proper opportunity of being heard.

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

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 17.01.2025

Sd/-
(Krinwant Sahay)
Accountant Member

Sd/-
(Udayan Dasgupta)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

True Copy

By Order