

आयकर अपीलीय अधिकरण  
पटना पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री संजय शर्मा, न्यायिक सदस्य  
एवं  
श्री रकेश मिश्रा, लेखा सदस्य  
के समक्ष  
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 232/PAT/2024  
Assessment Year: 2017-18**

Mahanth Kumar Singh <i>(Appellant)</i>	Vs.	ITO, NFAC, Delhi <i>(Respondent)</i>
<b>PAN: BWCPS5258M</b>		

**Appearances:**

**Assessee represented by** : G. P. Tulsiyan, FCA.

**Department represented by** : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : February 4<sup>th</sup>, 2025

Date of pronouncing the order : February 20<sup>th</sup>, 2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2017-18 dated 28.12.2023,



which has been passed against the assessment order u/s 147/144 of the Act, dated 24.03.2022.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*“1. That the order of AO is bad in law as it is based on single concept of cash deposit in bank without examining the source.*

*2. The assessee was an agent of a Micro Finance Co. namely EBIX PAYMENT SERVICES PRIVATE LIMITED, by virtue of which the loanee of Micro Finance Co. used to deposit cash with the assessee on behalf of the company and in term the assessee used to deposit the cash in his current account maintained with SBI No. 35959737035 & Uttar Bihar Gramin Bank, Muzaffarpur current account No. and immediately send the money to the company by RTGS. (Copy of bank account enclosed along with the copy of code allotted by EBIX Payment Services Pvt. Ltd.)*

*3. Accordingly the cash deposited of Rs.1,22,60,580/- which is alleged to be unexplained and treated as income u/s 69A is out of cash receipt from loanee. The assessee received only a petty sum of Rs. 67,742/- as his commission for AY 2017-18 as is depicted in Form 26AS. Therefore the income of assessee liable to tax is only to the extent of Rs.67,742/- which being below taxable limit, no return was filed. Therefore the addition of Rs. 1,23,28,322/- shall be deleted.*

*Further grounds shall be urged at the time of hearing.”*

3. Brief facts of the case are that the Ld. AO noted that the assessee had not filed the return of income for the A.Y. 2017-18 and from perusal of records and data available on e-filing portal, it was observed that the assessee had income from two sources; one from brokerage/commission received from EBIX Payment Services Private Ltd. and the other being proprietary firm M/s Khushboo Mobile. From perusal of returns filed by the assessee for subsequent and preceding years, it was found that the assessee had regular source of income from M/s Khushboo Mobile, but he failed to file the return of income for the year under consideration. In the current account, cash deposit of



₹1,22,60,580/- was made besides brokerage/commission income earned. The commission of ₹ 67,742/- from EBIX Payment Services Private Ltd. and cash deposits in the current bank account indicated that besides the commission/brokerage income, the assessee had also earned income from other sources. Accordingly, a notice under section 148 of the Act was issued and the assessee was asked to furnish various details vide questionnaire issued. However, no compliance was made and therefore, the assessment was made to the best of judgement as despite several opportunities, the assessee had not replied to any of the notices issued and it was inferred that the assessee had nothing to say. The entire cash deposited in the bank account at Rs. 1,22,60, 580/- was added to the income besides the commission income of ₹ 67,742/- as per the ITS details and the total income was assessed at Rs. 1,23,28,322/-. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who vide order dated 28/12/2023 dismissed the appeal as there was no compliance to the notices issued by the Ld. AO and the advance tax was also not paid by the assessee. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. On perusal of the appellate order it is noticed that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee before the Ld. AO as the notices sent were not complied with but he has not adjudicated the appeal on merit. The assessee had mentioned in column no. 9 of Form No. 35 relating to the advanced tax payment as 'Not Applicable' and the Ld. CIT(A) has reproduced the provisions of section 249 (4), 234B (1) and 208 and has mentioned para 3.5 that though the appellant has not offered 'YES' comment at Serial No. 9 in form No. 35, yet it was asked to intimate whether it had made payment of tax, which



includes element of advance tax also but the appellant failed to contradict the information given at serial No. 9 on Form No. 35 and to prove that it had make payment of amount equal to the advance tax, which was due on his income. Since the appellant had not filed the return of income, the appeal was not liable to be admitted and was treated as infructuous and therefore, was dismissed.

5. Rival contentions were heard and the record and the submissions made have been examined. During the course of the appeal before us, the assessee filed written submissions, the relevant extract from which is as under:

*In the copy of ITR for A.Y. 2016-17 enclosed at page no18-21 of the paper book it can be seen at page no.20 that the business of the assessee is designated as retailers with trade name KHUSHBOO MOBILE the gross turnover for the period 01.04.2015 To 31.03.2016 had been declared as Rs.10,58,120/- on which a presumptive income u/s 44AD had been declared as 1,26,974/- and other income of Rs. 1,57,974/- making a total taxable income of Rs.2,52,960/-.*

*In the year 01.04.2016 to 31.03.2017 the assessee did not file any ITR and his income is comprising of presumptive income from mobile business whose turnover as depicted at page 50 of paper book is Rs.4,91,037.35 @ 8% Rs.39,283 and the commission from agency of microfinance facilitator for SATIN CREDITCARE NETWORK LIMITED amounting to Rs.67,742/- (On a volume of business of Rs.1,22,60,580/-) which is also reflected in 26AS statement at page no. 62 of the paper book.*

*The assessee in this year in addition to its regular business of mobile undertook to facilitate microfinance business of SATIN CREDITCARE NETWORK LIMITED.*

*The modus of this business is explained as below:-*

*1. The ground agents of SATIN CREDITCARE NETWORK LIMITED used to collect cash from microfinance beneficiaries and on the daily basis handed over this cash to the assessee who was working as its agent.*

*2. This cash was deposited by the assessee on day basis in the SBI A/c No. 35959737035 and immediately transferred the similar amounts to the AREA DISTRIBUTOR of "SATIN CREDITCARE NETWORK LIMITED" namely SAHITYALOK, MOTIJHEEL, MUZAFFARPUR, BIHAR by banking channel through the above State Bank account.*

3. The SATIN CREDITCARE NETWORK LIMITED had an agency named EBIX CASH who had allotted ID and Password to all the agents and area distributors for updating the collections and claiming their commissions as per the statement of SATIN CREDITCARE NETWORK LIMITED enclosed at page 22 to 36 of the paper book.

4. During the year 2016-17 the assessee as per the details given at page no. 50 of the paper book had transferred Rs. 1,25,33,370/- to Sahitya Lok. The micro-financee appearing in the site of EBIX CASH who were required by the assessee to be setoff or disbursed on the portal as per the instruction of the EBIX CASH. The one and only allegation of the NFAC (CIT-A) regarding noncompliance of Section 249(4) in this case is not correct due to following reason:-

1. The assessee had a total income for the year 2016-17 corresponding to A.Y.2017-18 estimated as Rs. 1,07,025/-(-67,742+39,283) which is well below the taxable limit not requiring him to file an ITR. Accordingly, the invocation of Section 249(4), Section 234B(1) and Section 208 in this case doesn't hold good and the dismissal of the appeal based on the above is not sustainable.

In this regard we are submitting a recent case law of Ahmedabad Tribunal No. (2024)132TLC439 in the case of KARAMSHI BHAI MEGHJI BHAI PATEL VS INCOME TAX OFFICER & OTHERS in ITA No.258/AHD/2024 enclosed at page no.53 to 55 of the paper book.

In the above judgement the Honorable ITAT has categorically held that "Statutory requirement contemplated in Section 249(4)(b) would stand triggered only when any obligation is cast upon assessee to pay "ADVANCE-TAX". Where assessee had no taxable income, no obligation would be cast upon him to compute and pay any advance tax under Section 208/209. Therefore, where assessee has not filed his return of income as he had no taxable income, Commissioner (Appeal) could not have held that he has failed to comply with statutory condition contemplated in Section 249(4)(b) of the Act".

All the above facts couldn't be examined either at the stage of scrutiny by A.O. or proceeding before CIT-Appeal.

Therefore, in the interest of natural justice, it is requested that the above appeal may kindly be allowed and the case may be set aside to the A.O. for the proper verification and passing of order for proper determination of tax payable, if any.

6. In this respect, it is relevant to examine the provisions of section 250(6) which are reproduced as under:

“250(6) – The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”



6. Thus, section 250(6) of the Act casts a duty on the Ld. CIT(A) to pass an order in appeal which should state the points for determination and the decision as well as the reason for arriving at such decision. In the present case before us, the Ld. CIT(A) has not mentioned the reasons after examining the records while disposing of the appeal. The Ld. CIT(A) has neither adjudicated upon various grounds of appeal nor has passed a reasoned order for arriving at the decision, as is required u/s 250(6) of the Act. We further note that in **Ajji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose the assessee's appeal merely by holding that Assessing Officer's order is a self-speaking order which requires no interference. The relevant extract from the order is as under:

*“6. ... The first respondent is the appellate authority. Needless to state that the Appellate Authority is also a fact finding authority and therefore, he has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings as to whether the order of assessment can be sustained or not. In other words, the order passed by the Appellate Authority should explicitly exhibit his application of mind to the facts and circumstances and the objections raised in the grounds of appeal, also by expressing his reasons and findings in support of his conclusion.*

*7. In this case, the Appellate Authority, after extracting the order of the Assessing Officer in full, has not given any other reason or finding to dismiss the appeal except by stating that he is of the considered view that the Assessing Officer's order is a self speaking order and does not call for any interference. In my considered view, such single line finding of the Appellate Authority, cannot be sustained as a proper exercise of the Appellate Authority, while disposing the appeal. Therefore, it is apparent that the order impugned in this writ petition is an outcome of total non-application of mind. Consequently, the impugned order cannot be sustained. It is further contended that before passing the order, the petitioner was not heard.”*

6.1. It has also been held in the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** that the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. The relevant extract is as under:

*“7. An appeal is filed with the CIT(A) from appealable orders listed in Section 246A of the Act. We find that the procedure in appeal before the CIT(A) and the powers of the CIT(A) are governed by Sections 250 and 251 of the Act respectively. The relevant provisions for consideration are as under:—*

*Procedure in appeal*

*250 (4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).*

...

*(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*

...

*Powers of the Commissioner (Appeals)*

*"Section 251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers —*

*(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.*

...

*(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty."*

...

*(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.*

*Explanation. - In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the*

*order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.'*

8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”

7. Further, it is also important to refer to the provisions of Section 249(4)(b) of the Act, which is relied upon by the Ld. CIT(A) while dismissing the appeal and which is as under:

*“249(4)(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 and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause.”*

7.1. As per the proviso thereof, there is an option available to the assessee to file an application before the Ld. CIT(A) who may dispense with the requirement of payment of advance tax on the basis of facts. Apparently, no such application was filed by the assessee and, therefore, the appeal was dismissed.

7.2. However, the liability to pay the advance tax is determined by the provisions of Chapter XVII-C relating to advance payment of tax and is governed by the provisions of section 208 as per which 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 in this regard is Rs. 10,000/- or more. Further, Section 209 of the Act r.w.s. 210 specifies the manner of computation of advance tax; section 209(1) of which is reproduced as under:

*“209. (1) The amount of advance tax payable by an assessee in the financial year shall, subject to the provisions of sub-sections (2) and (3), be computed as follows, namely :—*

*(a) where the calculation is made by the assessee for the purposes of payment of advance tax under sub-section (1) or sub-section (2) or sub-section (5) or sub-section (6) of section 210, he shall first estimate his current income and income-tax thereon shall be calculated at the rates in force in the financial year;*

*(b) where the calculation is made by the Assessing Officer for the purpose of making an order under sub-section (3) of section 210, the total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment or the total income returned by the assessee in any return of income furnished by him for any subsequent previous year,*

*whichever is higher, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year;*

*(c) where the calculation is made by the Assessing Officer for the purpose of making an amended order under sub-section (4) of section 210, the total income declared in the return furnished by the assessee for the later previous year, or, as the case may be, the total income in respect of which the regular assessment, referred to in that sub-section has been made, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year;*

*(d) the income-tax calculated under clause (a) or clause (b) or clause (c) shall, in each case, be reduced by the amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income (as computed before allowing any deductions admissible under this Act) which has been taken into account in computing the current income or, as the case may be, the total income aforesaid; and the amount of income-tax as so reduced shall be the advance tax payable:*

*Provided that for computing liability for advance tax, income-tax calculated under clause (a) or clause (b) or clause (c) shall not, in each case, be reduced by the aforesaid amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income, if the person responsible for deducting tax has paid or credited such income without deduction of tax or it has been received or debited by the person responsible for collecting tax without collection of such tax.”*

7.3. The Ld. CIT(A) has not specified as to how much advance tax was payable or even whether the provisions of Section 208 of the Act were applicable to the assessee or not. On the contrary, the assessee contends that since the income was below the maximum amount not chargeable to tax, therefore, there was no question of payment of any advance tax. Further, the Ld. CIT(A) has not decided the appeal on the merits of the case. Hence, in view of the facts, since the Ld. CIT(A) has not mentioned as to how much advance tax was payable by the assessee which has not been paid, and the assessee had the option of filing an application before the Ld. CIT(A), which however, was not filed and



consequently the discretion available to the Ld. CIT(A) to exempt the assessee from the applicability of the rigours of section 249(4) could not be exercised by him and the appeal has also not been decided on merit, therefore, in the interest of justice, the order of the Ld. CIT(A) is set aside to be done afresh. The assessee may file an application for exemption from the requirement of payment of advance tax, which shall be decided by the Ld. CIT(A) in accordance with law and considering the totality of facts. The assessee shall also be at liberty to file necessary evidences in support of the relief claimed before the Ld. CIT(A) as per law. Needless to say, the assessee shall be given a reasonable opportunity of being heard and to make any further submissions he wants to make in support of the relief claimed and shall not seek unnecessary adjournments and rule 46A of the I.T. Rules, 1962 shall also be followed, if required. Accordingly, the grounds taken by the assessee in his appeal are allowed for statistical purposes.

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

**Order pronounced in the open Court on 20<sup>th</sup> February, 2025.**

Sd/-

**[Sonjoy Sarma]**  
Judicial Member

Sd/-

**[Rakesh Mishra]**  
Accountant Member

Dated: 20.02.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

1. **Mahanth Kumar Singh, GF, Meenapur, Ganj Bazar, Muzaffarpur, Bihar, 843128.**
2. **ITO, NFAC, Delhi.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

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By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata