

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.86/Nag./2024
(Assessment Year : 2018-19)

Smt. Sushma Singhal
C-98, 3rd Floor, Rosewood City
Sector-49, Gurugram 122 018
PAN – AUBPS4491E

..... Appellant

v/s

Income Tax Officer
Ward-2(2), Nagpur

..... Respondent

Assessee by : Shri Abhay Agrawal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 30/01/2025

Date of Order – 25/02/2025

ORDER

This appeal by the assessee is emanating from impugned order dated 02/02/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2018-19.

2. The assessee has raised following grounds:-

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in passing the impugned order without providing an opportunity of being heard to the assessee, and violating the principles of natural justice and without appreciating the facts and circumstances of the case.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in dismissing the appeal by applying the

provisions of section 249(4)(b)? however, the said section is not applicable in the present case as the assessee is exempted for filing the income tax return and making the payment of advance tax.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have decided the appeal on merits and should have deleted the aggregate addition of Rs.28,83,082/- made by Ld. AO and that too without any basis and without appreciating the facts and circumstances of the case.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the impugned reassessment order passed by Ld. AO as the assumption of jurisdiction u/s 147 is illegal, bad in law, invalid and not complying with the mandatory conditions of section 147 to 151A as envisaged under the Income Tax Act, 1961.

5. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

3. Facts of the present case are that the assessee did not file return of income for the year under appeal and hence the Assessing Officer arrived at a total income of ₹ 28,83,082, and computed the tax payable at ₹ 44,76,490, which included the advance tax payable by the assessee.

4. On appeal, the learned CIT(A) was of the view that as per the provisions of section 249(4)(b) of the Act, the assessee is mandatorily required to pay an amount equal to the amount of advance tax which was payable by him in order to get his appeal admitted since the assessee did not file return of income. However, the learned CIT(A) noted that the assessee, while filling Form no.35, has stated "NA" against col. No.9 of Form no.35. Hence, the learned CIT(A) issued deficiency letter in response to which the assessee filed reply. The reply so filed by the assessee was not acceptable to the learned CIT(A). In response to the deficiency note, the assessee replied as under:—

"Kindly refer to your notice dated 09-01-2024 bearing DIN:

ITBA NFAC F 17/2023-24/1059501496(1).

It is respectfully submitted that the assessee is a housewife not having any source of income except the meagre interest income which is below the taxable limit and that is why she was under the bonafide belief that return was not to be filed for the year under consideration either u/s 139(1) or in response to notice u/s 148 of the Act. Thus advance tax was not payable.

Rest addition of Rs 27.01.872/- made by Ld. AO u/s 69 in the reassessment order is under dispute and in any case FDR has not been made in the year under consideration.

In view of these circumstances, objections/clarifications raised by your goodself may kindly be treated as rectified."

5. In view of the above reply furnished by the assessee, the learned CIT(A) dismissed the appeal of the assessee holding as under:–

"3. Decision:

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 him if no return of income has been filed.

In the present case, the appellant did not file return of income. The AO arrived at the total income of Rs. 28,83,082/- and computed the tax payable at Rs. 44,76,490/- which included the advance tax payable by the appellant. On or before filing the present appeal, the appellant has failed to make the required payment of the amount equal to the amount of advance tax which was payable by him. 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, for seeking exemption from the operation of the sec. 249(4)(b) even though sufficient opportunities were provided to him.

On careful consideration of the above facts and circumstances, as the appellant has failed to fulfill the necessary conditions for admission of appeal before CIT(A) as per sec. 249(4)(b), the present appeal is liable to be held as not eligible for admission and hence, the appeal is not admitted.

In the result, the appeal is treated as dismissed for statistical purposes."

The assessee being aggrieved is in further appeal before the Tribunal.

6. Before me, the learned Counsel for the assessee submitted that the learned CIT(A) has erred in not admitting the appeal of the assessee by relying upon provisions of section 249(4)(b) of the Act. The assessee was a housewife and did not have any source of income except the meager interest income which was below taxable income. The assessee was, therefore, under bona fide belief that the return of income was not required to be filed for the year under consideration. The addition made by the Assessing Officer at ₹ 27,01,872, was being contested in appeal before learned CIT(A). The learned counsel argued that for the purpose of section 249(4)(b) of the Act, advance tax liability is to be determined on admitted tax liability and not as per tax on assessed income. The assessee has filed a brief synopsis in respect of his arguments and relied on the decision of the Co-ordinate Bench of the Tribunal in Vishnusharan Chandravanshi v/s ITO, [2024] 161 taxmann.com 803 (Raipur - Trib.).

7. On the other hand, the learned Departmental Representative relied on the impugned order passed by the learned CIT(A).

8. I have heard the rival parties, perused the order of the authorities below and gone through the material available on record. I find that the assessee has submitted before the learned CIT(A) that he had no taxable income for the year under consideration and his income was only interest income of ₹ 1,81,210, which was below basic exemption limits. Therefore, the assessee was not liable to file return of income. Considering all materials on record, I am of the opinion that the assessee has presented a prima facie case of no obligation to make payment of advance tax under section 208

of the Act for the year under consideration and I hold that the learned CIT(A) ought to have admitted the appeal for adjudication on merits. Accordingly, I set aside the impugned order passed by the learned CIT(A) and restore the same to his file for denovo adjudication on merits on the grounds raised by him in accordance with law and after allowing adequate opportunity to the assessee of being heard.

9. In the result, assessee's appeal stands allowed, but only for statistical purposes.

Order pronounced in the open Court on 25/02/2025

NAGPUR, DATED: 25/02/2025

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur