

INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "DB": AGRA
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
(Through virtual hearing)

ITA No. 322/AGR/2024
(Assessment Year: 2018-19)

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| Manoj Singh Gurjar, H. No. 214, Gokul Vihar, Near Aastha Nagar Gate Behind in front of Deen Dayal Nagar Gate, bahadurpur, BO Gwalior (Appellant) | Vs. Income Tax Officer, Ward-2(2), Gwalior (Respondent) |
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PAN: BDFPG6465G

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| Assessee by : | Shri S. C. Jain, CA |
| Revenue by: | Shri Sukesh Kumar Jain, CIT DR |

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| Date of Hearing | 05/02/2025 |
| Date of pronouncement | 05/02/2025 |

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.322/AGR/2024 for AY 2018-19, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] dated 22.11.2023 against the order of assessment passed u/s 147 r.w.s. 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.03.2023 by the Assessing Officer, ITO, BPL-W-(41)92) (hereinafter referred to as 'Id. AO').
2. Though the assessee has raised several grounds of appeal before us, the preliminary issue to be decided is as to whether the Id NFAC was justified in dismissing the appeal of the assessee as not maintainable by applying the provisions of section 249(4)(b) of the Act in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the material available on record. We have heard the Id DR and perused the materials available on record. It is not in dispute that the assessee had not filed his return of income u/s 139 of the Act for the year under consideration. Accordingly, the case of the assessee was sought to be reopened u/s 147 of the Act after recording the reasons based on the information that there was some sale of property; purchase of property; investment in time deposit made by the assessee; interest received on deposit together with cash deposits made by the assessee. Based on this information, the Id AO formed reason to believe that income had escaped assessment and reopened the assessment of the assessee. Notice u/s 148 of the Act stood issued to the assessee. In response to notice u/s 148 of the Act, no return of income was filed by the assessee. The assessment stood completed u/s 144 r.w.s. 147 r.w.s. 144B of the Act on 27-3-2023 determining total income of the assessee at Rs 4,04,26,106/-. The assessee preferred an appeal before the Id NFAC. The Id NFAC applied the provisions of section 249(4)(b) of the Act by stating that assessee had not paid the advance tax liability and accordingly dismissed the appeal as not maintainable. Aggrieved, the assessee is in appeal before us.

4. We find that the assessee had neither filed his original return of income u/s 139 of the Act or in response to notice u/s 148 of the Act. Hence there was no admission of any income by the assessee in the entire proceedings for the year under consideration. While this is so, there cannot be any advance tax liability that could be fastened on the assessee. Once there is no question of payment of advance tax, the provisions of section 249(4)(b) of the Act cannot be pressed into service. Hence we hold that the Id NFAC erred in dismissing the appeal as not maintainable without deciding the grounds on merits. In the interest of justice and fairplay, we deem it fit and appropriate to restore this appeal to file of Id NFAC for de novo adjudication of the grounds

raised by the assessee before the Id NFAC in accordance with law. The assessee is also entitled to raise any additional grounds and file additional evidences in support of his contentions, if he so desires. Needless to mention the assessee be given reasonable opportunity of being heard. The assessee is directed to cooperate with Id NFAC for expeditious disposal of the appeal by not taking unwarranted adjournments. Hence, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 05/02/2025.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 05/02/2025

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi