

**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. 400/AGR/2024
(Assessment Year: 2015-16)**

Arvind Pratap Singh, 1/65, Bazariya Aliganj, Fatehgarh, UP	Vs.	Income Tax Officer, Ward-4(2)(1), Farrukhabad
(Appellant)		(Respondent)
PAN:BNLPS7513K		

Assessee by :	Shri C. S. Yadav, Adv
Revenue by:	Shri Shailender Shrivastava, Sr. DR
Date of Hearing	07/02/2025
Date of pronouncement	07/02/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. /AGR/ for AY , arises out of the order of the Commissioner of Income Tax (Appeals)-2, Agra [hereinafter referred to as 'Id. CIT(A)', in short] dated against the order of assessment passed u/s of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated by the Assessing Officer, Agra (hereinafter referred to as 'Id. AO').
2. The only effective issue to be decided in this appeal is as to whether the Id NFAC was justified in dismissing the appeal on the ground of violation of 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 materials available on record. The assessee did not file any return of income for the

assessment year 2015-16. The assessment order was framed under section 144 read with section 147 read with section 144B of the Act on 21-3-2023 by the Learned AO determining total income of the assessee at Rs 30,35,880/-. The assessee preferred an appeal before the Learned NFAC. The Learned NFAC observed that assessee had not paid the advance tax and thereby violated the provisions of section 249(4)(b) of the Act. Accordingly, the Learned NFAC dismissed the appeal of the assessee as unadmitted. Aggrieved, the assessee is in appeal before us.

4. We find that the assessee had not filed his original return of income u/s 139 of the Act or in response to notice u/s 142(1) 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 07/02/2025.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 07/02/2025
A K Keot

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

ASSISTANT REGISTRAR
ITAT, New Delhi