

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE**

**BEFORE SHRI R.K. PANDA, VICE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.2387/PUN/2024  
निर्धारण वर्ष / Assessment Year : 2018-19**

Aruna Singh, C/1902 Casa Bella Gold, Palava City Kalyan Shildesai Shanti Nagar, Nilje, Thane-421204  PAN : BFKPS6115N	<b>Vs.</b>	Income Tax Officer, Ward – 3(1), Kalyan
<b>अपीलार्थी / Appellant</b>		<b>प्रत्यर्थी / Respondent</b>

Assessee by :	Shri Sharad Vaze & Amod Vaze
Department by :	Shri Amol Khairnar
Date of hearing :	13-01-2025
Date of Pronouncement :	11-04-2025

**आदेश / ORDER**

**PER ASTHA CHANDRA, JM :**

The appeal filed by the assessee is directed against the order dated 06.11.2024 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi [**“CIT(A)”**] pertaining to Assessment Year (**“AY”**) 2018-19.

2. Briefly stated, the facts of the case are that the assessee is an individual. She has not filed her return of income for the relevant AY 2018-19 under consideration. The case of the assessee was reopened u/s 147 of the Income Tax Act, 1961 (**the “Act”**) based on the information received from INSIGHT Portal. Accordingly, statutory notice(s) were issued and duly served upon the assessee from time to time. However, the assessee failed to respond to any of the notice(s) issued by the Ld. Assessing Officer (**“AO”**). The Ld. AO, therefore, proceeded to pass an ex-parte order u/s 147 r.w.s. 144 read with section 144B of the Act dated 19.12.2023 thereby making the following additions :

i.	Purchase of residential Flat	Rs.2,25,73,600/-
ii.	Purchase & Sales of securities / FO	Rs.29,02,68,389/-
iii.	Rent from Delhi Metro Rail Corporation	Rs.2,18,655/-
iv.	Commission	<u>Rs.90,472/-</u>
	<b>Total</b>	<b>Rs.31,31,51,116/-</b>

3. Aggrieved, the assessee filed appeal before the Ld. CIT(A) who without admitting the appeal dismissed the appeal of the assessee on the ground that the assessee has not filed the return of income as well as not paid an amount equal to the amount of advance tax which was payable by the assessee. The relevant observations and findings of the Ld. CIT(A) is reproduced below :

*“3.1 I have examined facts of the case as also gone through relevant provisions of Income Tax Act (the Act). In the present case, the appellant failed to file return of income. The impugned order was passed u/s 147 r.w.s 144 of the Act, creating demand of Rs. 15.66,74,094/- and the appellant was asked by notice u/s 156 of the Act to deposit the demand but it is noticed that the appellant has not deposited the demand before filing of this appeal. The appellant, at sl. no. 16 of Form-35, has stated to have made payment of appeal fee of Rs. 1,000/- only. At sl. No. 9 of Form-35, the appellant has offered 'Not applicable' comments. This sl. No. 9 is reproduced below-*

9	<i>Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act, 1961 has been paid</i>	<i>Not applicable</i>
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*3.2. As per provisions of section 249(4)(b) of the Act, where no return has been filed by the assessee, the assessee has to pay an amount equal to the amount of advance tax which was payable by him otherwise appeal shall not be admitted. The provisions of section 249 (4) of the Act are reproduced as under –*

*Section 249(4)*

*"No appeal under this Chapter shall be admitted unless at the time of filing of the appeal.-*

*(a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or*

*"(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. 2 in a case falling under clause (b) and) on an application made by the appellant in this behalf, the Deputy Commissioner (Appeals)) or, as the case may be, 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]]*

*3.3 As per provisions of section 2348(1), read with provisions of section 208 of the Act, the liability to pay advance tax, in a case where returned income is less than the assessed income, is calculated on the basis of assessed*

income. The provisions of section 2348(1) and provisions of section 208 of the Act are reproduced below –

*Section 234B(1)*

*"(1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of two per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year 3 to the date of determination of total income under sub-section (1) of section 143A and where a regular assessment is made, to the date of such regular assessment, on an amount]] equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax. 5 Explanation 1-In this section," assessed tax" means,-*

*(a) for the purposes of computing the interest payable under section 140A, the tax on the total income as declared in the return referred to in that section;*

*(b) in any other case, the tax on the total income determined under sub-section (1) of section 143 or on regular assessment, as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.] Explanation 2.- Where in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section. 5 Explanation 3.- In Explanation 1 and in sub- section (3)," tax on the total income determined under sub- section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.]"*

*3.4. Section 208*

*"208. Conditions of liability to pay advance tax 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 of this Chapter, is one thousand five hundred rupees or more."*

*3.5. The appellant has offered 'Not applicable' comments at sl. No. 9 of Form-35 and the appellant failed to make payment of amount equal to the advance tax which was due on its income. It is, therefore, clear that information, given at sl. no. 9 of Form-35 is not correct and the appellant has not made payment of amount equal to the advance tax which was due on its income. The appellant has also not requested for exemption from operation of the provisions of clause (b) of sub-section (4) of section 249 of the Act.*

*4. Since the appellant has not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is infructuous and is, therefore, dismissed.*

*5. The appeal is dismissed."*

4. Dissatisfied, the assessee is in appeal before the Tribunal raising the following grounds of appeal :

*"1. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax, (A) -NFAC Delhi, is not justified in dismissing the appeal solely on the ground of non-payment of advance tax required u/s 249(4)(b) of the Income Act, 1961 even*

*when the provisions of sec 249(4)(b) are not attracted in the facts and circumstances of the case. The appeal before CIT(A) be restored by setting aside his order dt 06/11/2024.*

2. *Without prejudice to Ground No 1 above, in the facts and circumstances of the case as well as in law, the assessment is bad in law as the assessee was never served any physical notice during assessment proceedings. The assessee was not aware about the notices that were uploaded on the ITBA Portal.*

*Thus, the principles of natural justice not being followed, the assessment order dt 19/12/2023 be set aside and restored to the file of AO for de novo assessment.*

*The appellant craves leave to add, alter, omit or substitute any of the grounds at the time of hearing of the appeal.”*

5. The Ld. AR submitted that the assessee is a senior citizen and house wife and the husband of the assessee who was looking after the tax matters passed away in September, 2023. The assessee was not aware about the notice(s) of hearing issued by the Ld. AO which was uploaded on ITBA portal. The assessee did not receive any physical notice and the show cause notice(s) sent via speed post were returned by the Postal Authorities with remark “Addressee Moved”. The SCNs were sent on the incorrect address inspite of the fact that the assessee had already communicated change of address to the tax authorities. The new and correct address was properly reflected in Form 26AS and other records of the Department. Owing to the above, the assessee and/or her authorized representative could not attend the hearing during the assessment proceedings. He further submitted that the provisions of section 249(4)(b) of the Act is not applicable to the assessee’s case as the assessee is having income below taxable limit and is therefore not required to file return of income as per the relevant provisions of law. The assessee is not liable to pay any advance tax. He submitted that the Ld. CIT(A) therefore grossly erred in dismissing the appeal of the assessee on the ground of non-payment of advance tax under the provisions of section 249(4)(b) of the Act even without admitting the appeal.

5.1 In support of the contention that the provisions of section 249(4)(b) of the Act are not applicable to the assessee’s case, reliance has been placed by the Ld. AR on the following decisions :

- i. T Govindappa Setty Vs. ITO (1998) 231 ITR 0892 (Kar)
- ii. Vishnusharan Chandravanshi ITA No. 73/Rpr/2024
- iii. Dilip Hirala Chaudhari ITA No. 642/Pun/2024

5.2 The Ld. AR also relied on the decision of Mumbai Tribunal in the case of Nile Global Industries in ITA No. 3889/Mum/2023 wherein it has been held as under :

*“Here is the case of reassessment which is done for the benefit of Revenue. Hence, in our view, clause (b) of Section 249(4) of the Act will not apply as there is no question of paying advance tax in reassessment proceedings, even though assessee did not file Rol.”*

5.3 On merits of the case, the Ld. AR submitted that the addition made by the Ld. AO in respect of the property transaction (i.e. purchase of residential flat) in the hands of the assessee is also not sustainable since the said property was purchased by her son who is a regular tax payer and that the required taxes have already paid in respect of such transaction by her son. The assessee’s son purchased the residential flat at Kanjur-Kurla Mumbai and included name of his mother as second holder. The assessee had not invested anything towards the purchase of the said flat. The said property was purchased by her son by availing housing loan from HDFC initially which was subsequently shifted to State Bank of India.

5.4 As regards, the addition made by the Ld. AO in respect of shares and F & O transactions, the Ld. AR submitted that the Ld. AO has considered the entire sale value as income instead of only capital gain arising out of such transaction(s) which is chargeable to tax under the provisions of section 45 of the Act and not the entire transaction value. He submitted that the assessee has all the relevant documentary evidence in support of her claim. The Ld. AR therefore, prayed that the matter may be set aside to the file of the Ld. AO to decide the above impugned issues afresh on merits after affording due opportunity of hearing to the assessee.

6. The Ld. DR had no objection to the above proposition of the Ld. AR for remanding the impugned issues to the file of the Ld. AO for fresh adjudication on merits.

7. We have heard the Ld. Representatives of the parties and perused the material on record as well as various judicial precedents relied upon by the assessee. We find that both the assessment order as well as the first appellate order for AY 2018-19 under consideration are passed ex-parte qua the assessee. The Ld. AO completed the assessment ex-parte by

making the impugned additions on account of non-participation by the assessee in the assessment proceedings before him. Before us, the Ld. AR has submitted the reasons stated above due to which the assessee could not represent her case before the Ld. AO. It is an admitted fact the assessee is a senior citizen and the notice(s) of hearing issued by the Ld. AO via ITBA portal could not be accessed by her. Even the SCNs sent by the Ld. AO via speed post had the incorrect postal address of the assessee. Thus, in our considered view, the assessee had a reasonable and sufficient cause for non-appearance before the Ld. AO. We observe that the Ld. CIT(A) has passed the impugned order even without admitting the appeal of the assessee and dismissed the appeal for the reason that the assessee failed to file the return of income and also not paid the advance tax invoking the provisions of section 249(4)(b) of the Act. It is seen that the impugned order has been passed by the Ld. CIT(A) without providing any opportunity of hearing to the assessee which, in our view, is against the principle of natural justice. It is the contention of the Ld. AR that the assessee is not required to file the return of income; her income being below the taxable limits and hence she is also not liable to pay any advance tax. This fact was brought to the notice of the Ld. CIT(A) in Form No. 35 filed before him wherein the assessee stated that her income is below taxable limit and she is not required to file her return of income and therefore, the question of payment of advance tax does not arise. None-the-less the appeal of the assessee was dismissed by the Ld. CIT(A) under the provisions of section 249(4)(b) of the Act. As regards merits of the case are concerned, we find some force in the arguments advanced by the Ld. AR. Before us, the Ld. AR submitted that given an opportunity the assessee is in a position to substantiate her claim in respect of the impugned additions made by the Ld. AO by filing the requisite details/documentary evidence in support thereof.

8. Considering the totality of the facts and in the circumstances of the case enumerated above and there being no objection from the Ld. DR for remanding the matter back to the file of the Ld. AO for fresh adjudication on merits, we deem it fit in the interest of justice and fair play to give an opportunity to the assessee to present her case and substantiate her claim before the Ld. AO. Accordingly, the impugned order of the Ld. CIT(A) is set aside and without dwelling into merits of the case, the issues on merits for the relevant AY 2018-19 under consideration are hereby restored to the file

of the Ld. AO with a direction to decide the same afresh as per fact and law after affording adequate opportunity of hearing to the assessee. The assessee is also directed to provide proper email id to the Department for receiving the notice(s) of hearing from the ITBA portal and remain vigilant and not to take adjournment on the appointed date unless otherwise required for reasonable cause, failing which the Ld. AO shall be at liberty to pass appropriate order as per law. Needless to say, the assessee shall provide the requisite support in terms of submitting the relevant documents/evidence as may be required/called upon during the fresh proceedings before the Ld. AO. The order of the Ld. CIT(A) is hereby set aside and the matter is restored back to the file of Ld. AO for de-novo adjudication on merits. We direct and order accordingly.

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

**Order pronounced in the open court on 11<sup>th</sup> April, 2025.**

Sd/-  
(R.K. Panda)  
**VICE PRESIDENT**

Sd/-  
(Astha Chandra)  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 11<sup>th</sup> April, 2025.  
रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune