

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 5888/Del/2024
(Assessment Year: 2015-16)

Sangeet Kathuria, D-49, 2 nd Floor, Suncity Sector-54, Chakarpur	Vs.	ITO, Ward-49(1), Delhi
(Appellant)		(Respondent)
PAN: BJNPK2905B		

Assessee by :	Shri Karanjot Singh, Adv Shri Zorawar Singh, CA Shri Amarbir Singh, CA
Revenue by:	Shri Sahil Kumar Bansal, Sr. DR
Date of Hearing	06/05/2025
Date of pronouncement	15/05/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.5888/Del/2024 for AY 2015-16, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] in Appeal No. ITBA/NFAC/S/250/2024-25/1070746586(1) dated 29.11.2024 against the order of assessment passed u/s 147 r.s.w. 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 21.02.2024 by the Assessing Officer, NaFAC, Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has raised grounds of appeal:-

"1. On the facts and in the circumstances of the case and law, the Ld. CIT(A) has erred in quashing the re-assessment made by the AO u/s 147/143(3) when the AO has sufficient material on record to prove that the assessee has concealed particulars of its income.

2. The appellant craves, leave or reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

3. We have heard the rival submissions and perused the material available on record. The assessee is an individual and had not filed any return of income for AY 2015-16. Information has been received in accordance with Risk Management Strategy formulated by CBDT, on Insight Portal maintained by the Income Tax Department under the head Non-filers Monitoring System (NMS) that income of the assessee is more than Rs 15 lakhs but had no income tax return had been filed. The case of the assessee was sought to be reopened vide issuance of notice u/s 148 of the Act on 08.04.2022. No return was filed by the assessee in response to the said notice. Despite giving sufficient opportunities by the Id AO, no response was filed by the assessee which resulted in completion of assessment u/s 144 r.w.s. 147 of the Act determining the total income at Rs. 94,38,788/-.

4. The Id National Faceless Appeal Centre (NFAC) observed that the assessee at Sl No. 9 of Form 35 in response to the query as to whether he had paid advance tax, had replied as "not applicable" and the Id NFAC noted that where no return of income was filed by the assessee, the assessee should have at least deposited the entire taxes in the form of advance tax before the end of the previous year, which alone would

entitle the assessee to prefer any appeal before the Id NFAC. Accordingly, the Id NFAC dismissed the appeal as not maintainable.

5. The assessee always pleaded that the sale of land for Rs. 62 lakhs is not taxable as capital gains tax as it was agricultural land. The assessee further pleaded that she had no taxable income which warranted her to file any income tax return or comply with advance tax provisions. In this circumstance, the assessee could only say in form No. 35 in response to Column 9 as 'not applicable'. The Id NFAC observed that assessee had not paid the advance tax and thereby the provisions of Section 249(4)(b) of the Act stood violated by the assessee. Accordingly, the Id NFAC dismissed the appeal of the assessee as un-admitted.

6. We find that the assessee had not filed the 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.

7. In this case, the assessment was also framed ex parte. Hence, we deem it fit and appropriate in the interest of justice and fairplay, to restore this appeal to the file of the Id AO for de novo adjudication in accordance with law. Needless to mention that the assessee be given reasonable opportunity of being heard. With these directions, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 15/05/2025.

-Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:15/05/2025
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi