

आयकर अपीलियअधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "DIVN" BENCH, VISAKHAPATNAM

श्री विजय पाल राव, उपाध्यक्ष एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT
&
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER
(Hybrid Hearing)

आयकर अपील सं./ I.T.A. No.189/Viz/2025
(निर्धारण वर्ष / Assessment Year: 2016-17)

Yalamarathi Lakshmi, Yanam. PAN: ABHPY4417B (अपीलार्थी/ Appellant)	Vs.	The Income Tax Officer, Ward-1, Kakinada. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Assessee by	:	Shri GVN Hari, Advocate
प्रत्यर्थी की ओर से / Revenue by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	30/04/2025
घोषणा की तारीख/Date of Pronouncement	:	20/05/2025

ORDER

PER S. BALAKRISHNAN, AM:

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1072568454(1), dated 27/01/2025

for the AY 2016-17 arising out of the order passed U/s. 147 of the Income Tax Act, 1961 ("the Act"), dated 20/05/2023.

2. Brief facts of the case are that the assessee is an individual and a dealer for M/s. Asian Paints Ltd. The assessee filed her return of income for the AY 2016-17 on 18/07/2016 declaring a total income of Rs. 5,09,740/-. As per the information available with the Department, it was observed that during the FY 2015-16 relevant to the AY 2015-16, M/s. Asian Paints Ltd., Mumbai debited expenditure of Rs. 130.68 Crs towards 'trip scheme expenses' to its dealers. The assessee is one of such dealers. It was further observed that as per the details in the return of income, the assessee being the benefit derived by way of trip expenses received from M/s. Asian Paints Ltd has not offered the same as her income. Since the assessee did not admit such income to tax, being luxury foreign / local tour expenditure, proceedings U/s. 147 were initiated and notice U/s. 148 of the Act dated 26/06/2021 was issued by the Ld.AO. Thereafter, notice U/s. 142(1) of the Act dated 06/02/2023 along with detailed questionnaire was issued and duly served on the assessee requiring the assessee to furnish her reply along with

substantive evidences on or before 20/02/2023. In response, the assessee furnished the reply vide letter dated 18/02/2023 wherein the assessee explained that with respect to the expenditure incurred by M/s. Asian Paints Ltd in the AY 2016-17 towards 'trip scheme expenses' to its dealers (numbering 3519 and assessee is one of them) and incurred Rs. 3,71,367/- for each dealer in providing luxury foreign / local tour and travels in the course of dealer's meet at Barcelona. However, the Ld. AO observed that there was no entry in the books of the assessee with respect to the amount of Rs. 3,71,367/-. The Ld. AO further observed that the assessee has derived benefit to the extent of Rs. 3,71,367/- being the luxury foreign / tour enjoyed by the assessee which is in personal expenditure in nature in the hands of the assessee which is 'income' as per section 28(iv) r.w.s 2(24)(vd) of the Act. Thus, the Ld. AO treated the amount of Rs.3,71,367/- as income of the assessee and made addition towards benefit received for foreign tour from the company and determined the total income at Rs. 8,81,107/- and passed the order U/s. 147 r.w.s 144B of the Act. Aggrieved by the order of the Ld. AO, the assessee carried the matter in appeal before the Ld. CIT(A).

3. On appeal, Ld. CIT(A)-NFAC dismissed the appeal of the assessee in limine by invoking the provisions of section 249(4)(b) of the Act by observing as under:

“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.

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

4. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. the Ld. CIT(A) is not justified in erroneously dismissing the appeal in limine by invoking the provisions of section 249(4)(b) of the Act.*
- 3. The Ld. CIT(A) ought to have quashed the notice issued U/s. 148 of the Act as barred by limitation.*
- 4. The Ld. CIT(A) ought to have quashed notice issued U/s. 148 of the Act as invalid and ought to have quashed the consequent reassessment proceedings as void ab initio.*
- 5. The Ld. CIT(A) ought to have directed the AO to delete the addition of Rs. 3,71,367/- made by the treating the tour expenses received by appellant from Asian Paints Ltd as income U/s. 28(iv) r.w.s 2(24)(vd) of the Act.*
- 6. Any other grounds may be urged at the time of hearing.”*

5. At the outset, the Ld. Authorized Representative [AR] submitted that the assessee has filed her return of income U/s. 139(1) of the Act on the admitted total income, and therefore, the question of payment of advance tax does not arise as observed by the Ld. CIT(A)-NFAC. The Ld. AR further submitted that before the Ld. CIT(A)-NFAC, the assessee has challenged the addition made by the Ld. AO. However, the Ld. CIT (A)-NFAC did not consider the submissions of the assessee but held that the assessee has not paid advance tax in accordance with the provisions of section 249(4)(b) of the Act. Therefore, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee as not maintainable. The Ld. AR pleaded that the assessee is not required to discharge the obligation of payment of advance tax as mandated U/s. 249(4)(b) of the Act on the assessed income. He therefore pleaded that the assessee may be provided one more opportunity and the Ld. CIT(A)-NFAC may be directed to decide the case on merits.

6. Per contra, the Ld. Departmental Representative [DR] strongly relied on the orders of the Ld. Revenue Authorities and argued in support of the same.

7. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an admitted fact that the Ld. CIT(A)-NFAC has not looked into the merits of the case and dismissed the appeal of the assessee *in limine* by stating that the assessee has not complied with the provisions of section 249(4)(b) of the Act. The Ld. CIT(A) has relied on the provisions of section 249(4)(b) of the which is reproduced below for reference:

“Sec. 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, in a case falling under clause (b) and on an application made by the appellant in this behalf, the ⁶⁶[Joint Commissioner (Appeals) or 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.”*

From the plain reading of the above section 249(4)(b) of the Act, it operates when no return has been filed by the assessee and the assessee has not paid the amount equivalent to the amount of advance tax which was payable by him. However, in the instant case, the assessee has filed her return of income U/s. 139(1) of the Act and has duly paid the taxes. Therefore, the provisions of

section 249(4)(b) of the Act in our considered opinion is not applicable to the assessee in the instant case whereas the Ld. CIT(A) has erred in considering that the assessee is liable to pay the advance tax on the assessed income. Considering the above facts and circumstances of the case, we find force in the argument of the Ld. AR that the assessee cannot be subjected to payment of advance tax on the assessed income. Accordingly, we hereby set-aside the order passed by the Ld. CIT(A)-NFAC and remit the matter back to the file of the Ld.CIT(A)-NFAC with a direction to decide the case on merits after affording a reasonable opportunity of being heard to the assessee in accordance with the principles of natural justice. At the same breath, we also hereby caution the assessee to promptly co-operate before the Ld. Revenue Authorities in their proceedings failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate orders in accordance with law and merits based on the materials on the record. It is ordered accordingly.

8. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on 20th May, 2025.

Sd/-
(VIJAY PAL RAO)
उपाध्यक्ष/VICE PRESIDENT

Sd/-
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 20/05/2025

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Yalamarthi Lakshmi, D.No. 3-2-32, Vishnu Street, Yanam, East Godavari District, Andhra Pradesh -533464.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1, O/o. ITO, Deepthi Towers, Main Road, Kakinada, Andhra Pradesh-533001.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam