

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA**

**BEFORE
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.171/AGR/2025
(ASSESSMENT YEAR: 2020-21)

Datia Vishvanath Trading Company, Sheetla Ganj Indergarh, Datia-475675 Madhya Pradesh. PAN-AFVPA3319N	Vs.	Asst. CIT, Central Circle, Gwalior.
(Appellant)		(Respondent)

Assessee by	Shri Arun Gupta, Adv.
Department by	Shri Shailendra Srivastava, Sr. DR
Date of Hearing	22/05/2025
Date of Pronouncement	29/05/2025

ORDER

PER MANISH AGARWAL, AM:

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-3, dated 04.03.2025 in Appeal No. CIT (A)-3, Bhopal/IT-11562/2019-20 for Assessment Year 2020-21.

2. From the perusal of grounds appeal, it is seen that besides challenging the additions made by AO, assessee challenged the appellate order where the appeal of the assessee is not admitted for

non-payment of self-assessment tax of Rs. 1,66,61,030/- along with the return of income. Since the ld. CIT(A) has dismissed the appeal of the assessee in *limine* thus we first decide the issue of maintainability of the appeal of the assessee. So far as the non-maintainability of assessee's appeal on account of non-payment of self-tax, we find that the ld. CIT(A) invoked the provisions of section 249(4) of the Act which reads as under:

“(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 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. During the course of hearing, Ld. AR of the assessee stated that assessee has deposited self-assessment tax on 21.02.2025 and placed copy of challan. It is submitted by Ld. AR that tax was paid, thus, Ld. CIT(A) ought to have admitted the appeal of the assessee and decide the same on merits.

4. In the present case, admittedly self -assessment tax was not paid upto date of filing appeal before Ld. CIT(A), however, the same was finally deposited on 21.02.2025 i.e., prior to the completion of appellate proceedings. The reasons for delay in deposit the tax was explained as shortage of funds. The Hon'ble Karnatka High Court in the case of CIT vs. K. Satish Kumar Singh [2012] 209 taxmann 502

(Kar.) has held that if the admitted tax return income is paid, then appeal of the assessee has to be admitted for adjudication by the Ld. CIT(A) on merits. This order is further followed in case of PCIT vs. Abdul Zahid [2017] 397 ITR 727 (Kar.).

5. The provision of section 249(4)(a) is directory provision failing which no penal consequence follows. However, in case of mandatory provisions, non-compliance exposes the assessee with penal provisions. Thus, omission to comply a mandatory requirement renders the action void whereas, omission to comply with directory requirement makes it defective or irregular which can be validate after removal of defect. Once the assessee has paid the due and admitted tax there is no reason to shut the doors of justice. In the present case, assessee has finally paid the due and admitted tax thus the appeal of the assessee should be considered as valid and should be decided by Ld. CIT(A) on merits. This view is further supported by the decision of Co-ordinate Bench of ITAT, Bangalore in the case of Annapoorneshwari Investment Vs. DCIT reported in 177 ITD 717 (ITAT Bangalore).

4. Accordingly, in view of above discussion, we set aside the order of the CIT(Appeals) and restore the same to his file with a direction to dispose appeal after considering the merits of the case. Needless to say, the CIT(Appeals) shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee. The Ground of appeal No.1 of the assessee is partly allowed for statistical purposes.

5. In the result, appeal filed by the assessee is partly allowed.
Order pronounced in the open Court on 29.05.2025.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 29.05.2025

PK/Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR