

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

BEFORE

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

ITA No.164/AGR/2025
(ASSESSMENT YEAR: 2011-12)

Pradeep Singh Aswal, 804, NG Grand, New Collectorate Road, Alkapuri City Centre, Gwalior-474011 Madhya Pradesh PAN-AFVPA3319N	Vs.	Income Tax Officer, Ward-3(2),
(Appellant)		(Respondent)

Assessee by	Shri S.C. Jain, CA
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. CIT(A), National Faceless Appeal Centre (NFAC), dated 23.10.2024 in Appeal No. CIT (A), Gwalior/10343/2018-19 for Assessment Year 2011-12.

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 advance tax though the assessee is not having taxable 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.

3. Brief facts are that the AO had the information that the assessee had deposited Cash of Rs.21,85,100/- in bank during demonetization period. Since no return was filed by assessee for the year under appeal, the assessee was identified as “Non-Filer” and a notice u/s 142(1) of the Act was issued however, no return was filed by the assessee either in compliance to notice u/s 142(1) or within the time permitted u/s 139 of the Act. Assessee neither participated in the assessment proceedings thus the AO has completed the assessment u/s 144 dt. 31.10.2018 by making addition of Rs.21,85,100/- towards the deposits in cash and in the bank account of the assessee. Aggrieved, the assessee carried matter in first-appeal. The CIT(A) has dismissed the appeal of the assessee *in limine* for want of payment of advance tax as per the provisions of Section 249(4)(b) of the Act. Against this order of ld. CIT(A), assessee is in appeal before Tribunal.

4. So far as the non-maintainability of assessee’s appeal on account of non-payment of advance 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.”

5. Admittedly, as per section 249(4)(b) of the Act, in a case where no return of income has been filed by the assessee, then his appeal shall be maintainable before the CIT(Appeals) only if he had paid an amount equal to the amount of advance tax which was payable by him. At the same time, the legislature had carved out an exception to the applicability of the aforesaid statutory requirement by way of a “proviso” to Section 249(4) of the Act, as per which, on an application made by the appellant, the CIT(Appeals) may, for any good and sufficient reason to be recorded in writing exempt him from the operation of the aforesaid statutory provision. The statutory requirement contemplated in Clause (b) of sub-section (4) of Section 249 of the Act would stand triggered only where any obligation was cast upon the assessee to pay “advance tax”. As per the statement of facts and grounds of appeal filed by assessee alongwith the appeal memo, it is claimed that assessee is not having total income exceeding the maximum amount not chargeable to tax and thus in

absence of any taxable income for the year under consideration, he was not under any obligation to compute and pay any advance tax.

6. In view of these facts, we are of the opinion that the view taken by the CIT(Appeals) while dismissing the appeal of the assessee as not maintainable for the sole reason of non-compliance of the mandatory condition contemplated in Clause (b) of sub-section (4) of Section 249 the Act is not maintainable. This view is supported by the orders of the ITAT, Bengaluru in the case of Shamama Reddy Vs. ITO in ITA No.1120/Bang/2023 dt. 20.02.2024 and also of the ITAT, Delhi in the case of Vikram Singh Vs. ITO in ITA No.6559/Del/2019, dt. 21.02.2023.

7. Accordingly, in view of above discussion, we set aside the order of the CIT(Appeals) and direct the Ld. CIT(Appeals) to decide the 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.

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

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