

IN THE INCOME TAX APPELLATE TRIBUNAL 'GUWAHATI' BENCH, GUWAHATI

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI MANOMOHAN DAS, JM**

**ITA Nos.70 to 74/GHY/2025
(Assessment Year:2018-19& 2019-20)**

Dhurba Saikia
N.H. 52, Banderdewa Bishnupur,
Sonarpur BO, Dist. Lakhimpur
Assam-784160

Vs.

**ITO, Ward North
Lakhimpur**
Aaykar Bhavan, Bora
complex, DK Road,
North Lakhimpur-787001
Assam

(Appellant)

(Respondent)

PAN No. CKFPS8547D

Assessee by : Shri Anil Kumar Agarwala, AR
Revenue by : Shri Kausik Ray, DR

Date of hearing: 10.07.2025
Date of pronouncement: 28.07.2025

ORDER

PER BENCH:

These appeals preferred by the assessee against the orders of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 28.01.2025, A.Ys. 2018-19 & 2019-20.

02. The facts and circumstances are similar in all the appeals in ITA No. 70 to 74/GHY/2025, hence, we will take the ITA no. 70/GHY/2025 for A.Y. 2018-19 as lead case and will decide the issue. The grounds raised in ITA No. 70/GHY/2025 is as under: -

"1. For that the Learned Commissioner of Income Tax (Appeals) erred in law as well as on facts in dismissing the appeal filed by the appellant on the ground of non-payment of deposit u/s 249(4)(b).

2. For that, the order imposing penalty of Rs 25,000/u/s 271A of the Income-tax Act, 1961 for violating the provisions of Section 44AA is bad in law and on facts and hence needs to be repealed.

3. For that the appellant urges leave to add to, modify or delete any ground of appeal, before or at the time of hearing of the appeal.”

03. Brief facts of the case are that the assessee is an individual engaged in the business of retail trade of motorcycle, in the name and style of M/s Maina Motors Limited. The assessee had not filed his return of income u/s 139(1) of the Act, for A.Y. 2018-18, despite having huge financial transactions. As per information available in Insight Portal, the assessee had deposited ₹4,84,27,550/- in his UCO bank current account for A.Y. 2018-19. In view of above, a show cause notice u/s 148A(b) of the Act was issued asking him as to why notice u/s 148 of the act should not be issued in his case but there was no compliance. Consequently, notice u/s.148 of the Act was issued on 29/03/2023, there was no compliance. Finally, on the basis of records available ₹4,84,27,550/- is treated as his business income. Hence, 8% of total turnover of Rs.4,84,27,550/- was applied to estimate the income which came to ₹38,74,204/- and was added to the total income of the assessee.

04. Aggrieved assessee preferred an appeal before the Id. CIT (A), who without going into the merits of the case, simply dismissed the appeal of the assessee by holding as under: -

"Decision –

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 270A of the Act, creating demand of Rs. 5,02,001/- 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>	Not applicable
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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 3 Deputy Commissioner (Appeals)] 4 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 5 that clause].]

3.3 As per provisions of section 234B(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 234B(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 143 4 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. 6 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."

4. In this regard, it would not be out of place to mention here that it is assessed income and not income, claimed to have been earned by the appellant, is the basis for computation of an amount equal to the amount of advance tax which is to be paid at the time of filing of appeal. Provisions of section 249(4)(a) and 249(4)(b) of Income Tax Act, in this regard, are very speaking and compulsory in nature in as much as their compliance is must before admission of appeal. Whereas provisions of section 249(4)(a) of the Act say that tax is to be paid on returned income where ITR has been filed, provisions of section 249(4)(b) are to be construed so as to compute the amount equal to the amount of advance tax on the basis of assessed income as no ITR was filed by the appellants. The non-filers cannot be treated in a more advantageous manner in comparison to ITR-filers so that non-filers can avoid payment of an amount equal to the amount of advance tax, claiming that their income was below taxable limit.

5. The appellant has offered 'Not applicable' comments at sl. No. 9 of Form-35 and the appellant failed to made 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 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 in fructuous and is, therefore, dismissed."

05. Aggrieved, assessee preferred the appeal before us. The Id. Counsel for the assessee submitted before the Bench that the orders passed by the Ld. CIT(A) u/s. 250 of the Act was without providing sufficient opportunity to the assessee and as such the order is bereft of natural justice and is liable to be set aside.
06. On the other hand, the learned Departmental Representative heavily relied on the decisions of the Id. lower authorities.
07. We after hearing the parties and perusing the material available on record, find that instant impugned order passed by NFAC was dismissed without looking into the merits of the case. In our opinion, the order passed by the Id. appellate authority is in violation of Provision of Section 250(6) of the Act. Sub-section (6) of section 250 of the Income Tax Act, 1961, mandates the Id. CIT(A) to state the point in dispute, and thereafter record reasons in support of his conclusion. A perusal of the order of the Id. CIT(A) would indicate that it is not in consonance with mandate given in the Act. The Id. CIT(A) has not made any analysis of facts available on record, including the assessment records and has passed an ex-parte order. Therefore, the impugned order is not sustainable, it deserves to be set aside. We therefore, feel it necessary in the larger interest of justice and fair play, deem it appropriate to restore the issue to the file of the Id. CIT (A) for necessary adjudication for which reasonable opportunity to be provided to the assessee to furnish the reply and file relevant details and evidences if needed. It is further clarified that assessee should also not seek any adjournments unless otherwise required for reasonable cause. The appeal of the assessee is allowed for statistical purposes.



08. Our above decision in the lead case would apply to all the remaining appeals and consequently all the appeals are restored to Id. CIT(A).
09. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 28.07.2025.

Sd/-
(MANOMOHAN DAS)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 28.07.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

True Copy//

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Guwahati