

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(HYBRID COURT)

**BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. Nos. 158, 161 & 166/Asr/2025

Assessment Years: 2016-17, 2018-19 & 2019-20

Abdul Hamid Nachar,
H. No. 61 Green Lane,
Azad Basti, Natipora
Jammu & Kashmir

[PAN: AUAPN 7161M]

(Appellant)

Vs.

Income Tax Officer,
Ward 1, Rajbagh,
Srinagar

(Respondent)

Appellant by : Sh. Tasir Ul Islam & Sh. Zubair Khan, Advs.
Respondent by : Sh. Charan Dass, Sr. D. R.
Date of Hearing : 17.07.2025
Date of Pronouncement : 18.08.2025

ORDER

Per Udayan Dasgupta, J.M.:

All the above three appeals are filed by the assessee against the orders of the Ld. CIT (A) NFAC, *all dated 24/10/ 2024*, passed u/s 250 of the Act, 1961 and arising out of the order of the *AO Ward –1, Srinagar* dated 18/05/2023 (AY: 2016-17), out of the order passed by NFAC (AU) dated 04/12/2023 (AY: 2018-19) and out

of order passed by NFAC) (AU) dated 05/12/2023 (AY: 2019-20), respectively , all passed *u/s 147 (r.w.s. 144)* , of the Act, 1961.

2. Since identical facts and common grounds are involved in all the years, all the appeals are taken together for disposal.

3. **Condonation of delay:** It is pointed out by the registry that all the three appeals are filed belatedly, *by 50 (fifty) days, by 52 (fifty two) days and by 53(fifty three) days*, respectively. The assessee has filed applications for condonation of delay (*along with an affidavit*) explaining the delay to have arisen because of medical illness in his family , which are supported by *doctors prescriptions and hospital records* , and prayed for condonation of the delay and for admission of appeal for hearing on merits. The Ld DR has no objection. Considering the medical records we find that the delay is not intentional or willful and as such we condone the same and admit the appeals to be heard on merits.

4. The common issue that arises in all the three appeals are that the Ld. first appellate authority has dismissed the appeals without admitting the same for hearing on merits for non-payment of advance tax coupled with the fact that the assessee has not filed any return for the years under appeal, thereby violating the provisions of section 249(4)(b) of the Act, 1961 and has not made any application requesting for exemption from pre deposit as *per proviso to section 249(4)(b) of the Act*.

5. The facts in brief as emerging from records are that the assessee has made cash deposits in various bank accounts maintained with *J & K bank and HDFC bank*, for all the years under appeal including other financial transactions (*as per details contained in the assessment order*) and no return of income has been filed for any of the years.
6. The cash deposit amounted to *Rs. 3.19 crores (AY: 2016-17), Rs. 1.70 crores (AY: 2018-19) and Rs. 2.42 crores (AY 2019-20)*, amongst other financial transactions through same banks.
7. In response to various notices issued by the AO in course of assessment proceedings (*including issue of notice through speed post*) apart from notices issued through portal and email, there has not been any compliance or any response from the assessee, resulting in completion of assessment *ex-parte*, for all the above three assessment years, determining total income at *Rs.3.23 crores (for AY 2016-17), Rs.1.94 crores (for AY 2018-19) and Rs.2.74 crores (for AY 2019-20)*.
8. The matters carried in appeal for all the three years, has been dismissed by the Ld first appellate authority without admitting the appeals for hearing on merits on the ground that the appeals are hit by the provisions of section 249(4)(b) of the Act, 1961, because in the instant case no returns are filed by the assessee and no advance taxes as payable has been paid and the assessee has not even filed any application as

per the proviso to section 249(4)(b), seeking exemption (*or waiver*) of such payment, by observing as follows:

“3.5. 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.

4. 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 infructuous and is, therefore, dismissed.”

9. Now, the matter is in appeal before the tribunal on various grounds contained in the memorandum of appeal in form 36 , out of which one of the grounds being that the assessee is not obliged to pay any advance tax because of his business profit margin being very low and as such no taxes are payable and he claims that he has no liability to pay advance tax u/s 210 of the Act 61, which is payable by the assessee of his own accord and as per his computation of income u/s 209, of the Act 61, the assessee is not liable to pay any advance tax .

10. In course of hearing before the tribunal , the Ld AR of the assessee furnished computation of income for all the three years under appeal (*along with copies of profit and loss A/c and balance sheet*), which is duly signed by him (*the advocate of*

the assessee Mr. Tasir Ul Islam (Jammu and Kashmir High Court), in support of his contention that the assessee does not have taxable income and as such no tax has been paid and the Ld. first appellate authority was legally not justified in dismissing the appeal without admitting the same for hearing and without allowing any opportunity of being heard or to explain the reasons for non-payment of advance tax. He prayed for opportunity of hearing on merits of the case.

11. The Ld. DR relied on the order of the Ld CIT (A).

12. We have heard the rival submissions and considered the materials on record. The computation of income filed by the Ld AR of the assessee are taken on record (*and made a part of the order*), and we direct the assessee to pay the ***admitted tax***, (*with interest as applicable*) as per its own computation submitted before us , within *30 (thirty days)* from the date of this order.

13. We find that as per the computation of income furnished for all the three years, advance tax liability does not arise, (*though admitted tax is due as per assessee own calculation*). However, the veracity, authenticity and genuineness of the figures and particulars contained in such profit and loss A/c and computation of income furnished cannot be accepted at face value, and needs proper verification and scrutiny supported by documentary evidences.

COMPUTATION

<u>NAME OF ASSESSEE</u>	<u>ABDUL HAMID NACHOR</u>
<u>ADDRESS</u>	GREEN LANE, AZAD BASTI, NATIPORA
<u>STATUS</u>	INDIVIDUAL
<u>ASSESSMENT YEAR</u>	2016-17
<u>PAN NO</u>	AUAPN7161M
<u>D.O.B</u>	23-03-1964
<u>BANK A/C NO</u>	CD-0067010100001450
<u>IFSC CODE</u>	JAKA0STREET
<u>INCOME FROM BUSINESS</u>	
<u>Net Profit As Per P&L</u>	3,59,795.00
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Net Income Under The Head PGBP	3,59,795.00
Gross Total Income	3,59,795.00
Less:Deduction U/S 80C	26,623.00
Net Taxable Income	3,33,172.00
Tax Thereon	10,317.00
Less:Rebate U/S 87A	2,000.00
Tax Thereon after Rebate	8,317.00
Add:Health & E.c@3%	250.00
Total Tax Payable	<u>8,567.00</u>

Adv. Pasir ul Islam.
Taris
Islam.

M/S GOUSIA MUTTON SHOP, (PROP: ABDUL HAMID NACHAR), AZAD BASTI,
NATIPORA, SRINAGAR
TRADING AND PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED AS ON 31.03.2016

<u>Particulars</u>	<u>Amount</u>	<u>Particulars</u>	<u>Amount</u>
Opening Stock	3,77,854.00	Sales	3,59,21,291.00
Purchases	3,38,96,262.00	Closing Stock	4,26,170.00
Freight & Carriage	4,53,160.00		
Gross Profit	16,20,185.00		
	<u>3,63,47,461.00</u>		<u>3,63,47,461.00</u>
Salary & Wages	3,68,330.00	Gross Profit	16,20,185.00
Packing Material	61,250.00		
Slaughtering Charges & Sorting Expenses	4,55,820.00		
Rent, Rates & Taxes	27,370.00		
Heating & Lighting Ex	15,145.00		
Entertainment	23,105.00		
Travelling & Conveyance	2,29,460.00		
Telephone Charges	5,122.00		
Bank Interest/Charges	1,147.00		
Other Expenses	5,265.00		
Depreciation	68,376.00		
Net Profit	3,59,795.00		
	<u>16,20,185.00</u>		<u>16,20,185.00</u>

Date:-13/07/2016
Place:-Srinagar

Adv. Tahir ul Islam.
Tahir
Islam

COMPUTATION

NAME OF ASSESSEE	ABDUL HAMID NACHOR
ADDRESS	GREEN LANE, AZAD BASTI, NATIPORA
STATUS	INDIVIDUAL
ASSESSMENT YEAR	2018-19
PAN NO	AUAPN7161M
D.O.B	23-03-1964
BANK A/C NO	CD-0067010100001450
IFSC CODE	JAKA0STREET
<u>INCOME FROM BUSINESS</u>	
Net Profit As Per P&L	3,75,052.00
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Net Income Under The Head PGBP	3,75,052.00
Gross Total Income	3,75,052.00
Less:Deduction U/S 80C	1,08,200.00
Less:Deduction U/S 80TTA	-
Net Taxable Income	2,66,852.00
Tax Thereon	843.00
Less:Rebate U/S 87A	843.00
Tax Thereon after Rebate	-
Add:Health & E.c@4%	-
Total Tax Payable	<hr/> <hr/>

Adv. Tasir-ul-Islam.
Tasir
Islam

M/S GOUSIA MUTTON SHDP. (PROP:ABDUL HAMID NACHAR), AZAD BASTI, NATIPORA, SRINAGAR
TRADING AND PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED AS ON 31.03.2018

Particulars	Amount	Particulars	Amount
Opening Stock	5,90,570.00	Sales	1,99,49,605.00
Purchases	1,84,23,607.00	Closing Stock	7,89,730.00
Freight & Carriage	2,91,550.00		
Gross Profit	14,33,608.00		
	<u>2,07,39,335.00</u>		<u>2,07,39,335.00</u>
Salary & Wages	2,57,300.00	Gross Profit	14,33,608.00
Packing Material	41,820.00		
Slaughtering Charges & Sorting Expenses	4,30,300.00		
Rent, Rates & Taxes	43,200.00		
Heating & Lighting Exp	17,202.00		
Entertainment	19,536.00		
Travelling & Conveyance	1,87,360.00		
Telephone Charges	6,154.00		
Bank Interest/Charges	2,103.00		
Other Expenses	985.00		
Depreciation	52,596.00		
Net Profit	3,75,052.00		
	<u>14,33,608.00</u>		<u>14,33,608.00</u>

Date:-28/06/2016
Place:-Srinagar

Adv. Tabir ul Islam
Tasir
781 acis

COMPUTATION

<u>NAME OF ASSESSEE</u>	<u>ABDUL HAMID NACHOR</u>
<u>ADDRESS</u>	GREEN LANE, AZAD BASTI, NATIPORA
<u>STATUS</u>	INDIVIDUAL
<u>ASSESSMENT YEAR</u>	2019-20
<u>PAN NO</u>	AUAPN7161M
<u>D.O.B</u>	23-03-1964
<u>BANK A/C NO</u>	CD-0067010100001450
<u>IFSC CODE</u>	JAKAOSTREET
<u>INCOME FROM BUSINESS</u>	
<u>Net Profit As Per P&L</u>	4,96,012.00
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Net Income Under The Head PGBP	4,96,012.00
<u>INCOME FROM OTHER SOURCES</u>	
Interest on Savings	-
Interest on Deposits	-
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Net Income Under The Head Other	-
Gross Total Income	4,96,012.00
Less:Deduction U/S 80C	1,50,000.00
Less:Deduction U/S 80TTA	-
Net Taxable Income	3,46,012.00
Tax Thereon	4,801.00
Less:Rebate U/S 87A	-
Tax Thereon after Rebate	4,801.00
Add:Health & E.c@4%	192.00
Total Tax Payable	4,993.00

Adv. Tasir - w. Islam

Tasir
Islam

**M/S GOUSIA MUTTON SHOP, (PROP: ABDUL HAMID NACHAR), AZAD BASTI, NATIPORA,
SRINAGAR
TRADING AND PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED AS ON 31.03.2019**

Particulars	Amount	Particulars	Amount
Opening Stock	7,89,730.00	Sales	2,78,65,850.00
Purchases	2,60,45,557.00	Closing Stock	11,26,780.00
Freight & Carriage	4,27,120.00		
Gross Profit	17,30,223.00		
	2,89,92,630.00		2,89,92,630.00
Salary & Wages	2,66,390.00	Gross Profit	17,30,223.00
Packing Material	35,275.00		
Slaughtering Charges & Sorting Expenses	4,91,680.00		
Rent, Rates & Taxes	44,800.00		
Heating & Lighting Exp	26,513.00		
Entertainment	17,441.00		
Professional Fee	4,000.00		
Travelling & Conveyance	2,89,665.00		
Telephone Charges	7,635.00		
Bank Interest/Charges	3,199.00		
Other Expenses	1,305.00		
Depreciation	46,308.00		
Net Profit	4,96,012.00		
	17,30,223.00		17,30,223.00

Date:-29/07/2019

Place:-Srinagar

Adv. Tahir ul Islam.

Tahir
Nachar

14. As such based on the computation of income (*produced before us for the first time*), we are of the opinion that interest of justice will be served if the matter is remanded back to the Ld. first appellate authority, to admit the appeal for hearing on merits, and to adjudicate on the grounds contained in *form 35* on merits of the case and to cause all necessary verification and enquiry , as deemed fit and proper, and to obtain necessary report from the AO after verification of necessary documentary evidences including books of accounts, as per provisions of law, un-influenced by any observation that we might have made.

15. We have not expressed any opinion on merits and all issues are left open.

16. The assessee is directed to file all necessary documentary evidences and submissions in support of his contention and to fully cooperate in appellate proceedings for proper disposal of the appeal.

17. Since the matter is remanded back to the Ld. first appellate authority we have not adjudicated on the remaining grounds on merits.

18. The assessee will be allowed proper and reasonable opportunity of being heard.

19. In the result, all the three appeals filed by the assesseees are allowed for statistical purpose.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 18.08.2025.

Sd/-
(Manoj Kumar Aggarwal)
Accountant Member

Sd/-
(Udayan Dasgupta)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

True Copy
By Order