

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

(Through Physical / Virtual Hearing)

**BEFORE SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER,
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.- 284/Agr/2025
[Assessment Year: 2017-18]**

Lakhmi Chand Khushiramani, B-117, Samadhiya Colony, Taraganj Lashkar, Gwalior- 474001, Madhya Pradesh.	VS	Income Tax Officer, Ward 1(1), Gwalior, Income Tax Office, Aaykar Bhawan, City Centre, Gwalior-474011, Madhya Pradesh.
PAN- AGWPK0493P		
Assessee		Revenue

Assessee by	Shri Ashok Vijaywargia, CA
Revenue by	Shri Anil Kumar, Sr. DR

Date of Hearing	18.07.2025
Date of Pronouncement	15.09.2025

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal has been preferred by the assessee against the order dated 27.12.2023 of National Faceless Appeal Centre (NFAC)/ CIT(A) pertaining to Assessment Year 2017-18 arising out of

Assessment Order u/s 144 of the Income-tax Act, 1961(hereinafter referred to as 'the Act') dated 24.12.2019.

2. Brief facts of the case are: In this case, as per information available with the AO on AIMS Module of ITBA, it was noticed by the AO that, during the period of demonetization from 09.11.2016 to 30.12.2016, the assessee had made cash deposits, as per the following details:

S. No.	Bank Name	Branch	Account Number	Total amount of Credited in account
1	HDFC Bank	Gwalior	5010014126920	Rs. 3,00,000/-
2.	Yes Bank	Gwalior	55483800000290	Rs. 14,55,000/-
	Total			Rs. 17,55,000/-

2.1 In view of the above fact, the AO issued notice under Section 142(1), dated 21/02/2018 requesting the assessee to file return of income for A.Y. 2017-18 and the notice was served to the assessee on email:- khushiramaniashubhash@gmail.com. However, the assessee failed to comply with the notice u/s 142(1) of the Income Tax Act, 1961 and it was also noted by the AO that the assessee had not filed regular return of income as per the provisions of section 139 of the Income Tax Act, 1961, for the A.Y. 2017-18.

3. The AO thereafter issued notices, which were not complied with, and the AO also issued a show-caused notice dated 09.12.2019 which was also not complied with. The AO further noted that the assessee had deposited a total sum of Rs. 63,32,892/-, as per the details on page 3 of the Assessment Order, in various bank accounts maintained with HDFC Bank and Yes Bank, Gwalior. In view of the non-compliance by the assessee, the AO held that the assessee had no explanation to offer regarding the nature and source of the above amount credited in the assessee's bank account and therefore, treated the sum of Rs. 63,32,892/- as unexplained money u/s 69A of the Act, r.w.s. 115BBE of the Act.

4. Aggrieved with the said order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal of the assessee on the ground that the assessee did not pay an amount equal to the amount of advance tax, which was payable on or before filing the appeal. This comment was made by the Ld. CIT(A) on the basis of assessee's answer "No" in column number 9 of Form 35. The Ld. CIT(A), relying upon the provisions of Section 249(4)(b) of the Act, which according to the Ld. CIT(A) was that the appeal shall not be admitted, unless the appellant has paid an amount equal to the

amount of advance tax which was payable by him if no return of income has been filed. In view of these facts, the Ld. CIT(A) dismissed the appeal being not eligible for admission. The relevant finding of the Ld. CIT(A) in para 4 of his order is reproduced as under:

“4. As per the provisions of the section 249(4)(b) of the Act, the appeal shall not be admitted, unless the appellant has paid an amount equal to the amount of advance tax which was payable by him if no return of income has been filed. In the present case, the appellant did not file return of income. On or before filing the present appeal, the appellant has failed to make the mandatory payment of the amount equal to the amount of advance tax which was payable by him. Further, the appellant neither provided any clarification/ explanation in response to the deficiency letter issued by this office nor did he offer any good and sufficient reasons seeking exemption from the operation of the sec. 294(4)(b) even though sufficient opportunities were provided to him.

On careful consideration of the above facts and circumstances, as the appellant has failed to fulfill the mandatory and essential conditions for admission of appeal before CIT(A) as per sec. 249(4)(b), the present appeal is liable to be held as not eligible for admission.”

5. Aggrieved with the said order, the assessee is in appeal before us, on the following grounds of appeal:

“1. That, on the facts and circumstances of the case and in law, and in any view of the matter, the Ld. Commissioner of Income Tax (Appeals) has erred in not admitting the appeal stating that the appellant has failed to make the mandatory payment of advance tax as per provision of section 249(4) (b) of the Act. Whereas, the appellant has mentioned in the statement of facts that the income is below the maximum limit not liable for Income Tax.

2. That, on the facts and circumstances of the case and in law, and in any view of the matter, the Ld. Commissioner of Income Tax (Appeals) has erred in not admitting the appeal stating that the appellant has not provided any clarification/explanation in

response to the deficiency letter issued whereas, the impugned deficiency letters were not received by the legal heir of the appellant Shri Subhash Chandra Khushiramani.

3. That, on the facts and circumstances of the case and in law, and in any view of the matter, the Ld. authorities below have erred in completing the assessment and passing the appeal order in the name of appellant the deceased person died on 13.10.2017.

4. That, on the facts and circumstances of the case and in law, and in any view of the matter, the Ld. Commissioner of Income Tax (Appeals) has erred in not deciding the following grounds of appeal raised: 1. That, on the facts and circumstances of the case and in law and in any view of the matter, the Ld. Assessing Officer has erred in making addition Rs. 63,32,892/-considering the cash deposit of Rs. 63,32,892 (Rs. 6,61,625/-in Bank account no. 50100141269205 with HDFC Bank, Rs. 38,29,400/-in Bank account no. 055483800000290 with Yes Bank, Rs. 17,78,000/- in bank account no. 055483800000219 with Yes Bank, Rs. 63,317/- in bank account no. 0055493700000950 with Yes Bank and Rs. 550/- in bank account no. 055490100001830 with Yes Bank) as alleged unexplained money u/s 69A, read with section 115BBE of the Income Tax Act, 1961 for the year under consideration.

5. That, on the facts and circumstances of the case and in law and in any view of the matter, the Ld. Assessing Officer has erred in invoking provision of section 115BBE of the Income 5 Tax Act, 1961 for the purpose of determination of tax liability considering the amount of Rs. 63,32,892/- of bank deposits as alleged unexplained money u/s 69A of the Income Tax Act, 1961.”

(emphasis supplied by the Bench)

6. The Ld. AR, before us, filed a written submission submitting that as per the provisions of section u/s 209(1)(a) of the Act, advance tax payable was Nil in the case of the assessee because according to the assessee, his income for the year under consideration was less than the maximum amount not liable to income tax. It was further submitted that this fact was categorically mentioned in beginning of

the statement of facts in Form no. 35 in the appeal form filed before the Ld. CIT(A). The relevant extract of the written submission filed by the assessee is reproduced as under:

- *Facts:-*
- *The income of the appellant for the year under consideration was less than the maximum amount not liable for income tax. This fact is categorically mentioned in beginning of the statement of facts in Form No. 35.*
- *Meaning thereby there was no income tax liability, hence, income tax return was not filed.*
- *The provisions of section 249(4)(b) of the Act invoked by the Ld. CIT(A) says*

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.

- *As per provision of section 249(4)(b), two conditions must be fulfilled, namely*
 - (i) No return has been filed.*
 - (ii) Assessee has paid an amount equal to the amount of advance tax, which was payable by him.*

- *Section 208 of the Act - Conditions of liability to pay advance tax –*
- *Conditions of liability to pay advance tax as per provision of section 208 of the Act - The advance tax is payable when the total tax liability as per assessee is Rs 10,000/-or more.*
- *Section 209 of the Act - Computation of advance tax.*
- *(1) The manner of computation of advance tax is given in provision of section 209 of the Act. The amount of advance tax payable by an assessee in the financial year shall subject to the provisions of sub section (2) and (3), be computed as follows, namely*

(a) Where the calculation is made by the assessee for the purposes of payment of advance tax, he shall first estimate

his current income and income tax thereon shall be calculated at the rates in force in the financial year. Accordingly, the appellant has estimated his current income, which was less than the maximum amount not liable for income tax. Therefore, the income tax liability was nil.

(b) This clause is applicable where the Ld. Assessing Officer has passed the order under section 210(3) of the Income Tax Act, 1961. But, in this case, no such order u/s 210(3) of the Act was passed by the Ld. Assessing Officer. Hence, this clause is not applicable.

- *That, in view of the above, as per provision of section 209(1)(a), the advance tax payable by the assessee was NIL.*
- *Therefore, in view of above, provision of section 249(4)(b) of the Act as invoked by the Ld. CIT(A) is not applicable to the facts of the case because the advance tax payable by the assessee as mentioned in provision of section 249(4)(b) was NIL as computed as per provision of section 209(1)(a) of the Act. Accordingly, the conditions of liability to pay advance tax as per provision of section 208 of the Act, the appellant was not liable to pay advance tax. Hence, not paid.*
- *Since, the advance tax payable by the appellant was NIL, hence, question of application of provision of section 249(4)(b) of the Act does not arise.*
- *Therefore, in view of the above, since, the provision of section 249(4)(b) of the Act is not applicable, hence, appeal dismissed by the Ld. CIT(A) is not justified.*
- *In view of the above, the appeal may kindly be restored to the Ld. CIT(A) to decide the appeal on merits and oblige. “*

7. Further, the Ld. AR in his written submission, also relied on the orders of the Coordinate Benches of Tribunal, in the case of Vishnusharan Chandravanshi vs. Income Tax Officer, ITA No. 73/RPR/2024, Assessment Year 2017-18, order dated 10.04.2024,

(2024) 161 Taxmann.com 803 (Raipur- Trib.), Dilip Hiralal Chaudhari vs. Income Tax Officer, ITA No.- 642/PUN/2024, Asstt. Year 2017-18, Date of Order 05.06.2024., Ritika Jain vs. Income Tax Officer, ITA No.-168/Agr/2023, Asstt. Yea 2017-18, date of order 13.12.2024, and Neeraj Tripathi vs. Income Tax Officer, ITA No. 117/Agr/2024, Asstt. Year 2018-19, Order dated 17.02.2025, in support of his aforesaid contentions.

8. The Ld. Sr. DR, on the other hand, relied upon the order of the Ld. CIT(A).

9. We have heard both the parties and perused the relevant material on the record. On similar facts, the co-ordinate Bench of Raipur Bench in the case of Vishnusharan Chandravanshi (supra), in para 13 & 14 of its order held that when the assessee in “Statement of Facts” had stated before the Ld. CIT(A) that he had no taxable income, then, there was no obligation cast upon the assessee to compute / pay “advance tax” u/s 208 and 209 of the Act for the subject year, and, therefore, the first appellate authority could not have held that the assessee had failed to comply with the statutory conditions contemplated in section 249(4)(b) of the Act. In the said

case, the Tribunal set aside the order of the Ld. CIT(A) and restored the matter to his file with a direction to dispose of the appeal on merits. The relevant findings of the aforesaid order in the case of Vishnusharan Chandravanshi (supra), in para no. 10 to 16 is reproduced as under:

“ 10. Admittedly, it is a matter of fact borne from record that the assessee had neither filed his return of income u/s. 139 of the Act nor in compliance to notice issued to him u/s. 142(1) of the Act, dated 10.03.2018. As the assessee had failed to file his return of income, the CIT(Appeals) had brought his case within the meaning of Clause (b) of sub-section (4) of Section 249 of the Act. For the sake of clarity, Section 249(4) of the Act is culled out 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."

The CIT(Appeals) observed that as the assessee who had not filed his return of income had neither paid an amount equal to the amount of advance tax which was payable by him; nor filed any application seeking exemption from operation of the aforesaid statutory provision for any good and sufficient reason, therefore, he had failed to comply with the statutory requirements contemplated u/s 249(4)(b) of the Act. Accordingly, the CIT(Appeals) dismissed the appeal on the said count itself.

11. Controversy involved in the present appeal lies in a narrow compass, i.e. sustainability of the view taken by the CIT(Appeals) that

the appeal of the assessee who had not filed his return of income for the subject year was not maintainable for the reason that he had failed to satisfy the conditions contemplated in Section 249(4) of the Act.

12. 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.

13. At this stage, I may herein observe that 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 stated by the Ld. AR, and rightly so, in absence of any taxable income for the year under consideration [as was stated by him in the "SOF" filed before the CIT(Appeals)] no obligation was cast upon him to compute and pay any advance tax u/ ss. 208 & 209 of the Act. Considering the fact that as no obligation was cast upon the assessee to compute/deposit any amount towards "advance tax for the subject year, I am unable to concur with the view taken by the CIT(Appeals) who had dismissed the appeal as not maintainable for the reason of non-compliance of the mandatory condition contemplated in Clause (b) of sub-section (4) of Section 249 of the Act. Although, at the first blush, I was of the view that the amount assessed by the A.O vide his order u/ s. 144 of the Act dated 23.11.2019 of Rs.10 lacs would saddle the assessee with an obligation to pay "advance tax", but stood corrected on a careful perusal of Section 208 and Section 209(1)(a) of the Act, which contemplates determination of the said tax liability at the behest of the assessee.

14. As in the present case, the assessee had not only before me but had also in the "Statement of facts" stated before the CIT(Appeals) that he had no taxable income, therefore, in my view in absence of any obligation cast upon the assessee to compute/pay "advance tax" u/ ss. 208 and 209 of the Act for the subject year, the first appellate authority could not have held that he had failed to comply with the statutory conditions contemplated in Sec. 249(4)(b) of the Act. My aforesaid view is fortified by the orders of the ITAT, Bengaluru in the case of Shamanna Reddy Vs. ITO, ITA No. 1120/Bang/2023 dated

20.02.2024 and that of ITAT, Delhi in the case of Vikram Singh Vs. ITO, ITA No.6559/Del/2019, dated 21.02.2023.

15. I, thus, in terms of my aforesaid observations, set aside the order of the CIT(Appeals) and restore the same to his file with a direction to dispose off the appeal after considering the merits of the case. Needles to say, the CIT(Appeals) shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee.

16. In the result, appeal of the assessee is allowed for statistical purposes in terms of the aforesaid observations.”

10. A similar view was also taken by the Co-ordinate Bench of the Pune Bench, in the case of Dilip Hiralal Chaudhari (supra). In this case also, the assessee, in the statement of facts, had submitted that the income of the assessee for the year under consideration was less than the maximum amount not liable income tax. The relevant extract of the same is reproduced as under:

“ 8. We have heard learned counsels from both the sides & perused the material available on record. The solitary question which arises for our consideration is whether LD CIT(A)/NFAC was justified in dismissing the appeal of the assessee in limine, by treating that the assessee has not deposited the amount of advance tax in the light of section 249(4)(b) of the IT Act. We find that the appellant assessee did not respond to the notice issued by LD CIT(A)/NFAC, wherein the assessee was asked to clarify that whether he has made payment of tax which includes the element of advance tax. But the appellant assessee failed to reply to the above notice & also did not file any application seeking exemption from payment of advance tax, which compelled LD CIT(A)/NFAC to dismiss the appeal in limine. But at the same time LD CIT(A)/NFAC also referred section 234B(1) for the purposes of calculation of interest on advance tax & hold that advance tax is to be calculated on the basis of assessed tax & the assessee has not paid advance tax on the basis of assessed tax. We find that, as per section 234B(1) of the IT Act for the purposes of calculation of interest on advance tax, advance tax is calculated on the basis of

assessed tax, whereas in section 249(4)(b) the words advance tax which was payable by him are used. If the intention of the legislature would have been same than in both the sections same wording could have been used. But we do not find so. It is the contention of the counsel of the assessee that clause (b) of section 249(4) contemplates that advance tax payable by him, means according to the assessee & not according to the assessed income. We are in agreement with the contention of the counsel of the assessee & hold that in the instant case the assessee was not required to pay advance tax on the basis of assessed tax but was required to pay advance tax, if any, which was payable by him i.e. on the basis of his undisputed admitted income.

9. Now we find that the assessee has admitted the taxable income of Rs.5,32,310/- in belated income tax return, & due income tax of Rs.32,406/- was sought to be adjusted from TCS of Rs.61,149/-Therefore instead of advance tax whole of the tax payable on undisputed admitted income of the assessee was already deposited in the shape of TCS of Rs.61,149/- & therefore there was no further advance tax liability remained to be paid. Therefore in our considered opinion LD CIT(A)/NFAC erred in dismissing the appeal of the assessee on the limited ground of non payment of advance tax, because whole of the income tax on the undisputed income declared in the belated income tax return of the assessee was already paid in the shape of TCS, hence there was no requirement as per section 249(4)(b) of the IT Act to pay any further tax in the shape of advance tax by the assessee. Hence without going into merits of the case we set-a-side the order passed by LD CIT(A)/NFAC & remand the matter back to the file of LD CIT(A)NFAC with direction to admit the appeal for adjudication on merits of the case after providing the assessee a reasonable opportunity of hearing. LD CIT(A)NFAC shall pass the order as per facts & law & on grounds of appeal after providing reasonable opportunity of being heard to the assessee. The assessee is also hereby directed to respond to the notice issued by the Id. CIT(A)/NFAC and submit the requisite details on the appointed date without seeking any adjournment under any pretext, failing which Id. CIT(A)/NFAC is at liberty to pass appropriate order as per law. We hold & direct accordingly.

10. In the result, the appeal of the assessee stands allowed for statistical purposes.”

11. In this case, the assessee in its ground no. 1 of the appeal states that the appellant has mentioned in the statement of facts that the income is below the maximum limit not liable for Income Tax, as was

the fact in the above two cited cases. Moreover, we are in agreement with the view held by the Co-ordinate Bench of the Tribunal, in the case of Dilip Hiralal Chaudhari (supra), that assessee was not required to pay advance tax on the basis of assessed tax but was required to pay advance tax, if any, which was payable by him i.e. on the basis of his undisputed admitted income. The facts being similar in the present case as in the above cited cases and respectfully following the same, we hold that the Ld. CIT(A) erred in dismissing the appeal of the assessee, on the ground that the assessee had failed to fulfil the mandatory and essential conditions by not paying the advance tax, which was payable by him, if no return of income was filed by the assessee for admission of appeal before the CIT(A) as per section 249(4)(b) of the Act.

12. Hence, without going into merits of the case we set aside the order passed by LD CIT(A)/NFAC and remand the matter back to the file of LD CIT(A)NFAC with direction to admit the appeal for adjudication on merits of the case after providing the assessee a reasonable opportunity of hearing.

13. In the result, appeal of the assessee is allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced in the open court on 15th September, 2025.

Sd/-
[SUNIL KUMAR SINGH]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 15.09.2025.

Pooja.

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,