

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.2680/Ahd/2025
(Assessment Year: 2016-17)

Dharmendra Rikhavchand Shah (HUF), 5, Nagar Palika Market, Town Hall, Himmatnagar, Sabarkantha, Himatnagar H.O.-383001	Vs.	NFAC, Delhi (Now present jurisdiction Income Tax Officer, Ward-1, Himatnagar)
[PAN No.AAEHD6246F]		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by:	Shri Rajenkumar M Vasavda, Sr. DR

Date of Hearing	05.02.2026
Date of Pronouncement	19.02.2026

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 08.10.2025 passed for A.Y. 2016-17.

2. The assessee has raised the following grounds of appeal:

“1. In law and on the facts and in the circumstances of the case, the order u/s 250 of the Act passed by the Ld. CIT(A) is bad in law and deserves to be quashed.

2. In law and on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in dismissing the appeal by invalidity invoking the provisions of section 249(4)(b) of the Act without considering the fact that the appellant had filed original return of income.

2.1 In law and on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in dismissing the appeal without adjudicating merits which is in violation of principles of natural justice and contrary to the statutory mandate of section 250.

3. *In law and on the facts and in the circumstances of the case, the proceedings initiated u/s 147/148 are bad in law being as the same is in violation of section 151A and CBDT Notification No. 18/2022 which provides for Faceless Reassessment proceedings.*

4. *In law and on the facts and in the circumstances of the case, the approval granted u/s 151 is mechanical in nature as well as the same lacks the signature of the specified authority which vitiates the entire reassessment proceedings.*

5. *In law and on the facts and in the circumstances of the case, the Ld. AO had erred in making addition of Rs. 1,13,02,029 u/s 69A r.w.s. 115BBE of the Act without bringing any incriminating material or evidence on record.*

6. *In law and on the facts and in the circumstances of the case, the appellant craves leave to add, amend, alter or withdraw any ground at or before the time of hearing.”*

3. The brief facts of the case are that the assessee, a Hindu Undivided Family engaged in the business of wholesale trading of tyres and allied goods under the name Darshan Tyres & Tools, had originally filed its return of income for the Assessment Year 2016-17 under section 139(1) of the Act on 16.10.2016 declaring a total income of Rs.4,05,580/-. The said return was processed under section 143(1) of the Act on 16.11.2016 and the returned income was accepted without any adjustment. Subsequently, a search action was carried out on 30.07.2018 in the case of Mehta Soni Group, during which business premises of Mehta Finance and Mehta Corporation were covered and it was allegedly found that these concerns were engaged in providing accommodation entries by accepting cash and issuing cheques or demand drafts. Based on this third-party information, the Assessing Officer formed a belief that the assessee had entered into transactions amounting to Rs.36,97,000/- with M/s Mehta Finance and Rs.76,05,029/- with M/s Mehta Corporation during the year under consideration, aggregating to Rs.1,13,02,029/-, which was treated as undisclosed money.

4. Accordingly, proceedings under section 148A of the Act were initiated and thereafter notice under section 148 of the Act was issued on 24.03.2023. The assessee did not respond to the notices issued during the reassessment proceedings. Multiple notices under section 142(1) of the Act were issued calling for details such as bank statements, nature of business, cash book, and supporting evidences for the impugned transactions. As there was no compliance, a show cause notice under section 144 of the Act was issued proposing to treat the entire amount of Rs.1,13,02,029/- as unexplained money under section 69A of the Act. Even to the show cause notices, the assessee remained non-responsive. Accordingly, the Assessing Officer completed the assessment ex parte under section 147 read with sections 144 and 144B of the Act on 20.02.2024, treating the entire sum of Rs.1,13,02,029/- as unexplained money under section 69A, taxing the same under section 115BBE, and initiating penalty proceedings under sections 271(1)(c) and 271(1)(b) of the Act.

5. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(Appeals). Before the first appellate authority, the assessee raised grounds challenging the validity of the reassessment proceedings as well as the additions made. However, the CIT(Appeals) did not go into the merits of the additions. The appeal was dismissed in limine by invoking the provisions of section 249(4)(b) of the Act on the reasoning that the assessee **had not filed a return of income in response to notice under section 148 of the Act and had also not paid an amount equal to the advance tax payable on the assessed income.** The CIT(Appeals) held that payment of advance tax equal to the assessed income was a mandatory pre-condition for admission of appeal under section 249(4)(b) of the Act where no return had been filed, and since the assessee had neither paid

such tax nor sought exemption under the proviso to section 249(4)(b), the appeal was not admissible and was accordingly dismissed without adjudicating the issues on merits.

6. The assessee is in appeal before us against the order passed by the CIT(Appeals) dismissing the appeal of the assessee.

7. Before us, the ld. counsel for the assessee submitted that the order of the CIT(Appeals) is legally unsustainable as the foundational assumption that the assessee had not filed a return of income is factually incorrect. It was pointed out that the assessee had duly filed its original return of income under section 139(1) of the Act, which was processed under section 143(1) of the Act, and even the Assessing Officer in the order passed under section 148A(d) of the Act had recorded that the assessee had filed a return declaring income of Rs.4,05,580/-. It was contended that once an original return of income has been filed, the provisions of section 249(4)(b) of the Act have no application, even if no return is filed in response to notice under section 148 of the Act. The ld. counsel submitted that section 249(4)(b) of the Act applies only in cases where no return of income has been filed at all, and not in cases where an original return exists on record. Reliance was placed on several judicial precedents, including **Russell Adrian Rodrigues v. ITO (ITA No. 98/Mum/2025 dated 14.02.2025)**, **Nine Globe Industries Pvt. Ltd. No. 3889/Mum/2023 dated 16.04.2024** and **Ramdas Yadav v. ITO (ITA No. 163/Ind/2024 dated 27.06.2024)**, wherein it has been held that dismissal of appeal under section 249(4)(b) of the Act is not justified when the assessee has already filed an original return of income. The ld. counsel for the assessee further submitted that the assessment order itself was passed ex parte without granting an effective opportunity of being heard

and without furnishing any incriminating material or evidence relied upon by the Assessing Officer. On the issue of advance tax, the ld. counsel submitted that it is a well settled principle that advance tax is payable only on admitted income and not on income which is disputed or assessed ex parte. It was argued that insisting upon payment of advance tax on disputed additions defeats the statutory right of appeal and is contrary to settled law. The ld. counsel also submitted that since the assessment itself suffers from serious legal infirmities, including violation of faceless reassessment provisions under section 151A of the Act and mechanical approval under section 151 of the Act, the matter deserves to be restored to the file of the Assessing Officer for fresh adjudication after affording due opportunity to the assessee.

8. We have considered the rival submissions and perused the material available on record. It is an undisputed fact that the assessee had filed its original return of income under section 139(1) of the Act, which stood processed under section 143(1) of the Act. Even the Assessing Officer has acknowledged this fact in the order passed under section 148A(d) of the Act. In such circumstances, invocation of section 249(4)(b) of the Act by the CIT(Appeals) on the premise that no return of income was filed is clearly erroneous. The condition of payment of advance tax under section 249(4)(b) of the Act applies only where no return of income has been filed at all. Once an original return is on record, the appeal cannot be dismissed for non-payment of advance tax merely because the assessee did not file a return in response to notice under section 148. This position is supported by the decisions of the coordinate benches in **Russell Adrian Rodrigues, Nine Globe Industries Pvt. Ltd.** and **Ramdass Yadav supra**, wherein it has been consistently held that section 249(4)(b) of the Act cannot be mechanically applied in such cases.

9. We also find force in the contention of the ld. counsel that it is a well settled law that there is no requirement to pay advance tax on disputed income. Advance tax is payable on estimated and admitted income and not on additions made by the Assessing Officer, particularly when such additions are disputed and the assessment has been framed ex parte. The Hon'ble Supreme Court in **CIT v. Hindustan Electro Graphites Ltd. (243 ITR 48)** has held that interest and advance tax provisions operate only on income which is accepted or admitted and not on income which is ultimately found not chargeable. In the case of **Balwinder Singh vs. ITO [2024] 163 taxmann.com 599 (Amritsar - Trib.)**, the ITAT held that where assessee had no taxable income and there was no obligation on assessee to pay advance tax under section 208, Commissioner (Appeals) should have admitted appeal for adjudication on merits and the Commissioner (Appeals) could not have refused to admit appeal for hearing for non-payment of tax as per provisions of section 249(4)(b) of the Act. In the case of **Vishnusharan Chandravanshi vs. Income-tax Officer [2024] 161 taxmann.com 803 (Raipur - Trib.) [10-04-2024]**, the ITAT held that where assessee had no taxable income, there is no obligation cast upon assessee to compute/pay 'advance tax' under sections 208 and 209 of the Act. Thus, insisting upon payment of advance tax on disputed additions as a pre-condition for admission of appeal is contrary to law.

10. Considering the fact that the assessment order has been passed ex parte without proper opportunity and that the first appellate authority has dismissed the appeal on a technical ground without examining the merits, we are of the considered view that the matter deserves to be restored to the file of the Assessing Officer for de novo consideration. The Assessing Officer shall reframe the assessment in accordance with law after

affording adequate opportunity of being heard to the assessee and after considering all submissions and evidences that may be produced. The assessee shall cooperate and furnish all requisite details as called for.

11. In view of the above discussion and in the interest of justice, the impugned order of the CIT(Appeals) is set aside and the assessment is restored to the file of the Assessing Officer for fresh adjudication.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on	19/02/2026
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 19/02/2026

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad