



**।आयकर अपीलीय अधिकरण “एस एम सी” न्यायपीठ पुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**PUNE BENCHES “SMC” :: PUNE**

**BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER**  
**AND**  
**SHRI VINAY BHAMORE, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.2143/PUN/2024**

**निर्धारण वर्ष / Assessment Year: 2017-18**

Hingora Ali Mohd Vali Mohd, Opp. Amol Petrol Pumb, Basmath Road, Karegaon, Parbhani – 431902.  PAN: ANOPK6751F	V s	The Income Tax Officer, Ward Hingoli, Parbhani, Maharashtra.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Rajendra Agiwal– AR
Revenue by	Shri Akhilesh Srivastava – Addl.CIT(DR)
Date of hearing	07/01/2025
Date of pronouncement	10/01/2025

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the assessee against the order of  
ld.Commissioner of Income Tax(Appeals)[NFAC] passed under  
section 250 of the Income-tax Act, 1961 for Assessment Year  
2017-18; dated 14.08.2024, emanating from assessment order  
under section 144 of the Act, dated 27.12.2019. The Assessee has  
raised the following grounds of appeal :



*“1. In the facts and circumstances of the case and in law the Ld.CIT(A) erred in dismissing the appeal as non-admitted u/s 249(4) of the Act.*

*2. In the facts circumstances of the case and in law the Ld.CIT(A) erred in not appreciating the fact and law that the liability to pay advance tax as per section 208 arises only when the tax payable is Rs.10,000 and more.*

*3. In the facts circumstances of the case and in law the Ld.CIT(A) ought to have taken a liberal view that the appellant is not liable for payment of advance tax but for shortfall is Rs.285 and erred in dismissing the appeal without considering the merits.*

*4. In the facts circumstances of the case and in law the Ld.AO erred in making the addition of Rs.6,20,000 on account of cash deposited in Bank during the period 08.11.2016 to 19.11.2016 demonetisation period holding it as unexplained cash deposit.*

*5. In the facts circumstances of the case and in law the Ld.AO erred in making the addition and erred in not appreciating the fact that the appellant is engaged in carrying on business of grading and regrading and packing of Cashew Kernels. The income is computed u/s 44AD and the cash deposited is from business source.*

*6. In the facts circumstances of the case and in law the Ld.AO erred in not appreciating that the appellant is liable for sales tax. He has paid sales tax and furnished the details of sales, purchase etc. When the other financial results are accepted, the cash deposited cannot be held as unexplained.*

*7. In the facts circumstances of the case and in law the Ld.AO erred in making estimated addition @8% of turnover of Rs.1,05,23,217 which comes to Rs.8,41,857 over and above the cash deposited in bank during the period 08.11.2016 to 19.11.2016.*

*8. In the facts circumstances of the case and in law the Ld.AO erred in initiating penalty u/s 271AAC and u/s.270A.*



9. *The appellant seeks any other relief in the facts and circumstances of the case and in law.*

*The appellant craves leave to add, alter, modify, omit and delete all or any of the grounds of appeal on or before hearing.”*

### **Findings & Analysis :**

2. We have heard both parties and perused the records. It is observed that Id.CIT(A) has dismissed the appeal of the assessee in limine on the ground that assessee has not paid advance tax, hence assessee's appeal was dismissed under section 249(4) of the Act.

2.1 On perusal of the paper book filed by the assessee, it is observed that assessee had paid advance tax of Rs.4,000/- on 30.12.2016 and self-assessment tax of Rs.1,750/- on 07.08.2017. Copies of the challans are on record. Advance tax is the tax payable on the estimated total income of the relevant financial year, which is chargeable to tax in the assessment year but is payable in that very financial year. A catena of decisions by various Hon'ble High Courts has reiterated that the advance tax payable under chapter XVII is based on an estimate of the total income of the assessee. An estimate always has an element of guess work. There could be various reasons due to which an estimate may be faulty and inaccurate which is why, there is a



provision for payment of interest on deficient or excess payment of advance tax when there is variation between advance tax paid and actual liability to tax.

2.2 In this case, admittedly, assessee has not filed Return of Income. Assessment Order was passed under section 144 of the Act on 27.12.2019. Assessee's case falls under section 249(4)(b) of the Act. The proviso to section 249(4) also gives a discretion to the Id.Commissioner of Tax(Appeal) to admit the appeal even if advance tax is not paid when assessee is able to show sufficient reason. In this case, admittedly assessee is a Senior Citizen. During the period, assessee was suffering from illness. Assessee had estimated his tax liability and paid the advance tax as per his estimation. It is a fact that there is a shortfall of advance tax, but estimations may go wrong. In this case, it has been submitted by the Id.AR that the shortfall advance tax has been paid by the assessee subsequently. In these facts and circumstances of the case, we are of the opinion that a lenient view needs to be taken as Assessee is a Senior Citizen. Therefore, we set-aside the order of Id.CIT(A) to Id.CIT(A) to decide the appeal on merits. Id.CIT(A) shall provide opportunity of hearing to the assessee. Assessee



shall provide necessary documents before the ld.CIT(A).  
Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.

3. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 10<sup>th</sup> January, 2025.

**Sd/-**  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 10<sup>th</sup> Jan, 2024/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, “एस एम सी” बेंच, पुणे / DR, ITAT, “SMC” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.