

V. Baskaran Vs. Assistant Commissioner of Income Tax

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Court : Chennai

Decided On : Jul-08-1998

Reported in : (1998)62TTJ(Mad)698

Appeal No. : IT (SS) A. No. 238/Mad/1997 7 August 1998

Appellant : V. Baskaran

Respondent : Assistant Commissioner of Income Tax

Judgement :

ORDER

Abdul Razack, J.M.

This appeal is filed by the assessee before this Tribunal on 20-10-1997 challenging the order dated 30-9-1997 passed under section 144 read with section 168BC/158BD computing undisclosed income at Rs. 9,60,84,250 raising a tax demand at 60 per cent at Rs. 5,76,50,550. During the pendency of the appeal petition under rule 35A of Income Tax Appellate Tribunal Rules, 1963 was filed on 11-2-1998 praying for stay of demand (which we have recorded above) till the disposal of the appeal.

2. The stay petition was posted for hearing on several occasions and at one of the hearings, the Senior Departmental Representative, J. Suresh, submitted that the appeal filed by the assessee is not maintainable and has to be dismissed in limine for failure to pay the tax on the admitted returned undisclosed income of Rs.

18,04,100 on which admitted tax worked out to Rs. 9,52,460 which was not paid by the appellant- assessee along with the returned income or even till date. The Senior Departmental Representative pleaded that according to the provisions of section 249(4) no appeal under Chapter XX is maintainable unless and until the tax on the admitted returned income is paid by any assessee and since the assessee has not paid the admitted tax on the returned income, the appeal before this Tribunal in terms of section 253(l)(b) is not maintainable and since the appeal is not maintainable, submitted the Senior Departmental Representative, this Tribunal does not possess power or jurisdiction to entertain any stay petition in terms of rule 35A of Income Tax Appellate Tribunal Rules, 1963 and therefore, no orders can be passed either way on the stay petition. This was put to the assessee's counsel, K. Ravi, Chartered Accountant, who submitted that the provisions of section 249(4) of the Income Tax Act are only applicable in relation to appeals before the Commissioner (Appeals) or Deputy Commissioner (Appeals) and not in relation to any appeals which are filed before this Tribunal under section 253 of the Income Tax Act, 1961. It was fairly conceded by the assessee's authorised representative, K. Ravi that the assessee did not pay the admitted tax of Rs. 9,52,460 on the returned undisclosed income of Rs. 18,04,100. However, Ravi sought time for examining the legal position for making further submissions regarding the maintainability of the appeal before this Tribunal in respect of non-payment of the admitted tax on the returned income and to satisfy us about the non-applicability of the provisions of sub-section (4) of section 249 of the Income Tax Act, 1961. A prayer was made by Ravi that pending decision on the maintainability of the appeal in respect of non-payment of the admitted tax on the returned income stay may be granted till a final decision is taken in this regard. This was also put to the Senior Departmental Representative, who left the matter to our discretion.

3. After pondering over the matter, we were of the opinion that the matter regarding the maintainability of the appeal before this Tribunal in respect of non-payment of admitted tax on the returned income in terms of section 249(4) is of vital importance and, therefore, both sides should be given adequate time to make submissions in this regard. However, since this would take time, an order was passed on 31-3-1998, ordering interim/stay status quo in this case till a decision is

rendered by us on the maintainability of the appeal filed by the appellant-assessee.

4. We have, therefore, to decide at the threshold in this case whether the appeal filed by the assessee is maintainable before this Tribunal under section 253(l) (b) of the Act, in view of the bar created by section 249(4) of the Income Tax Act, 1961, inasmuch as the assessee has failed to pay the admitted tax of Rs. 9,52,460 on the returned undisclosed income of Rs. 18,04, 100, as recorded by us above.

5. At the time of hearing on 22-4-1998 and 28-4-1998 K. Ravi, Chartered Accountant assisted by N. Quadir Hussain, Advocate, argued that the provisions of section 249(4) are not applicable in relation to the appeals filed before this Tribunal under section 253 of the Income Tax Act, 1961. According to him the provisions have been brought on statute book from 1-10-1975, and are only applicable in relation to the appeals which are filed by the assessee before the first appellate authorities, namely, the Commissioner (Appeals) and the Deputy Commissioner (Appeals). This Tribunal is the second appellate authority as per the scheme of the appeals provided under the Income Tax Act, 1961 and it is only pursuant to the enactment of the provisions contained in Chapter XIV-B that this Tribunal had become the first appellate authority in relation to the orders passed by the assessing officers under sections 158BC or 158BD of the Act that too in respect of those assessee/cases where searches have been conducted after 30-6-1995, and before 1-1-1997. Under the provisions of Chapter XIV-B of the Act, submitted Ravi that separate block period assessments have been envisaged for computing the undisclosed income on the basis of books of accounts, documents and other materials found and seized during the course of search operations under sections . 132 and 132A of the Act. What is computed under the Chapter XIV-B is the undisclosed income earned by any assessee and it is for this reason that the legislature has not provided about non-maintainability of any appeal before this Tribunal upon failure to pay admitted tax on the undisclosed 'returned' income. Appeals before this Tribunal as provided in section 253(l)(b) of the Act are pursuant to the orders which may be passed by the assessing officer under section 158BC or under section 158BD provided in Chapter XIV-B of the Act and the legislature has not imposed any condition that the appeal before this Tribunal

under section 253(l)(b) will not lie unless and until the tax @ 60 per cent on the admitted undisclosed income is paid. Had the legislature intended for entertaining an appeal after the payment of the admitted tax on the undisclosed income of the block period pursuant to search operations, then there would have been a clear insertion of a specific provision similar to the provision contained in section 249(4) of the Act. Since the provisions under Chapter XIV-B are understood de hors of the general provisions in relation to the normal and regular income, the provisions of section 249(4) have no applicability and this Tribunal should not be guided by the arguments of the Senior Departmental Representative that the present appeal by the assessee under section 263(l)(b) is not maintainable and has been hit by the provisions of section 249(4) of the Act. In order to convince us the assessee's counsel took us through the provisions of section 249 particularly sub-section (4) to the said provision. Arguing further, Ravi submitted that Form No. 35 which is the statutory prescribed form for preferring appeal before the Commissioner (Appeals) as well as Deputy Commissioner (Appeals) contains a clause whether the tax on the returned income has been paid or not, whereas Form No. 36 which is the statutory prescribed form for preferring appeal before this Tribunal does not contain any such clause and, therefore, it is obvious that the legislature never intended that the provisions of section 249(4) should be made applicable in relation to the appeals before this Tribunal under section 253 of the Income Tax Act, 1961. Our attention was also drawn to the proviso to section 249(4) of the Act and reliance was placed on the decision of the Supreme Court in CIT v. Ashoka Engg. Co. (1992) 194 ITR 64 7 .

Our attention was also drawn to para 7 of Form No. 7 which is the notice of demand prescribed under the Income Tax Rules as per the provisions of section 156 of the Income Tax Act. Ravi also drew our attention to the statutory Form No. 213 which is the Form prescribed for filing the return of undisclosed income of the block period pursuant to search and seizure operations as provided in provisions contained in Chapter XIV-B of the Act. According to Mr. Ravi, had the legislature intended for payment of the admitted tax, there would have been a separate column or clause in the said statutory Form No. 2B. But there was none. For such an argument, the assessee's counsel endeavoured to convince us that there was no legal necessity on the part of any appellant- assessee to first pay the admitted

tax on the returned undisclosed income and then come to this Tribunal challenging the block period assessment order passed under section 158BC or 158BD of the Act. Arguing further, Ravi assisted by Quadir Hussain, submitted that the provision of s. 158BC(a) do not contain any mandate or command for payment of tax on the undisclosed income like the one contained in the provisions of section 140A of the Act. It was vehemently pleaded by the assessee's counsel that the appeal was maintainable in spite of non-payment of the admitted tax on the returned undisclosed income of the block period by the assessee in terms of section 253(l)(b) and the provisions of section 249(4) were not applicable in relation to the appeals before this Tribunal but were only applicable in relation to the appeals filed before the first appellate authorities mentioned in section 246 of the Act.

6. Countering the arguments put forth by Ravi, Chartered Accountant and Quadir Hussain, Advocate, J. Suresh, Senior Departmental Representative submitted that the provisions of section 249(4) are applicable even in relation to appeals which are to be presented and filed before this Tribunal under section 253(l)(b) of the Act. In order to convince us, our attention was drawn to the provisions of sub-section (4) to section 249. Suresh, Senior Departmental Representative emphasised that the words used by the legislature in section 249(4) are 'no appeal' under this Chapter shall be admitted unless admitted tax on the returned income has been paid. It is the case of Suresh that the legislature has never stated that no appeal under Chapter XX-A shall be admitted unless tax on the returned income is paid. The legislature has used the word 'Chapter' and the appeals before this Tribunal fall under Chapter XX only.

According to him, therefore, this Tribunal cannot entertain or admit any appeal if there is non-payment of the admitted tax on the returned income. Suresh drew our attention to the statutory Form No. 2B which is the prescribed form for returning the undisclosed income of the block period in accordance with the provisions contained in Chapter XIV-B of the Act wherein there is a column which states to attach challan of tax paid on the undisclosed income. According to Suresh this itself clearly establishes that there is to be payment of the tax on the admitted undisclosed income returned in the statutory Form No. 2B and non-payment of the same to disentitle the assessee to approach this Tribunal challenging the block

period assessment order by way of appeal as provided in section 253(l)(b) of the Act. Suresh submitted that it is not the case of the assessee that there were no funds because there was fixed deposit of very huge amount in Canara Bank in the name of the assessee's wife which was attached by the department under section 226(3) of the Act after framing of the block period assessment. Since the assessee had sufficient funds before the filing of the undisclosed income return pursuant to notice issued under section 158BC of the Act, the assessee could have very well paid the admitted tax of Rs. 9,52,460 in relation to the admitted undisclosed income of Rs. 18,04,100. Having failed to do the same, the provisions of section 249(4) got attracted even before this Tribunal which is the first and only appellate authority provided under section 253(l)(b) of the Act in relation to the assessments made in accordance with the provisions contained in section 158BC and 158BD of the Act. It was also strongly urged by Suresh that the appeal under section 253(l)(b) was the first appeal before this Tribunal against the block period assessment framed under section 158BC/158BD of the Act and, therefore, even on that reasoning the provisions of section 249(4) were applicable and this Tribunal should not admit the appeal unless and until the tax has been paid on the returned undisclosed income by the assessee. Since there has been deliberate and blatant failure in paying the admitted tax on the returned income, according to Suresh, this Tribunal should not entertain and admit the appeal and dismiss it in limine and vacate the interim stay granted on 31-3-1998.

7. On enquiry from us, the assessee's counsel Ravi submitted that the assessee had no funds or means to raise funds at the time of the filing of return of the undisclosed income of the block period in statutory Form No. 2B as the assessee was in jail till May, 1997, from 29-12-1996, under the alleged offences and violations committed as per the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. It is for this reason, Ravi submitted that there was failure in making payment of the admitted tax on the returned undisclosed income and since this constituted a reasonable cause this Tribunal may take cognizance of this fact and admit the appeal assuming but not admitting that the provisions of section 249(4) are also applicable to appeals before this Tribunal. On a specific query from us, Sri Ravi submitted that even as on date, the assessee had no liquid funds to pay the admitted tax on the returned undisclosed income, if time is

given by us to pay the same. There has been a clear emphatic 'No' for payment of the admitted tax on returned income from the assessee's side even to our suggestion for maintainability and admission of the appeal under section 253(l)(b) of the Act assuming for a while that the provisions of section 249(4) do get attracted in relation to the appeal before this Tribunal.

8. We drew the attention of Ravi, Chartered Accountant, assessee's authorised representative, to the user of the word 'Chapter' in section 249(4) of the Act and not the user of the word 'Chapter XX-A' or 'this Chapter under the heading 'A' appeals to the Deputy Commissioner (Appeals) and Commissioner (Appeals)'. To this Ravi submitted that no doubt the legislature has only used the word 'Chapter' in section 249(4) and not Chapter XX-A yet this Tribunal should read the words 'Chapter XX-A in relation to the appeals before the Deputy Commissioner (Appeals) and Commissioner (Appeals)'.

9. After hearing the arguments and submissions made by representatives of both sides and that of Quadir Hussain, Advocate, and examining various case law on our own to decide the controversy, we are of the view that the appeal is not maintainable for the reasons which we record below:

10. It is trite law that appeal right is not fundamental right is but a substantive statutory right created and governed by the provisions of a particular statute conferring such a right. The right to appeal being a statutory right can be circumscribed and controlled by the legislature by imposing conditions for exercise of such a grant or right. If the statute gives a right to appeal upon fulfilment of certain conditions, it is only then that such a right becomes a vested right and becomes exercisable by the appellant. The right to appeals under Chapter XX of the Income Tax Act is, therefore, controlled by the legislature by enactment of section 249(4) and, therefore, such a right of appeal has become a conditional right. If any authority is needed in this regard, the same is available in the judgment of the Supreme Court in the case of Gangabhai v. Vijaykhan AIR 1974 SC 1126. Since the right of appeal is a creature of a particular statute or enactment, the aggrieved person for redressal of the grievance or for any relief from any appellate authority has to comply with the conditions or requirements for

admission and for consideration of an appeal, unless the appellate authority is invested and authorised with the power to relax, exempt, or waive the conditions and requirements imposed by the statute for preferring an appeal.

11. According to Suresh the Senior Departmental Representative, the provisions of section 249(4) are attracted in this case as the assessee admittedly did not pay the tax due and payable on the income admitted and disclosed in the prescribed statutory return in Form No. 2B. If the argument of the learned Senior Departmental Representative is correct that the appeal filed by the assessee under section 253(l)(b) is not maintainable because of the operation of section 249(4), then we think that appellant-assessee is out of this Tribunal without getting any relief upon adjudication as the appeal becomes otiose and not maintainable being hit by the mandatory provisions of section 249(4) of the Act, owing to non-payment of tax on returned income at the time of filing of this appeal. Now, therefore, the short but interesting question is whether the provisions of section 249(4) operate and apply to an appeal before this Tribunal filed in terms of the provisions contained in section 253 of the Income Tax Act. In order to decide the issue, we deem it fit to reproduce the provisions of sub-section (4) of section 249 of the Income Tax Act, which read as under :

'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, in a case falling under clause (b) and on an application made by the appellant in this behalf, the Deputy Commissioner (Appeals) 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 that clause'.

12. A plain reading of section 249(4) extracted above, we think, amply supports the case of the revenue.

The section clearly says that no appeal under this Chapter shall be admitted unless at the time of filing of the appeal the admitted tax has been paid or where no return has been filed, the advance-tax payable by an assessee has been paid. According to the proviso to sub-section (4) of section 249, power has been given to the two different first appellate authorities, namely; the Deputy Commissioner (Appeals) and Commissioner (Appeals) to exempt an assessee from the operation of the provisions of clause (b) of sub-section (4) of section 249 if good and sufficient reasons which are to be recorded in writing are given by an assessee-appellant.

13. The provisions of section 249(4) of the Income Tax Act, 1961 are analogous to the provisions contained in section 129E of the Customs Act, 1962. The Hon'ble Supreme Court while considering the effect of provisions of section 129E of the Customs Act, 1962, in the case of *Vijay Prakash D. Mehta v. Collector of Customs* : [1989]175ITR540(SC) has held to be to act in terrorem to make the people comply with the provisions of law.

14. The requirements in section 249(4) of the Income Tax Act, 1961 brought on the statute book from 1-10-1975, regarding the payment of tax on the admitted income returned cannot be said to be procedural or merely to regulate the exercise of the assessee's pre-existing right of appeal but in reality and truth whittles down the statutory right itself and cannot be as a mere rule of procedure. The provisions of section 249(4), in our view, are therefore, substantive provisions mandating any assessee-appellant to fulfil and comply with the requirements and conditions laid down in sub-section (4) of section 249 if his appeal has to be admitted for consideration by the appellate authorities mentioned in Chapter XX of the Income Tax Act, 1961. In saying so, we rely upon various decisions of the Hon'ble Supreme Court rendered in the below given cases :

(1) *Hussain Kasam Dada (India) Ltd. v. State of MP* (1953) 4 STC 114 (SC);

(2) *Collector of Customs v. A.S. Bava*, AIR 1968 SC 18; and

(3) Mohd. Akhalaq Ahmed v. State of AP .

14.1. It follows, therefore, that, in order to get an appeal admitted by the appellate authorities prescribed in Chapter XX of Income Tax Act, 1961, the assessee must comply with the mandatory requirements of the provisions of main sub-section (4) of section 249 wherever it has application as to the payment of the tax on the admitted returned income, etc, before the expiry of the period of limitation for filing the appeal. On failure, the Supreme Court in the case of Navinchandra Chhotelal v. Central Board of Excise & Customs : 1981(8)ELT679(SC) has held that the appellate authority will be competent and empowered not to admit the appeal.

15. The word 'Chapter' in sub-section (4) of section 249 of the Income Tax Act has been used deliberately and with some set purpose and intent by the legislature, namely; to compel an assessee to pay the tax on the admitted returned income in order to get the right or benefit of appeal exercisable before the appellate authorities. That being the true and real intention of the legislature, we see no reason why the same cannot be made applicable to appeals being filed before this Tribunal under section 253 of the Income Tax Act. It is for this reason we find substantial force in the contention raised by the Senior Departmental Representative, Suresh.

16. The Income Tax Act is a self-contained code and is divided into several chapters totalling in all (for the present) nearly 38 (thirty-eight) excluding the sub-divided chapters, The Chapter XX deals with appeals and revisions which is again sub-divided into six (6) sub-headings or sub-chapters From A to F. The sub-Chapter 'A' of Chapter XX from sections 246 to 251 deals with and relates to appeals before the Deputy Commissioner (Appeals) and Commissioner (Appeals). The sub-chapter 'B' of Chapter XX from sections 252 to 256 deal with and relate to appeals before this Tribunal. The remaining subchapters from C to F of Chapter XX are not relevant for our. purpose in this appeal. Hence, no further discussion is made by us.

17. Since the legislature has mandated under section 249(4) that no appeal shall be admitted unless tax on the returned income is paid before filing of the appeal clearly conveys the meaning that the provisions even apply to appeals before this

Tribunal which are required to be filed in accordance with the provisions of section 253 of the Act. The legislature has not used the word Chapter XX-A or appeals in accordance with this Chapter under the head 'A'-appeals before the Deputy Commissioner (Appeals) and Commissioner (Appeals). The legislature has purposely used the word 'Chapter' and not any sub-chapter containing words from A to F in Chapter XX. Since the word Chapter employed in section 249(4) is very simple, plain and unambiguous we do not think that it requires any interpretation or assignment of a different meaning as contended by Ravi, the learned authorised representative of the assessee.

18. The Supreme Court in the case of State of UP v. Vijay Nanda Maharaja : [1962]45ITR414(SC) has held that when language in a statute is plain and unambiguous and admits only of only one meaning then no question of construction of a statute arises, for the Act speaks for itself.

19. If we are to add the letter or alphabet 'A' after the word Chapter XX in section 249(4) as submitted by the assessee's authorised representative, Ravi, then, we will be simply rewriting the said provision, which is not permissible, as it will amount to legislating or tinkering with the mandate and command of the legislature. It is a settled law that nothing should be added, substituted or subtracted from any provision contained in a statute in the guise of rule of interpretation by any court or Tribunal.

20. Where, therefore, the 'language' employed in a statute is clear and there is no ambiguity, then the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statute as also what has not been said. The courts have cautioned that a construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case here. Reference may be made in this regard to various decisions of the Apex Court, details of which we give below :

1. Gwalior Rayon Mill Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests, Palghat : [1990]2SCR401 ;

2. Smt. Shyam Kishori Devi v. Patna Municipal Corporation : [1996]3SCR466 ; and

3. A. R. Antulay v. Ramdas Srinivas Nayak : [1984]1SCR767

20.1. Indeed, this Tribunal, therefore, cannot reframe or redraft the provisions of section 249(4) because power to legislate has not been conferred upon this Tribunal by the legislature. It is also a settled law that no court can reframe the legislation as it lacks power to legislate. Reference in this regard may be made to few landmark judgments of the Hon'ble Supreme Court in the below given cases :

(1) State of Kerala v. Mathai Verghese : 1987 CriLJ308 .

(2) Union of India v. Deoki Nandan Aggarwal AIR 1992 SC 96 : (1991) 3 SCR 878.

20.2. Applying the principles enunciated and laid down by the Hon'ble Supreme Court in the various decisions, citations of which we have given above, to the instant case and applying all the basic principles of interpretation, including the guiding rules, the rule of mischief, the rule of harmonious construction, the rule of internal and external aid to construction, the rule of reading all the provisions together as also the rule of giving effect to a particular part of the statute so as not to render the other part as otiose, together with all other principles, relating to interpretation of statutes, it cannot but be said that the provisions contained in section 249(4) are not capable of any other meaning except the meaning that the same are also applicable and operate in relation to appeals before this Tribunal which are required to be filed in accordance with the provisions of section 253 of the Income Tax Act.

21. The legislature has used the word Chapter in various numerous provisions under the Income Tax Act, 1961 and to quote few the same are mentioned in sections 65, 74A(b), 78, 79, 80, 80A and so on and so forth. Wherever the legislature wanted particular sub-heading of a Chapter or sub-division of a Chapter the same has been used. Reference may be made to the provisions contained in sections 80, 80AB where the legislature has said 'where any deduction is required to be made or allowed in any section (except section 80M) included in this Chapter under the heading 'See deduction in respect of certain incomes). Similarly,

reference can also be made to section 80HHB(5), section 58(ii) and (iii), section 115BBA(ii)(b). These few sections which we have quoted buttress our view that non-user of the letters A or B after the word Chapter in sub-section (4) of section 249 clearly brings out the intention of the legislature that it never wanted that the provision relating to payment of tax on admitted returned income should only be made applicable to appeals being filed before the Deputy Commissioner (Appeals) or the Commissioner (Appeals). We are of the considered view that the legislature deliberately wanted and intended that the condition of payment of tax on the admitted returned income should also be applied in relation to appeals which are required to be filed and admitted before this Tribunal in accordance with the provisions of section 253 of the Act. We patently see no quarrel or ambiguity in relation to the employment of the word 'Chapter' in sub-section (4) of section 249 of the Act, for applicability in relation to appeals for admission by this Tribunal.

22. We wanted to exercise the discretion like the first appellate authorities namely, Deputy Commissioner (Appeals) and Commissioner (Appeals) by granting exemption from the operation of the rigour of sub-section (4) of section 249 in accordance with the proviso to that section, as held by their Lordships of the Madhya Pradesh High Court in the case of CIT v. Bela] Nisa (1988) 171 ITR 646 . In fact during the course of one of the hearings, we gave an opportunity to the assessee's counsel Ravi to ask the appellant to pay the tax on the admitted returned income to enable us to admit the appeal even at this belated stage to serve and advance the cause of justice. But alas, the appellant- assessee for the reasons best known to him did not avail of the opportunity given by us. The assessee's authorised representative. Ravi very candidly submitted that the assessee has no funds nor possesses any means to raise the funds to pay the tax of Rs. 9,52,460 on the admitted returned undisclosed income of Rs. 18,04, 100.

23. The assessing officer in the impugned assessment order of the block period has stated that the assessee is the son of T. Vivekanandan, who is the brother of Smt. Sasikala, a close associate of the former Chief Minister of Tamil Nadu, Miss J. Jayalathia. We, therefore, think that the assessee is a very resourceful person having adequate means and capacity at his command to raise funds to pay the tax of Rs. 9,52,460 on the admitted returned income of Rs. 18,04,100. But yet fails to

pay and even at earlier stages and even now at this belated stage not availing the opportunity given by us.

24. The reasons given by the assessee's counsel for non-payment of tax on the admitted returned income, which we have recorded above in para 7 of this order do not constitute a reasonable cause which could persuade us to exempt the appellant- assessee from the operation of the provisions of section 249(4) of the Act. We reiterate that no serious effort has been made by the appellant assessee to get the benefit of our discretion in accordance with proviso to section 249(4) because in the interest of justice we wanted to exercise such a discretion in favour of the appellant- assessee, as per the decision of the Madhya Pradesh High Court, in the case of CIT v. Belal Nisa (supra). The assessee, has therefore, lost this benefit and opportunity from this Tribunal for admission and maintainability of this appeal in spite of the non-payment of tax on the admitted returned income at the time of filing of this appeal.

25. We have studied the decisions relied upon by the assessee's authorised representative and find no relevance to the facts or controversy of the instant case. Hence, the assessee cannot get the benefit of those judgments to succeed,

26. For the reasons mentioned above, we hold that the provisions of section 249(4) are mandatory in nature and do apply and operate for admission of appeals before this Tribunal in accordance with section 253 of the Income Tax Act. The present appeal, therefore, filed by the appellant- assessee before this Tribunal impugning the block period assessment order is not admitted for consideration on account of non-payment of tax of Rs. 9,52,460 by the appellant- assessee on the admitted returned income of Rs. 18,04, 100.

27. The Assistant Registrar and other registry officials are hereby ordered and directed not to post or list this appeal for hearing or for any orders.

28. The appeal, therefore, is dismissed and not admitted for adjudication. The interim stay/status quo ordered on 31-3-1998 in SP No. 20/Mad/98 stand vacated and withdrawn.