

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No.378/Bang/2024
Assessment year : 2017-18

Bangalore Restaurant, M.G Road, Opp. BSNL Office, Vijayapura, Karnataka – 586 101. PAN – AADFB 7544 B	Vs.	The Income Tax Officer, Ward-2, Bijapur.
APPELLANT		RESPONDENT

Assessee by	:	Shri Prasanna N Uralla, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Department

Date of hearing	:	20.05.2024
Date of Pronouncement	:	20.05.2024

ORDER

Per Chandra Poojari, Accountant Member

The appeal by the assessee is directed against the order of NFAC, New Delhi both dated 30/01/2024 passed u/s 250 of the Act for the assessment years 2017-18.

2. The grounds raised by the assessee s reproduced as under:-

“1. The order of the Hon'ble National Faceless Appeal Centre (NFAC), Delhi, is opposed to law and facts of the case.

2. *The Hon'ble NFAC erred in dismissing the appeal in limine.*
3. *The impugned order is passed without considering the explanation of the Appellant, hence, bad in law.*
4. *The Hon'ble NFAC's finding that there was an obligation on the Appellant to pay the advance tax is on a misinterpretation of Section 249(4) of the Act and erroneous.*
5. *The Hon'ble (NFAC) ought to have appreciated that the Firm having PAN: AADFB7544B is not in existence, hence, assessment order on the said Firm is bad in law.*
6. *Without prejudice, the Hon'ble NFAC ought to have appreciated that the Appellant Firm has not deposited any cash, much less a sum of Rs. 10 lakhs during the demonetization period.*
7. *The Hon'ble NFAC ought to have held that the provisions of Section 69A of the Act are not applicable in the facts of the case.*
8. *The Appellant craves for leave to add to, delete from or amend the grounds of appeal.*

3. In this case, the order has been passed u/s 144 of the Act by making various additions.

4. Against this, assessee went in appeal before the NFAC, New Delhi.

5. The NFAC observed that there was a demand of Rs.12.36 lakhs as the assessee has not filed return of income as well as the equal to the amount of advance tax, which was payable by the assessee. Hence, the appeal filed by the assessee was not admitted by the NFAC, New Delhi.

6. Against this, the assessee is in appeal before us.

7. We have heard both the parties and perused the material available on record. Before us, the ld. AR submitted that the assessee in this case has not filed the return of income, as there was no taxable income for the assessment year under consideration. There was addition of Rs. 10 lakhs in the order passed by the AO towards cash deposited into the assessee's bank account during the demonetization period. This entire addition has been challenged before the NFAC, New Delhi, as such, no income was admitted. Hence, the provision of sec. 249(4)(b) is not applicable to the assessee's case. We agree with the assessee counsel. The assessee case is below taxable limit. The total addition made by the AO is subject matter of appeal before the NFAC, New Delhi. Hence, there is no question of payment of advance tax u/s 249(4)(b) of the Act. Accordingly, the NFAC, New Delhi is not justified in dismissing the appeal on the reason that no payment of admitted tax. Accordingly, the order of the NFAC, New Delhi is vacated.

8. After going through the AO order, we find that it is appropriate to remit this issue regarding the addition

made by the AO to the file of the AO for reconsideration to decide the same after giving reasonable opportunity to the assessee since the order passed by the AO is ex-parte u/s 144 of the Act. Accordingly, the addition disputed by the assessee in this appeal is remitted to the file of AO for fresh consideration.

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

Order pronounced in the open court on 20th May, 2024.

Sd/-

Sd/-

(SUNDARARAJAN K)

(CHANDRA POOJARI)

Judicial Member

Accountant Member

Bangalore,

Dated, 20th May, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore