

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

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

ITA No.752/Bang/2024
Assessment Year: 2017-18

Swasthik Financiers Shop No.2, 1 st Floor Akul Complex Bypass Road Kushalnagara Kodagu 571217 Karnataka PAN NO : ACWFS0593E	Vs.	ITO Ward-(321)(91) Madikeri
APPELLANT		RESPONDENT

Appellant by	:	Sri Siddesh Nagaraj Gaddi, A.R.
Respondent by	:	Shri V. Parithivel, D.R.

Date of Hearing	:	03.06.2024
Date of Pronouncement	:	04.06.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2017-18 dated 23.2.2024 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised following grounds of appeal:

- 1. The impugned order passed by the learned CIT(A) and AO, to the extent prejudicial to the appellant, is not justified in law and on the facts and circumstances of the case.*
- 2. The learned CIT(A) and AO have erred in law and on facts in passing the order against the principles of natural justice.*
- 3. The Learned CIT(A) has erred in law and on facts in stating that the provisions of section 249(4) of the Act are applicable to the facts in the present case;*
- 4. The Learned CIT(A) has erred in law and on facts in not passing the order in accordance with the provisions of section (6) of the Act;*

5. *The Learned CIT(A) has erred in law and on facts in not appreciating that the order is AO is bad in law and on facts as it is without jurisdiction.*
6. *In the absence of proper service of notice/order, the impugned reassessment order is bad in law and against the principles of natural justice.*
7. *The Learned AO has erred in law and on facts in making additions under section 68 of the Act to the extent of Rs. 1,23,85,850.*
8. *The Learned CIT(A)/AO have erred in law and on facts in not appreciating that the provisions of section 68 of the Act are not applicable to the facts in the present case.*
9. *The Learned AO, based on the above addition, has erred in law and on facts computing taxes in accordance with the provisions of section 115BBE of the Act.*
10. *The Learned AO, based on the above additions, has erred in levying interest under section 234A, 234B, 234C and 234D of the Act. For Swasthik Financiers (R)*

Total tax effect: Rs.2,06,66,950/- “

2. The ld. A.R. submitted that the assessee has not filed return of income as its income is below taxable limit and there was no tax liability. However, the NFAC has dismissed the appeal of assessee by applying the provisions of section 249(4)(b) of the Act as the assessee has not paid the tax on the admitted income. Further, he submitted that the ld. AO made addition of Rs.1,23,85,850/- and the entire amount has been challenged before the NFAC. Hence, there was no question of any admitted tax. Even otherwise, according to the assessee, the tax liability of the assessee duly paid by the assessee on 28.5.2024 and produced the copy of the challan before us. Thus, he submitted that there is no reason to dismiss the appeal of assessee by stating that there was no payment of admitted tax in terms of section 249(4)(b) of the Act.

3. The ld. D.R. relied on the order of NFAC.

4. We have heard the rival submissions and perused the materials available on record. Before us, the ld. A.R. 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.1,23,85,850/- 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 section 249(4)(b) of the Act is not applicable to the assessee's case. We agree with the assessee's counsel. The assessee's case is below taxable limit. The total addition made by the ld. 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. Even otherwise, the assessee has filed the challan for payment of Rs.4,700/- towards its admitted tax liability. As such, payment of admitted tax before disposal of appeal is the due compliance of the provisions of the Act and non-compliance of section 249(4)(b) of the Act is a curable one and in a given case if the Tribunal is satisfied that there exists sufficient reasons for curing such defects after expiry of limitation, it would be in the realm of Tribunal's discretion to restore such matters to the file of first appellate authority for deciding the controversy on merit as held by Hyderabad Tribunal in the case of T. Kishan Vs. ACIT (2012) 32 CCH 463 (Hyd.) In the present case, the assessee has discharged the admitted tax of Rs.4,700/- vide challan no.14332 PAN ACWFS0593E dated 28.5.2024 (Net banking), which is evident from the document filed by the assessee before us. Thus, it would be totally unfair for not providing the opportunity to assessee for disputing the addition made by ld. AO on merit.

4.1 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.

4.2 After going through the order of Id. AO, we find that it is appropriate to remit this issue regarding the addition made by the Id. AO to the file of the Id. AO for reconsideration to decide the same after giving reasonable opportunity to the assessee since the order passed by the Id. 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 Id. AO for fresh consideration.

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

Order pronounced in the open court on 4th June, 2024

Sd/-
(Soundararajan K.)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 4th June, 2024.
VG/SPS

Copy to:

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

By order

Asst. Registrar,
ITAT, Bangalore.