

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

**Before Shri Chandra Poojari, Accountant Member  
and  
Shri Keshav Dubey, Judicial Member**

<b>ITA No. 595/Bang/2024</b> (Assessment Year: 2017-18)		
Banyan Tree Diagnositic and Research Centre No. 10, 1st Main, 1st Cross Devegowda Road, R.T. Nagar Bangalore 560032 PAN – AAPFB7186F (Appellant)	vs.	ITO, Ward - 6(3)(1) BMTc Building Koramangala Bangalore 560095 (Respondent)

Assessee by:	Shri V. Sridhar, CA
Revenue by:	Shri Ganesh R. Gale, Standing Counsel

Date of hearing:	11.06.2024
Date of pronouncement:	12.08.2024

**ORDER**

**Per: Keshav Dubey, J.M.**

This appeal at the instance of the assessee is directed against Id. CIT(A) / NFAC's Order dated 31.01.2024 vide DIN & order No. ITBA/NFAC/S/250/2003-24/1060336178(1) passed under Section 250 of the Income Tax Act, 1961 (the Act) for the Assessment Year (AY) 2017-18.

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

- “1. The order of CIT-A is opposed to Law and Facts of the Case.
2. The CIT-A failed to appreciate that appellant stated in the statement of facts vide Para 4 that the other Partner refused to sign the cheque for payment and taxes and non co-operation. Hence, could not file the return of income.

3. *The order of CIT-A is opposed to the Principle of Natural Justice as the learned CIT-A granted only 5 days time comply with the notices which is highly insufficient.*
  4. *The CIT-A failed to appreciate that due to the on going disputes between the Partner of the Firm, the return of income and replies to the Notice U/s 142(1) of the I.T. Act 1961 could not be filed.*
  5. *The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*
  6. *For these and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed and appropriate relief be granted in the interest on justice and equity.”*
3. The brief facts of the case are that the assessee being a partnership firm, filed its return of income up to AY 2016-17. It was seen from the AIMS database in ITBA that although the assessee firm has deposited cash of Rs. 23,29,530/- in A/c No. 1441100301000479 of Vijaya Bank during the period of demonetisation, i.e. 09.11.2016 to 30.12.2016, the assessee firm had not filed its return of income for the AY 2017-18 within the time allowed u/s. 139(1) of the Act. Accordingly, a notice u/s. 142(1) of the Act dated 04.01.2018 was issued by the AO and served through email but the assessee had neither replied nor responded to the said notice. Therefore, a proposed order u/s. 144 of the Act was issued & served through email to the assessee on 25.09.2019 in response to which the assessee had also neither responded nor furnished any explanation. Further, during the course of scrutiny proceedings notice u/s. 133(6) of the Act dated 09.09.2019 was issued to the bank for furnishing the bank account statement for the period from 01.04.2015 to 31.03.2017. On verification of the bank account statement furnished by the bank the AO found that out of the total cash deposited in the account during the financial year 2016-17 amounting to Rs. 96,61,125/- the total deposit made during the demonetisation period was only Rs. 23,29,530/-. Therefore as no return of income/ any explanation regarding the source of the above cash deposits being furnished by the firm, the assessment u/s. 144 of the Act was concluded by the AO by adopting the following income: -

- i. Business income: Out of the total amount credited in the bank account amounting to Rs. 96,61,125/- for the F.Y. 2016-17, the AO deducted the cash deposits made during the demonetisation period amounting to Rs. 23,29,530/- to arrive at the total business receipts for the F.Y. 2016-17 amounting to Rs.73,31,595/- and then computed the Income by applying net profit @ 8% of gross receipts (Rs.73,31,595) which comes to Rs.5,86,527/-.
- ii. Unexplained money u/s. 69A : Only Cash deposits made during the period of demonetisation amounting to Rs.23,29,530/- was treated as unexplained money u/s. 69A of the Act as no explanation was offered by the assessee firm.

4. Accordingly the AO, completed the assessment on a total income of Rs. 29,16,057/- U/s 144 of the Act vide Order dated 14/11/2019. Aggrieved by the assessment completed u/s. 144 of the Act, the assessee preferred an appeal before the CIT(A).

5. The Id. CIT(A)/NFAC dismissed the appeal of the assessee in limine for not fulfilling the conditions laid down in s. 249(4)(b) of the Act. The main contention of the Id. CIT(A) is that where the assessee has failed to file return of income before the AO and also has not paid the amount equal to the Advance tax Payable prior to filing the appeal, the appeal of the assessee is hit by the provisions of s. 249(4)(b) of the Act and further the assessee was not been able to establish its case of getting exemption from the provisions of the said sub-clause (b) of s. 249(4) of the Act. Accordingly the Id. CIT(A) held that the Appeal shall not be admitted & dismissed the Appeal for Statistical purposes. Aggrieved by the order of the CIT(A)/NFAC, the assessee has filed the present appeal before the Tribunal. The Assessee has also filed a paper book comprising 79 pages enclosing therein as detailed below-

- i) Written submission filed before CIT(A) with Annexure
- ii) Copy of Partnership Deed
- iii) MOU dated 27/11/2015
- iv) Return of Income filed for the Asst. Year 2016-17.
- v) MOU dated 12/01/2017
- vi) E-mail dated 29/09/2017 enclosing 2 letters dated 28/09/2017 & 29/07/2017
- vii) E-mail dated 20/10/2017 enclosing 2 letters dated 19/10/2017
- viii) E-mail dated 24/10/2017 enclosing account copies
- ix) E-mail dated 29/10/2017 enclosing letter 29/10/2017
- x) Complaint to Station House Officer, R.T. Nagar Police Station- Misappropriation of funds
- xi) Complaint with 4<sup>th</sup> Addl. CMM Court
- xii) Copy of Vijaya Bank Pass Sheet, Nrupatunga Road, Bangalore
- xiii) Assessment Order U/s 144 dated 14/11/2019
- xiv) Letter from CIT(A)-NFAC dated 25/01/2024
- xv) Copy of Challan towards payment of Admitted Tax.

6. Before us, the learned A.R. of the assessee submitted that the assessee is a partnership firm consisting of two partners, namely, Smt. C. Gayatri Devi and Mr. Abdul Azeez Amanulla, both having equal share of profit/loss. The firm entered into a MOU dated 27/11/2015 to run the Radiology Department with M/s. Ananda Social & Educational Trust, which was running Dr. B. R. Ambedkar Medical College & Hospital for which the firm has to install and setup machineries to run the Radiology department. The assessee firm filed return of income for AY 2016-17 on 28.01.2017 on a presumptive basis. Subsequently the said Ananda Social & Educational Trust requested the assessee firm to run a Central Lab at Dr. B.R. Ambedkar Medical College &

Hospital and accordingly entered into a separate MOU dated 12.01.2017 to run Central Lab at the hospital. The Assessee firm also took a loan of Rs. 60,00,000/- from Vijaya Bank to purchase & install the machinery as per the MOU. It was submitted by the learned A.R. that the other partner Mr. Abdul Azeez Amanulla subsequently did not cooperate and started blocking the receipt of funds from the college. The Partner C. Gayatri Devi vide several emails/letter informed to the Other Partner about his refusals to sign cheques for the past several months due to which bank transactions had been stopped and also requested to contribute his 50% capital so that the assessee firm would be able to file the return of income and paid the due taxes. The other partner, Mr. Abdul Azeez Amanulla, inspite of sending repeated reminder did not respond and accordingly the partner, Smt. C. Gayatri Devi, on behalf of the firm was forced to give a complaint to the Station House Officer, R.T. Nagar Police Station on 24.02.2018. The learned A.R. vehemently submitted that the firm had not received any money from the college after July, 2017 and no withdrawal was also made after July, 2017 since the other partner was refusing to sign cheques for the expenses and tax payment on behalf of the Firm. Thus, in the absence of cooperation from the other partner and also non receipt of money, the assessee firm could neither filed the return of income for AY 2017-18 nor pay the tax dues of the firm, which may be considered. Further, the learned A.R. vehemently stated that the Id. CIT(A) granted only a short period of 5 days time to comply with the deficiency notice, which is highly insufficient for which the assessee could not appoint professional to file reply/application.

7. The learned D.R., on the other hand, vehemently supported the orders of the Id. CIT(A) and submitted that as per section 249(4) of the Act, no appeal shall be admitted unless at the time of filing of the appeal the specified conditions are strictly satisfied and accordingly the Id. CIT(A) has rightly not

admitted the appeal as per the provisions contained in Section 249(4) of the Act.

8. We have heard the rival contentions and perused the material on record. It is pertinent to note that provisions of s. 249(4)(b) of the Act is clear that appeal before the CIT(A) should be admitted only when the assessee has paid an amount equal to the amount of advance tax which was payable by him. Where the return of income has not been filed the proviso to the said section also describe that the assessee will get exemption from this clause if an application is made before the CIT(A) for not paying an amount equal to the amount of advance tax for any good and sufficient reason to be recorded in writing. In the instant case, the assessee has explained that due to some misunderstanding and in the absence of cooperation from the other partner, the firm was unable to withdraw money from the bank since July, 2017 & therefore the assessee firm was unable to pay due taxes and file the return of income. A Complaint along with FIR was also filed against the other partner Mr. Abdul Azeez Amanulla for alleged misappropriation of the Funds of the Firm. Being So, looking to the peculiar facts enumerated above, we are of the opinion that there is good and sufficient reason for not paying the amount equal to the amount of Advance Tax at the time of filing of the Appeal before the Id. CIT(A). Further we also notice that in the meanwhile the Assessee Firm had already paid the admitted taxes amounting to Rs.3,84,491/- vide Challan No. 23350 dated 10/06/2024 for the Asst year 2017-18.( Pg. 79 of the PB marked Annex- XIV). We, therefore, in the interest of principles of natural justice and to sub serve the interest of substantive justice, set aside and restore the grounds of appeal to the Id. CIT(A) to reconsider the grounds of Appeal after giving adequate opportunity of being heard to the assessee. We are of the opinion that merely on the technical ground, the appeal before the CIT(A) cannot be dismissed without good and sufficient reason for not paying an

amount equal to the amount advance tax where no return has been filed by the assessee. This decision is based on the peculiar facts of the present case of the assessee and cannot be treated as a precedent.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 12<sup>th</sup> August, 2024.

Sd/-  
**(Chandra Poojari)**  
**Accountant Member**

Sd/-  
**(Keshav Dubey)**  
**Judicial Member**

Bengaluru, Dated: 12<sup>th</sup> August, 2024  
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Bangalore*

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	06.08.2024		Sr. PS/PS
2	Draft placed before author	07.08.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the			Sr. PS/PS
6	Kept for pronouncement			Sr. PS/PS
7	File sent to Bench Clerk			Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			

