

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. UDAYAN DAS GUPTA, JUDICIAL MEMBER**

**I.T.A. No.1/Asr/2024  
Assessment Year: 2017-18**

Showkat Hussain Wani, Nowgam Byepass, J & K. [PAN:AASPW9317N] <b>(Appellant)</b>	Vs.	ITO, Srinagar.  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Malik Mukhtar Ahmad, Adv.
<b>Respondent by</b>	Sh. Ravinder Mittal, Sr. DR

<b>Date of Hearing</b>	02.07.2024
<b>Date of Pronouncement</b>	28.08.2024

**ORDER**

**Per: Udayan Das Gupta, JM**

This appeal is filed by the individual assessee against the order of the Ld. CIT (A) NFAC, order dated 14/09/2023, refusing to admit the appeal on the ground of non-payment of advance tax as per provisions of section 249(4)(b) of the Act 1961.

2. It is pointed out by the registry that the appeal filed is belated by 50 days. The assessee has filed an application for condonation of delay citing the reasons

that his authorized advocate Mr. Malik Mukhtar Ahmad was seriously ill during the month of August 2003 and was diagnosed coronary angiography and history angina in Paras Hospital, Dalgate, Srinagar and was under bed rest for three months. Meanwhile, the order of the Id. CIT(A) has been passed on 14.09.2023 but in absence of the login password, the assessee could not open the portal and had no knowledge of the appellate order being passed without admitting the appeal for hearing. Subsequently, after the authorized advocate was discharged from the hospital, the appeal fee has been paid on 26.12.2023, and the appeal has been submitted on the said date itself which was belated by 50 days. Since, the assessee was prevented by sufficient cause from filing this appeal in time (in absence of his advocate on medical ground), we condoned the delay of 50 days and admit the appeal to be decided on merits. The Id. DR has not made any objection against the condonation of delay.

2.1 The grounds of appeal taken by the assessee in the memorandum of appeal are as follows;

- “1. That the CIT Appeal erred in law as well as on facts while rejecting the appeal.*
- 2. That the provision of sections 249(4)(b) doesn't apply to present case, as the assessee has already file his return and paid the admitted tax, a copy of ITR is enclosed.*

3. *That the CIT Appeal didn't appreciate the fact that the A.O has passed an ex- parte order and no opportunity was offered to the assessee. As the assessment was conducted during the year 2019-2020 and during the said year electronic or manual communication was impossible. The Kashmir valley, due to abrogation of Article 370, the state was under strict lockdown physically as well and communication, such as Telephones, Mobile Services and Internet Services were blocked and were released after January 2020. So it was not possible for the assessee to receive any sort of notice whether manually or electronically. As per law mere issuance of notice is not sufficient, it should have been served, which was not possible since 5th august 2019 to Jan-2020, even if the assessee had received the earlier notices (which he has not as the address on the pan was of some Pan facilitation center), how could he attend the assessment proceedings when the state was under lock down.*

4. *That the CIT Appeals erred on facts while rejecting the appeal as all the relevant documents such as, Audited financials and ITR pertaining to the year in question were attached which he choose to ignore. And in the balance sheet, the balance and account number of CC-23 is clearly mentioned and also the bank account of CC-23 with changed Pan Number was also uploaded."*

3. The brief facts of the case are that the appeal filed before the first appellate authority has not been admitted for adjudication by the Id. CIT(A) NFAC for violation of provisions of section 249(4)(b) of the Act. In the instant case, it is alleged that no return of income has been filed and no advance tax has been paid before filing of the appeal. As such, the appeal is non maintainable and the said appeal has been dismissed in limine.

3.1 It is seen that the assessee has filed a paper book containing 87 pages which contains copies of audit report alongwith audited balance sheet for the F.Y. 2016-17 relevant to the assessment year under appeal, bank statements of J & K Bank A/c No. 0385020100000023, ITR acknowledgment receipts, return filed on 28.11.2017 (under PAN AASPW9317N), of Mr. Showkat Hussain Wani, (Proprietor of Nice Marbles, House).

4. The Id.AR explained that there has been technical defect in this case, as far as the assessment order is concerned, and as far as the filing of the first appeal is concerned and also the filing of the appeal before the Tribunal is concerned. He further stated that assessment has been framed by the AO Ward (2), Sringar, in the status of the partnership firm "Nice Marbles" (under PAN AAFFN7199C) for the A.Y. 2017-18 u/s 144 of the Act on the basis of bank statements obtained from the banker Jammu & Kashmir Bank which reflects cash deposit in the said bank during

demonetization period and other business transactions. He further stated that this partnership firm under the trade name of “Nice Marbles” (partnership firm) had already been dissolved in the year 2011-12. The existing bank account of the partnership firm being cash credit A/c No. 0385020100000023 in the name of the partnership firm has been taken over by the sole proprietor Mr. Showkat Hussain Wani under PAN AASPW9317N as individual, proprietorship concern. All business transactions relating to purchase and sales including bank transactions are carried out in the name of the sole proprietor Mr. Showkat Hussain Wani under the trade name of “Nice Marbles” under individual (PAN-AASPW9317N).

4.1 He further submitted that the return of income for the assessment year 2017-18 has been filed by the sole proprietor under his individual PAN and accompanied by audited profit and loss account balance sheet and audit report and the relevant bank account with Jammu & Kashmir Bank, cash credit A/c No. 0385020100000023 is also considered in the books of account of the individual proprietor and duly reflected in the balance sheet of “Nice Marbles” (proprietorship concern). He further submitted that it was incumbent on the part of the bank authorities to have linked the bank cash credit A/c No. 0385020100000023 to the PAN of the individual i.e. Mr. Showkat Hussain Wani, but instead of doing so, the banking authorities has left the CC-account LINKED

with the PAN of the dissolved partnership firm “Nice Marbles”, which has created all the confusions. The AO has completed assessment ex parte vide order dated 13.12.2019 on a wrong and dissolved PAN in the name of the partnership concern “Nice Marbles” which no more exists. The partnership firm has got no income because it is already dissolved and has no business transaction, neither any purchase nor any sale, and that is the reason that return of income has not been filed by the dissolved partnership firm. He further stated that all bank transaction in the CC-account has already been considered in the books of accounts and balance sheet of the proprietorship concern “Nice Marbles”. He further submits that the appeal filed before the first appellate authority, Id. CIT(A), NFAC has been filed in the name of the individual Mr. Showkat Hussain Wani, under his individual PAN but memorandum of appeal in Form 35 displays the figures relating to the assessment order of the partnership firm under the different PAN, (AAFFN7199C) which is not legally correct.

5. It is also observed by us that the Id. CIT(A) has passed an order refusing to admit the said appeal on the ground of non-payment of advance tax, but he has not observed the fact that this particular appeal has been filed in the name of the individual PAN, where no assessment has taken place and no assessment order

exist against such PAN in the name of the individual, and there is no Demand Notice u/s 156 of the Act.

5.1 It is further observed by us that the assessment order exists against the PAN of the partnership firm and the said partnership firm has been stated to have been dissolved and for all practical purposes the appeal should have been filed before the first appellate authority in the status of the (dissolved) partnership firm under the PAN of the partnership firm which has not been done by the assessee in this case.

6. As such, considering the totality of the facts and circumstances of the case, we remit back the appeal to the file of the Id. CIT(A) to consider the entire facts and to take an appropriate decision in this matter as per provisions of law, because there is no assessment order or demand notice u/s 156 which exists against this particular PAN AASPW9317N for the assessment year 2017-18 against which this appeal has been filed before us. Needless to say, the assessee will be best advised to take up proper appeal procedure against the assessment order of the partnership firm against proper PAN (AAFFN7199C), under proper legal status. As such, this appeal is set aside to the file of the Id. CIT(A), because in absence of any order or D/N, against this PAN, this appeal is infructuous.

7. In the result, the appeal of the assessee bearing **ITA No. 1/Asr/2024** is allowed for statistical purposes.

**Order pronounced in the open court on 28.08.2024**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(UDAYAN DAS GUPTA)**  
**Judicial Member**

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order

