

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

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA Nos.1736 & 1737/Bang/2024
Assessment Years: 2017-18 & 2018-19

M/s. Akshaya Builders Developers Promoters No.28, Bhoomi Paradise, BENL Main Road Opp. Jai Durgamma Temple HAL 3 rd Stage Bengaluru 560 075 PAN NO : AAYFA0082A	Vs.	ACIT Circle-3(2)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri V. Narendra Sharma, A.R.
Respondent by	:	Sri Subramanian S., D.R.

Date of Hearing	:	04.12.2024
Date of Pronouncement	:	16.12.2024

O R D E R

PER PRAKASH CHAND YADAV, JUDICIAL MEMBER:

Both these appeals of the assessee are arising from the order of Id. CIT(A) dated 24.7.2023 & 30.8.2024 relates to assessment year 2017-18 & 2018-19 respectively having DIN & Order No.ITBA/NFAC/S/250/2023-24/1054550907(1). We are taking ITA Number 1736/2024 for AY 2017-18 as lead year and deciding the appeals accordingly.

2. ITA No.1736/Bang/2024 is delayed by 355 days as evident from the date of Id. CIT(A)'s order dated 24.7.2023. Id. Counsel for the assessee appearing on behalf of the assessee drawing the attention of the bench towards the condonation application, duly supported with sworn affidavit of the partner of the assessee firm,

contended that the appeal has been filed belatedly because there was serious dispute among partners and hence, the delay has happened due to reasonable cause and the same may kindly be condoned.

3. Ld. D.R. strongly opposed the prayer made by the counsel of the assessee for condoning the delay in filing the appeal belatedly.

4. After considering the submissions with respect to the condonation application, we observe that there was a dispute between the partners of the assessee firm due to which the assessee was unable to approach this Tribunal in time. It is also coming out from the affidavit of the assessee that the assessee has come to know the fate of the appeal for AY 2017-18, after the dismissal of appeal for assessment year 2018-19 by the ld. CIT(A) and thereafter the assessee immediately filed the appeal for both years. Considering the facts and circumstances of the case, we hereby condone the delay and proceed to decide the matter on merits.

5. Brief facts giving rise to the filing of present appeal are that the assessee is a partnership firm and engaged in the business of Real Estate. It has not filed return of income for the impugned year 2017-18 as well as assessment year 2018-19. Thereafter, on the basis of information, the AO picked up the cases of the assessee for the impugned years under scrutiny. The information with the department was revealing that the assessee has deposited substantial cash after demonetization. During the course of assessment proceedings, the AO issued notice u/s 142(1) of the Act to the assessee and called for the return of income. The assessee filed the return of income for both years and tried to explain the source of cash deposit. Thereafter, no one appeared from the side of assessee and the department framed the assessment by treating the returns filed by the assessee as invalid return.

6. Aggrieved with the order of AO, the assessee preferred appeal before the Id. CIT-(A). The Id. CIT(A) issued 7 notices of hearing to the assessee. However, no one appeared from the side of the assessee and hence, the Id. CIT(A) dismissed both the appeals ex-parte affirming the order of the AO. Now the assessee has come up in appeal before us and contended that the order of Id. CIT(A) is not tenable as the same has been passed without affording reasonable opportunity of being heard. However, the Id. Counsel for the assessee accepted that notice issued from the office Id. CIT(A) was duly served upon the assessee.

7. The Id. D.R. appearing on behalf of the revenue vehemently argued that the assessee is a non-cooperative tax payer and playing with the tactics of delay and latches and hence, the additions made by the AO and affirmed by the Id. CIT(A) are legally tenable.

8. We have heard the rival submissions and perused the materials available on record. We observe that in this case, the assessee has neither appeared before the AO nor before the Id. CIT(A), which shows that assessee was either willfully not attending the lower authorities or the assessee was not taking the income tax proceedings as vigilantly. Be that as it may, we deem it appropriate to restore this matter to the file of AO for deciding afresh in accordance with law after levying a cost of Rs.50,000/- for each assessment year, and direct the assessee to deposit the cost under the head "Others" and the challans should be submitted to the AO. We hereby clarify that in case the assessee will not appear before the AO, and will not comply with the notices issued by the AO in remand proceedings, then no leniency would be available to the assessee in a second round. With these observations, the appeals are decided.

9. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 16th Dec, 2024

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore,
Dated 16th Dec, 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.