

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.19/Bang/2025
Assessment Year : 2019-20

M/s. Educational Concepts Innovators International No.84, First Floor, Hutchins Main Road St. Thomas Town Bangalore 560 084 PAN NO : AADFE3988N APPELLANT	Vs.	ITO Ward 1(2)(1) Bangalore RESPONDENT
--	------------	---

Appellant by	:	Sri M. Monish Sowkar, A.R.
Respondent by	:	Sri Balusamy N., D.R.

Date of Hearing	:	15.07.2025
Date of Pronouncement	:	13.10.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the Id. CIT(A)/NFAC dated 6.11.2024 vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1070144509(1) passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the assessment year 2019-20.

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

1. The appellate order passed by the learned Commissioner of Income-tax [Appeals], NFAC, Delhi, under Section 250 of the Act dated 06/11/2024, in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case, may be quashed.
2. The learned Commissioner of Income-tax [Appeals] is not justified in not admitting the statutory appeal preferred by the appellant as per the provisions of section 246A of the Act for non-payment of advance tax as per the provisions of section 249[4][b] of the Act and thereby not adjudicating the issues on merits of the matter, on the facts and circumstances of the case.
3. The learned Commissioner of Income-tax [Appeals] is not justified in erroneously holding that the appellant as per the provisions of clause [b] of sub-section [4] of Section 249 of the Act ought to have made the payment of amount equal to advance tax which was due on its income and consequently has erroneously not admitted the appeal preferred by the appellant, on the facts and circumstances of the case.
4. The appellant denies itself liable to be assessed on a total income of Rs. 13,50,000/- as determined by the learned assessing officer over and above the correct income of the Appellant, on the facts and circumstances of the case.
5. The learned Commissioner of Income-tax [Appeals], is not justified in estimating the income of the appellant at 50% on the total receipts by the appellant of Rs. 27,50,000/- which worked out to Rs. 13,50,000/- as against the income to be taxed on presumptive basis as per the provisions of section 44AD of the Act at 8%, on the facts and circumstances of the case.
6. Without prejudice, the learned Commissioner of Income-tax [Appeals] failed to appreciate that the receipts received by the appellant from carrying business are to be taxed as per the provisions of section 44AD of the Act at 8% since the appellant is not maintaining books of accounts, on the facts and circumstances of the case.
7. Without prejudice, the learned Commissioner of Income-tax [Appeals], failed to appreciate that the estimation of income at 50% made by the learned assessing officer is substantially higher and the learned assessing officer ought to have adopted and assessed correct and proper income of the appellant, on the facts and circumstances of the case.
8. Without prejudice, to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234 A, 234 B and 234 C of the Income Tax Act on the facts and circumstances of the case. The appellant contends that the levy of interest under section 234 A, 234 B and 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of the case.
9. The appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.
10. For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.

3. The assessee has also raised the additional grounds of appeal as follows:

1. The order of re-assessment passed under section 147 r.w.s. 144 of the Act, dated 05/02/2024 is bad in law and void-ab-initio as the mandatory conditions to invoke the provisions of section 147 did not exist and thereby the very notice issued under section 148 is also bad in law, on the facts and circumstances of the case.
2. The reason recorded by the learned assessing officer at utmost may be considered as reason to suspect and under no stretch of imagination the same cannot constitute reason to believe which is a basic ingredient for a valid assumption of re-assessment, on the facts and circumstances of the case.
3. The notice issued under section 148 of the Act is very vague and without any application of mind since the learned assessing officer has not specified as regard to which limb he has issued the notice whether to assessee or reassess the income of the appellant and consequently the subsequent proceedings which has been concluded on an invalid notice becomes bad in law, on the facts and circumstances of the case.
4. The learned Assessing Officer has not followed proper procedure before and after issuance of a notice under section 148 of the Act, be that may be sanction under section 151 of the Act and consequently, subsequent proceedings on an invalid procedure adopted by the learned assessing officer becomes void-ab-initio and does not have any legs to stand the test of law which renders the re-assessment order unsustainable in law, on the facts and circumstances of the case.
5. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.
6. In the view of the above 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 may be granted in the interest of justice and equity.

4. We have heard both the parties on admission of additional grounds. In our opinion, all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of the adjudication of above additional grounds. Further,

we are also of the opinion that the additional grounds raised in the present case are purely legal in nature and therefore these are critical for a fair adjudication of the matter. The Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT reported in 229 ITR 383 held that the Tribunal has jurisdiction to examine a question of law which did not arise before the lower authorities but arise before it from facts as found by lower authorities and having a bearing on tax liability of the assessee. Further, the Hon'ble Allahabad High Court in the case of CIT Vs. Sahara India (2012) 347 ITR 331 held that a question of law which can be decided with reference to material on record can be admitted even though not raised before. Accordingly, we inclined to admit the additional grounds for the purpose of adjudication as there is no investigation of any fresh facts otherwise on record and the grounds raised are purely legal in nature.

5. Now brief facts of the case are that the assessee, being a partnership firm consisting of two partners namely Mr. Michel Blake and his wife Mrs. Julia Blake engaged in the contractual activity of providing educational services i.e. authorized preparation and enrolment centre for the Cambridge English Language assessment, the department of the University of Cambridge, U.K. The activities were outsourced to the assessee firm to train the children in the specific skill sets, as per the curriculum set by the school/Cambridge University. The institute or the school entered into a contract agreement with the assessee firm. For the assessment year 2019-20, the assessee firm did not file its return of income in spite of high value transaction. The case was reopened u/s 147 of the Act based on information received in Risk Management Strategy (RMS) as under:

“The assessee has not filed its return of income for the assessment year 2019-20. However, during the financial year 2018-19, the assessee has received professional fee from St. Joseph’s High School amounting to Rs.27,00,000/-.”

5.1 The case was reopened u/s 147 of the Act with the approval of Principal Commissioner of Income Tax, Bangalore-1, as per the provisions of section 151 of the Act and accordingly a notice u/s 148 of the Act dated 7.3.2023 was issued and served on the assessee. The case was opened following the provisions of section 148A of the Act as per the amended provisions. In response to the notice u/s 148 of the Act, the assessee did not file its return of income. Further, in response to notice u/s 142(1) of the Act as well as show cause notice dated 22.12.2023, seeking explanation as to why assessment should not be concluded u/s 144 of the Act, no explanation was received from the assessee firm and accordingly, the assessment was concluded u/s 144 of the Act considering the following income:-

“50% income corresponding to professional fees received of Rs.27 lakhs was brought to tax as income from business or profession u/s 28 of the Act, which amounts to Rs.13,50,000/-.”

6. Aggrieved by the order of ld. AO passed u/s 147 r.w.s. 144 of the Act, dated 5.2.2024, the assessee preferred an appeal before the ld. CIT(A)/NFAC.

7. The ld. CIT(A)/NFAC dismissed the appeal of the assessee with the following observations:-

“3.5 The appellant has offered ‘Not applicable’ comments at sl.no.9 of Form-35 and the appellant failed to make payment of

amount equal to the advance tax which was due on its income. It is, therefore, clear that information, given at sl.no.9 of Form-35 is not correct and the appellant has not made payment of amount equal to the advance tax which was due on its income. The appellant has also not requested for exemption from operation of the provisions of clause (b) of sub-section (4) of section 249 of the Act.

4. Since the appellant has not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is infructuous and is, therefore, dismissed.”

8. Again, being aggrieved by the order of Id. CIT(A)/NFAC, the assessee has filed the present appeal before this Tribunal. The assessee has also filed a paper book comprising 39 pages containing therein the various documents/certificate/confirmation and copy of 26AS along with computation sheets in support of its claim.

9. Before us, the Id. A.R. of the assessee vehemently submitted that the assessee's case falls under the provisions of section 44AD of the Act and not u/s 44ADA of the Act as computed by the AO and accordingly the assessee is liable to be taxed on a total income of Rs.2,16,000/- (8% of the gross receipt). Further, the Id. A.R. of the assessee submitted that the Id. CIT(A)/NFAC dismissed the appeal of the assessee by not admitting the appeal since the assessee did not pay an amount equal to the amount of advance tax without giving proper opportunity of being heard to the assessee.

10. Id. D.R. on the other hand supported the order of the authorities below.

11. We have heard the rival submissions and perused the materials available on record. First, we take up the additional grounds of appeal as raised by the assessee. The assessee has mainly contended that the order passed u/s 147 r.w.s. 144 of the

Act is bad in law & void-ab-initio as the mandatory conditions to invoke the provisions of section 147 of the Act did not exist. Secondly, the reason recorded by the AO at utmost may be considered as reason to suspect and the same cannot constitute reason to believe and lastly, the AO has not specified as regard to which limb he has issued the notice whether to assess or reassess the income of the assessee and accordingly, the proceeding which has been concluded is invalid and bad in law. Further, the assessee has also raised ground relating to AO having not followed proper procedure before and after issuance of notice u/s 148 of the Act and as well as sanction u/s 151 of the Act and accordingly proceedings are void-ab-initio.

11.1 We have gone through the above additional grounds raised by the assessee and we do not find any merits in the legal grounds raised which are general & without any basis. The assessee firm failed to demonstrate that what are those mandatory conditions that did not exist while invoking the provisions of section 147 of the Act. As observed by the AO, the case was opened by following the provisions of section 148A of the Act. Further, the case was opened based on the information in accordance with the RMS formulated by the board. It is also not refuted by the assessee firm that they have not received professional fee from St. Joseph's High School amounting to Rs.27 lakhs. It is not in dispute that the assessee firm did not file its return of income for the assessment year 2019-20. Further, we are also of the opinion that the case was reopened u/s 147 of the Act with the proper approval as per the provisions of section 151 of the Act as observed by the AO in his assessment order. In fact we take note of the fact that during the proceeding before the AO, the assessee was very callous in its approach by not filing any return in response to notice u/s 148 of the Act as well as by not submitting any explanation with regard to professional fees

as received from St. Joseph's High School and accordingly, the AO was compelled to pass order u/s 144 of the Act. We are of the considered opinion that all the mandatory conditions to invoke the provisions of section 147 of the Act were duly followed and there was information with the AO which suggest that income chargeable to tax has escaped assessment in the case of assessee for the relevant assessment year and the AO after taking proper sanction u/s 151 of the Act had only issued the notice and therefore, we do not find any infirmity in the order of AO and accordingly all these additional grounds are dismissed.

11.2 Further, on going through the order of ld. CIT(A)/NFAC, we take a note of the fact that ld. CIT(A)/NFAC dismissed the appeal of the assessee as the assessee had not filed its return of income as well as not paid an amount equal to an amount of advance tax which was payable by it and accordingly, dismissed the appeal as infructuous. While filing the form No.35, at sl.no.9 of Form 35, the assessee has mentioned (Not applicable comments). As the assessee has offered "not applicable" comments at sl.no.9 of Form 35, and the assessee also failed to make payment of amount equal to the advance tax which was due on its income, the ld. CIT(A)/NFAC dismissed the appeal of the assessee.

11.3 Before we proceed further, it would be handy to refer to the provisions relating to the payment of advance tax under the Act. Chapter XVII-C, which deals with "advance payment of tax" contains section 208 to 219 of the Act with respect to payment of advance tax under the Act. Advance tax is the tax payable on the estimated total income of the relevant financial year, which is chargeable to tax in the assessment year but is payable in that very financial year. Section 207 of the Act is based on the principle that

“pay as you earn”. Section 207 of the Act lays down the liability for payment of advance tax as follows:

Section 207 of the Act:

“Liability for payment of advance tax.

“207. (1) Tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year, such income being hereafter in this Chapter referred to as "current income".

(2) The provisions of sub-section (1) shall not apply to an individual resident in India, who—

(a) does not have any income chargeable under the head "Profits and gains of business or profession"; and

(b) is of the age of sixty years or more at any time during the previous year.”

Conditions of liability to pay advance tax:

“208. Advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during the year, as computed in accordance with the provisions of this Chapter, is (ten thousand) rupees or more]

Computation of advance tax:

209 (1) The amount of advance tax payable by an assessee in the financial year shall, subject to the provision of sub-sections (2) and (3), be computed as follows, namely:-

(a) Where the calculation is made by the assessee for the purposes of payment of advance tax under sub-section (1) or sub-section(2) or sub-section (5) or sub-section (6) of section 210, he shall first estimate his current income and income-tax thereon shall be calculated at the rates in force in the financial year.

(b)

Payment of advance tax by the assessee of his own accord or in pursuance of order of Assessing Officer.

“210. (1) Every person who is liable to pay advance tax under section 208 (whether or not he has been previously assessed by way of regular assessment) shall, of his own accord, pay, on or before each of the due dates specified in section 211, the appropriate percentage, specified in that section, of the advance tax on his current income, calculated in the manner laid down in section 209.”

11.4 From the plain reading of the above provisions, we can safely say that firstly for the purposes of payment of Advance tax, the assessee shall first estimate his current income (Section 290(1)(a) of the Act), secondly the advance tax shall be payable during the financial year where the amount of tax payable is Rs.10,000/- or more (Sec.208 of the Act) and thirdly every person liable to pay advance tax shall, of his own accord pay on or before each of the due dates specified in section 211 of the Act (Sect 210(1) of the Act).

11.5 In the present case, it is an undisputed fact that the assessee firm could not file its return of income for the assessment year 2019-20 and therefore, the provisions of section 249(4)(b) of the Act will be clearly applicable to the assessee. The provisions of section 249(4) of the Act is reproduced below for ease of reference and convenience:

Section 249(4): No appeal under this chapter shall be admitted unless at the time of filing of the appeal—

(a) Where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or

(b) Where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him;

Provided that, [in a case falling under clause (b) and] on an application made by the appellant in this behalf, the [Joint Commissioner (Appeals) or the] [Commissioner (Appeals)] may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of [that clause]].

11.6 Thus, from the plain reading of above provisions of law, we can safely infer that if the assessee has not filed any return of income, then no appeal shall be admitted unless at the time of filing of the appeal, the assessee has paid an amount equal to the amount of advance tax which was payable by him. The legislature at their full wisdom had used the term “Amount equal to the amount of advance tax which was payable by him”. As discussed

earlier, the advance tax is the tax payable on the estimated total income of the relevant financial year, which is chargeable to tax in the assessment year but is payable in that very financial year. A catena of decisions by various High Courts has reiterated that the advance tax payable under chapter XVII is based on an estimate of the total income of the assessee. An estimate always has an element of guess work. There could be various reasons due to which an estimate may be faulty and inaccurate which is why, there is a provision for payment of interest on deficient or excess payment of advance tax when there is variation between advance tax paid and actual liability to tax.

11.7 Section 249(4)(b) of the Act which states that the assessee has paid an amount equal to the amount of advance tax which was payable by him can never even stretch of imagination be treated as “advance tax payable on the disputed demand raised u/s 156 of the Act as held by Id. CIT(A)/NFAC . In our opinion, the Id. CIT(A)/NFAC in para 3.2 although reproduced the provisions of section 249(4) of the Act and accepted the fact that the assessee has not filed the return of income and therefore, the second part of the provision is applicable to the case of the assessee but grossly erred in holding that as per the provisions of the Act, the Advance tax payable is the disputed demand amount raised u/s 156 of the Act amounting to Rs. 6,02,056/- and accordingly, not admitted the appeal as per provisions of section 249(4) of the Act.

11.8 We are of the firm opinion that in the present case as the assessee firm had filed its return of income neither u/s 139 of the Act nor u/s 148 of the Act and therefore, the assessee firm is liable to pay an amount equal to the amount of advance tax which was payable by them. In the present case, we also take note of the fact that the assessee firm had also not made any application before the

ld. CIT(A)/NFAC in writing as per the proviso to section 249(4) of the Act. Before us, the ld. A.R. of the assessee strongly contended that assessee is liable to be assessed u/s 44AD of the Act and the net taxable income should be determined @ 8% on gross receipts of Rs.27 lakhs. We are of the considered opinion that as per the provisions of the Act, the assessee firm was liable to pay advance tax on the admitted income of Rs.2,16,000/- (Rs.27 lakhs x 8%) before filing the appeal before the ld. CIT(A)/NFAC. Before us, the ld. A.R. of the assessee vehemently submitted that the assessee firm was completely unaware of such procedure and prayed that the case may be remitted back to the file of ld. CIT(A)/NAC to decide on merits in accordance with law. Further, the ld. A.R. of the assessee also undertakes to deposit the full amount of advance tax on a admitted total income of Rs.2,16,000/-. This being so, in the interest of justice and fair play and as requested by ld. A.R. of the assessee, we deem it fit and proper to remit the entire issues in dispute to the file of ld. CIT(A)/NFAC to decide afresh in accordance with law subject to the condition that assessee firm shall deposit the entire advance tax on a total admitted income of Rs.2,16,000/- and produce the copy of the same before the ld. CIT(A)/NFAC. Needless to say, a reasonable opportunity of being heard must be granted to the assessee. It is ordered accordingly.

12. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 13th Oct, 2025

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 13th Oct, 2025.
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.**