

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER

**ITA No. 6599/Del/2018
Assessment Year: 2009-10**

Vimal Kumar Tayal H.No. 82, Near Saraswati Vidya Mandir, Opp. Tula Ram Ki Bagichi, Jewar, Noida, Uttar Pradesh. PAN No. AFBPT4251N	vs	ITO Ward 2(5) Noida
APPELLANT		RESPONDENT

Assessee by	Sh. Rajiv Jain, CA Ms. Meatika, CA
Revenue by	Shri S.L. Anuragi, Sr. DR

Date of Hearing	03.04.2019
Date of Pronouncement	04.04.2019

ORDER

This is an appeal filed by the Assessee against the order of CIT(Appeals-1, Noida dated 28.06.2018

2. At the outset, the AR of the assessee submitted that the appeal of the assessee was dismissed by the CIT(A) on the ground that the assessee failed to deposit tax of an amount equal to amount of advance tax as stipulated under provisions of section 249(4)(b) of the Income Tax Act, 1961 as the assessee had not filed its return of income for the assessment year under consideration.

3. The AR of the assessee relied on the decision of Pune Bench of the Tribunal in the case of Hotel Sai Siddi (P) Ltd. vs. DCIT reported in [2011] 13 taxmann.com 155 (Pune), wherein it was held that the CIT(A) should admit the appeal of the assessee and in case the assessee is able to establish the loss incurred for the year under consideration and he was not liable to pay tax of an amount equal to the amount of advance tax as stipulated under the provisions of section 249(4)(b) of the Act. In case it is found that the provisions of section 249(4)(b) are not applicable the appeal may be admitted and the same should be decided on merits. Therefore, he submitted that the matter should be remanded back to the file of the CIT(A) with the very same directions as given by the Pune Bench of the Tribunal in the case of Hotel Sai Siddi P. Ltd. (supra).

4. The DR had no objection to the above submission of the AR of the assessee.

5. In the above facts and circumstances, I set aside the order of the CIT(A) and remand the matter back to his file with the very same directions of the Pune Bench of the Tribunal in the case of Hotel Sai Siddi P. Ltd. (supra).

6. Needless to mention that the CIT(A) shall allow reasonable opportunity of hearing to the assessee before adjudicating the appeal afresh.

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

Order pronounced in the open court on 04/04/2019

Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER

Dated: 04.04.2019
*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	03/04/2019
Date on which the typed draft is placed before the dictating Member	04/04/2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	04/04
Date on which the fair order comes back to the Sr. PS/PS	04/04
Date on which the final order is uploaded on the website of ITAT	04/04
Date on which the file goes to the Bench Clerk	04/04
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

