

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

Before Sh. N. S. Saini, Accountant Member

ITA No. 6483/Del/2018 : Asstt. Year : 2010-11

Kapil Kumar, S/o Sh. Dhanpal, D-19, Shatabdi Enclave, Sect.-49, Noida, Dadri	Vs	Income Tax Officer, Ward-2(1), Noida
(APPELLANT)		(RESPONDENT)
PAN No. AOFPK2642M		

**Assessee by : Sh. Raghuraj Singh, Adv.
Revenue by : Sh. S. L. Anuragi, Sr. DR**

Date of Hearing: 11.04.2019	Date of Pronouncement: 29.04.2019
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ORDER

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-I, 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 the assessee is allowed for statistical purposes.

(Order pronounced in the Court on 29th day of April, 2019 at New Delhi)

Sd/-
(N. S. Saini)
Accountant Member

Dated: 29/04/2019

Subodh

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

ASSISTANT REGISTRAR