

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

BEFORE SHRI G.S. PANNU, VICE PRESIDENT

ITA No.1935/Del/2019
Assessment Year : 2010-11

Smt. Suman Chaudhary,
W/o Late Shri Vijay Singh,
A-271, Sector-31,
Noida.

PAN : AFBPC7270E.

(Appellant)

Vs. Income Tax Officer,
Ward-3(4),
Noida.

(Respondent)

Appellant by : Shri K.P. Garg, CA.
Respondent by : Ms. Ekta Vishnoi, Senior DR.

Date of hearing : 24.09.2019

Date of pronouncement : 24.09.2019

ORDER

This appeal by the assessee for the assessment year 2010-11 is directed against the order of learned CIT(A)-1, New Delhi dated 31st August, 2018.

2. In this appeal, the first and foremost grievance of the assessee is against the action of the CIT(A) in ex-parte deciding not to admit the appeal on alleged non-compliance of requirements of Section 249(4)(b) of the Income-tax Act, 1961 (in short 'the Act').

3. It is the say of the learned representative of the assessee that the requisite opportunity was not available before the CIT(A) to the assessee to explain that there was no violation of Section 249(4)(b) of the Act inasmuch as there was no advance tax payable for the year under consideration because the income of the assessee was below the maximum amount not chargeable to tax.

4. I have carefully perused the decision of the CIT(A) and find that Section 249(4)(b) of the Act has been invoked to treat the appeal unadmitted on mere conjectures without establishing that the requisite conditions have been fulfilled or not in this case. Ostensibly, in the absence of the assessee, the correct and complete factual position may not have been available with the CIT(A). In these circumstances, and in the fitness of things, I deem it appropriate to set aside the matter to the CIT(A) with the direction to adjudicate the appeal de-novo. Of course, at the outset, the assessee shall satisfy the CIT(A) with regard to the admission of the appeal in terms of Section 249(4)(b) of the Act. If the appeal is found by the CIT(A) to be admissible as per law, he shall thereafter decide the appeal raised before him as per law. Since we are remitting the matter to the file of the CIT(A) on the preliminary point of admissibility of appeal, the merit of the dispute is not being adjudicated.

5. In the result, the appeal of the assessee is allowed, as above.

Above decision was dictated and pronounced in the open Court on 24th September, 2019 at the conclusion of the hearing in the presence of both the parties.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

VK.

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1. Appellant : **Smt. Suman Chaudhary,
W/o Late Shri Vijay Singh,
A-271, Sector-31, Noida.**
2. Respondent : **Income Tax Officer, Ward-3(4), Noida.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar