

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA NO.1546/MUM/2024  
Assessment Year :2017-18

Osia Jewels Private Limited  
65/67, 2<sup>nd</sup> Floor, Zaveri Bazar,  
Girgaon S.O, Mumbai 400 004  
PAN: AABCO-4780-H

- Appellant

Vs.

Income Tax Officer, Ward 4(3)(1), Mumbai  
Aaykar Bhavan, M.K. Road,  
Mumbai – 400 020

- Respondent

Appellant by : None  
Respondent by : Shri H.M.Bhatt

Date of Hearing : 18/06/2024

Date of Pronouncement : 18/06/2024

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

The assessee has filed this appeal challenging the order dated 28/02/2024, passed by learned CIT (A), NFAC, Delhi and it relates to the assessment year 2017-18.

2. None appeared on behalf of the assessee. On perusal of the order passed by learned CIT(A), we notice that the First Appellate Authority has dismissed the appeal on technical ground that the assessee did not pay advance tax as mandated u/s. 249(4)(b) of the Act, which is applicable to assesseees who have not filed return of income. In this regard, the learned D.R explained that the assessee did not file return of income for the year under consideration and hence in terms of sec.249(4)(b) of the Act, the assessee should have paid advance tax due for this year in order to get the

appeal admitted. However, the assessee has not paid advance tax at all. Hence the Ld CIT(A) has dismissed the appeal in-limine without admitting it.

3. On merits of the addition, the Ld D.R submitted that the AO has noticed that the assessee has deposited cash into his bank account during the demonetization period and in order to examine the sources thereof, the AO issued notice u/s 142(1) of the Act to the assessee asking him to file return of income. However, the assessee did not file return of income and also did not appear before him. Hence, the Assessing Officer completed the assessment to the best of his judgment u/s. 144 of the Act assessing entire cash deposit of Rs.25.40 crores as income of the assessee u/s. 69A of the Act.

4. Since, the assessee has not filed return of income and has also not paid advance tax also, the learned CIT(A) did not admit the appeal and accordingly, dismissed the same in-limine.

5. However, in the ground of appeal urged by the assessee before the Tribunal, it is stated that the assessee has incurred loss in this year and hence, there was no necessity to pay any advance tax. We notice that this fact was not brought to the notice of learned CIT(A) and hence, he was constrained to dismiss the appeal. Further, it is not clear as to whether the assessee made proper representation before the learned CIT(A). Accordingly, we are of the view that the issue of compliance of provisions of section 249(4) of the Act may be examined by learned CIT(A) afresh after affording adequate opportunity of being heard to the assessee. If the appeal is found to be admissible, then the Ld CIT(A) is also required to adjudicate the grounds on merits also. Accordingly, we set-aside the impugned order passed by learned CIT(A) and restore all the issues to his file for examining them afresh.

6. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 18<sup>th</sup> June, 2024.

Sd/-

(SUNIL KUMAR SINGH)  
JUDICIAL MEMBER  
Mumbai, Date : 18<sup>th</sup> June, 2024

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "C" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai