

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" DELHI**

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1222/Del/2024
Assessment Year 2012-13

Pardeep Shah G-7, C-77, Ramprastha Ghaziabad, Uttar Pradesh-201001	Vs.	ITO, Ward-34(6) New Delhi-110002
TAN/PAN: AMHPS1523K		
(Appellant)		(Respondent)

Applicant by:	Sh. Rakesh K. Sehgal, Chartered Accountant		
Respondent by:	Sh. Om Parkash, Sr.DR		
Date of hearing:	20	06	2024
Date of pronouncement:	20	06	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['CIT(A)' in short] dated 09.02.2024 arising from the assessment order dated 09.12.2019 passed by the Assessing Officer (AO) under Section 144 r.w. Section 147 of the Income Tax Act, 1961 (the Act) concerning A.Y. 2012-13.

2. As per the grounds of appeal, the assessee has challenged the denial of relief claimed by the assessee against the assessment order on the ground that CIT(A) has declined to admit appeal on account of alleged non-payment of tax due on returned income / advance tax payable where returned is not filed.

3. When the matter was called for hearing, the ld. counsel submitted that an addition of Rs.13,45,560/- was made by the AO under Section 69A of the Act on the ground that no return of income

was filed by the assessee for the assessment year in question showing transactions made in commodity exchange and also has not complied with the notices issued under Section 148 and 142(1) of the Act.

4. The assessee preferred appeal against the action of the AO before the CIT(A). The CIT(A) however declined to admit the appeal of the assessee on the ground that advance tax payable under Section 249(4)(b) of the Act has not been paid by the assessee. The CIT(A) has thus dismissed the appeal *in limine* without adjudicating the case on merits.

5. In the background of such facts, the Id. counsel referred to affidavit dated 07.06.2024 verified by the assessee to submit that the total income of the assessee during the year was lower than the maximum amount liable to tax and therefore, there was no advance tax liability arising in the hands of the assessee. Consequently, the embargo placed under Section 249(4)(b) is not applicable at the first place. The Id. counsel thus urged for restoration of appeal to the file of the CIT(A) for determination of the issues on merits.

6. The Id. DR for the Revenue relied upon the first appellate order.

7. I have carefully considered the rival submissions and perused the first appellate order and the assessment order. The relevant documents referred to in the course of hearing as placed in the paper book were also perused.

8. The assessee by way of affidavit has confirmed that no advance tax liability arises to the assessee having regard to the taxable income below the threshold limit. This being so, the provisions of Section 249(4)(b) would not apply. The CIT(A) has misdirected himself in law in dismissing the appeal *in limine* without admitting it for adjudication on merits. The order of the CIT(A) is thus set aside and the appeal filed by the assessee before the CIT(A) is revived and restored for

fresh adjudication in accordance with law after giving proper opportunity to the assessee.

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

Order was pronounced in the open Court on 20th June, 2024.

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: June, 2024
Prabhat