

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**BEFORE Dr. MANISH BORAD, ACCOUNTANT MEMBER  
SHRI SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No. 351/Kol/2024  
Assessment Year: 2013-14**

**Parwati Bricks Pvt. Ltd.,  
C/o Subash Agarwal & Associates,  
Advocates Siddha Gibson,  
1, Gibson Lane, Suite 213, 2<sup>nd</sup> Floor,  
Kolkata- 700069  
[PAN: AAHCP7385D]**

..... **Appellant**

**vs.**

**Income Tax Officer  
Ward 11(1), Kolkata,  
Aayakar Bhawan, P-7,  
Chowringhee Square,  
Kolkata - 700069**

..... **Respondent**

**Appearances by:**

Assessee represented by : Shri Siddharth Agarwal, Advocate  
Department represented by : Shri G. Ajay Robin Singh, JCIT

Date of concluding the hearing : June 13, 2024

Date of pronouncing the order : July 16, 2024

**ORDER**

**Per Dr. Manish Borad, Accountant Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 01.01.2024 arising out of the assessment order framed u/s 147 read with Section 144 of the Act dated 04.03.2022.

2. The Assessee has raised the following grounds of appeal:

*"1. (a). For that on the facts and circumstances of the case, the Ld. CIT(a) was not justified in dismissing the appeal by wrongly applying the provisions of section 249(4) of the Income Tax Act.*

*(b) For that the Ld. CIT(A) was not justified in treating the appeal as "not admitted" and dismissed the same in limine.*

*2. For that the Ld. CIT(A) has passed the order in gross violation of the principles of natural justice without providing any opportunity to place submissions on the merit of the case.*

*3. For that the Ld. CIT(A) ought to have held that the re-opening proceeding initiated u/s 147 is bad in law and the assessment order passed pursuant thereto is liable to be quashed*

*4. For that the Ld. CIT(A) ought to have deleted the addition of Rs. 3,49,32,400/- made by the A.O. u/s 69 in respect of alleged investment made in immovable property when the assessee had not made any such investment.*

*5. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing."*

2. At the outset, the Ld. Counsel for the Assessee submitted that the Ld. CIT(A) did not admit the appeal solely on the ground that the assessee has not paid advance tax as provided in Section 249(4)(b) of the Act. He submitted that this being the first year of incorporation, there was no liability to pay advance tax. He prayed that the issues on merits may be restored to Ld. CIT(A) for necessary adjudication.

3. On the other hand, the Ld. DR supported the order of lower authorities.

4. We have heard the rival contention and perused the material placed on record. We observe that the assessee is a private limited company incorporated on 14.09.2012. Assessment Year 2013-14 is the first year in which assessee is required to file income tax return. We observe that against the addition made by the Ld. AO under Section 69A of the Act at Rs. 3,49,32,400/-, assessee preferred appeal before Ld. CIT(A). However, perusal of impugned order indicates that assessee's appeal was not admitted by the Ld. CIT(A) by referring to Section 249(4)(b) of the Act and stating that the assessee had not paid an amount equal

to the amount of advance tax payable by him. We observe that Section 249(b)(4) of the Act reads as under:

*"(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him.*

5. From perusal of above, Section 249(4)(b) of the Act, we find that same is applicable for those assessee's who have filed the return for preceding year and based on such returns if there is any advance tax liability the same needs to be paid even if return has not been submitted in case, the assessee desires to file the appeal. However, the present assessee is in its first year of incorporation and therefore, there could not be any liability to pay advance tax. The Ld. CIT(A) erred in not admitting the appeal by invoking Section 249(4)(b) of the Act.

6. We therefore, under the given facts and circumstances of the case set aside the impugned order and restore the issues raised on merit to the file of Ld. CIT(A) for necessary adjudication in accordance with law after providing reasonable opportunity of hearing to the assessee. Therefore, all Grounds of appeal raised by the assessee on merits are allowed for statistical purposes.

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

***Kolkata, the 16<sup>th</sup> July, 2024.***

**Sd/-**  
**[Sonjoy Sarma]**  
**Judicial Member**

**Sd/-**  
**[Dr. Manish Borad]**  
**Accountant Member**

Dated: 16.07.2024.  
*Alindra, PS*

*Copy of the order forwarded to:*

- 1 Parwati Bricks Pvt. Ltd.,
2. Income Tax Officer, Ward 11(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches