

आयकर अपीलीय अधिकरण  
कटक पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
CUTTACK BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री संजय शर्मा, न्यायिक सदस्य  
एवं  
श्री रकेश मिश्रा, लेखा सदस्य  
के समक्ष  
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 182/CTK/2025  
Assessment Year: 2018-19**

Ashok Bricks Industries Private Limited (Appellant)	Vs.	Asst. Commissioner of Income Tax (Respondent)
<b>PAN: AADCA6930F</b>		

**Appearances:**

**Assessee represented by** : None (Adjournment appln. filed).

**Department represented by** : S.C. Mohanty, Sr. DR.

Date of concluding the hearing : May 14<sup>th</sup>, 2025

Date of pronouncing the order : May 26<sup>th</sup>, 2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2018-19 dated 15.01.2025,



which has been passed against the assessment order u/s 143(3) of the Act, dated 17.04.2021.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*“1) That in the facts and circumstances of the case the Learned Assessing Officer is not justified to add the share premium amount of Rs. 1,05,19,180/- received on issue of shares by the assessee company u/s 56(2)(viib) of the Income Tax Act, 1961 without providing reasonable opportunity to submit the valuation report in support of the valuation of shares.*

*2) That in the facts and circumstances of the case the Learned NFAC, Delhi is not justified to simply dismiss the appeal filed by the assessee without accepting the valuation report submitted during the appellate proceedings simply due to procedural mistake of not making an application for consideration of the same as 'Additional Evidence' for admission.*

*3) That in the facts and circumstances of the case the learned assessing officer as well as the learned NFAC, Delhi have erred in law and in fact when the entire audited balance sheet alongwith allotment of shares as per Companies Act, 1956 have been filed during assessment proceedings which can justify the amount as share premium, simply because the valuation report could not be filed due to reasonable cause. The addition is therefore against the principles of natural justice.*

*4) That in the facts and circumstances of the case the learned Assessing Officer as well as Learned CIT (Appeals) have failed to provide justice to the appellant while dealing with the case in terms of circular no.14(XL-35) of 1955 dated 11.04.1955 and the intention of the legislature to provide reasonable justice.*

*5) That in the facts and circumstances of the case the order of assessment as well as order in appeal are both wrong, illegal and against the principles of natural justice and are therefore liable to be quashed.*

*6) That TDS deduction of Rs. 1,79,55,137/- has not been allowed as credit by the learned National e-Assessment Centre, Delhi while calculating the tax payable in the order of assessment which is wrong, illegal and against the principles of natural justice.*

*7) That the appellant craves to add, modify, withdraw or substitute any ground or grounds before or at the time of hearing.”*



3. Brief facts of the case are that the assessee is a company and had filed its return of income on 7.1.2019 showing total income of Rs.5,39,05,660/- which was revised on 19.1.2019 declaring total income of Rs.5,48,52,660/-. The case was selected for limited scrutiny on the issue of default in TDS and disallowance for such default and on the issue of share premium received. On verification of details submitted by the assessee, the Ld. AO noticed that the assessee company had issued shares to its shareholders at a premium of Rs.454/- per share. The assessee was asked to produce various details. Since the assessee did not furnish the required details despite having been given sufficient time and a number of opportunities, the Ld. AO completed the assessment u/s.143(3) of the Act on 15.1.2025 and added the entire share premium of Rs.1,05,19,180/- received from the shareholders as income from other sources under section 56(2)(viib) of the Act and computed the total income at Rs.6,53,71,840/- and also computed the income u/s. 115JB at Rs.2,83,86,082/-.

4. Aggrieved with the assessment order, the assessee filed an appeal before the ld CIT(A), who issued notices of hearing and the assessee filed written submissions. The Ld. CIT(A) has noted the written submissions filed, which have been reproduced in the appeal order. The assessee also submitted one page valuation report dated 2.2.2017. It is noted that during the assessment proceedings, the assessee did not submit the same or other details which were called for by the Ld. AO. Consequently, he was of the view that any documents/evidences produced in the appellate proceedings would amount to additional evidence, the admission of which is subject to the discretion of the Appellate Authority. He relied upon Rule 46A of the Income Tax Rules, 1962 as regards submission of additional evidence and as the assessee



had not made any application requesting for additional evidence as mentioned in para 8.5 of the appellate order, nor in the Form No. 35 and in response to questionnaire No.12, the assessee has stated that no documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of Rule 46A nor any justification or explanation has also been given as to why these evidences were not produced before the Assessing Officer, therefore, considering the non-responsive nature of the assessee, the valuation report was not considered for adjudication of the appeal. Further, reliance was placed upon the decisions of the Hon'ble Supreme Court in the case of Sreelekha Banerjee vs CIT (1963) 49 ITR 112 (SC), Kale Khan Mohammad Hanif vs CIT (1963) 50 ITR 1(SC), Roshan Di Hatti vs CIT (1977) 107 ITR 838 (SC), Sumati Dayal vs CIT (1995) 50 Taxman 89 (SC), CIT vs. P. Mohanakala (2007) 161 Taxman 169 (SC) and other cases and the decision of Hon'ble Guwahati High Court in the case of Nemi Chand Kothari vs CIT (2004) 264 ITR 254 (Gau), wherein it has been held that merely because a transaction is through bank account, it is not sufficient to discharge the burden and following other several decisions, he confirmed the addition of Rs.1,05,19,180/- made by the Ld. Assessing Officer as income from other sources and dismissed the appeal of the assessee.

5. When the matter was called for hearing, none represented on behalf of the assessee. An adjournment application was, however, received by email but considering the Grounds raised and the facts of the case, it was considered appropriate to decide the appeal after hearing the Ld. Sr. DR. who appeared for the revenue and the appeal was heard with the assistance of the Ld. Sr. DR.



6. In Ground No.2, it is observed that the assessee has agitated that the Ld. CIT(A) is not justified to simply dismiss the appeal without accepting the valuation report submitted during the appellate proceedings, merely due to procedural mistake of not making an application for consideration of the same as additional evidence for admission. In Ground No. 3, it is submitted that when the entire audited balance sheet along with the details of allotment of shares as per the Companies Act, 1956 have been filed during the assessment proceedings which could justify the amount as share premium, both the Assessing Authority and the Ld. CIT(A) were not justified in making addition and confirming the same respectively, simply because the valuation report could not be filed due to a reasonable cause, which is against the principles of natural justice. The assessee has also referred to the CBDT circular No.14(XL-35) of 1955 dated 11.4.1955 mentioning the intention of the legislature to provide reasonable justice. The TDS deduction of Rs.1,79,55,137/- has also not been allowed as a credit by the Ld. Assessing Officer while calculating the tax payable in the order, which is illegal and against the principle of natural justice. The Ld. Sr. THE LD. DR, however, argued that the order of the Ld. CIT(A) may be confirmed.

7. We have considered the submissions made. The Bench was of the view that the Ld. CIT(A) had brushed aside the additional evidence in the form of valuation report submitted by the assessee, which goes to the root of the matter and has not commented upon the same. Therefore, in the interest of justice, the order of the Ld. CIT(A) is set aside and the matter is restored to his file to pass an order de novo after



affording a reasonable opportunity of being heard to the assessee as well as to the Assessing Officer as required under rule 46A of the I.T. Rules, 1962 as the appeal cannot be dismissed merely on technical ground of not filing an application for admission of additional evidence and the addition cannot be confirmed only for the reason that the assessee had not filed any application under rule 46A of the I. T. Rules, 1962. Hence, Ground Nos. 1 to 5 of the appeal are allowed for statistical purposes.

8. As regards Ground No. 6 for not allowing the credit for TDS made, this issue is also set aside to the Ld. CIT(A) to decide considering the facts of the case and this Ground of appeal is also allowed for statistical purposes.

9. Ground No. 7 is general in nature and does not require any separate adjudication.

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

**Order pronounced in the open Court on 26<sup>th</sup> May, 2025.**

*Sd/-*

**[Sonjoy Sarma]**

Judicial Member

*Sd/-*

**[Rakesh Mishra]**

Accountant Member

Dated: 26.05.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

- 1. Ashok Bricks Industries Private Limited, Near Railway Station, PO. Belpahar RS, Dist. Jharsuguda, Odisha, 768217.**
- 2. Asst Commissioner of Income Tax.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Cuttack Bench, Cuttack.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata