

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

Before Shri Duvvuru RL Reddy, Vice-President (KZ)

**I.T.A. No. 272/KOL/2024
Assessment Year: 2009-2010**

***Evergreen Fincap Market Private Limited,....Appellant
Subash Agarwal & Associates,
Advocates,
Siddha Gibson,
1, Gibson Lane, Suite 213, 2nd Floor,
Kolkata-700069
[PAN:AABCE2789A]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-5(3), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Siddharth Agarwal, Advocate, appeared on behalf of
the assessee*

*Shri Kallol Mistry, JCIT, Sr. D.R., appeared on behalf of
the Revenue*

Date of concluding the hearing: June 23, 2025

Date of pronouncing the order: July 22, 2025

O R D E R

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 13.12.2023 passed for Assessment Year 2009-2010.

2. The facts in brief are that the assessee is a Private Limited Company, which filed its return of income for the assessment year 2009-10 on 24.09.2009 declaring total income at Rs. 3,500/-. The return was duly processed under section 143(1) of the Act. The assessee was engaged in the business of finance. Information received from ADIT(Inv.), Unit-3(4), Kolkata that there were 31 linked entities amongst whom fund transfer were made and in few account there were cash deposit also. Notice under section 143(2) of the Act was issued to the assessee on 14.07.2016 and after than notice under section 142(1) with questionnaire was issued and served on the assessee asking him to produce the submit certain details and documents to substantiate its return of income. The assessee failed to discharge his onus of providing the source of credit entry in his books which is an ingredient of section 68 of the Income Tax Act. Ld. Assessing Officer not getting satisfactory reply from the side of assessee, treated the credit entry in the Bank account from M/s. Badrinath Vyapaar Pvt. Ltd. as bogus and penalty proceedings under section 271(1)(c) were initiated. Total disallowance under section 14A read with Rule 8D limited to the maximum amount of expenditure claimed by the assessee in the profit & loss account i.e. Rs.4,79,524/- was disallowed by the ld. Assessing Officer and added back to the total income of the assessee. Therefore, the ld. Assessing Officer determined the total taxable income of the assessee at Rs.44,82,930/-. Being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals).

3. The ld. CIT(Appeals) dismissed the appeal of the assessee *ex-parte* as the assessee did not bring on record any supporting evidence in support of ground raised by it and repeated non-compliance after providing sufficient opportunities and opined that the assessee is not interested in prosecuting its appeal and required to be adjudicated drawing adverse inference.

4. On being aggrieved, the assessee preferred appeal before the ITAT. At the time of hearing, the ld. Counsel for the assessee argued before the Bench that the ld. CIT(Appeals) passed the *ex-parte* order without going into merit of the case and giving sufficient opportunity of being heard. Therefore, ld. Counsel pleaded to set aside the order passed by the ld. CIT(Appeals).

5. On the other hand, ld. Departmental Representative brought to my notice that the assessee did not produce the relevant documents as asked by the ld. Assessing Officer at the time of assessment proceedings and ld. CIT (Appeals) during the appellate proceedings. The ld. CIT (Appeals) has given many opportunities to the assessee and the assessee neither filed written submission nor any evidence before the CIT (Appeals). He further submitted that before the ITAT, the assessee did not substantiate its claim. Therefore, he pleaded to uphold the orders passed by the revenue authorities.

6. I have heard both the sides and perused the material available on record. Considering the facts and circumstances of

the case, I am inclined to set aside the order passed by the CIT (Appeals) in order to meet the principle of natural justice, and remit the matter back to the file of Id. CIT (Appeals) with a direction to provide one more opportunity of being heard to the assessee. At the same breath, I also hereby caution the assessee to promptly co-operate with the proceedings before the Id. CIT (Appeals) failing which the Ld. CIT (Appeals) shall be at liberty to pass appropriate order in accordance with law and merits of the case, based on the materials available on the record. Thus, the grounds raised by the assessee in the appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 22/07/2025.

Sd/-
(Duvvuru RL Reddy)
Vice-President (KZ)

Kolkata, the 22nd day of July, 2025

*Copies to :(1) Evergreen Fincap Market Private Limited,
Subash Agarwal & Associates,
Advocates,
Siddha Gibson,
1, Gibson Lane, Suite 213, 2nd Floor,
Kolkata-700069*

*(2) Income Tax Officer,
Ward-5(3), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

- (3) *CIT(A), NFAC, Delhi;*
- (4) *CIT - , Kolkata;*
- (5) *The Departmental Representative;*
- (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.