

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 647/Kol/2024
(Assessment Year 2019-2020)**

**I.T.A. No. 648/Kol/2024
(Assessment Year 2020-2021)**

**I.T.A. No. 649/Kol/2024
(Assessment Year 2021-2022)**

Anup Majee,

Vill- Bhamuria, P.O.- Bhamuria,
Neturia – West Bengal - 723121
[PAN: AITPM2463J]

..... **Appellant**

vs.

**ACIT, Central Circle 2(1),
West Bengal,**

Aaykar Bhawan, 110 Shantipally,
E.M. Bypass, Kolkata - 700107

..... **Respondent**

Appearances by:

Assessee represented by : P. Jhunjhunwala, AR

Department represented by : Praveen Kishore, CIT-DR

Date of concluding the hearing : 28.08.2025

Date of pronouncing the order : 01.09.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. This is a batch of three appeals of the same assessee for AY's 2019-20, 2020-21 and 2011-22. These three appeals arise from orders all dated 31.10.2024, passed by the Ld. Commissioner of Income Tax (Appeals), Kolkata – 26 (hereafter “the Ld. CIT(A)”, u/s 250 of the Income Tax Act, 1961, (hereafter “the Act”). Since at the first appeal stage, these three appeals have all been dismissed for identical reasons, hence they are being disposed of through a single order.

1.1 For the sake of convenience, ITA No. 647/Kol/2024 will be taken as the lead case.

2. In ITA No. 647/Kol/2024 for AY 2019-20, the assessee has not succeeded at first appeal stage due to the following findings:

“8. As per section 249(4) of the Act, unless and until, assessee has paid income tax due on income returned by him, no appeal under Chapter XX will be admitted and statute does not give any discretion to appellate authority to entertain an appeal or to extend time for paying self-assessment tax, except in respect of cases falling under section 249(4)(b) in terms of proviso under said section. As stated earlier and admitted by the appellant, this is a case failing under Section 249(4)(a) of the Act.....

8.2 In light of the above discussions and the judicial decisions referred to above, is held that since the assessee has not paid the admitted tax on the income returned in response to notice u/s 153A of the Act, this appeal is not maintainable in view of provisions of Section 249(4) of the Act for non-payment of tax on the income admitted in the return and is therefore dismissed.

9. This appeal is decided on scope of maintainability of the appeal and therefore other issues raised in the submission are not considered.

In the result, the appeal is dismissed.”

2.1 Aggrieved with this action, the assessee has approached the ITAT with the following grounds:

“1. For that the order dated January 31, 2024 passed by the Commissioner of Income Tax (Appeals) is erroneous and contrary to the facts of the case and in law

2. For that the Commissioner of Income Tax (Appeals) erred in law in dismissing the appeal on the ground of non-compliance of section 249(4) of the Income Tax Act, 1961 ("Act") and the findings and observations in this regard are perverse and contrary to law.

3. For that without prejudice to the aforesaid the Commissioner of Income Tax (Appeals) erred in considering that the appellant did not complied with the provision section 249(4) of the Act

4. For that without prejudice to anything said hereinabove, further and in any event, assuming though not admitting that the case of the appellant comes within the purview of clause (a) of section 249(4) of the Act, the proviso to section 249(4) of the Act to the extent it allows the Commissioner of Income Tax (Appeals) to only consider cases falling under clause (b) to section 249(4) of the Act is arbitrary, discriminatory, illegal, unconstitutional and ultra-vires and the same ought to be read down to allow the Commissioner of Income Tax (Appeals) to exercise the discretion even falling under clause (a) to section 249(4) to prevent the same from being treated as arbitrary, discriminatory and unconstitutional

5. For that the order dated March 30, 2022 passed by the Assessing Officer is arbitrary, erroneous, contrary to law and without jurisdiction and the findings therein are arbitrary, perverse and contrary to facts of the case.

6. For that the Assessing Officer failed to provide the appellant with the relied upon incriminating material and/or statements of persons relied upon and also the opportunity to cross-examine the deponents of such statements rendering the assessment proceedings including the order dated March 30, 2022 to be arbitrary, erroneous, illegal and in gross violation of principles of natural justice and as such the same are liable to be set aside.

7. For that the approval under section 153D of the Act has been given without application of mind

8. For that the additions made by the Assessing Officer on account of alleged cash transactions and/or alleged coal transactions are arbitrary, erroneous, invalid and contrary to law and the findings and observations made in the order dated March 30, 2022 are perverse

9. For that the addition made under section 56(2)(x) of the Income Tax Act, 1961 by the Assessing Officer is arbitrary, erroneous, invalid and contrary to law and the findings and observations made in the order dated March 30, 2022 are perverse.”

3. Before us, the Ld. AR pointed out that the Ld. CIT(A) could have exercised his discretion as per the proviso to section 249(4) of the Act. Alternatively, the Ld. AR made a statement at Bar that the department could have realised the admitted tax liability by disposing of the assets seized from the assessee as a result of action u/s 132 of the Act. The Ld. AR prayed that the appeals deserve to be adjudicated on merits and the department could have realised the tax liability admitted by the assessee from a disposal of the assets in possession of the department.

3.1 The Ld. DR, on the other hand, pointed out that the Ld. CIT(A) was satisfied that this was not a case where any discretion could have been exercised in favour of the assessee and the Ld. CIT(A) has rightly dismissed all the three appeals for not paying the admitted tax liability as required u/s 249(4) of the Act.

4. We have carefully considered the submissions of Ld. AR/DR and have also gone through the records before us. It is clear that the assessee has not paid the admitted tax liability and the Ld. CIT(A) has exercised the powers contained in Section 249(4) of the Act to dismiss the appeals on the

grounds of admissibility of the same. We are considerably persuaded by the statement at the Bar made by the Ld. AR that the department could have realised the admitted tax liability by disposing of the assets in possession of the department as a result of action u/s 132 of the Act. Accordingly, we set aside the impugned order and direct as under:

(a) The AO would be at liberty to dispose of any assets in possession of the department to realise only to the extent of admitted tax liability. For this purpose, the AO would be at liberty to liquidate any number of assets in his possession.

(b) The impugned order is set aside and the matter is restored to the file of Ld. CIT(A) to allow the AO to recover the admitted tax liability after liquidating requisite assets. Thereafter, once the admitted tax liability has been collected by the Ld. AO, then the Ld. CIT(A) would admit the appeal and adjudicate on merits.

(c) The assessee is directed to cooperate fully in this exercise and in case for whatever reason the admitted tax liability is not recovered and deposited in the government account then the Ld. CIT(A) would be free to once again consider the case u/s 249(4) of the Act, as deemed fit.

4.1 In result, ITA No. 647/Kol.2024 is partly allowed for statistical purposes, having been remanded with specific directions.

5. The decision in ITA No. 647/Kol/2024 shall apply mutatis mutandis to ITA No. 648/Kol/2024 and ITA No. 649/Kol/2024 as well.

6. In result, the three appeals are partly allowed for statistical purposes.

Order pronounced on 01.09.2025

Sd/-
(George Mathan)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 01.09.2025

AK, Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches