

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, AM &  
SHRI N. K. CHOUDHRY, JM**

आयकरअपीलसं./ I.T.A. No. 678/Mum/2023  
(निर्धारणवर्ष / Assessment Year: 2017-18)

**M/s Immense Packaging  
Private Limited**  
501, Devpooja Apt.  
North Avenue Road, Santacruz  
West, Mumbai-400 054.

**बनाम/  
Vs.**

**ITO Cir. 12(2)(2),**  
Aayakar Bhavan, M. K. Road,  
Mumbai-400 020

स्थायीलेखासं ./PAN No. AABCI 7198 B  
(अपीलार्थी/**Appellant**)

:

(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**  
प्रत्यर्थीकीओरसे/**Respondent by**

:  
:

Shri Varun Sharma, Ld. AR  
Shri M. P. Ahuja, Ld. DR

सुनवाईकीतारीख/  
**Date of Hearing** : 10.05.2023  
घोषणाकीतारीख /  
**Date of Pronouncement** : 18.05.2023

आदेश / O R D E R

**Per N. K. Choudhry, Judicial Member:**

The Assessee/Appellant herein has preferred this appeal against the order dated 15.12.2022 impugned herein, passed by Ld. Commissioner of Income Tax {in short 'Ld. Commissioner' } u/s 250 of the Income Tax Act 1961 (in short 'the Act' ) for AY 2017-18.

**2.** At the outset, we observe that there is a delay of 23 days in filing the instant appeal. The Appellant for condonation of delay cited the reason that due to not getting appropriate guidelines from Professional and Counsel for representation, the appeal filing process has got delayed. We observe that the reason given for condonation of appeal is not substantiated by any corroborative evidence, even otherwise the same is improper as not getting proper guidelines from professional or counsel is not an excuse for seeking any relief in law. Therefore, we are inclined not to accept the reason given by the Appellant as sufficient for condonation of delay. However, considering the peculiar facts and circumstances, as both the orders passed by the authorities below are ex-parte and the delay in filling of the instant appeal is minuscule, we deem it appropriate for just and proper decision of the case, to condone the delay of 23 days, but subject to deposit of Rs. 5,500/- in the national relief fund, within 30 days of receipt of this order.

**3.** Now coming to the merits of the case, we observe that the Ld. Commissioner in the impugned order clearly noted that though in Form No. 35, the Appellant mentioned "attached documentary evidence explaining the source of the shareholders", but in reality, no such evidence has been attached with Form No. 35 nor during the appellate proceedings, thus, the logic furthered by the Appellant is not

backed by any evidence, whatsoever document or otherwise. In the aforesaid constrained circumstances, the Ld. Commissioner decided the appeal of the Appellant as ex-parte and consequently affirmed the decision of the AO to add back the unexplained share capital and share premium of Rs. 1,00,00,000/- u/s 68 of the Act.

**4.** We have given thoughtful consideration to the facts and circumstances of the case and rival submission of the parties. The Appellant neither appeared nor filed any documents/evidence in support of its claim before the authorities below, therefore both the authorities below in the peculiar facts and circumstances, constrained to pass the orders as ex-parte. However the Appellant before us by filling documents/paper book containing 190 pages, claimed that it did not receive the notices as mentioned in para no. 4.3 of the impugned order. We observe though the Ld. Commissioner in the impugned order in para no. 4.3 has clearly mentioned to have sent the notices dated 25.02.2021, 25.11.2021, 23.08.2022 and 29.11.2022 respectively for the dates of hearing on 05.03.2021,

10.12.2021, 07.09.2022 and 09.12.2022 which remained un-complied by the Appellant, however from the impugned order, it does not appear as to whether the notices mentioned above have ever been served upon the Appellant or not. Hence considering peculiar facts and circumstances of the case and various documents filed by the Appellant in support of its claim, we for proper and just decision of the case /controversy involved and for the ends of justice, deem it appropriate to afford an opportunity to the Appellant to establish its case. Consequently, the case is remanded back to the file of Ld. AO for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Appellant.

We also direct the Appellant to cooperate with the assessment proceedings and to appear and file the relevant documents including filed before us or other documents which may be required by the AO. In case of default, Appellant shall not be entitled for any leniency.

5. In the result, the appeal filed by the Appellant is allowed for statistical purposes.

*Orders pronounced in the open court on 18<sup>th</sup> May, 2023.*

Sd/-  
(Om Prakash Kant)  
Accountant Member

Sd/-  
(N. K. Choudhry)  
Judicial Member

Sr.PS. Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
4. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai