

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकर अपील सं/ I.T.A. No.490/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2010-11)

Shri Manoj N. Tekriwal C/C, G. P. Mehta & Co. CAS, 807, Tulsiani Chambers, Nariman Point, Mumbai-400021.	बनाम/ Vs.	ITO/National Faceless Assessment Centre Delhi.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं/ I.T.A. No.491/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2010-11)

Shri Manoj N. Tekriwal C/C, G. P. Mehta & Co. CAS, 807, Tulsiani Chambers, Nariman Point, Mumbai-400021.	बनाम/ Vs.	ACIT, Circle-30(2) Kautilya Bhavan, 6 th Floor, BKC Bandra (E), Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABTPT8105D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri G. P. Mehta
Revenue by:	Shri P. D. Chougule (Addl. CIT)

सुनवाई की तारीख / Date of Hearing: 23/05/2023

घोषणा की तारीख /Date of Pronouncement: 30/05/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 28.12.2022 for assessment year 2010-11 [*against the quantum assessment as well as the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter "the Act") respectively*].

2. At the outset, it has been brought to our notice that the impugned order of the Ld. CIT(A) is an ex-parte order; and have been passed by him without going into the merits of the grounds raised by



ITA Nos.490 & 491/Mum/2023

A.Y. 2010-11

Manoj N. Tekriwal

the assessee. According to the Ld. AR, the assessee couldn't respond to the notice of the Ld. CIT(A) due to the technical snag in the income tax portal, which prevented him from uploading the response. Therefore, according to Ld. AR, the impugned action of the Ld. CIT(A) dismissing the grounds of appeal raised by the assessee ex-parte without going into the merits is bad for violation of natural justice. It has been brought to our notice that the assessee had raised legal as well as grounds on merits against the addition made by the AO. However, the Ld. CIT(A) has not acted in accordance to the mandate given under sub-section (6) of section 250 of the Act and dismissed the appeal. And therefore, he pleads to set aside the impugned action of the Ld. CIT(A).

3. Per contra, the Ld. DR submitted that despite the Ld. CIT(A) granting several opportunities to the assessee, he failed to utilize the same, so the Ld. CIT(A) had no other alternative but to dismiss the appeal. And therefore, we should not interfere in the action of the Ld. CIT(A).

4. Having heard both the parties and after perusal of the records, we note that the impugned action of the Ld. CIT(A) is an ex-parte order, without going into the merits of the case. According to the assessee, he could not upload the relevant documents/written submission due to technical snag in the departmental portal. Be that as it may, the Ld. CIT(A) ought to have disposed off of the appeal of the assessee in accordance to sub-section (6) of section 250 of the Act wherein he was mandated to give reasons for his decision in respect of each of the grounds raised by the assessee, which in this case the Ld.



ITA Nos.490 & 491/Mum/2023

A.Y. 2010-11

Manoj N. Tekriwal

CIT(A) didn't do. Therefore, we cannot sustain the action of the Ld. CIT(A). And therefore, we set aside the impugned order and restore the appeal back to the file of the Ld. CIT(A) with a direction to dispose off of the grounds of appeal raised by assessee in accordance to sub-section (6) of section 250 of the Act after hearing the assessee. And assessee is directed to be diligent in filing the written submission/relevant documents to support the grounds of appeal raised by it. And the Ld. CIT(A) to decide the issue in accordance to law.

ITA. No. 490/Mum/2023 for AY. 2010-11

This is an appeal emanating from the penalty order passed by the AO u/s 271(1)(c) of the Act for AY. 2010-11. Since the impugned order of the Ld. CIT(A) on the penalty appeal is also an ex-parte order; and since we have already set aside the quantum appeal for AY 2010-11 back to the file of the Ld. CIT(A), consequently the penalty sustained by the Ld. CIT(A) also cannot survive. And therefore, the same is also set aside and restored back to the file of the Ld. CIT(A) to be decided after the quantum appeal is decided in accordance to law.

5. In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 30/05/2023.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 30/05/2023.
Vijay Pal Singh, (Sr. PS)



ITA Nos.490 & 491/Mum/2023

A.Y. 2010-11

Manoj N. Tekriwal

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai