

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

डॉ. मनीष बोर्ड, लेखा सदस्य  
एवं  
श्री संजय शर्मा, न्यायिक सदस्य  
के समक्ष

**Before**

**DR. MANISH BORAD, ACCOUNTANT MEMBER**

**&**

**SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. Nos.: 302 & 303/KOL/2023**

**Assessment Years: 2010-11 & 2011-12**

***Falguni Ghosh.....Appellant***  
***[PAN: ADZPG 6418 Q]***

***Vs.***

***ITO, Ward-47(1), Kolkata.....Respondent***

**Appearances by:**

*Sh. Chayan Mukherjee, A/R, appeared on behalf of the Assessee.*

*Sh. Vijay Kumar, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.*

Date of concluding the hearing : May 17<sup>th</sup>, 2023

Date of pronouncing the order : June 12<sup>th</sup>, 2023

**ORDER**

**Per Manish Borad, Accountant Member:**

Both these appeals filed by the assessee pertaining to the Assessment Years (in short "AY") 2010-11 & 2011-12 are directed against the common order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by ld. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short ld. "CIT(A)"] dated 23.01.2023

arising out of the assessment order framed u/s 148/144 of the Act dated 30.03.2015.

2. Registry has informed that both the appeals filed by the assessee are time barred by 8 days. Condonation application has been filed by the assessee stating as follows:

*“In the Matter of Shri Falguni Ghosh residing at Old-14, New-17, Kumar Para Lane, Liluah, Howrah 711204, Assessment year 2010-11, PAN-ADZPG 6418Q in the matter of an Appeal against the order passed by Ld. Appeal Commissioner of NFAC U/s. 144/250 of Income Tax Act 1961, date of order 23/01/2023 for the above referred Assessment Year, Sir, your assessee I, Shri Falguni Ghosh beg to state before your honour that I from 15.03.2023 become seriously ill. A doctor was called for a treatment continued. The doctor advised me to take bed rest and not to think over anything. Due to such unavoidable ailment I failed to file the Appeal against the Assessment order passed by the Ld. Appeal Commissioner of National Faceless Appeal Centre, Delhi for the Assessment Year 2010-11 before your honour in time.*

*Therefore, your assessee, I Sri. Falguni Ghosh fervently request your honour to condone delay what has caused due to illness which is beyond of avoidable and accept your assessee's appeal for the Assessment year 2010-11. For this act of your kindness your assessee will ever remain grateful to your honour.”*

2.1. Considering the condonation application and the reasons stated therein, we are satisfied that the assessee was prevented for reasonable cause from filing the instant appeals within statutory time limit. We, therefore, condone the delay and admit the appeals for adjudication on merits.

3. The assessee has raised the following grounds of appeal:

*Assessment Year 2010-11:*

*“1) It was not possible to comply in terms of statutory notice issued by Id. Appeal Commissioner, u/s 250, NFAC, from such distant place of stay. The appellant not engage any lawyer and tax expert for*

*compliance on his behalf because of fund crisis. The non-compliance of statutory notice is therefore not intentional but due to compelling reason.*

*2) In making a best judgement assessment, the AO does not process absolute authority to assess any figure he likes, although he is not bound by strict judicial principals, he should be guided rule of justices, equity and good conscience. [CIT Vs. Ranichera Tea Co. Ltd. 207 ITR 979 (Cal)]*

*3) The authority making a best judgment assessment must make an honest and fair estimate of the income of assessee and through arbitrariness cannot be avoided; the same must not be capricious but should have a reasonable nexus with available material. This view has been expressed in Brij Bhushan Lal Parduman Kumar vs. CIT, reported at 115 ITR 574 (SC).*

*4) That on the facts and in the circumstances of the case, the action of Ld. Commissioner ex-parte order without considering his further submission in CIT Appeal-10, Kolkata on the manual hearing which was unlawful and against the law of natural justice*

*5) That the appellant craves leave to add, alter, adduce or amend any grounds or grounds on or before the date of hearing of the appeal.”*

*Assessment Year 2011-12:*

*“1) (i) That on the facts and circumstance of the case, Ld. Commissioner is completing assessment under the ex-parte view has failed to appreciate that non-compliance of statutory notice is not intentional but due to compelling reason.*

*ii) That on the facts and in the circumstance of the case, Ld. Commissioner is wrong and unjustified in passing order u/s 250 of I.T. Act,1961 without allowing reasonable, adequate and effective opportunity of hearing.*

*2) That on the facts and in the circumstances of the case, the action of Ld. Commissioner to consider the total deposit in bank account as unexplained investment and thereby making addition of Rs.38,71,196/- is erroneous, arbitrary and bad in law.*

*3) That the appellant craves leave to add, alter, adduce or amend any grounds or grounds on or before the date of hearing of the appeal.”*

4. The effective grounds raised by the assessee in both these appeals are that the impugned orders are *ex-parte* but the non-compliance of the statutory notice was not intentional but due to compelling reason. Authorized person on behalf of the assessee appeared and appraised that for both the years the assessee did not get fair opportunity to file necessary details and submissions on merits of the case. Prayer was made to restore the issues on merit for AY 2010-11 & AY 2011-12 to the file of ld. CIT(A) for afresh adjudication.

5. Ld. D/R was fair enough not to oppose this request.

6. We have heard ld. D/R as well as the authorized person appearing on behalf of the assessee and perused the records placed before us and notice that both the impugned orders are *ex-parte*. Though opportunity of hearing was granted on few occasions but as prayed by the authorized person of the assessee that the assessee remained seriously ill on most of the occasions and for this reason compliance could not be made to the notice of hearing. Looking to the to the facts and circumstances of the case and being fair to both the parties and in the interest of justice all the issues are restored to ld. CIT(A) for afresh adjudication giving proper opportunity of being heard. The assessee is also directed to remain vigilant and file necessary documents, if considered necessary, in support of its grounds of appeal and should not take adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is no compliance by the assessee, then ld. CIT(A) can pass a speaking order in accordance with law. Therefore, all the grounds of appeal

raised against Id. CIT(A) passing an *ex-parte* order without considering the submissions of the assessee are allowed for statistical purposes.

7. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

***Kolkata, the 12<sup>th</sup> June, 2023***

*Sd/-*

[Sonjoy Sarma]  
Judicial Member

*Sd/-*

[Manish Borad]  
Accountant Member

Dated: 12.06.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Falguni Ghosh, Old-14, New-17, Kumar Para Lane, Liluah, Howrah-711 204.***
- 2. ITO, Ward-47(1), Kolkata.***
- 3. CIT(A)-NFAC, Delhi.***
- 4. CIT-***
- 5. CIT(DR), Kolkata Benches, Kolkata.***

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata