

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

**Before Shri Prashant Maharishi, Accountant Member &  
Shri Narender Kumar Choudhry, Judicial Member**

**ITA No. 1358/Mum/2023**  
(Assessment Year: 2004-05)

M/s. Candy Holdings Pvt. Ltd.  
C-204, 2nd Floor, Vishal  
Apartment, Taki Road  
Tulinj, Nallasopara (E)  
Thane 401209  
PAN – AAACC2733M

**Appellant**

The Income Tax Officer-  
6(2)(1)  
Vs. Room No. 510, 5th Floor  
Ayakar Bhawan, M. K . Road,  
Mumbai-400020

**Respondent**

Appellant by : Mr. Neelkanth Khandelwal, Ld. CA  
Respondent by: Shri H.M. Bhatt, Ld. Sr. A.R.

Date of Hearing : 08.08.2023  
Date of Pronouncement: 21.08.2023

**ORDER**

**Per: N.K. Choudhry, JM**

This appeal has been preferred by the Assessee against the order dated 20.02.2023 impugned herein passed by the learned Commissioner of Income Tax (Appeal)/National Faceless Appeal Centre, Delhi (NFAC) (in short 'ld. Commissioner') under section 250 of the Income Tax Act, 1961 (in short 'the Act') for AY 2004-05.

**2.** In this case, the AO vide assessment order dated 29.12.2006 u/s 143(3) of the Act, also made the disallowance of Rs.1,50,64,000/- on account of loss incurred on share trading activity, against which the Assessee preferred first appeal in the first round of litigation before the then learned Commissioner, who vide order dated 12.11.2007 affirmed the said addition.

**3.** The Assessee challenged the said order dated 12.11.2007 passed by the learned CIT(A)-VI, Mumbai before the Tribunal. The Hon'ble Coordinate Bench of the Tribunal at Mumbai vide order dated 11.02.2016 in ITA No. 5559/Mum/2007 set aside the said order of the learned CIT(A) and restored the matter to his file with a direction to adjudicate the issue afresh after giving proper and adequate opportunity of being heard to the Assessee.

**4.** The learned Commissioner in compliance to the directions of the Hon'ble Tribunal, started appeal proceedings and afforded various opportunities, however, the Assessee neither appeared nor filed any reply. Therefore, the learned Commissioner finding no option and by construing *"that the Assessee is reluctant to comply with the notices leading to the presumption that it has either nothing to explain in this regard or is not interested to continue the appeal proceedings and thus has no objection at present regarding the addition made by the learned AO in the impugned assessment order"*, ultimately affirmed the order passed by the AO by dismissing the appeal of the Assessee. The Assessee is in appeal before us.

**5.** We observe that in the second round of litigation upto the level of the Tribunal, the time and resources of the Government machineries have been wasted unnecessarily due to non-cooperative attitude of the Assessee and therefore the Assessee do not deserve any leniency. However, considering the peculiar facts and circumstances in totality as the learned Commissioner failed to decide the case on merit in the absence of relevant reply and/or documents which the Assessee has failed to produce, hence for the proper and just decision of the case and for the ends of justice we are inclined to afford an opportunity to the Assessee by remanding the case, hence the case is remanded to the file of the learned Commissioner for decision afresh but subject to deposit of Rs.11,000/- in the PM National Relief Fund within 30 days of this order. Suffice to say, the learned Commissioner will afford reasonable opportunity to the Assessee.

We also direct the Assessee to appear and file the relevant documents as would be needed before the Id. Commissioner. In case of further default, the Assessee shall not be entitled for any leniency.

**6.** In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Pronounced in the open Court on 21<sup>st</sup> August, 2023.

Sd/-

**(Prashant Maharishi)**  
**Accountant Member**

Sd/-

**(Narender Kumar Choudhry)**  
**Judicial Member**

Mumbai, Dated: 21<sup>st</sup> August, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT concerned*
4. *The DR, ITAT, Mumbai*
5. *Guard File*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai*

n.p.