

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

**SHRI N. K. CHOUDHRY, JM**

1. I.T.A. No. 2235/Mum/2023  
(Assessment Year: 2010-11)  
&  
2. I.T.A. No. 2236/Mum/2023  
(Assessment Year: 2011-12)

<b>Ganesh Natarajan</b> 256/10117, Kannamwar Nagar No. 1 Vikhroli East, Mumbai PAN No. AHFPG 9553 Q	Vs.	<b>CIT(A) –30,</b> Mumbai
<b>Appellant)</b>	:	<b>Respondent)</b>
<b>Appellant by</b>	:	Shri Prakash Jotwani
<b>Respondent by</b>	:	MS Smitha V. Nair
<b>Date of Hearing</b>	:	04.10.2023
<b>Date of Pronouncement</b>	:	10.10.2023

O R D E R

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

The Assessee/appellant herein has preferred these appeals against the orders dated 01.03.2023 & 27.05.2023 impugned passed by National Faceless Appeal Centre, Delhi {in short 'NFAC '}/ Ld. Commissioner of Income Tax (in short " Ld. Commissioner" u/s 250 of the Income Tax Act 1961 (in short 'the Act') for AY 2010-11 and 2011-12.

**2.** As both the impugned orders are ex-parte and having involved identical issues, therefore, for sake of brevity, are being disposed of by this composited order.

**3.** ITA No. 2235/Mum/2023 is lead case, in which at the outset it has been observed that there is a delay of **52 days** in filing of the instant appeal. The Assessee claimed that e-mail sent by the Id. CIT(A)'s office went into junk/span folder and therefore, the Assessee failed to know about any notice of hearing. However subsequently checking e-mail, it was found by the Assessee that various notices have been received from Id. CIT(A) and also an order was passed by Id. CIT(A) as ex-parte. It is fact that "No physical notices" were issued by Id. CIT(A) and therefore, the Assessee was not aware about any hearing before Id. CIT(A). Somehow the delay has been occurred in filing the instant appeal, which was not due to any willful or intentional default but in fact the same was due to bonafide mistake. The Assessee in support of said contentions also filed duly sworn affidavit. The Id. DR on the contrary refuted the claim of the Assessee. I have given thoughtful consideration the claim of the Assessee and in the absence of any contrary material, find the same as genuine and bonafide and therefore I am inclined to condone the delay, hence the same is condoned.

**4.** Coming to the merits of the case, I observe that the AO vide order dated 22<sup>nd</sup> Dec, 2017 u/s 143(3) read with section 147 of the Act, assessed the income of the Assessee to the tune of Rs.

14,47,500/- by making addition of Rs. 14,47,500/- u/s 69B of the Act as unexplained investment, which has been affirmed by the Id. CIT(A) vide impugned order against which the Assessee is in appeal before this bench. I observe that during the course of appellate proceedings, various notices have been issued to the Assessee however as the Assessee claimed that it was unable to see the notices sent by Id. CIT(A) as the notices sent through e-mail went into junk/span folder. Therefore, the Assessee was unable to know about the notices for the dates of hearing and exact status of appellate proceedings before the Id. CIT(A). Mr. Prakash Jotwani, Ld. Advocate also claimed that it is admitted fact that no physical notices have ever been issued to the Assessee however now, the Assessee will appear and co-operate with the appellate proceedings and therefore requested for remand back the case to the file of Id. CIT(A) for de novo adjudication. The Id. DR also suggested the same way out as requested by Id. AR. Hence considering the peculiar facts and circumstances of the case and for the just decision of the case and the ends of the justice and to resolve the controversy, I am inclined to remand the instant case to the file of the Id. CIT(A) for decision afresh, suffice to say by according reasonable opportunity of being heard to the Assessee. The Assessee is also directed to co-operate with the appellate proceedings and appear if requires and file the relevant document(s) which would be needed for proper and real adjudication of the case and in case of default, the Assessee shall not be entitled for any kind of leniency. Ordered accordingly.

5. In the result, both the appeals filed by the Assessee are allowed for the statistical purposes, on the same terms.

Order pronounced in the open court on 10<sup>th</sup> Oct, 2023.

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

मुंबई Mumbai;दिनांक Dated : 10/10/2023  
PS, Ganesh Kumar (on tour)

**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**