

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

**BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER**

**AND**

**SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 3859/MUM/2023 (A.Y: 2010-11)**

New Infrastructure Private Limited 23, B, Ganjawala Apartment SVP Road, Borivali (W) Mumbai- 400092  <b>PAN: AACCN1678G</b>	v.	ACIT- 13(1)(1) 218, 2 <sup>nd</sup> Floor Aayakar Bhavan Mumbai- 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Bhupendra Shah</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Ashok Kumar Ambastha</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>05.03.2024</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>13.03.2024</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

**1.** This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] dated 29.08.2023 for the A.Y.2010-11.

**2. Assessee has raised following grounds in its appeal: -**

*"1. In the facts and circumstances of the case and in law, the learned CIT[A] NFAC erred*

- a. in passing order ex-parte*
- b. by refusing to condone delay of 35 days in filing appeal and*
- c. also without deciding appeal on merits just because the emails sent for hearing could not be traced which went to spam folder and no regular staff was available to the Appellant for appellate work*

*Without prejudice to the above and alternatively,*

*2. In the facts and circumstances of the case and in law, the learned A.O. erred in reopening the assessment u/s 148 twice and the learned CIT(A), NFAC also erred in confirming the reopening u/s. 148*

- a. only on the basis of borrowed satisfaction*
- b. relying upon information from Investigation wing*
- c. third party statements*
- d. overlooking earlier order passed u/s 143[3] dated 30-3-2012 which amounts to change of opinion*
- e. overlooking the fact that second reopening on 30-3-2017 was beyond 4 years from the end of assessment year [ last date was 31-3-2015]*
- f. there was no failure on the part of the Appellant to disclose all details fully.*

*3. In the facts and in the circumstances of the case and in law, the Ld. AO erred in making the addition of Rs.50 lacs/-by way of share application money and the CIT[A] NFAC erred in confirming addition without any inquiry from the share applicant.*

*4. On the facts and circumstances of the case as well as in law the Learned AO and the CIT[A] NFAC have grossly failed in appreciating the fact that the Appellant's obligation is not to prove the "Sources of Source" and it is sufficient on part of the appellant once it has submitted the evidence of proximate loans and thus addition as unexplained cash credit U/s.68 of the I.T Act not justified on the grounds that appellant has not provided "Sources of Source".*

- a. *On the basis of suspicion and presumption*
- b. *Based on third party statements*
- c. *Without any proof of refund of cash*
- d. *by making only guesswork & overlooking documents and by relying upon cases not applicable in this case.*
- e. *Without granting an opportunity for personal hearing through video conferencing even though a specific request was made by the Appellant and without appreciating detailed Written Submissions and rejecting Judgments of Jurisdictional High Court of Bombay and other courts including SC.*

5. *In the facts and circumstances of the case and in law, the learned A.O. erred in levying interest u/s 234 & initiating penalty u/s 271 [1][c] [C].”*

*Relief Prayed:*

*The appellant therefore prays follows,*

1. *To restore the appeal to CIT[A] NFAC.*
2. *To quash second reopening initiated u/s 148*
3. *To delete the addition of Rs 50 Lacs-wrongly made in respect of alleged unproved share application money*
4. *To delete interest u/s 234 & initiation of penalty u/s 271[1][c].*

*[D] General: The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion. This appeal is filed in time and may please be allowed in full. A detailed paper book will be filed at the time of hearing.”*

**3.** At the outset, Ld. Counsel for the assessee submitted that Ld.CIT(A) has not condoned the delay of 35 days in filing the appeal before First Appellate Authority and further submitted that Ld. CIT(A) and Assessing Officer had passed exparte order without providing adequate opportunity of being heard to the assessee, therefore, considering additions/disallowance made by the Assessing Officer, Ld.Counsel for the

assessee requested that the matter may be restored to the file of the Assessing Officer.

4. On the other hand, Ld.DR relied on the order of the lower authorities and submitted that assessee has not utilized the opportunity provided by Assessing Officer as well as Ld.CIT(A). Therefore, he agreed that the order passed by Ld. CIT(A) is exparte order.

5. Considered the rival submissions and material placed on record. On a perusal of the assessment order and First Appellate Authority order, we find that even though the Assessing Officer and Ld.CIT(A) provided opportunity on several occasions, assessee could not appear nor complied to the notices issued. We further observe from the order of the Ld. CIT(A) that the appeal was dismissed on technical ground by rejecting the application for condonation of delay observing as under: -

*"3.1 The request for condonation of delay is duly considered. It is seen that during the assessment also, the assessee was totally non-cooperative and desired information were not submitted to the AO. The AO also issued show cause notice before making the addition, however, the assessee preferred to remain non-complaint. Under section 249(3) of the Act, the first appellate authority may on "good and sufficient reasons can admit an appeal after the expiry of the period of limitation. Here in the present case, the assessee has taken a lame excuse that it has no permanent employee. Simply taking pretext of there is no permanent employee does not constitute a "good and sufficient cause" for condoning the delay of a period more than 1 months. Considering the deliberate delay on the part of the appellant without good and sufficient reasons, the appellant*

*deserves no sympathy and hence it is not a fit case for condonation of delay. Hence, the application for of delay is hereby rejected. In view of this, appeal is held as not maintainable."*

6. Considering the totality of facts and keeping in view the additions / disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard. Accordingly, in the interest of justice we are of the view that this matter should go back to the file of the Assessing Officer for denovo verification and assessment. Assessee shall cooperate with the proceedings before the Assessing Officer without taking unnecessary adjournments. Needless to say that the Assessing Officer shall give adequate opportunity of being heard to the assessee. Thus, this appeal is restored to the file of the Assessing Officer accordingly.

7. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 13<sup>th</sup> March, 2024.

**Sd/-**  
**(ABY T VARKEY)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 13.03.2024  
Giridhar, Sr.PS

**Sd/-**  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**