

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.4225/Mum/2023  
(A.Y. 2010-11)**

K.Pukhraj Enterprises Private Limited, 44, 3 <sup>rd</sup> Floor, Shahi Gully Zaver Bazar, Kalbadevi Maharashtra 400002	Vs.	ITO, Ward 4(2)(4) Aayakar Bhavan 4 <sup>th</sup> Floor, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADCK5086A		
Appellant	..	Respondent

Appellant by :	Prateek Jain
Respondent by :	P.D. Chougule

Date of Hearing	22.04.2024
Date of Pronouncement	25.04.2024

**आदेश / O R D E R**

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC for A.Y. 2010-11. The assessee has raised the following grounds before us:

- “1. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in passing an ex parte order, without affording adequate opportunity of being heard to the appellant.*
- 2. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Ld AO in issuing notice dated 31 03 2017 u/s 148 of the Act and the consequent order dated 22.12 2017 passed u/s 143(3) r.w.s 147 of the Act passed is bad in law and without jurisdiction.*
- 3. On the facts and circumstances of the case and in law the Ld CIT(A) erred in confirming the action of the Ld AO in making an addition of Rs.7,69,50,000/- on account of share premium received on increase in paid-up share capital, for the reasons mentioned in the impugned order or otherwise.*

4. *The Appellant craves leave to add, alter amend or delete any or all of the above grounds of appeal on before the hearing.*

*The appellant prays this Hon'ble Tribunal to delete the disallowance made by the Id.AO, which is confirmed by the Id. CIT(A).”*

2. There was delay in filing the appeal by 33 days and the assessee has filed application for condonation of delay along with affidavit dated 18.04.2024 of the director of the assessee company Mr. Dinesh Rathod. In the affidavit it is explained that director of the assessee company who had received the order of Id. CIT(A) could not consult timely with his consultant due to continuously visited Rajasthan in the month of September and October 2023 because of some family medical issue.

3. Heard both the sides on the issue of marginal delay in filing the appeal. After considering the submission of the assessee we consider that there appears to be a bonafide reason for marginal delay of 33 days in filing the appeal for the reason as discussed above in this order. We have also considered the decision of Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. Mst. Katigir (1987) taxman.com 1072 wherein held that sufficient cause for the purpose of condonation of delay should be interpreted with a view to do even handed justice on merit in preference to scuttle a decision on merit. After considering the facts and circumstances and evidence as discussed supra we condone the marginal delay in filing the appeal by 33 days.

4. Fact in brief is that return of income declaring total income of Rs.9,01,718/- was filed on 15.10.2010. The case was reopened by issuing of notice u/s 148 of the Act on 31.03.2017 on the basis that assessee has received share premium amounting to Rs.8,55,00,000/- in excess of face value of share of Rs.10. The AO also referred the information received from DCIT, Central Circle, Mumbai that assessee company was one of the beneficiary company had availed accommodation entries to the aforesaid amount from Mr. Satish Saraf

group and Mr. Dinesh Rathod. During the course of assessment the AO stated that share was issued without obtaining valuation report and the premium received in excess of face value of shares of Rs.10 was not acceptable. The assessing officer on the basis of information received and detail filed by the assessee concluded that assessee has not satisfactorily explained the issuing of shares at premium, therefore, the share premium of Rs.7,69,50,000/- was disallowed and added to the total income of the assessee.

5. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee on the ground that in spite of providing several opportunities the assessee has not made any compliance before the ld. CIT(A).

6. During the course of appellate proceedings before us at outset the ld. Counsel contended that ld. CIT(A) has not adjudicated the appeal of the assessee on merit and the assessee has obtained adjournment till 09.06.2023, however, the last hearing by the ld. CIT(A) could not be complied and requested for providing more opportunity to decide the case of the assessee on merit.

On the other hand, the ld. D.R supported the order of lower authorities.

7. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above the ld. CIT(A) has passed the ex-parte order u/s 250 of the Act on the ground that assessee has failed to make any response during the course of appellate proceedings. It is noticed that neither the ld. CIT(A) has decided the appeal of the assessee on merit after taking into consideration the material on record nor the assessee has made compliance to the notice issued by the ld. CIT(A). We consider that Sec. 250(6) of the Act contemplate that ld. CIT(A) would determine point in dispute and therefore record reason on such point

in support of his conclusion. The Id. CIT(A) ought to decide the issue in the appeal on merit as provided u/s 250(6) of the Act after taking into consideration the material available on record. In the light of the above facts and circumstances we consider that it is appropriate to restore the matter back to the Id. CIT(A) for adjudication on merit after providing reasonable opportunities of hearing to the assessee. The assessee is also directed to make compliance before the Id. CIT(A) without any failure. Therefore, the appeal of the assessee is allowed for statistical purpose.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25.04.2024

Sd/-

(Sandeep Singh Karhail)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 25.04.2024

Rohit: PS

**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 DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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