

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.16/M/2024  
Assessment Year: 2015-16**

<b>M/s. Khodiyar Builders Private Limited,</b> 402, Saiya House, Masjid Bunder, Mumbai Maharashtra – 400 002 <b>PAN: AADCK2901Q</b>	Vs.	<b>Income Tax Officer 4(2),</b> Aaykar Bhavan, Maharishi Karve Road, Mumbai – 400 020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Adjournment Petition  
Revenue by : Shri Manoj Kumar Sinha, Sr. DR.

Date of Hearing : 23 . 07 . 2024  
Date of Pronouncement : 31 . 07 . 2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 26.10.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2015-16.

**2.** Though the Assessee has submitted adjournment application, however, we observe that the impugned order is ex-parte and not on merits; hence we are inclined to decide this appeal.

**3.** In the instant case, the Assessing Officer (AO) vide order dated 26.12.2017 u/s 143(3) of the Act, made the additions of Rs.49,38,060/- & Rs.2,343/- respectively on account of gain/profit

worked out and AIR mismatch. The Assessee, being aggrieved, challenged the said additions before the Ld. Commissioner, however, in spite of affording various opportunities by sending notices to the Assessee, the Assessee neither filed any submission/information nor any documents, therefore in the constrained circumstances, the Ld. Commissioner decided the appeal of the Assessee as ex-parte and consequently dismissed the same in limine for non-prosecution but not on merits. Though the Assessee, because of its conduct for non compliance, does not deserve any leniency, however, considering the peculiar facts and circumstances of the case, as in the absence of relevant reply and documents, the issues involved in the first appeal remained to be adjudicated on merits, hence for the just decision of the case and for the ends of substantial justice, we are inclined to set aside the impugned order and remand the instant case. Consequently, the case is remanded to the file of the Ld. Commissioner for decision afresh on merits, suffice to say by affording reasonable opportunity to the Assessee to substantiate its claim.

**4.** We also direct the Assessee to cooperate with the appellate proceedings and to file the relevant submissions/documents which would be essential and required by the Ld. Commissioner for proper adjudication of the case. In case of further default the Assessee shall not be entitled for any leniency.

**5.** In the result, the appeal filed by the assessee stands allowed for statistical purposes.

**Order pronounced in the open court on 31.07.2024.**

**Sd/-**  
**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.