

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND**

**SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA no.2155/Mum./2024**  
(Assessment Year : 2010-11)

**ITA no.2152/Mum./2024**  
(Assessment Year : 2011-12)

**Pukhraj Bhomaji Mutha**

1605 Siddesh Darshan, 10<sup>th</sup>  
Khetwadi Mumbai-400004  
PAN – AACPM4077H

..... Appellant

v/s

**ITO-19(2)(5)**

Piramal Chambers,  
Lalbaug, Mumbai-400012

..... Respondent

Assessee by : Shri Rajkumar Singh

Revenue by : Shri R. R. Makwana, Sr. DR

Date of Hearing – 30/07/2024

Date of Order – 05/08/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeals have been filed by the assessee challenging the separate impugned orders dated 20/03/2023 and 17/03/2023 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment years 2010-11 and 2011-12, respectively.

2. The present appeals for the assessment years 2010-11 and 2011-12 have been filed after a delay of 308 and 311 days, respectively. Along with the present appeals, the assessee has filed an applications seeking condonation of delay in filing the appeals, which are duly supported by the affidavit of the assessee. In the aforesaid affidavits, the assessee submitted that he did not receive any formal education and was doing trading business of ferrous and non-ferrous metal with the guidance of his relatives. It is further submitted that all the income tax matters of the assessee including assessment and appeals are being handled by his tax consultant. In the aforesaid affidavit, the assessee further submitted that the assessment for the assessment years 2010-11 and 2011-12 were re-opened u/s 147 of the Act and statutory notices u/s 148, 143(2) and 142(1) of the Act were issued and sent to his tax consultant, who despite assurance to attend proceedings, did not comply with the same without informing the assessee. Accordingly, the assessment orders were passed u/s 144 r.w.s 147 of the Act for the assessment years 2010-11 and 2011-12. It is further the submission of the assessee that upon the receipt of the assessment orders, the same were sent to the tax consultant of filing of the appeals before the learned CIT(A). However, the tax consultant again committed the same lapse and laxity and without any knowledge or information of the assessee neither attended the proceedings before the learned CIT(A) nor made any submission in response to hearing notices issued by the learned CIT(A), resulting in the impugned ex-parte order. The assessee further submitted that he being an illiterate person was not aware about the faceless appeal proceedings and also did not receive physical copy of the appellate orders passed by the learned CIT(A). It is only in the fag end of

March, 2024 when recovery notice for tax demands raised and penalty show cause notices in respect of addition and disallowance made in the assessment order for these assessment years were issued that he became aware through his tax consultant. Accordingly, thereafter necessary steps were taken to file the present appeal for the assessment years 2010-11 and 2011-12 before the Tribunal. The assessee submitted that due to the aforesaid circumstances, the present appeals are delayed and such delay is neither being willful nor with any malafide intention.

3. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee did not stand to benefit by the late filing of the appeals. In view of the above and having perused the affidavit, we are of the considered view that there exists sufficient cause for not filing the present appeals within the limitation period and therefore, we condone the delay in filing the appeals by the assessee and we proceed to decide the appeals on merits.

4. Having considered the submissions and perusal the material available on record, it is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on the behalf of the assessee. Now in appeal before us, the assessee has duly represented by the learned Authorised

Representative ("*learned AR*") and wishes to pursue the litigation against the addition made by the AO. In the affidavit filed by the assessee, in support of its applications seeking condonation of delay in filing the present appeals, it has been submitted that he being illiterate person was not aware about the faceless appeals proceeding and tax consultant neither attended the appellate proceeding before the learned CIT(A) nor made any submissions in response to the any notices issued by the learned CIT(A). It is submission of the assessee that only upon initiation of recovery proceedings his tax consultant informed him about the impugned order and no physical copy of the impugned order was received by the assessee.

5. Therefore, in view of the facts and circumstances as noted above, we are of the considered opinion that in the interest of justice and fair play, the assessee be granted one more opportunity to represent his case on merits. It is evident from the record that the assessee also did not comply with the statutory notices issued during the assessment proceedings, and accordingly, the assessment orders were passed on best judgment basis u/s 144 r.w.s 147 of the Act. Accordingly, we deem it fit and proper to set aside the impugned order and restore the matter to the file of the AO for de novo consideration. Since the assessee did not appear before the learned CIT(A) as well as before the AO, we feel it appropriate to impose a cost of Rs.2,500 for each appeal, which the assessee shall pay to the Prime Minister's National Relief Fund. Subject to the payment of above cost for each appeal, which shall be verified by the AO, the impugned orders passed by the learned CIT(A) are set aside and the matter is restored to the file of the AO for deciding afresh on merits

after taking into consideration the submissions as may be filed by the assessee. Needless to mention no order shall be passed without reasonable opportunity of hearing to the assessee. We also direct the assessee to fully co-operate with the AO in the completion of the assessment proceedings. As a result, the grounds raised by the assessee in both appeals are allowed for statistical purposes.

6. In the result, the appeals by the assessee for the assessment years 2010-11 and 2011-12 are allowed for statistical purposes.

Order pronounced in the open Court on 05/08/2024.

**Sd/-**

**RENU JAUHRI  
ACCOUNTANT MEMBER**

**MUMBAI, DATED: 05/08/2024**

Vijay Pal Singh, (Sr. PS)

**Sd/-**

**SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai