

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.831/M/2024
Assessment Year: 2012-13**

M/s. Apeekay Construction Private Limited, 8, Dharmeshwar, T H Kataria Marg, Matunga (West), Mumbai - 400016 PAN: AADCA7224Q	Vs.	Income Tax Officer Ward 6(1)(1), Room 503, 5 th Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri R. R. Makwana, SR D.R.

Date of Hearing : 22 . 08 . 2024
Date of Pronouncement : 17 . 09 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 08.01.2024, 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. 2012-13.

2. In the instant case, the Assessing Officer (AO) vide assessment order dated 23.12.2019 has made the following additions:

1. Rs.7,09,400/- u/s 41 of the Act
2. Rs.1,48,156 /- u/s 69A of the Act
3. Rs.4,68,888/- u/s 56 of the Act
4. Rs.44,549/- u/s 69A of the Act

3. The Assessee, being aggrieved, though challenged the aforesaid additions before the Ld. Commissioner, however, despite affording various opportunities, made no submissions/documents in support of its appeal and therefore in the constrained circumstances, the Ld. Commissioner decided the appeal filed by the Assessee as ex-parte and dismissed the same.

4. The Assessee, being aggrieved, is in appeal before us. The conduct of the Assessee, as it appears from the impugned order as in spite of sending various notices the Assessee made no compliance, seems to be non-compliant and therefore the Assessee does not deserve any leniency. However, considering the peculiar facts and circumstances in totality as the Ld. Commissioner did not decide the appeal filed by the Assessee on appeal merit but dismissed the same in limine for want of submissions/documents, hence, for the just decision of the case and substantial justice, we are inclined to set aside the impugned order and consequently remanding the case to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity to the Assessee to substantiate its case. We clarify that in case of further default the Assessee shall not be entitled for any leniency. Thus, the case is remanded to the file of the Ld. Commissioner accordingly.

5. In the result, the appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 17.09.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
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.