

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1689/MUM/2021
Assessment Year: 2017-18**

Shri Chandrakant Ramanna Shetty,
Flat No. 306, Kalpraj Apartment, Opp
Zojwala Petrol Pump, Bail Bazar,
Kalyan-421 301.

ACIT, Circle-3,
2nd floor, Rani Mansion, Murbad
Road, Kalyan-421 301.
Vs.

**PAN No. ACKPS 4771 Q
Appellant**

Respondent

Assessee by : Mr. Sunil Rohra, AR
Revenue by : Mr. R.A. Dhyani, DR

Date of Hearing : 30/03/2022
Date of pronouncement : 30/03/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 24/08/2021 passed by the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [in short 'the Ld. CIT(A)'] for assessment year 2017-18 raising following rounds:

1. *On the facts and in the circumstances of the case and in the law, FAA erred in passing ex-parte order without providing a reasonable opportunity of being heard in the course of faceless hearing to the appellant without appreciating the facts that submissions couldn't be uploaded due to non-functional/technical glitches on the income tax portal since 1st June 2021 onwards.*
2. *"On the facts and in the circumstances of the case and in the law, FAA erred in confirming impugned addition by Ld. A.O., treating the cash deposited in banks as unexplained money u/s 69 of I.T. Act., 1961 by.*
3. *On the facts and in the circumstances of the case and in the law, FAA erred in confirming the Ld. A.O.'s action of completely ignoring/ overlooking the facts of the sources of cash deposited during the demonetisation period out of cash withdrawal from the firms against the share of profits/remuneration /interest / capital withdrawal and cash in hand kept in the proprietary concern namely Maharashtra Guest House.*

2. In grounds of appeal the assessee is mainly aggrieved with the *ex-parte* order passed by the Ld. CIT(A).

3. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. On perusal of para four of impugned order of the Ld. CIT(A), we find that notice

under section 250 of the Income Tax Act, 1961 (in short 'the Act') was issued on 23/01/2021 fixing the hearing on 08/02/2021. For said date of the hearing, the assessee filed request on 06/02/2021 seeking adjournment of the hearing. The Ld. CIT(A) in para six concluded that assessee made wilful non-compliance of the statutory notices and therefore he proceeded to confirming the disallowance made by the Assessing Officer observing as under:

"Considering the entirety of facts, circumstances and material on record and looking into preponderance of probabilities here the appellant has miserably failed to substantiate its claim of having either received the amount of the said transaction as unexplained money and has also not even been able to establish that he could himself accumulate such huge amount from the sources disclosed, therefore, the AO is fully justified in making/confirming the disallowance in the amount of Rs.1,57,53,000/-, found as unexplained money of the appellant. In this condition the addition made by A factually and legally correct is upheld and the plea of the appellant on this issue is dismissed being devoid of any merits."

3.1 We find that the Ld. CIT(A) had issued only one notice for fixing the hearing and in response to which the assessee filed a

letter seeking adjournment. The assessee complied to the notice but Ld. CIT(A) has rejected the request of adjournment. In our opinion, the Ld. CIT(A) is not justified in deciding the appeal without providing sufficient opportunity of being heard to the assessee. Before us, the assessee has submitted that sources of the cash deposited in bank account are duly explained. The appeal of the assessee has been disposed off without taking into consideration explanation of the assessee regarding source of the cash deposited. Before us the Ld. Counsel of the assessee has given undertaking that assessee is willing to file all evidence in support of its claim and appear before the Ld. CIT(A). In the facts and circumstances of the case and in the interest of substantial justice, we therefore, set aside the order of the Ld. CIT(A) and restore the matter back to the Ld. CIT(A) for deciding a fresh on merit in accordance with law after taking into consideration explanation of the assessee.

4. The appeal of the assessee is accordingly allowed for statistical purposes.

Order pronounced in the open Court on 30/03/2022.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 30/03/2022

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai