

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

**BEFORE SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 1745/MUM/2021 (A.Y. 2016-17)**

Rajkumar Sharma 52, Acharya Nagar Waman tukaram Patil Marg Deonar, Mumbai - 400088  <b>PAN: AAYPS0538H</b>	v.	ACIT – 35(2) Pratyakshkar Bhavan Bandra Kurla Complex Bandra (E), Mumbai – 400051
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>Shri Vinayak Pandya</b>
<b>Department by</b>	:	<b>Shri T. Shankar</b>
<b>Date of Hearing</b>	:	<b>26.04.2022</b>
<b>Date of Pronouncement</b>	:	<b>24.05.2022</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

**1.** This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 02.08.2021 for the A.Y. 2016-17.

**2. Assessee has raised following grounds in its appeal: -**

*"1. The Order dated 02.08.2021 passed by learned Commissioner of Income Tax (Appeals) dismissing the appeal and confirming the arbitrary, unjust and erroneous order of learned Assessing officer (AO) is bad-in-law, arbitrary and unjust which requires to be reversed, cancelled and set aside.*

*2. The learned CIT(A) has erred in law by dismissing the appeal on the ground of non-compliance of Hearing scheduled on 24.06.2021. However, learned CIT(A) failed to notice the ongoing glitches on new Income Tax Portal [www.incometax.gov.in](http://www.incometax.gov.in), owing to which appellant could not comply on the scheduled date. However, as soon as the issues were resolved appellant had made the submission on 22.07.2021. The learned CIT(A) has erred in law by dismissing the appeal on 02.08.2021 without considering the Written Submission made by the appellant on 22.07 2021*

*3. The learned CIT(A) has erred by not considering the appellant's plight owing to Income Tax Portal issues and dismissing the appeal without giving any further opportunity of being heard, thus violating the principle of natural justice.*

*4. The learned CIT(A) erred law and not justified in confirming the additions of Rs. 22,89,012/- made by the Assessing officer by treating it as Unexplained Cash Credits under section 68 of the Income Tax Act, 1961. Without appreciating the fact that the above amount is per se not a credit in the bank account of appellant, but it is the sum total of Rs. 15,64,012/- (which represents the balance of cash in hand as on 31.03.2015 as per the Balance Sheet filed along with return of income) and Rs. 7,25,000/- (which represents cash withdrawal from Bank account). The learned CIT(A) has erred in upholding the Assessing Officers allegations of treating the above amounts as credits to the bank account of appellant without verifying the material available on records.*

*5. The learned CIT(A) has erred in not deciding the ground of appeal disputing the Charging of Interest under section 234A, 234B and 234C of the Income Tax Act, 1961."*

**3.** Ld. Counsel for the assessee submits that Ld.CIT(A) passed exparte order without providing adequate opportunity of being heard to the assessee and submitted that all the details relating to cash credits, further submitted there is no cash deposits involved in any transaction, therefore, considering additions/disallowance made by the Assessing Officer, Ld.Counsel for the assessee requested that the matter may be restored to the file of the Ld.CIT(A).

**4.** Ld.DR vehemently supported the orders of the authorities below.

**5.** Considered the rival submissions and material placed on record. On a perusal of the Ld.CIT(A) order, we find that Ld.CIT(A) provided opportunity on a single occasion and assessee could not appear before the Ld.CIT(A). Considering the totality of facts and circumstances of the case and keeping in view the additions/disallowance made by the Assessing Officer, in the interest of justice we are of the opinion that assessee should be given one more opportunity of being heard. Thus, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee is directed to appear before the Ld.CIT(A) and shall cooperate with the appellate proceedings without

taking unnecessary adjournments. Thus, this appeal is restored to the file of the Ld.CIT(A) accordingly.

**6.** In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 24<sup>th</sup> May, 2022.

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai / Dated 24.05.2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**