

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, AHMEDABAD**  
**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**ITA No.158/Ahd/2022**  
**Asstt.Year : 2017-18**

Amber Cinema Polo Ground Himatnagar. PAN : AAZFA 9291 Q	Vs	ITO, Ward-3 Himatnagar.
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(Applicant)	(Responent)
Assessee by :	Shri Sunil Talati, CA
Revenue by :	Shri Mukesh Thawani

सुनवाई की तारीख/Date of Hearing : 06/09/2022  
घोषणा की तारीख /Date of Pronouncement: 13/09/2022

**आदेश/O R D E R**

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (in short referred to as Id.CIT(A)) under section 250 of the Income Tax Act, 1961 ("the Act" for short), dated 22.3.2022 pertaining to Asst.Year 2017-18.

2. The assessee has filed this appeal raising the following grounds:

*"1. The Ld. CIT(A) had erred in confirming the addition of Rs. 10,27,783/- made by the Ld. A.O. on the ground of excess cash deposited in the bank account as against actual net excess cash deposited of Rs.7,88,142/-. It is submitted that there is no unexplained cash deposits and the balance, which was negative on the day was met with by the partners has not been appreciated by the Ld. A.O. and Ld. CIT(A). It is submitted that the addition so made of Rs. 10,27,783/- be deleted.*

*2. The Ld. CIT(A) has erred in passing the order on the ground that the appellant has not filed submissions. There has appellant filed submissions*

*before the Assessing Officer, on which he relied upon with all evidences and material. It is submitted that the addition made of Rs.10,27,783/- be deleted.*

*3. The Ld. CIT(A) has erred in not allowing the appellant an appropriate opportunity to file further evidence under Rule 46(A) with regard to the cash introduced by the partners of the partnership firm.”*

3. At the outset Ld.Counsel for the assessee contended that his primary payer before us is grant of another opportunity of hearing before the Revenue authorities, both the assessment order and the first appeal order having been passed exparte. Ld.Counsel for the assessee contended that due to ill health of the partner of the assessee firm, Sh.Mukesh Kumar B Patel, on account of COVID related complications, the hearings before the Ld.CIT(A) remained unattended. An affidavit of the said partner, Sh.Mukesh Kumar B Patel, affirming the above on oath was placed before us alongwith doctors certificate that he had been under treatment and advised rest on account of being affected with Covid in the month of September 2021. Ld.Counsel for the assessee pointed out from the Ld.CIT(A)'s order that proceedings before him from September 2021 onwards primarily, remained unattended. He stated that huge addition of Rs.10,27,783/- on account of unexplained cash deposits in Bank had been made to the income of loss returned of Rs.(-) 1,22,005/- by the assessee firm and confirming the same without hearing the assessee would entirely be to the prejudice of the assessee, particularly when there were valid reasons for not attending the hearing before the Ld.CIT(A). He therefore pleaded that the assessee may be given one more opportunity to prosecute his case either before the ld.AO or before the ld.CIT(A).

4. The ld.DR on the other hand strongly objected to the prayer of the assessee. He submitted that before both the Revenue authorities the assessee had been given a number of opportunities to controvert the finding of the AO. Therefore, the appeal of the assessee is liable to be dismissed.

5. I have heard both the parties and gone through the orders of both the authorities below. A perusal of the Ld.CIT(A)'s order would indicate that the ld.CIT(A) had issued notices to the assessee for submissions of details, documents and evidences to support his case as many as on six occasions as mentioned by the ld.CIT(A) in his impugned order, but the assessee did not appear nor filed details/explanation during the appellate proceedings. Accordingly, the ld.CIT(A) after considering material available on record confirmed impugned addition of Rs.10,27,783/- on account of unexplained money u/s.69A of the Act made by the AO. Before me, the ld.counsel for the assessee filed an affidavit deposing that due to COVID, the partner of the assessee firm had been hospitalized during this period, and could not attend and present the case before the appellate authorities, and since the assessee has a good arguable case, the assessee may be given one opportunity either before the AO or before the ld.CIT(A) to prosecute his case.

6. I find that the *bonafides* of the assessee for not attending the hearing before the Ld.CIT(A) have been satisfactorily established. In the interest of justice and fair play, I am inclined to give one more opportunity to the assessee by restoring the issue back to the file of the ld.CIT(A). I allow this primary issue raised by the assessee and set aside the impugned order of the ld.CIT(A) for fresh adjudication

on merits. Needless to mention here, the assessee shall cooperate in the set aside appellate proceeding and would not seek unnecessary adjournment nor indulge in delay tactics.

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

**Order pronounced in the Court on 13<sup>th</sup> September, 2022 at Ahmedabad.**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 13/9/2022