

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

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM**

आयकर अपील सं/ I.T.A. No.2227/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2008-09)

M/s. Anushka Soft-Tel Pvt. Ltd. Bldg. No. 3, Shop No. 007, New Friend Co-op Housing Society New Link Road, Near Atharva College CSR Complex, Kandivali (W), Mumbai-400067.	<b>बनाम/</b> Vs.	Kailash Khandelwal ITO, Ward-12(1)(2) Room No. 146A, 1 <sup>st</sup> Floor, Aayakar Bhawan, Maharishi Karve Road, Churchgate, Mumbai- 400020.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGCA8006M</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Poojan Mehta
Revenue by:	Smt. Shailja Rai (DR)

सुनवाई की तारीख / Date of Hearing: 03/11/2022

घोषणा की तारीख /Date of Pronouncement: 28/11/2022

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)-20, Mumbai dated 18.02.2020 for AY. 2008-09.

2. At the outset, we take note of the ground no. 2 which is against the action of the Ld. CIT(A) in passing the ex-parte order.

3. Brief facts in respect of grounds of appeal of the assessee is that the AO has passed the assessment order dated 31.03.2016 u/s 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter "the Act") wherein the AO had added Rs.19,00,00,000/- u/s 68 of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) which was filed on 26.04.2016 however the same was dismissed on technical ground by the Ld. CIT(A) by holding as under: -



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“5. Decision:

5.1 The appellant has filed appeal manually and as per the notification no. S.O.637(E) dated 1<sup>st</sup> March, 2016, the appeal has to be filed electronically w.e.f 01.03.2016. However, the appellant failed to file the appeal electronically and also did not make any submission or appeared before the undersigned, despite opportunity given in this regard. In view of the above, the paper appeal filed is treated as non-est.”

4. Aggrieved by the aforesaid action of the Ld. CIT(A), the assessee is before us raising ground no. 2 (supra).

5. We have heard both the parties and perused the records. We note from perused of the impugned order (supra) that the Ld. CIT(A) has dismissed the appeal of the assessee on technical reasons and not on merits. We do not countenance the impugned action of Ld.CIT(A). For the interest of justice and fair play we restore the appeal back to the file of the Ld. CIT(A), with a direction that appeal of the assessee be adjudicated by Ld.CIT(A) as per sub-section (6) of Section 250 of the Act i.e. the CIT(A) shall dispose of the appeal after stating the points for determination and by giving reasons for the decision. The assessee is directed to file electronically also the appeal. We note that the assessee had filed the manually the appeal on 26.04.2016 against AO's order dated 31.03.2016. We note that the notification recording compulsory e-filing of appeal before the Ld. CIT(A) was w.e.f 31.03.2016 and the assessee had filed it manually on 26.04.2016 in the office of Ld.CIT(A) on 26.04.2016; and if the assessee was



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alerted/cautioned about this omission [of filing the same electronically], and given an opportunity to rectify the same, then the assessee could have filed the same electronically and then such an action on the part of Ld CIT(A) could have been avoided. Ignorance on the part of the assessee should not have been taken advantage of by authorities, rather the assessee ought to have been told/advised to file immediately the appeal in electronic form as directed by CBDT. Anyway, for the interest of justice and fair play, since we have restored the appeal filed by the assessee back to the file of the Ld. CIT(A), the assessee to upload the appeal electronically and the Ld. CIT(A) is directed to adjudicate the appeal as if the same has been filed in time (i.e. within limitation period) and decide question of law as well as the merits of the addition made by the AO in accordance to the law.

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

Order pronounced in the open court on this 28/11/2022.

Sd/-

(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28/11/2022.  
Vijay Pal Singh, (Sr. PS)



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**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**