

IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI  
BEFORE SHRI OM PRAKASH KANT ACCOUNTANT MEMBER &  
SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 3065/Mum/2022  
(A.Y: 2019-20)

M/s. Yoboho New Media Pvt Ltd, Ground Floor, Mezzanine Floor, Crystal House, Plot No. 79, Dr. Annie Besant Road, Worli Naka, Worli, Mumbai – 400018.	Vs.	CPC, Income Tax Department Bengaluru. Karnataka-560500.
PAN/GIR No. : AACCC12112A		
Appellant	..	Respondent

Appellant by :	Shri Dharan Gandhi.AR
Respondent by :	Smt. Sonia Kumar.DR

Date of Hearing	13.02.2023
Date of Pronouncement	15.02.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/s 143(1) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. Under the facts and in law, the learned CIT(A) erred in confirming addition of Rs 26,36,089/- on account of inconsistency in amount of disallowance u/s 40*

*as per Tax) Audit report and as per return of income filed.*

*1.1 Under the facts and in law, the learned CIT(A) erred in confirming the addition without giving appellant an adequate and reasonable opportunity to make submission.*

*2. The appellant leaves to add, alter or amend any of the above ground of appeal.*

2. The brief facts of the case are that the assessee company is engaged in the business of digital video production and distribution. The assessee has filed the return of income for the A.Y 2019-20 on 29.11.2019 disclosing a total income of Rs. 32,08,10,280/-. Subsequently the assessee has filed the revised return of income on 16.07.2020 with the total income of Rs.31,46,50,190/-.Whereas the return of income was processed u/s 143(1)(a) of the Act with adjustment of disallowance u/s 40(a)(i) of the Act of Rs.26,36,089/- and the belated payment of Rs6,193/- of ESIC and PF. The assessee has filed the reply online on the proposal of the CPC and also TDS credit was not granted.Finally the return of income

was processed under 143(1) of the Act on 17-03-2021 determining a total income of Rs. 31,72,92,480/-.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts, findings and has issued notice of hearing and since there was no compliance by the assessee. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer. Further, the assessee has a good case on merits and shall substantiate with the material evidence and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed

the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notice was issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld.CIT(A) has issued the notice of hearing referred at Para 3 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O. and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the Assessing Officer to adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and allow

the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15.02.2023.

Sd/-

(OM PRAKASH KANT)  
**ACCOUNTANT MEMBER**

Sd/-

(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 15.02.2023

KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//()

1.

( Asst. Registrar)  
ITAT, Mumbai