

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 671/MUM/2024
(Assessment Year: 2022-23)**

NM Diagnostics Private Limited,
32, Summerville, Jn. Of 14th and
33rd, Above Bombay Blue Restaurant,
Link Road, Khar (West),
Mumbai - 400050
[PAN: AADCR1280P]

..... **Appellant**

Ward 13(3)(1) Mumbai,
Karve Road, New Marine Lines,
Churchgate - 400020

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Anuj Kisnadwala
For the Respondent/Department : Shri Ashok Kumar Ambastha

Date

Conclusion of hearing : 22.05.2024
Pronouncement of order : 29.05.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 08/02/2024, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2022-23, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Rectification Order, dated 14/07/2023, passed under Section 154 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Assessee has raised the following grounds of appeal:

- "1. On facts and in law, Learned Commissioner of Income-tax Appeals, NFAC, Delhi (hereinafter referred to as Ld. CIT-A) had erred in not appreciating that appeal against the order u/s 154 is tenable under the Income Tax Act.*
 - 2. On facts and in law, the Ld. CIT(A) had erred in confirming the addition of Rs. 21,62,400/- u/s 36(1)(va) of the Income Tax Act. Under the facts and circumstances of the matter, he ought not to have confirmed the said addition.*
"
 - 3. On facts and in law, the Ld. CIT(A) had failed to appreciate that a sum of Rs. 11,62,400/- was delayed by a day due to non-operation of portal on 15.02.2022. Under the facts and circumstances of the matter, he ought to have allowed the said sum.*
3. When the appeal was taken up for hearing, the Learned Authorised Representative of the Assessee sought remand of the issue raised in appeal back to the file of CIT(A). It was submitted that the CIT(A) did not grant the Appellant sufficient opportunity of being heard and decided the appeal merely because the Appellant was not able to respond to solitary notice of hearing, dated 30/01/2024, issued by the CIT(A). The Learned Departmental Representative could not controvert the fact that only one notice of hearing was issued by the CIT(A) before deciding the appeal.
 4. On perusal of record, we find that the appeal was instituted before CIT(A) on 16/08/2023. As per paragraph 3 of the order impugned, notice of hearing was issued on 30/01/2024. Since none was present on behalf of the Appellant before CIT(A), the Appellant was proceeded ex-parte and appeal was decided by way of order dated 08/02/2024. Thus, we find that the averment made by the Appellant was factually correct. In view of the aforesaid facts and circumstances, we find merit in the contention advanced on behalf of the Appellant that the CIT(A) has failed to grant a reasonable opportunity of being heard to

the Appellant. Accordingly, we set aside the order, dated 08/02/2024, passed by the CIT(A) and restore the appeal back to the file of CIT(A) at its original number with the directions to the CIT(A) to decide the appeal afresh as per law after granting the Appellant a reasonable opportunity of being heard. Thus, in terms of the aforesaid, Ground No. 2 raised by the Appellant is allowed for statistical purposes while Ground No. 1, 3 & 4 are dismissed as being infructuous.

5. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 29.05.2024.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.05.2024
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.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