

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ - इंदौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE - BENCH**

**[Conducted through Virtual Court]**

**[Ahmedabad-Indore]**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No.165/Ind/2020**

**निर्धारण वर्ष/Asstt. Year: 2011-2012**

Shri Manjeet Singh Bhatia BCC House, 8/5 Manoramaganj Indore.	Vs.	JCIT, Range-3 Indore.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Harsh Vijay Wargiya, AR
Revenue by :	Shri (Dr.) Harshi Bari, Sr.DR

सुनवाई की तारीख/Date of Hearing : 06/07/2021

घोषणा की तारीख/Date of Pronouncement: 14/07/2021

**आदेश/O R D E R**

**PER RAJPAL YADAV, VICE-PRESIDENT**

This is assessee's appeal against order of Id.CIT(A)-1, Indore dated 27.2.2020 passed for the Asstt.Year 2011-12.

2. In the appeal memo, the assessee has raised as many as seven grounds of appeal against order of the Id.CIT(A), which *inter alia* challenges various additions made by the AO and confirmed by the Id.CIT(A). However, the assessee in ground no.1 has challenged by way of a preliminary issue that the Id.CIT(A) has erred in passing an *ex parte* order without providing any opportunity of being heard to the assessee. We proceed to adjudicate this preliminary issue first.

3. Facts of the case in brief are that an assessment order dated 31.3.2014 was passed under section 143(3) of the Income Tax Act, 1961 by the Assessing Officer by making various additions. These additions were challenged by the assessee before the first appellate authority. However, despite giving various opportunities, the assessee did not appear during the appellate proceedings, and in the *ex parte* proceedings, the Id.CIT(A) confirmed the assessment order of the AO. The assessee got aggrieved, and now came before the Tribunal in second appeal.

4. With the assistance of the Id.representatives, we have gone through the record carefully. A perusal of the CIT(A)'s order would indicate that the Id.CIT(A) has issued notices to the assessee for arguing the appeal on various occasions as mentioned by the Id.CIT(A) in his impugned order, but the assessee did not avail the same, and accordingly, the Id.CIT(A) after putting reliance upon the decision in the case of P.N. Balasubramaniam (A) 112 ITR 512 held that since the assessee has not availed opportunities given, he is not entitled for any natural justice. He dismissed appeal of the assessee. In this connection, it is pertinent to take note of sub-section (6) of section 250 of the Income Tax Act, 1961 which reads as under:

*"6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision."*

5. On perusal of section would indicate that the Id.CIT(A) was required to formulate points in dispute, and thereafter record reasons on such points. No doubt the Id.CIT(A) has given number of opportunities to the assessee to attend the hearing, and the assessee did not avail and remained absent, which *ipso facto* would not empower the Id.CIT(A) to pass an *ex parte* order without going to the merit of the cases and without making a speaking order, because, rationale for

passing a speaking order based on the material available on record is that, such order is subject to further appeal, and such order would enable not only the litigant and the appellate authority to know the exact point of dispute for adjudication. In the instant case, even if the assessee did not participate, the Id.CIT(A) ought to have gone through the assessment record and thereafter formed the point in dispute, and should have recorded reasons in support of his conclusions on those points. The Id.CIT(A) failed to adhere the mandatory procedure, hence his order is not sustainable. We allow this preliminary ground of appeal and set aside the impugned order of the Id.CIT(A) for fresh adjudication. Needless to mention here, the assessee shall cooperate in the set aside appellate proceeding, and would not indulge in unnecessary delay tactics.

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

Order pronounced in the Court on \_14<sup>th</sup> \_\_\_July, 2021 at Indore.

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT

Indore, Dated 14 /07/2021

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

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

*आदेशानुसार* / BY ORDER,  
*उप/सहायक पंजीकार (Dy./Asstt.Registrar)*  
*आयकर अपीलीय अधिकरण, ITAT,*

1. *Date of dictation* : **06-07-2021**
2. *Date on which the typed draft is placed before the Dictating Member.* :
3. *Date on which the approved draft comes to the Sr.P.S./P.S* :
4. *Date on which the fair order is placed before the Dictating Member for pronouncement.* :
5. *Date on which fair order placed before Other Member* :
6. *Date on which the fair order comes back to the Sr.P.S./P.S.* :
7. *Date on which the file goes to the Bench Clerk.* :
8. *Date on which the file goes to the Head Clerk.* :
9. *The date on which the file goes to the Assistant Registrar for signature on the order.* :
10. *Date of Despatch of the Order* :