

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.367 & 368 /Ind/2022**  
**Assessment Year: 2011-12 & 2012-13**

Ramesh Chand Patni 3, Parsi Mohall, Aishwarya Apartment, Flat No.402, Chhawani, Indore	<b><u>बनम/</u></b> Vs.	ITO, 5(5) Indore
(Appellant / Assessee)		(Respondent / Revenue)
<b>PAN: AFTPP 6269 E</b>		
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	18.04.2023	
Date of Pronouncement	21.04.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 29.08.2022 and 26.08.2022 for Assessment-Year ["AY"] 2011-12 and 2012-13, both passed by learned Commissioner of Income-Tax, National Faceless Appeal Centre, Delhi ["Ld. CIT(A)"], which in turn arise out of respective assessment-orders dated 21.12.2018 passed by learned ITO, Ward-5(5), Indore ["Ld. AO"] u/s 147 read with section 144 of Income-tax Act, 1961 ["the Act"], the assessee has filed these appeals.

2. When the cases were called, none appeared on behalf of assessee although the Ld. DR representing the revenue was ready to argue. Ld. DR

submitted that the matters can be decided on the basis of material available on record and after hearing him. It is further observed that sufficient opportunities have already been given to assessee but there is no representation coming forward. Hence, it is not possible to grant further adjournments. The hearings are proceeded with and the matters are being decided.

3. Both of these appeals involve identical issues; hence they are being disposed of by this common order for the sake of convenience. We would take up facts of AY 2011-12 and our decision shall apply to both years.

4. Briefly stated the facts of AY 2011-12 are such that on the basis of information available in I-Tax Net, NMS, the AO found that the assessee deposited a sum of Rs. 39,97,259/- during the relevant previous year in State Bank of India. It was further observed that the assessee had not filed any return of income of that year. Accordingly, Ld. AO took action u/s 147 by issuing notice dated 28.03.2018 u/s 148 followed by several notices u/s 142(1). But there was no compliance by assessee in the sense the assessee neither filed return of income nor made any submission. Finally, Ld. AO framed assessment u/s 147 / 144 wherein he treated the entire cash deposit of Rs. 39,97,259/- in bank a/c as undisclosed income u/s 68.

5. Aggrieved, the assessee carried matter in appeal to CIT(A) and raised several contentions, both legal and factual, and made detailed submissions. However, the Ld. CIT(A) was not convinced with the submissions of assessee. Finally, the CIT(A) dismissed all contentions/pleadings of assessee.

6. Before us, the assessee has raised several grounds as mentioned in the Appeal-Memos; we are not re-producing the same for the sake of brevity. In Ground-I (including sub-grounds 1 and 2 thereof), the assessee claims that the CIT(A) was not justified in confirming the assessment u/s 144 made by AO in a summary, arbitrary and *ex-parte* manner. In Ground-II (including

sub-grounds 2.1 to 2.8 thereof), the assessee challenges the merit and quantum of addition assessed by AO.

7. With the able assistance of Ld. DR representing the revenue, we have gone through the orders of lower-authorities. On perusal of assessment-order, we observe that in response to the notices issued by AO u/s 148 / 142(1), the assessee did not file any return of income. Further, there were non-compliances of follow-up notices issued by AO u/s 142(1) on various dates. Therefore, the AO ultimately resorted to *ex-parte* assessment u/s 144. Going further to the order of first-appeal passed by CIT(A), we observe that the assessee made following submission in this regard during first-appeal:

***"In continuation with Grounds of Appeal and Statement of Facts, it is most humbly and respectfully submitted as under:***

***"SUBMISSIONS IN BRIEF***

***A. AS REGARDS REASSESSMENT PROCEEDINGS:***

***1. That the reassessment order passed Ex party u/s 144 is arbitrary, unjust and bad in law.***

***That my present place of residence (which was also the same during the reassessment proceedings) is as under:***

***Parsi Mohalla,  
Aishwarya Apartment, Flat no. 402 Chahawani,  
Indore,  
Madhya Pradesh***

***That my previous place of residence was:***

***22/5, Parsi Mohalla,  
Indore.***

***That due to change of address notices for reassessment proceedings could not be served. The aforesaid address has been mentioned in following documents:***

***Bank statement of State Bank of India S.B. Account no. 63016490793  
- Annexure 'A1'***

***Affidavit in support of above is enclosed. -Annexure 'B***

***That the last notice served on the proper address could not be attended due to following reasons:***

***That the daughter of the assessee wedded and got divorce creating distress for the entire family.***

***Against all the odd circumstances the daughter was re-wedded but due to conflicting interest the relationship could not sustain consequently resulting into divorce creating agony for the father and the entire family.***

***In the amid of unfavourable circumstances the assessee was diagnosed with chronic ischemic (blood clot in brain) and had undergone MRI Angiography, ECG (abnormal ECG) the unfavourable circumstances halted all other financial aspects resulting into failure to furnish return.***

***That the Ex-party order passed is without giving proper and reasonable opportunity of being heard. Affidavit in support of above is enclosed - Annexure 'B'***

On perusal of this submission, we find that the initial notices issued by AO could not reach assessee due to change in address. Further, the last notice by AO, though served on proper/new address, but the assessee could not comply with for the reason that the assessee's daughter had divorced and she had to be re-wedded; this caused mental agony for assessee and entire family. Further, the assessee was also diagnosed with chronic ischemic (blood clot in brain) and had undergone MRI Angiography as well as abnormal ECG. The assessee has also filed an affidavit in support of all these untoward happenings. The assessee has explained that due to such onerous circumstances, he could not make compliances of notices issued by AO and thus could not submit the details and documents required for his assessment. We find that the circumstances explained by assessee deserve a judicious consideration. Further, no contrary material has been brought by revenue to rebut/contradict those circumstances, which have been testified by assessee on a duly sworn affidavit file before CIT(A). Faced with this situation and also having regard to the principle of natural justice and fair play and to impart substantial justice to assessee, we deem it most appropriate to remand these matters back to the file of Ld. AO for framing a proper assessment after giving opportunity of hearing to the assessee.

Needless to mention that while framing such assessment, the AO shall not be influenced by earlier order passed by him/CIT(A). The assessee is also directed to ensure participation in the hearings fixed by Ld. AO and supply the details/documents required for a proper assessment.

**8. Resultantly, these appeals of assessee are allowed for statistical purposes.**

*Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on ...../...../2023.*

*Order pronounced in the open court on 21/04/2023.*

Sd/-

(VIJAY PAL RAO)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 21.04.2023

Patel/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*

1.	Date of taking dictation	
2.	Date of typing & draft order 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 approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	