

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.148 & 149/Ind/2023**  
**(Assessment Years:2012-13 )**

Primary Agriculture Credit Society Ghatera, Vidisha (Appellant / Assessee)	Vs.	ITO Vidhisha (Revenue)
<b>PAN: AAAAP 4575G</b>		
Assessee by	Shri Ashish Goyal & Shri N.D. Patwa, ARs	
Revenue by	None	
Date of Hearing	12.09.2023	
Date of Pronouncement	14.09.2023	

**ORDER**

**PER BENCH:**

These appeals by the Revenue are directed against two separate orders dated 26.02.2023 & 21.02.2023 arising from penalty order passed u/s 271(1)(c) and assessment order passed u/s 143(3) of the Act respectively for A.Y.2012-13.

2. Ld. Sr. DR is not present due to his official tour to Ahmedabad and an application for adjournment of hearing has been filed by the ITO, office of CIT-DR. However, at the outset, we note that the impugned orders are passed by the Ld. CIT(A) *ex-parte* and dismissed the appeals of the assessee for non-prosecution. Therefore, the bench proposes to hearing and disposed of these appeals after hearing the Ld. AR of the assessee and going through the orders of the authorities below.

3. First we take up quantum appeal in ITANo.149/Ind/2023 wherein the assessee has raised following grounds of appeal:

*“1. That the Ld. AO was not justified in passing the assessment order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

*2. That the Ld. CIT(A) was not justified in confirming the assessment order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

*3. The Ld. CIT(A) was not justified in providing sufficient opportunity to the appellant to furnish documents or reply in support of the claim and confirming the addition; and Ld. CIT(A) did not decide the appeal on merits.*

*4. The Ld. CIT(A) erred in confirming the penalty of Rs. 1,15,000 u/s. 271(1)(c).”*

4. Ld. AR of the assessee has submitted that the appeal before Ld. CIT(A) was filed by the assessee in 2015 and thereafter the matter was migrated to National Faceless Appeal, Centre vide CBDT notification No.76 dated 25<sup>th</sup> September 2022. The Ld. CIT(A) dismissed the appeal of the assessee for non-prosecution without deciding the same on merits. He has further submitted that since the appeal was filed in 2015 and there is a gap of about 7 to 8 years when the impugned order was passed by the Ld. CIT(A) therefore, due to non-communication of notices issued by the CIT(A) the assessee could not appear/represent before the Ld. CIT(A). Hence he has pleaded that the assessee may be given one more opportunity to present its case before the Ld. CIT(A).

5. Having considered the submissions of the Ld. AR and carefully perusal of the impugned order of the Ld. CIT(A) at the outset, we note that the assessee filed the appeal before the Ld. CIT(A) on 29.10.2015 which was pending before the Ld. CIT(A) till the same was migrated to National Faceless Appeal Centre vide CBDT Notification dated 25.09.2020. Though the Ld. CIT(A) has given the details of the various notices issued to the

assesse from the month of January 2021 to February 2023 however, there is no whisper about the status of the service of the notices issued by the Ld. CIT(A). Further the Ld. CIT(A) has not decided the appeal on merits but dismissed the appeal of the assessee for want of written submissions and evidence. Therefore, it is clear that the order passed by the Ld. CIT(A) is not in accordance with the provisions of section 250(6) of the Act. Accordingly in the facts and circumstances of the case and in the interest of justice the impugned order of the Ld. CIT(A) is set aside and matter is remanded to the record of the Ld. CIT(A) for fresh adjudication on merits by speaking order after giving one more opportunity of hearing to the assessee.

ITANo.149/Ind/2023

6. The assessee has challenged the penalty levied u/s 271(1)(c) of the Act. Since this appeal is consequential to the addition made in the quantum proceedings and therefore, in view of the quantum appeal is set aside to the record of the Ld. CIT(A) for fresh adjudication the appeal arising from the penalty levied u/s 271(1)(c) is also set aside to the record of the Ld. CIT(A) for deciding the same fresh after giving one more opportunity of hearing to assessee and as per the outcome of the set aside quantum appeal.

7. In the result, both appeals filed by the assessee in ITANo.148 & 149/Ind/2023 are allowed for statistical purposes.

Order pronounced in the open court on 14.09.2023

**Sd/-**

**(B.M. BIYANI)**  
Accountant Member

**Indore, 14.09.2023**

**Patel/Sr. PS**

**Sd/-**

**(VIJAY PAL RAO)**  
Judicial Member

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*