

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.354 & 355/Ind/2023**  
**(Assessment Years: 2016-17 & 2017-18)**

Ram Patel 67, Subhash Chowk Sanawad Dist. Khargone (Appellant / Assessee)	Vs.	ACIT Khandwa (Respondent/ Revenue)
<b>PAN: AOBPP0983J</b>		
Assessee by	Shri Venus Rawka AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	29.02.2024	
Date of Pronouncement	29.02.2024	

**ORDER**

**Per Bench :**

These two appeals by the Assessee are directed against two separate orders of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi both dated 28.07.2023 for A.Ys. 2016-17 & 2017-18 respectively. The assessee has raised following grounds of appeal:

**For A.Y.2016-17**

*“1 That the learned CIT(A) erred in law and facts of the case and passed an order on ex parte basis without giving the assessee the opportunity of being heard.*

*2.The learned CIT(A) has erred in law and facts of the case and assessed the total income at Rs. 1,89,90,123/- as against the returned income of 55,87,240/-.*

*3 The learned CIT(A) erred in law in assessing a sum of Rs. 75,00,000/- as income from undisclosed sources. The addition made is totally wrong and illegal on the facts of the case.*

*4.The learned CIT(A) erred in assessing the above income without appreciating that there was no discrepancy in Books of Accounts AND without pointing out the above aspect of incompleteness or incorrectness in Books of Accounts of Assessee.*

*5.The learned CIT(A) erred in relying on the outcome of survey u/s 133A without appreciating that there is no provision of offering additional income during course of survey u/s 133A.*

*6.The learned CIT(A) erred in invoking section 115BBE without appreciating that the documents relied upon contained name and amounts very clearly. Thus provision of section 115BBE does not apply.*

*7 The learned CIT(A) erred in assessing a sum of Rs. 1,14,90,123/- on account of excess stock found during the course of survey without appreciating that there was no discrepancy in the stock which is apparent from the fact that copy of inventory drawn at the time of survey was never provided to the assessee.”*

**For A.Y.2017-18**

*“1 That the learned CIT(A) erred in law and facts of the case and passed an order on ex parte basis without giving the assessee the opportunity of being heard  
2.The learned CIT(A) has erred in law and facts of the case and assessed the total income at Rs. 19,15,280/- as against the returned income of 11,26,380/-.  
3.The learned CIT(A)erred in law and facts of the case and made an addition of Sundry Creditors amounting to Rs. 7,88,900/- by treating it as unexplained money u/s 68 of Income Tax Act 1961. The addition made is totally wrong and illegal on the facts of the case.  
4.That the learned CIT(A)treated addition made under section 68 as unexplained despite of the fact that the said amount was receipt of sale of pesticides and fertilizers and the same was a business receipt. Therefore action taken by Assessing Officer for taxing it under section 68 and levied the tax under section 115BBE which is totally wrong.”*

2. At the time of hearing Ld. AR of the assessee has submitted that the CIT(A) has passed ex-parte order for both the assessment years due to non-participation of the assessee in the proceedings. He has pointed out that the notices issued by the CIT(A) were not received by the assessee due to the reason that the same were sent to the E-mail ID not used by the assessee. He has thus submitted that the assessee may be granted one more opportunity to represent its case before the CIT(A). Ld. AR has pointed out that now the assessee has updated its E-mail ID in the system of the department. Accordingly Ld. AR has pleaded that the impugned order may be set aside and the matter may be remanded to the record of the CIT(A) for afresh adjudication.

3. On the other hand, ld. DR has raised no objection if the matter is remanded to the record of the CIT(A) for fresh adjudication.

4. We have considered rival submission as well as relevant material on record. The CIT(A) has dismissed the appeals of the assessee for A.Ys.2016-17 & 2017-18 by passing an identical orders. The relevant part of the CIT(A) in para 5 is as under:

*“DECISION*

*5.0. During the appellate proceedings, the appellant has only submitted submission in the form of 'Statement of Facts'. After that neither he has replied to hearing notices nor submitted any documentary evidence/information to prove his side. Sufficient and adequate opportunities were afforded to the appellant as indicated at table at serial No. 4. No reply whatsoever has been submitted by the appellant. It can be safely presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer. Thus, the appeal raised by the appellant is dismissed.”*

5. Thus, the appeals of the assessee were dismissed for non-prosecution as no reply was submitted by the assessee to the notices issued by the CIT(A). It is manifest from the impugned order that the CIT(A) has not decided the grounds raised by the assessee on merits but the appeal of the assessee was dismissed due to non-representation and non-prosecution. Ld. AR of the assessee has submitted that the assessee has now updated its E-mail ID with the department and therefore, the assessee will now participate in the proceedings before the CIT(A). Accordingly in the facts and

circumstances of the case when the CIT(A) has dismissed the appeal of the assessee while passing the impugned ex-parte order and the grounds raised by the assessee have not been adjudicated on merits then in the interest of justice the impugned orders of the CIT(A) are set aside and matters are remanded to the record of the CIT(A) for fresh adjudication after giving appropriate opportunity of hearing to the assessee.

6. In the result, both appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on conclusion of hearing on  
29.02.2024.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, \_ 29.02.2024**

**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*