

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER

ITA No.592/Ind/2024
Assessment Year:2007-08

Mukesh Maheshwari 5 Professor Colony, Shyamla Hills Huzur Bhopal	<u>बनाम/</u> Vs.	ITO 1(4) Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: APKPM 9563M		
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	27.01.2025	
Date of Pronouncement	28.02.2025	

आदेश/O R D E R

Per UDAYAN DAS GUPTA, J.M.:

This appeal is filed by the assessee against the order of the Ld CIT (A) NFAC passed u/s 250 of the Act 61 , dated 12/06/2024, which has arisen from the Assessment order of the ITO 1(4), Bhopal, dated 05/03/2015, passed u/s 143(3) of the Act.

2. The grounds of appeal taken by the assessee are as follows:

“1.The ld AO was not justified in passing the 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. The ld CIT(A) was not justified in confirming the 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 ex-parte dismissing the appeal of the appellant, without deciding the appeal on merits, and that a fair and meaningful opportunity was not available to the appellant to present his case.

4.The Id CIT(A) was not justified in confirming the addition of Rs. 20,54,889/- without considering the facts and circumstances of the case.”

3. The facts of the case are that the assessee is an individual who has filed the return of income on 28.03.2008 declaring total income of Rs.7,52,330/- . The assessee has declared income from other sources amounting to Rs.1,36,552/- and LTCG at Rs.6,15,776/- (after claiming exemption u/s 54F of the Act). Subsequently, in course of assessment proceedings the AO noted that the assessee has not disclosed his share of business income of Rs.20,54,889/- .

4. The AO made assessment order in pursuant to the direction of the ITAT, Indore Bench in a connected case of *Shri Vishambar Das Maheshwari, Bhopal*.vide this order, share of business profits of Rs.20,54,889/- has been ascertained in the case of the assessee, which has not been considered in the income returned by the assessee .

5. The matter was carried in first appeal and the Ld CIT (A) NFAC, in absence of any representation from the assessee and in absence of any explanation and submission regarding the source of cash deposits in bank account, dismissed the appeal in *limine* , and in absence of any documentary evidences being filed before him he never had the chance to adjudicate on merits of case .

6. Now the assessee is before the tribunal on the grounds contained in the memorandum of appeal . The Ld AR of the assessee submitted that Ld. CIT(A) was not justified in passing ex-parte order as the same was not an order passed on merits and proper opportunity of hearing was not provided by the Ld first appellate authority , and he prayed for one more opportunity to explain his case with documentary evidences before the first appellate authority.

7. The Ld DR relied on the order of the Ld CIT(A) but admitted that the order has been passed ex-parte by the Ld. CIT(A).

8. We have heard the rival submission and considered the materials on record , and even though notices has been issued through the email id (stated in Form 35) there is no representation by the assessee , and we are of the opinion , that the issue regarding the asseess's share of business income of Rs.20,54,889/- flowing from the order (*relied upon by the AO*) , needs to be satisfactorily explained , with documentary evidences , to the full satisfaction of the Ld. CIT(A). In the instant case no explanation whatsoever , has been filed by the assessee before the Ld. CIT(A).

However, in the interest of justice , considering the fact that the Ld AR of the assessee has appeared in court and prayed for one last opportunity we are of the opinion that another opportunity may be allowed to the assessee , to explain the issue regarding the share of business income of Rs.20,54,889/- and as such we remand the matter back to the Ld.CIT(A), for fresh adjudication on merits of the case after allowing opportunity of being heard to the assessee and the assessee is also directed to file his written submission along all necessary documentary evidences and supporting papers to explain his case before the Ld first appellate authority .

9. As a result the appeal is allowed for statistical purpose.

Order pronounced in the open court on 28.02.2025.

Sd/-

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER
Indore

(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

दिनांक/Dated : 28/02/2025
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

email