

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI PARESH M JOSHI, JUDICIAL MEMBER
AND
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER

ITA No. 557/Ind/2024
Assessment Year: 2014-15

Mohammad Zahoor Qureshi, House No.956, Bagh Farhat Afza Gate Ke Andar, Gali No.2, Near Rajesh Cycle Aishbagh Stadium, Bhopal	<u>बनाम/</u> Vs.	ITO 4(2), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AACPO2965Q		
Assessee by	Shri Rakesh Choudhary, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	03.03.2025	
Date of Pronouncement	17.03.2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an appeal filed by the Assessee Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the Act for sake of convenience and ease) before this Tribunal. The assessee is aggrieved by order bearing Number ITBA/NFAC/S/250/2023-

24/1058506259 (1) dated 06.12.2023 passed by CIT(A) Under Section 250 of the Act which is hereinafter referred to as the “**Impugned order**”. The Relevant Assessment Year is 2014-15 and the corresponding Previous year period is from 01.04.2013 to 31.03.2014. Delay of 176 days is pointed out by the Registry for which sufficient cause is shown in the condonation of delay application which is supported by an affidavit. The Ld. DR has not objected to the same. Delay condoned. Appeal taken for hearing.

2.

FACTUAL MATRIX

2.1 That the assessee had filed his return of income on 26.02.2016 wherein a total income of Rs.2,14,400/- was declared.

2.2 That the return of income was processed u/s 143(1) of the Act.

2.3 That the Department of Income Tax had an information that during the Financial Year 2013-14 the assessee had sold immovable property (Agriculture land) with the boundaries of the

municipality for a sale consideration of **Rs.82,00,000/-** (Rupees Eighty Two lakhs only) whereas the market value of the property was **Rs. 1,16,00,000/-** (One Crore Thirty Two lakhs only).

2.4 That the assessee had purchased another agriculture land situated at Basai, Tehsil Berasia, Bhopal for **Rs.47,65,865/-** against market value of **Rs.1,32,00,000/-** (One Crore Thirty Two Lakhs only).

2.5 That since the assessee did not filed return of Income (**ROI**) the aforesaid facts/information formed the basis of satisfaction to reopen the case Under Section 147 of the Act. That after taking the necessary approval, under the Act, a notice U/s 148 of the Act was accordingly issued to the assessee on 16.03.2019. This notice was served upon the assessee though mail of ITBA, so also by Speed Post on the last known address available in the records of the Income Tax Department.

2.6. That in response to the above mentioned notice the assessee neither filed Return of Income (ROI) nor filed any written reply to the aforesaid notice issued u/s 148 of the Act.

2.7 That notice(s) issued Under Section 142(1) on 23.08.2019, 23.10.2019 & 09.11.2019 too were not complied by the assessee.

2.8 That a Show Cause Notice in terms of Section 144 of the Act came to be issued to the assessee on 16.11.2019 whereby last opportunity of being heard was afforded to the assessee for which hearing was fixed on 16.11.2019, but on that date also nobody attended the hearing nor any written submission was filed by the assessee.

2.9 That in view of the aforesaid facts and circumstance the Ld. A.O was left with no other option but to complete the assessment **as per best judgment** by virtue of provisions contained in **Section 144** of the Act.

2.10 That basis information available with the department the assessee had sold immovable property within municipal area for a sale consideration of Rs.82,00,000/- whereas market value of the property was Rs.1,16,00,000/-. The sale consideration as per **Section 50C** of the Act was taken as Rs.1,16,00,000/- . Further the assessee correspondingly had purchased another land for a consideration of Rs.47,65,865/- against market value

of Rs.1,32,00,000/- on 05.10.2023. In view thereof exemption u/s 54F to the tune of Rs.47,65,865/- was allowed and balance amount of Rs.68,34,135/- (Rs.1,16,00,000/- (-) Rs.47,65,865/-) was treated as undisclosed Long Term Capital Gain and added to the total income of the assessee.

2.11 That assessee had purchased yet another piece of agriculture land for Rs. 47,65,865/- against market value of Rs. 1,32,00,000/- on 05.10.2013 and that by virtue of Section 56(2)(vii)(6) of the Act the assessee ought to have shown Rs. 84,34,135/- (Rs.1,32,00,000/- (-) Rs. 47,65,865/-) as income from other sources which was not done so. Therefore Ld. A.O added **Rs. 84,34,135/-** to the total income of the assessee.

2.12 That Ld. A.O assessed and computed total income as below:-

Total income as per return of income (Return not filed)	Rs.2,14,400/-
Add:- As per para 3	+ Rs.68,34,135/-
Add:- As per para 4	+ Rs.84,34,135/-
Total Income assessed u/s 144/147	Rs.1,52,68,270/-

2.13 That the aforesaid assessment order bears No. 20141070740 is dated 30.11.2019 which is hereinafter referred to as the **"Impugned Assessment Order"** .

2.14 That the assessee being aggrieved by the aforesaid assessment order prefers first appeal u/s 246A of the Act before CIT(A) who by "Impugned Order" has dismissed the appeal.

2.15 That the assessee being aggrieved by the impugned order has filed an appeal before this Tribunal and has raised following grounds of appeal against the impugned order in **Form 36** which are as under:-

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 Ld CIT(A) was not justified in confirming the addition of Rs. 68.34.135/- as Long Term Capital Gain without considering the facts and circumstances of the case.

5. *The Ld CIT(A) was not justified in confirming the addition of Rs. 84,34,135/-as Long Term Capital Gain without considering the facts and circumstances of the case.*

6. *The appellant carves leave to add, amend or modify any of the grounds of appeal".*

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 03.03.2025 when the Ld. AR for and on the behalf of the assessee appeared before us and interalia contended that both the "Impugned Assessment Order " and "Impugned Order" are in violation of principle of natural justice, bad in law and illegal. That the same should be set aside by this Tribunal as no opportunity was afforded before impugned orders came to be passed.

3.2 Per contra Ld. DR fairly conceded that orders of both the lower authorities are indeed violative of principle of natural justice and that they deserves to be set aside on ground of violation of the principles of natural justice.

4. **Observations, findings & conclusions.**

4.1 We now examine the legality, validity and the propriety of the "Impugned Order" **basis** records of the case.

- 4.2 We have carefully perused records of the case and have heard rival contentions.
- 4.3 We observe that “Impugned Assessment Order” is passed u/s 144 of the Act. We observe that prior to the passing of the “Impugned Assessment Order” the Ld. A.O had followed due process of law u/s 148 & 142(1). In fact a show cause notice u/s 144 too was issued. The assessee despite opportunities after opportunities have remained non compliant for reasons best known to him. In first appeal u/s 246A of the Act the Ld. CIT(A) too seems to be have given to the assessee following opportunities which are tabulated as below:-

<i>Date of Notice</i>	<i>Date of compliance</i>	<i>Status</i>
<i>17.03.2020</i>	<i>25.03.2020</i>	<i>No compliance</i>
<i>06.01.2021</i>	<i>21.01.2021</i>	<i>No compliance</i>
<i>03.11.2023 (Final opportunity)</i>	<i>10.11.2023</i>	<i>No compliance</i>

But assessee remained non compliant to the above opportunities too. The Ld. CIT(A) in the impugned order relying upon the judgment of Hon'ble Supreme Court of

India in case of CIT V/s BN Bhattacharya (1997) 118 ITR 461 (SC) and other decisions of ITAT wherein it is held that preferring an appeal means more than formally filing it but **effectively pursuing it.**

4.4 We basis records of the case and the **rival submissions** made before us are of the considered view that there is no doubt that there is no disposal of the assessment in meritorious way and or on merits both before Ld. A.O and Ld. CIT(A). We, therefore are of the considered view that ends of justice requires one more opportunity be afforded to the assessee as by way of final opportunity by the Ld. CIT(A) to enable the assessee to present case on merits. This Tribunal desires meritorious disposal of at least first appeal. In the circumstances we set aside the impugned order and remand back to the file of CIT(A) to pass a fresh order on *denovo* basis. The assessee is simultaneously directed to cooperate with the department and not to seek adjournment unnecessary. Assessee is further directed to place on record of CIT(A) all papers, documents, computation of income etc.

to enable CIT(A) to dispose off 1st appeal in meritorious way by passing a reasoned order and that too as expeditiously as possible.

5. Order

5.1 In the premises set out herein above the impugned order is set aside as and by way of Remand on *Denovo* basis.

5.2 In result appeal of assessee is allowed for statistical purpose.

Order pronounced in open court on 17.03.2025.

Sd/-

Sd/-

(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक /Dated :17/03/2025

Dev/Sr. PS

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore