

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

ITA No. 653 & 654/Ind/2024
Assessment Years: 2018-19 & 2019-20

Aadim Jati Seva Shakari Samiti Marya Khedi Sawliad At khedi, Post Kehdi, Betul	<u>बनाम/</u> Vs.	AO, NFAC, Delhi
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AACTA4243P		
Assessee by	Shri Amol Rangnekar, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	17.03.2025	
Date of Pronouncement	19.03.2025	

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 brevity) before this Tribunal as and by way second appeal. The assessee is aggrieved by order bearing Number ITBA/NFAC/S/ 250/2024-25/1067884031(1) dated 22.08.2024 passed by Ld. CIT(A), passed U/s 250 of the Act which is

hereinafter referred to as the "impugned order". The relevant Assessment Year is 2018-19 and the corresponding previous year period is from 01.04.2017 to 31.03.2018.

2.

FACTUAL MATRIX

2.1 That the department of Income Tax had a specific information that the assessee had carried out following transactions during the financial year 2017-18 relevant to the A.Y. 2018-19:-

(1) Received contractorship receipts u/s 194C at Rs.1,21,121/-

(2) deposited cash in Bank Account of Rs.2,90,44,179/-

(3) Received Commission Income u/s 194H at Rs.3,35,070/-

2.2 Since the assessee had not filed return of income (ROI) for the year under consideration A.Y.2018-19 the above mentioned transactions remained unaccounted.

2.3 That Ld. AO gave opportunities to the assessee, the details of opportunities so give are detailed as follows:-

Adim Jati Seva Sahakari Samiti Mdt. Betul
ITA No. 653 & 654/Ind/2024
A.Y. 2018-19 & 2019-20

Type of notice/communication	Date of notice/communication	Date of compliance given	Response of the assessee received /not received	Date of response if received	Response type (full/part/adjournment)	Remark
148 notice	31.03.2022	-	no	--	--	--
142(1) Notice	27.09.2022	12.10.2022	Not received	--	--	--
142(1) notice AU-1	23.12.2022	5days	Not received			
SCN-144	12.01.2023	19.01.2023	Received	30.01.2023 part	Adjournment	
SCN	06.02.2023	15.02.2023	received	06.02.2023	Part	-

2.4 That Ld. AO in the assessment order has recorded that the assessee has not submitted any details in response to the various notices issued to them (supra).

2.5 That Since no reply was received from the assessee even after giving multiple opportunities (supra) a show cause notice dated 06.02.2023 was issued to the assessee with date of compliance fixed for 15.02.2023. The assessee however, submitted a reply to the show cause notice dated 06.02.2023.

2.6 The Assessee in reply to the aforesaid show cause notice dated 06.02.2023 submitted a copy of bank statement, registration certificate issued by M.P. Cooperative Society Act 1960 and unauthorised copy of form 26AS. It was brought to the notice of the department of Income Tax that the assessee is a primary agriculture credit society and its core business activity is accepting deposit and lending money to the farmers and also carrying the business of banking and credit facilities to its members. The assessee claimed benefit of section 80P of the Act, however, no documentary evidence in form of income and expenditure account, cash book, ledger etc. were submitted by the assessee. The assessee however contended that they are maintaining manual form of cash book, ledger and therefore it was not possible for them to upload scanned images of pages of books of account. The reply, contentions of the assessee were not found to be acceptable for the following reasons:

“1. The assessee has not provided any documentary evidence in support of its claims.

2. The assessee contents that he maintains manual cash book ledger but it is not possible for them to upload the same.

3. The assessee stated that the accounts were duly audited under MP cooperative societies Act 1960 by senior auditor of Government of MP.

4. The assessee has not submitted income & expenditure account to corroborate its claims."

2.7 That the Ld. AO in the assessment order has recorded that save and except Bank statement and Registration Certificate issued by the M.P. Cooperative society Act 1960, no documentary evidence in the form of income & expenditure Account, cash book, ledger has been submitted by the assessee. That the assessee is liable to file ROI & is also liable to get its books of accounts audited further assessee has not even submitted the authorised copy of form 26AS. In brief the assessee has remained totally non-compliant.

2.8 The Ld. AO in the assessment order has drawn conclusion that it undisputed position & fact, that the assessee has credits amounting to Rs.2,95,00,370 including cash deposit of Rs.2,90,44,179/-. The assessee in this regard has submitted that credits so received are business receipt and that it is a Cooperative Society. However, due to lack of details (supra) it would be logical & fair to estimate income of the assessee at 10%

of the credit received in the bank account, as income from business or profession which comes to Rs.29,50,037/-. No deduction u/s 80P of the Act is available to the assessee as no ROI is filed. Finally addition of Rs.29,50,037/- was made u/s 69A & that the assessment was finalised u/s 143(3) r.w.s 147 r.w.s 144B.

2.9 That the aforesaid assessment order of the Ld. AO bears number;- ITBA/AST/S/147/2022-23/1050085882(1) and same is dated 27.09.2022 which is hereinafter referred to as the "Impugned Assessment order".

2.10 That the assessee being aggrieved by the "impugned Assessment Order" prefers first appeal as provided for under the Act u/s 246A before Ld. CIT(A) who by the "Impugned Order" has dismissed the appeal as **not admitted**.

2.11 That the assessee being aggrieved by the "Impugned Order" has preferred present second appeal before this Tribunal against the "Impugned Order" and has raised following grounds of appeal in Form no.36 which are as under:

"1) The learned CIT(A) has erred in law and on facts in dismissing the appeal, stating Appeal fee has not been paid/ Particulars of payment not mentioned, however appeal fees of Rs.1,000/- was paid with below mentioned details, and mentioned in the Form 35 also BSR Code Date Challan No. 0180002 27/05/2023 04110.

2. The learned CIT(A) has erred in law and on facts in dismissing the appeal against assessment order u/s. 144 of the Act dated 24/02/2023 treating it as dismissed for no valid reason has been provided by the appellant for the delay in submission of appeal application, though the appellant has clearly mentioned that, assessee is a primary agriculture credit society, located in remote village of District of Betul, where Internet facility is not available, society use to access the income tax portal only by way of Mobile data, hence regular email access is also not possible, hence assessment order could not be accessed online and came to knowledge of the society only after considerable time, there is no regular board of directors and society is governed by State government Administrators only, hence due to regulatory permission also there is delay in decision of making appeal.

3. The learned CIT(A) has erred in stating that the assessee has failed to follow the department's digitisation process and respond on real time basis, however ignored the implementation of communication infrastructure at rural level.

4. The learned CIT (A) has simply dismissed the appeal summarily without even referring to the elaborate statement of facts and specific issues raised in the grounds of appeal.

5. The Learned CIT (A) has erred in ignoring the Assessee's right to be heard at the hearing of the appeal" and such a right cannot be put against the assessee. The non-exercise of this right by the assessee cannot be a reason enough for the CIT(A)'s not dealing with the points so raised before him on merits. Despite knowing that the assessee society is a Primary agriculture Credit society located in the remote village of the District Betul, where Telecommunication network is barely available, and without verifying the fact of no physical delivery of the hearing notices .the CIT(A) ought to have dealt with the issues so raised by the assessee on merits and to pass order by way of speaking order and in accordance with the law.

6. The Learneed CIT (A) has erred in ignoring the fact that, authority is required to extend opportunity to be heard to the appellant. It has been held in numerous cases that "right to natural justice" is a personal right. A person can waive it, a person may not avail it. Merely because

a person is not availing his right of natural justice, it cannot be a ground of refusal to do statutory duty of deciding appeal.

7. Your Appellant craves to leave, add, amend, alter or modify any of the Ground at the time of final hearing."

3. Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 17.03.2025 when Ld. AR for and on behalf of the assessee appeared before us & inter alia contended that the impugned order is illegal, not proper and is bad in law. It deserves to be set aside by this Tribunal in exercise of its Appellate jurisdiction. The Ld. AR inter alia further contended that while it is true that there was a delay of 65 days in filing the first appeal before Ld. CIT(A) u/s 246A of the Act but they had shown a reasonable & sufficient cause for delay & had requested the Ld. CIT(A) to condone the delay on following grounds/contentions:-

"Sir, assessee is a primary agriculture credit society located in remote village of District of Betul, where internet facility is not available, society use to access the income tax portal only by way of mobile data, hence regular email access is also not possible, hence assessment order could not accessed online and came to know the knowledge of the society only after considerable time, there is not regular board of directors and society is governed by State government Administrators only, hence, due to regulatory

*permission also there is delay in decision of making appeal.
It is kind request to condone the delay of filing the appeal."*

3.2 Ld. CIT(A) in the impugned order has not considered the above contentions & submission of the assessee which was just & reasonable. The Ld. CIT(A) in the impugned order has failed to apply his mind in as much as it is an undisputed position that in the rural areas of State of M.P. there is no proper internet facility. Further day to day affairs of the assessee is being carried out by Administrators appointed by Government of Madhya Pradesh & with the Government nominee coming on scene there are bureaucratic delays too. The Ld. AR finally contended that under the Act there should be meritorious disposal of at least their first appeal and that delay of 65 days is not at all loss. The delay was genuine & bonafide.

3.3 Per contra Ld. DR has not rebutted Ld. AR is contentions & submissions canvassed before us during hearing & has left the issue to be decided by this Tribunal according to law.

4. Observations & findings & conclusions

4.1 We now have to decide the legality, validity and propriety of the "impugned order" basis records of the case.

4.2 We have perused the records of the case and have heard the rival contentions.

4.3 We are of the considered opinion that the Ld. AR has made out a good reasonable and arguable case before us. Since Ld. AR has stated that if one more opportunity is given to us by this Tribunal, they would be able to convenience the Ld. CIT(A) on the issue of condonation of delay of 65 days in preferring the first appeal.

4.4 In the premises self-out hereinabove, we are of the considered opinion that it would be just, fair and convenient and in over all interest of the ends of justice that the impugned order be set aside and matter be relegated back to the file of Ld. CIT(A) to decide first the issue of limitation and then if issue of limitation is decided in affirmative/in favour of assessee on issue of time barring appeal then Ld. CIT(A) would be at full and complete liberty to dispose off the appeal of the assessee on merits too by

passing a reasoned order in meritorious way. This tribunal desired meritorious disposal of at least first appeal of the assessee as that is the legislative intend u/s 250 of the Act.

5.

5.1 In the premises impugned order is set aside as and by way of remand back to the file of the CIT(A) who shall pass a speaking order on merits after giving full complete opportunity to the assessee.

6. Both the parties fairly submitted that the facts and circumstances of other one appeal i.e. ITANo.654/Ind/2024 are exactly identical to the Appeal in ITANo.653/Ind/2024 and similar contentions raised therein may be considered, therefore our findings and directions given in ITANo.653/Ind/2024 shall apply mutatis mutandis to this appeal which is accordingly allowed for statistical purposes.

Order

7. In result both appeals are allowed as and by way of remand back to the file of CIT(A).

8. In result, both appeals are allowed for statistical purpose.

Order pronounced in open court on 19.03.2025.

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक /Dated : 19/03/2025

Patel/Sr. PS

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

By order

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore