

**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. 551/Ind/2024**  
**Assessment Year: 2017-18**

Shri Subhash Chandra Agrawal, 1 Bus stand Sarangi Petlawad Jhabua (Assessee/Appellant)	<b><u>बनाम/</u></b> <b><u>Vs.</u></b>	ITO Jhabua (Revenue/Respondent)
<b>PAN: AGFPA1903K</b>		
Assessee by	Shri Gagan Tiwari, and Ms.Priyal Jain ARs	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	24.03.2025	
Date of Pronouncement	26.03.2025	

**आदेश / ORDER**

**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/ 250/2024-25/1065846373(1) dated 20.06.2024 of Ld. CIT(A), passed U/s 250 of the Act in first appeal preferred u/s 246A of the Act which is hereinafter referred to as the

“impugned order”. The relevant Assessment Year is 2017-18 and the corresponding previous year period is from 01.04.2016 to 31.03.2017.

2.

**FACTUAL MATRIX**

2.1 That the assessee filed return of income (ROI) for the A.Y.2017-18 on 24.01.2018 declaring total income of **Rs.1,65,130/-** and **agriculture income of Rs.1,10,000/-**.

2.2 That the case of the assessee was selected for **complete scrutiny through CASS** on the basis of large cash deposit in the bank accounts during the year consideration.

2.3 That a notice u/s 143(2) dated 21.09.2018 under the Act was issued and served upon the assessee by e-mail and speed post. No compliance was made by the assessee.

2.4 That vide a notice u/s 142(1) dated 02.07.2019 the assessee was called upon to furnish certain information along with details on or before 15.07.2019. The assessee filed compliance on 13.07.2019 which was examined by Ld. AO and kept on record.

2.5 That the assessee was further issued notices u/s 142(1) dated 09.08.2019 and 04.09.2019. The assessee finally furnished reply 05.09.2019 and 27.09.2019 wherein the Bank Statements and copy of proof of agricultural land were filed.

2.6 That as per bank statement and bank letter dated 22.01.2018 the assessee has **deposited cash of Rs.3,20,000/-** in account no.5097351100000028 and Rs.50,000/- in account no.50972510000022 with **Narmada Jhabua Gramin Bank Sarangi** during demonitization period from **09.11.2016** to **30.12.2016**.

2.7 That in view of the above a "show cause" with notice u/s 142(1) dated 07.11.2019 was issued to the assessee calling upon him to show cause and explain about **source of "cash deposits"** in above mentioned bank account (s). In reply on 11.11.2019 the assessee contended that he is engaged in doing trading business of mobiles and mobile accessories. The cash was deposited out of sales proceeds of trading business by single entry. The total deposit is of Rs.370000/- in cash during the period of demonitization.

2.7 That Ld. AO **basis reply** as aforesaid (para 2.5 & 2.7 supra) which was examined carefully came to the conclusion that the assessee had not furnished the supporting documents of his business activity but had only furnished the supporting documents of activities relating to agricultural land. The Ld. AO after examining the ROI, overall facts and circumstances of the case made **addition of Rs.1,50,000/-(estimated)** and added the same to the total income of the assessee. **Total computed income was Rs.3,15,130/-.** (Rs.1,65,130+ 1,50,000).

2.8 That the aforesaid assessment order of Ld. AO bears number:- ITBA/Ast/S/143(3)/2019-20/1020758045(1) and is dated 20.11.2019 which is hereinafter referred to as the **"Impugned Assessment Order"**.

2.9 That the assessee being aggrieved by the aforesaid "impugned Assessment order" prefers first appeal in terms of section 246A of the Act before CIT(A) who by the "Impugned Order" has dismissed the appeal of the assessee and **has enhanced the returned income of the assessee by Rs.3,20,000/-.**

2.10 That the assessee being aggrieved by the impugned Order” has preferred present appeal before us and has raised following grounds of appeal in form 36 which are as under:

*“1. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law and also in breach of principle of natural justice.*

*1.1 That the CIT(A) has erred in passing order without application of mind.*

*2. That the CIT(A) has erred in deciding the appeal without calling/downloading the replies submitted by the appellant during assessment proceedings and thus ignoring the vital documents such as, cash book, bank statement and thus the order of CIT(A) is against the principles of natural justice.*

*2.1 The CIT(A) has erred in law and in facts in confirming the assessment order passed by the AO assessing the total income at Rs. 4,85,130/- as against returned income of Rs. 1,65,130/-*

*3. The Ld. CIT (A) erred in enhancing the total income of appellant without following the statutory provision which clearly provides for issue of notice and grant of proper opportunity of hearing before enhancing any income of the Assessee.*

*4. That the CIT(A) erred in confirming the addition of Rs 3,20,000/- u/s 69A without appreciating the written Submission & replies filed during the proceedings.*

*4.1 That the CIT (A) has erred in confirming the addition u/s 69A without appreciating that provision of Section 69A is not applicable in case of cash deposit made from trading activity. Thus the provision of section 69A is not applicable and has wrongly been invoked.*

*5. The appellant craves permission to raise additional grounds and to amend or alter the foregoing ground before the appeal is finally decided."*

3. Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 24.03.2025 when the Ld. AR for and on behalf of the assessee appeared before us and interalia contended that the "Impugned Order" is bad in law, illegal and not proper and that the same deserves to be set aside by this Tribunal. **The sheet anchor of the argument of Ld. AR was that it was just not open for the Id. CIT(A) to have enhanced the assessed total income to Rs.4,85,130/-(ROI= Rs.1,65,130 +Rs.3,20,000/- (enhanced amount by Ld. CIT(A)).** The action on part of Ld. CIT(A) by enhancing the income is totally arbitrary and capacious, as no opportunity was provided by Ld. CIT(A) before doing so in the "Impugned Order". The Ld. AR then contended that the assessee is a very small business-cum-agriculturist. The assessee is a senior citizen too. The Ld. AR fairly stated that the cash was deposited in bank in which he had loan account too. Ld. AR brought to our attention instruction no:-3/2017 dated

21.02.2017 which is at page 9 to 14 of paper book. The Ld. AR **basis** instructions (supra) contended that since **original addition is of Rs.1.5 lakh** as per "Impugned Assessment order" a lenient view is required to be taken and Government in its collective wisdom has taken a conscious decision not to touch those cases where amount of cash deposit is less than 2.5 lakhs. The Ld. AR has placed reliance on few decision of ITAT which are enclosed in the paper book. Per contra Ld. DR appearing for and on behalf of revenue has contended that orders of lower authority are legal and correct. The Id. DR however, looking to over all facts and the circumstances of the case left it to this Tribunal to pass such order as it thinks fit and proper but in accordance with law.

4. Observations & findings & conclusions

4.1 We have adjudicate and adjudicate this present second appeal before us basis records of the case.

4.2 We have carefully perused the records of the case and have heard rival submissions of both Ld. AR as well as Ld. DR patiently. We are of the considered view that the "Impugned

Order” has enhanced the total assessed income to Rs.4,85,130/- whereas original assessed income as “Impugned Assessment Order was Rs.3,15,130/-. Ld. AO had made **addition** of only Rs.1.5 lakh whereas Ld. CIT(A) has made addition of **Rs.3,20,000/-** without giving any opportunity or notice to the assessee herein which approach in our respectful view is totally illegal and bad in law. We hold that by virtue of the provision contained in **section 251(2) of the Act** it is not open for Ld. CIT(A) to enhance the assessment unless the assessee has been given a reasonable opportunity of showing cause against such enhancement. Nothing is brought on record by Ld. DR to demonstrate before us that such an opportunity in terms of section 251(2) of the Act was indeed given to the assessee before the Impugned order was passed.

4.3 In the premises we have no hesitation in holding that Impugned order is illegal and bad in law. It is indeed contrary to the statutory scheme u/s 251(2) of the Act. Even otherwise addition of Rs.1.5 lakh made in the Impugned Assessment order is **basis estimation**. The addition is therefore made on conjectures, surmises and presumption. The assessee is an agriculturist too

has not been contested seriously by Ld. DR. The subject bank is a rural bank used by the assessee both for loans and deposit.

4.4 In the Premises, we, therefore, set aside the Impugned Order and allow the appeal of the assessee.

5.

**Order**

5.2. In result, appeal of assessee is allowed.

**Order pronounced in open court on 26.03.2025.**

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)  
ACCOUNTANT MEMBER

(PARESH M JOSHI)  
JUDICIAL MEMBER

**Indore**

दिनांक /Dated : 26/03/2025  
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