

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'बी' बेंच, हैदराबाद  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' B ' Bench, Hyderabad**

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री मधुसूदन सावडिया, माननीय लेखा सदस्य  
**SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**  
**AND**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आयकर अपीलसं./I.T.A.Nos.55 to 61/Hyd/2025  
(निर्धारण वर्ष/ Assessment Years : 2014-15 to 2020-21)

Mohammed Imran Patni, Hyderabad.  PAN : AKYPP5711B <b>(अपीलार्थी/ Appellant)</b>	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 1(1), Hyderabad.  <b>(प्रत्यर्थी/ Respondent)</b>
--	-----	--

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Mohd. Afzal, Advocate.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Sachin Kumar, Sr.D.R.
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	21.04.2025
घोषणा की तारीख/ Date of Pronouncement	:	23.04.2025

**ORDER**

प्रति रवीश सूद, जे.एम./PER RAVISH SOOD, J.M.

The captioned appeals filed by the assessee are directed against the respective orders passed by the Commissioner of Income Tax (Appeals), Hyderabad – 11 dated 18.11.2024, which in turn arises from the respective orders passed by the Assessing

Officer (for short "A.O.") under Section 153C of the Income Tax Act, 1961 (for short "the Act"), dated 31.03.2023. As common issues are involved in all these appeals, therefore, the same are being taken up and disposed of vide this consolidated order.

2. We shall first take up the appeal filed by the assessee for A.Y. 2014-15 in ITA No.55/Hyd/2025 wherein the impugned order has been assailed on the following grounds of appeal before us:

“1. The order of the learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence, and probabilities of the case.

2. The learned Commissioner ought to have appreciated that the assessee opted not to communicate by email; in spite of that, notice under section 250 was served by email only. Therefore, the same is against the spirit of Form No.35, and the order passed under section 250 is to be held as invalid for not serving the notice as per the communication preference opted by the assessee.

3. The learned Commissioner ought to have appreciated that the alleged cash payment towards rent amounting to ₹3,98,700/- may have been paid by the proprietary concern Bombay Andhra Transport Organization, Proprietor Noor Mohammed Patni (father of the assessee). Therefore, the addition made in the hands of Mohammed Imran Patni is an invalid addition.

4. The learned Commissioner ought to have appreciated that notice under section 153C was issued to the assessee in the capacity of Imran Patni, individual, and not as Imran Patni, legal representative of Noor Mohammed Patni. Therefore, the notice and the order passed under section 153C are invalid on account of not having been issued in the correct legal capacity.

5. The learned Commissioner ought to have appreciated that there is no seized material in the nature of money, bullion,

jewellery, or other valuable article or thing belonging to the assessee, nor any books of accounts or documents seized that relate to the assessee. Therefore, notice under section 153C is invalid and consequently, the order based on such invalid notice is also to be held invalid.

6. The learned Commissioner ought to have appreciated that the search took place on 28.01.2020 in the case of the Polisetty Somasundaram Group, and the assessment made on 31.03.2023 is beyond the time limits prescribed under section 153B(1) of the Income Tax Act. Therefore, the order under section 153C is to be held as invalid.

7. The learned Commissioner ought to have appreciated that Mohammed Imran Patni was the Proprietor of Monarch Cargo Movers during the period relevant to the subject assessment and not the Proprietor of Bombay Andhra Transport Organization. Therefore, the notice issued under section 153C and the subsequent order are invalid.

8. The learned Commissioner ought to have appreciated that the assessee, Mohammed Imran Patni, was not a tenant of the firm M/s Polisetty Somasundaram. Therefore, the learned Commissioner erred in confirming the order of the Assessing Officer, wherein it was assumed that the assessee paid ₹3,98,700/- towards rent in cash, which is not recorded in the books of the assessee.

9. The learned Commissioner erred in confirming the order of the Assessing Officer, wherein an amount of ₹1,00,000/- was disallowed under section 80C of the Income Tax Act.”

3. Succinctly stated, the assessee had filed his return of income for A.Y. 2014-15 on 12.11.2014 declaring an income of Rs.12,70,760/-.

4. Search and seizure operations u/s 132 of the Act were conducted in the case of M/s. Polisetty Somasundaram on 28.01.2020. During the course of search proceedings, certain

incriminating material was found and seized, viz., (i). 30 cash vouchers seized vide Annexure A/PSS/CORP/2, 3, 4, 6 & 7; and (ii). Unaccounted cash book seized vide Annexure A/PSS /CORP/18 containing 64 entries on various dates reflecting cash transactions between the assessee and M/s. Polisetty Somasundaram.

5. On a perusal of the seized material, the A.O. observed that the assessee was a tenant in one of the properties belonging to the searched concern, viz., M/s. Polisetty Somasundaram (supra), and had paid the rent to the latter outside his books of accounts. Shri Polisetty Shyam Sunder, Managing partner of the searched party in his statement recorded u/s 132(4) of the Act admitted that the transactions with the assessee concern, viz. M/s. Bombay Andhra Transport Organization were not recorded in its regular books of accounts. Accordingly, the A.O. based on the aforesaid fact, issued notice u/s 153C of the Act to the assessee for the year under consideration, which however initially remained uncompiled with. Subsequently, the assessee pursuant to the notices u/s 142(1) of the Act filed his return of income for A.Y. 2014-15 disclosing his income at Rs.12,70,760/- i.e., as was originally returned.

6. During the course of the assessment proceedings, the A.O. issued summons to Shri Polisetty Shyam Sundar (supra), wherein the latter due to his ill-health could not participate and authorized Shri Yeluri Chandra Sekhar Rao to put up an appearance on his behalf. Shri Yeluri Chandra Sekhar Rao (supra) in his statement recorded before the AO on 10.03.2023 accepted that the firm viz., M/s. Polisetty Somasundaram had received cash from the assessee. On being confronted, the assessee submitted that his father viz., late Shri Noor Mohammad Patni was the Proprietor of the concern, viz M/s. Bombay Andhra Transport Organization, which was a tenant of M/s. Polisetty Somasundaram during the F.Y. 2013-14 and F.Y. 2014-15. The assessee though tried to distance himself from the transactions with M/s. Polisetty Somasundaram (supra) on the ground that he was unaware of the same, but the A.O. noticed that the assessee had in his submissions himself claimed that the business of his father was transferred to him. Also, the AO observed that the transactions were recorded in the books of accounts of M/s. Polisetty Somasundaram on the PAN of the assessee. Accordingly, the A.O. in the absence of any explanation forthcoming from the assessee held the cash payments of Rs. 3,98,700/- made towards rent by

the assessee to M/s. Polisetty Somasundaram as an unexplained expenditure u/s 69C of the Act. The A.O. based on his aforesaid deliberations vide his order passed u/s 153C of the Act dated 31.03.2023 determined the income of the assessee at Rs.17,69,460/-.

7. Aggrieved, the assessee carried the matter in appeal before the CIT(A). As the assessee despite having been afforded sufficient opportunity had failed to participate in the proceedings before the CIT(A), therefore, the latter dismissed the appeal for want of prosecution. For the sake of clarity, the observations of the CIT(A) are culled out as under:

**6. Decision:**

6.1. The appellant filed original return of income for A.Y. 2014-15 on 12.11.2014 declaring total income of Rs. 12,70,760/-. He filed original return of income for A.Y. 2015-16 on 26.10.2015 declaring total income of Rs. 16,41,900/-. A search & seizure operation u/s. 132 of the IT Act, 1961 (hereinafter called 'Act') was conducted in the case of M/s Polisetty Somasundaram on 28.01.2020. During the course of search conducted at the premises of M/s Polisetty Somasundaram, certain material was found and seized. 30 cash vouchers were seized vide Annexure A/PSS/CORP/2, 3, 4, 6 & 7. Unaccounted cash book seized vide Annexure A/PSS/CORP/18 contained 64 entries on various dates reflecting cash transactions between the appellant and M/s Polisetty Somasundaram. From the seized material, it was noticed that appellant is a tenant in one of the properties belonging to the firm M/s Polisetty Somasundaram and rent was paid to M/s Polisetty Somasundaram outside books of accounts. Sri. Polisetty Shyam Sunder in sworn statement recorded u/s. 132(4) admitted that the transactions with M/s Bombay Andhra Transport Organizations are outside the regular books of account. Accordingly, notice u/s. 153C of the Act was issued to the appellant for both the impugned A.Ys. 2014-15 and 2015-16 to which the appellant had not responded. Subsequently, notices u/s. 142(1) were issued. In response, appellant filed return of income for A.Y. 2014-15 with returned income of Rs. 12,70,760/- and for A.Y. 2015-16 with returned income of Rs. 16,41,880/-. Thereafter, AO issued summons to Sri Polisetty Shyam Sunder, Managing Partner of M/s Polisetty Somasundaram in response to which his authorized representative Sri Yeluri Chandra Sekhar Rao appeared and, in statement, recorded on 10.03.2023 Sri Chandra Sekhar Rao accepted that the firm M/s Polisetty Somasundaram had received cash from the appellant. During scrutiny proceedings, the appellant submitted that Late Noor Mohammad Patni (father of the appellant) was the proprietor of M/s Bombay Andhra Transport and M/s Bombay Andhra Transport was tenant of M/s Polisetty Somasundaram during the F.Ys. 2013-14 and 2014-15. Further, appellant submitted that he was not aware of the transactions made with M/s Polisetty Somasundaram by M/s Bombay Andhra Transport. However, AO noticed from the submissions that the appellant himself had submitted that the business of his father was transferred to him and further, AO also noticed that in the books of M/s Polisetty Somasundaram, the transactions were recorded on the PAN of the appellant. Further, AO relied upon the decisions of Hon'ble Courts in CIT Vs. V. Rukmini [2011] 12 taxmann.com 52 and CIT Vs. Madhukant M Mehta [2022] 124 taxmann.com 130 and held that the appellate is the legal heir/representative assessee of Late Noor Mohammed Patni. Accordingly, following additions were made:

- (i) **For A.Y. 2014-15:** Payment of rent of Rs. 3,98,700/- as unexplained

**Assessment Year 2015-16**

Date	Remarks
11.04.2023	Appeal filed.
06.06.2023	The appeal notice was sent to through Mail mentioned in Form No. 35 and the case was fixed for hearing on 13.06.2023
13.06.2023	No compliance.
25.07.2023	Fresh hearing notice with DOH on 02.08.2023, issued.
02.08.2023	No compliance.
14.09.2023	Fresh hearing notice with DOH on 21.09.2023, issued.
21.09.2023	No compliance.
18.10.2023	Fresh hearing notice with DOH on 25.10.2023, issued.
25.10.2023	No compliance.
08.12.2023	Fresh hearing notice with DOH on 15.12.2023, issued.
15.12.2023	No compliance.
21.03.2024	Fresh hearing notice with DOH on 10.04.2024, issued.
10.04.2024	No compliance.
13.06.2024	Fresh hearing notice with DOH on 19.06.2024 issued.
19.06.2024	No compliance.
30.09.2024	Fresh hearing notice with DOH on 15.10.2024, issued.
15.10.2024	No compliance.

6.3. However, neither appellant nor Authorized Representative submitted explanation / details in support of the grounds of appeal raised in the appeal memorandum. The appellant failed to furnish submissions to the undersigned and substantiate its grounds of appeal with evidences. Several opportunities, as tabulated above, have been granted in the interest of natural justice.

6.4. The Hon'ble MP High Court in Estate of Late Tukojirao Holkar v. CIT, 223 ITR 480(MP) has held that if a party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of paper books so as to enable hearing of the reference, the court is not bound to answer the reference. Similar view has also been taken in the case of CIT v. Multiplan (India) Pvt. Ltd., 38 ITD 320 (Del). Following the ratio of Multiplan (India) Ltd (supra), the Chennai Tribunal has also dismissed appeal for non-prosecution in the case of M/s Helios and

Matheson Information Technology Ltd v ITO in ITA No.134/Mds/2011 dated 5.7.2011 for A.Y.2006-07. It is pertinent to add here that the laws assist those who are vigilant and not those who sleep over their rights. This principle is embodied in the well-known maxim "**Vigilantibus Non Dormientibus Jura Subveniunt**".

6.5. In view of the non-compliance and also in view of the fact that the statement of fact and the grounds of appeal are not substantiated by any proper statement or evidence, the appeal is liable to be dismissed.

6.6. Duly following the principles of natural justice, appellant was given several opportunities to present his case and submit documents in support of grounds of appeal. To none of the notices mentioned in the above table, the appellant has responded. It is a clear case, wherein appellant chose not to furnish details in support of grounds of appeal. In view of this and in the circumstances brought in as above, the appeals filed by the appellant for the impugned A.Ys 2014-15 and 2015-16 are dismissed.

6.7. In the result the **appeals are dismissed for non-prosecution.**

8. The assessee, being aggrieved with the order of the CIT(A), has carried the matter in appeal before us.

9. Shri Mohd. Afzal, Advocate, the Learned Authorized Representative (for short "Ld.AR") for the assessee, at the threshold of hearing of the appeal, submitted that the CIT(A) had disposed of the appeal without validly putting the assessee to notice about the fixation of the same. Elaborating on his contention, the Id. AR submitted that though the assessee had in his "Memorandum of Appeal" i.e., Form No.35 specifically opted out of receipt of notices/communication from the office of CIT(A), through e-mail, but a perusal of the latter's order revealed that on

no occasion, any hard/physical copy of any notice intimating the fixation of appeal was ever served upon him. Carrying his contention further, the ld.AR submitted that as the assessee for no fault on his part had remained divested of an opportunity of putting up his case before the CIT(A), therefore, the latter's order cannot be sustained and is liable to be struck down on the said count itself.

10. Alternatively, the ld.AR submitted that as the CIT(A) merely for want of prosecution had dismissed the appeal vide a non-speaking order and had not adverted to the issues based on which the impugned order of assessment was assailed before him, therefore, for the said reason also, the order passed by him cannot be sustained and is liable to be vacated.

11. Per contra, Dr. Sachin Kumar, learned Senior Departmental Representative (for short the "Ld. DR") relied upon the orders of the lower authorities. The Ld. DR submitted that as the assessee despite sufficient opportunity has failed to participate in the proceedings before the first appellate authority, therefore, the latter was constrained to dispose of the appeal for want of prosecution.

12. We have heard the Learned Authorized Representatives of both the parties in the backdrop of the orders of the lower authorities, and the material available on record.

13. Admittedly, it is a matter of fact borne from the record that the assessee in his "Memorandum of Appeal" i.e., Form No.35 has specifically opted out of service of notices/communication from the office of CIT(A) through email. For the sake of clarity, the relevant extract of Form No.35 is culled out as under:

Personal Information :	
Name of Entity	MOHAMMED IMRAN PATNI
PAN	AKYPP5711B
TAN	-
Address	9-4-77/3/4/B, Yousuf Tekri ColonyGolconda, Toli Chowki S.O, HYDERABAD, Telangana, INDIA, 500008
Mobile No.	8801318865
STD code	
Landline No.	
Email Address	mohdtaher1955@gmail.com
Whether notices/communication may be sent on email?	No

14. As stated by Id.AR and rightly so, we find that despite the fact that the assessee had opted out of service of notice/communication from the office of CIT(A) through email, but

on neither of the occasions any hard/physical copy of notice intimating the fixation of the appeal was ever served upon him. Although, it is the Ld. DR's claim that there is no mechanism for carrying out service of notices otherwise than through e-mail, but we are unable to persuade ourselves to concur with the same. As an assessee-appellant at the stage of filing an appeal before the CIT(A) is provided with an option in the "Memorandum of Appeal" i.e Form No. 35 regarding the mode of service of notice/communication, therefore, the aforesaid contention of the Ld. DR being devoid and bereft of any substance cannot be accepted.

15. Be that as it may, we further find that the CIT(A) while disposing of the appeal had failed to advert to the specific grounds of appeal based on which the impugned order was assailed by the assessee before him and has simply dismissed the appeal for want of prosecution.

16. We are unable to concur with the manner in which the appeal had been disposed of by the CIT(A) vide a non-speaking order. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs.**

**Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom).**

In the aforementioned case the Hon'ble High Court had observed as under:

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of s. 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under s. 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non- prosecution of the appeal by the assessee. This is amply clear from the s. 251(1)(a) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."

17. Based on our aforesaid deliberations, we are of the considered view that as the assessee in the present case in the absence of any notice having been served upon him intimating the fixation of hearing of the appeal, had remained divested of an to participate in the assessment proceedings and put forth his case before the CIT(A), therefore, the matter in all fairness requires to be restored to his file with a direction to re-adjudicate the same. The CIT(A) is directed to re-adjudicate the appeal vide a speaking order qua the issues based on which the impugned order of assessment has been assailed before him. Needless to say, the CIT(A) shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee. As we have restored the matter to the file of the CIT(A) for fresh adjudication, therefore, we refrain from adverting to the merits of the case which are left open.

18. Resultantly, the appeal filed by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

**ITA Nos.56 to 61/Hyd/2025 for A.Ys. 2015-16 to 2020-21**

19. As the facts and the issue involved in all these appeals remain the same as were there before us in the assessee's appeal

for A.Ys.2014-15 in ITA No.55/Hyd/2025, therefore, the order therein passed shall apply *mutatis mutandis* for disposing of these appeals i.e ITA Nos.56 to 61/Hyd/2025 for A.Ys. 2015-16 to 2020-21.

20. In the result, all these appeals are allowed for statistical purposes in terms of our aforesaid observations.

21. To sum up, all the captioned appeals of the assessee are allowed for statistical purposes in terms of our aforesaid observations.

23<sup>rd</sup> अप्रैल 2025 को खुली अदालत में सुनाया गया आदेश।

Order pronounced in the Open Court on 23<sup>rd</sup> April, 2025.

Sd/- (श्री मधुसूदन सावडिया) (MADHUSUDAN SAWDIA) लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (श्री रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER
---	---

Hyderabad, dated 23.04.2025.

\*\*\*#TYNM/sps

**आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Mohammed Imran Patni, 9-4-77/3/4/B, Yousuf Tekdi Toli Chowki, Hyderabad – 500012, Telangana.
2.	राजस्व/ The Revenue	:	The Deputy Commissioner of Income Tax, Central Circle – 1(1), Hyderabad.
3.	The Principal Commissioner of Income Tax (Central), Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Hyderabad.