

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

ITA No.889/Ind/2024
Assessment Year:2017-18

Rupesh Jaiswal H.N.24, Deepak Nagar Indore (Assessee/Appellant)	<u>बनाम/</u> <u>Vs.</u>	ITO 5(2) Indore (Revenue/Respondent)
PAN: AEOPJ3576L		
Assessee by	Shri S.S. Deshpande with Ayushi Garg, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.04.2025	
Date of Pronouncement	28.04.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first-appeal dated 09.02.2024 passed by learned Commissioner of Income-Tax (Appeals)-Addl/JCIT(A)-2, Gurugram ["CIT(A)"] which in turn arises out of assessment-order dated 26.09.2019 passed by learned ITO-Ward 5(2), Indore ["AO"] u/s 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on the grounds mentioned in Appeal Memo (Form No. 36).

2. Ld. AR for assessee submits that the CIT(A), while conducting first-appeal, has served notices of hearing on e-mail although the assessee has specifically mentioned "No" in the column provided in Form No. 35 asking "*Whether notices/communication may be sent on email?*". Therefore, the assessee demanded physical hearing from CIT(A) but against the demand of assessee, the CIT(A) issued notices of hearing through e-mail. Furthermore, the CIT(A) has sent those notices of hearing to e-mail address: ramramsharma1930@gmail.com which the assessee's counsel (who filed first-appeal) mentioned in Form No. 35 but the counsel of assessee never made assessee aware of any of the notices or communications issued by Income-tax Department in connection with proceedings. Therefore, the assessee did not receive any notice of hearing fixed by CIT(A) and could not attend the hearings fixed by CIT(A), which has led to the passing of *ex-parte* order by CIT(A).

3. Ld. AR further submits that section 250(6) of the Income-tax Act, 1961 provides "*The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*". But, however, the Ld. CIT(A) has dismissed assessee's appeal although due to non-prosecution by assessee on the dates of hearing but still without complying with the mandate of section 250(6). Therefore, the impugned order of first appeal passed by Ld. CIT(A) deserves to be set aside and the matter requires a fresh adjudication by CIT(A).

4. Ld. AR, however, draws us to assessment-order to show that the AO has also passed assessment-order u/s 144 wherein the total income has been assessed at Rs. 10,90,515/- by treating (i) the deposits of Rs. 10,00,000/- made in bank a/cs during demonetization-period as unexplained money u/s 69A and (ii) further adding an estimated income of Rs. 90,515/- @ 10% of Rs. 9,05,159/- on credit entries in assessee's bank a/c during the previous year 2016-17 relevant to AY 2017-18 under consideration. He submitted that the AO has made such assessment since the assessee was not able to represent his case before AO but the assessee has subsequently compiled/collected all details/documents and is ready to represent case before AO. Therefore, in the situation, it would be better to restore this case to the file of AO instead of CIT(A) for a proper examination and adjudication.

5. Ld. DR for revenue instantly agrees with the prayer of Ld. AR to remand this matter back to the file of AO but, however, makes a request to direct the assessee to represent his case before AO and do not seek unnecessary adjournments.

6. Considering above submissions and also having regard to the principle of natural justice and fair play, we deem it fit to remand this matter back to the file of AO for adjudication afresh, at the risk and responsibility of assessee. The AO shall give necessary opportunity of hearing to assessee and pass an appropriate order uninfluenced by his earlier order. The assessee is also directed to ensure participation in the

hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law. Ordered accordingly.

7. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 28/04/2025

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 28/04/2025

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