

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.902/Ind/2024 (AY: 2017-18)

Anita Kesari, 101, Ankur Ally Apartment, Sch.No.54, Satya Sai Circle, Indore (PAN: ATOPK2918A)	बना म/ Vs.	Income Tax Officer 5(2), Bhopal
(Appellant)		(Revenue)
Assessee by	Shri Mahendra Mittal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.04.2025	
Date of Pronouncement	29.04.2025	

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 **brevery**) before this Tribunal as and by way of Second appeal under the Act. The assessee is aggrieved by the order bearing Number ITBA/NFAC/S/250/2024-25/1070654633(1) dated 26.11.2024 passed by Ld. CIT(A) u/s 250 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 as and by way of an assessment order made **u/s 147 r.w.s. 144 of the Act** the assessee's total assessed income was computed at Rs.41,12,740/-. Additions were made to the return of income. That the assessment order bears No.ITBA/AST/S/147/2023-24/10530310 and that same is dated 23.01.2023 **u/s 147 r.w.s. 144 of the Act** which is hereinafter referred to as the "**Impugned Assessment Order**". Originally assessee derived income from petrol pump but later on business was closed due to loss.

2.2 That the assessee being aggrieved by the aforesaid "**Impugned Assessment order**" prefers first appeal u/s 246A of the Act before Ld. CIT(A) who by the "**Impugned order**" has dismissed the appeal of the assessee on grounds specified therein.

2.3 That the assessee being aggrieved by the "**Impugned order**" has preferred the instant second appeal before this Tribunal and has raised following grounds of appeal in Form No.36 against the "**Impugned order**" which are as under:-

“1. On the facts and in the circumstances of the case the Ld.C.I.T. (Appeals) (NFAC) erred in upholding the assessment order passed by Id. A.O. by making assessment u/s 144 of Act, without considering the fact and materials available on record.

2. On the facts and in the circumstances of the case the Ld. C.L.T.(Appeals) (NFAC) erred in upholding the assessment order passed by Ld. A.O. by making addition of Rs. 37,67,000/-without providing opportunity of being heard to the appellant.

3. On the facts and in the circumstances of the case the Ld. C.I.T. (Appeals) (NFAC) erred in upholding the non-speaking order passed by Id. A.O. u/s 147 r.w.s. 144 of the Act.

4. The appellant seeks permission to add, to alter and/or amend the above statement of facts and grounds of appeal as and when necessary”.

3.

Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 24.04.2025 when Ld. AR for and on behalf of the assessee appeared before us and interalia stated and contended that the **“Impugned Order”** is illegal, bad in law, and not proper. It is in violation of the principles of natural justice. Therefore the **“Impugned Order”** deserves to be set aside. It was contended by the Ld. AR that no notice or communication with regard to opportunity was ever received by the assessee. In Form No.35

she had provided e-mail of **her daughter** as shwetakesari165@gmail.com. That all the notice(s) from office of Ld. CIT(A) came in **very short span of time** i.e. 14.09.2024, 24.09.2024, 08.10.2024, 15.10.2024, 31.10.2024 and 13.11.2024 but unfortunately her daughter could not check her **In mail box** consequently there was no communication to assessee by her daughter about **"opportunities"** provided to assessee by Ld. CIT(A). Assessee thus remained **non complaint** due to **fault of her daughter** which error was a bonafide and not a deliberate one. Hence no communication with regard to hearing was ever received by assessee due to above lapse and hence no opportunity of hearing could be availed off by the assessee due to bonafide reasons (supra).

3.2 Per contra Ld. DR for and on behalf of the Revenue contended that Revenue has no objection if the **"Impugned order"** is set aside and matter is remanded back to the file of Ld. A.O for *denovo* adjudication and adjudgement as original assessment is too u/s 144 of the Act.

4. Observations, findings & conclusions.

4.1 We now have to decide the legality, validity and the propriety of the "**Impugned Order**" basis records of the case and rival contentions canvassed before us.

4.2 We have carefully perused the records of the case.

4.3 We basis records of the case and after hearing and further upon examining the contentions, are of the considered opinion that "**Impugned order**" has just not examined merits of the case as contemplated by law u/s 250(6) of the Act and further though opportunity of hearing was afforded to the assessee but due to bonafide reasons she could not avail the same. Under these circumstances we set aside the "**Impugned order**" and remand the case back to the file of Ld. A.O to pass a fresh order on *Denovo basis* after giving reasonable opportunity to the assessee to present case. Assessee to cooperate with the Income Tax Department and not to seek any adjournment.

5.

Order

5.1 The impugned order is set aside as and by way of remand back to the file of Ld. A.O on *denovo basis*.

5.2 Appeal of the assessee is allowed for statistical purpose.

Order pronounced in open court on 29.04.2025.

Sd/-

Sd/-

**(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER**

**(PARESH M JOSHI)
JUDICIAL MEMBER**

Indore

दिनांक/ Dated : 29/04/2025

Dev/Sr. PS

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

By order
Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore