

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.855/Ind/2024 (AY: 2010-11)

Piyush Sharma, B 03, Nikhil Bunglows, Phase III, Near Vrindavan Garden, Hoshngabad, Bhopal (PAN: AIUPP4609A)	<u>बना</u> <u>म/</u> <u>Vs.</u>	Income Tax Officer, 2(3), Bhopal
(Appellant)		(Revenue)
Assessee by	S.S. Deshpande, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.04.2025	
Date of Pronouncement	30.04.2025	

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 **breivty**) 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/250/2024-25/1070419657(1) dated 18.11.2024 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 2010-11 and the corresponding previous year period is from 01.04.2009 to 31.03.2010.

2. **FACTUAL MATRIX**

2.1 That during the Financial Year 2009-10,(Assessment Year 2010-11) the Income tax Department had a credible information that the assessee had **deposited sum of Rs.25,13,000/- in saving bank account.**

2.2 That the assessee had filed return of income for the Assessment Year 2010-11 on **15.10.2010** declaring an income of Rs.7,97,490/-.

2.3 That thereafter a notice u/s 148 of the Act was issued on 22.03.2017 and that the same was duly served upon the assessee. The assessee however did not file return of income in response to the notice u/s 148 of the Act. Notice U/s 142(1) of the Act was issued on 31.10.2017 fixing the case for hearing on 13.11.2017. Notice u/s 142(1) of the Income Tax Act, 1961 was issued on 23.08.2018 fixing the case for hearing on 05.09.2018. On change of incumbent, notice u/s 142(1) of the Income Tax Act, 1961 alongwith a questionnaire was issued on 29.10. 2018 fixing

the case for hearing on 05.11.2018, **but no one attended nor any written submission was filed.**

2.4 Non compliance to the aforementioned notice(s) and letters compelled the Ld. A.O to ask the assessee to show cause as to why an assessment order u/s 144 of the Income Tax Act, 1961 “to the best of judgment on the basis of information available on record” should not be passed. As such a show cause was sent to the assessee on 12.11.2018 fixing the case for hearing on 19.11.2018. Again, on the given date no one attended nor any written submission was filed.

2.5 That from the above, it is evident that the assessee had been provided many opportunities, **but, he neither attended nor caused to produce the desired information.** It appears that the assessee is **not interested to avail the opportunities of being heard provided to him by the aforementioned notices/letters/show cause for completion of assessment for the A.Y. 2010-11.** In these circumstances, no option was left before Ld. A.O but to invoke the provisions of section 144 of the Income Tax Act, 1961 and to make the assessment to the best of judgment on the basis of information available on record.

2.6 That during the year under consideration assessee had deposited **Rs. 25,13,000/-** in his saving bank account. In spite of so many opportunities accorded to the assessee wherein it had been categorically requested to the assessee to explain the sources of **cash deposit** amounting to Rs 25,13,000/ during the F.Y. 2009-10 relevant to A.Y. 2010-11 alongwith the supporting evidences for the perusal of the undersigned. **But the assessee has not taken any interest to explain the source of cash deposit in his saving bank account.** As a result whole of the cash deposit amounting to Rs. 25,13,000/- is being treated as **unexplained money** and was added to the total income of the assessee.

2.7 The Ld. A.O basis aforesaid determined the assessee total income of the assessee at Rs.33,10,480/-. The addition of Rs.25,13,000/- was made to the return of income of Rs.7,97,490/-.

2.8 That the impugned assessment order of Ld. A.O is dated 11.12.2018 which is hereinafter referred to as the "**impugned assessment order**".

2.9 That the assessee being aggrieved by the **“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 and reasons specified therein.**

2.10 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 enumerated as under:-

“1. That on the facts and in the circumstances of the case of the assessee, the CIT(A) was not justified in passing the appeal order without providing the assessee adequate opportunity of being heard.

2. That on the facts and in the circumstances of the case of the assessee, the CIT(A) was not justified in dismissing the appeal without adjudicating on the merits of the case.

3. The assessee craves leave to add, alter amend or withdraw any ground of appeal on or before the time of hearing.”

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 contended that the **“impugned order”** is illegal, bad in law and not proper. It is passed in the

violation of the principles of natural justice. The “impugned order” deserves to be set aside. The Ld. AR has placed on record of this Tribunal a paper book from pages 1 to 33 wherein certain additional/supplementary contentions on real nature of controversy has been brought to the notice of this Tribunal. These submissions are stated as below:-

- I. *“(i) The assessee is a permanent resident of Bhopal, have his permanent office at Bhopal and all his ITR since inception has been filed at Bhopal and all previous assessments have been completed by the Assessing Officers based at Bhopal.*
(ii) The assessee is in the business of civil constructions and takes such contracts through out the state, however receipts of all such contracts are accounted for, in the books maintained at Bhopal and the ITR filed with the Jurisdictional AO based at Bhopal.
(iii) In continuation of his business, the assessee received a contract at Rewa and to execute such contract he opened a temporary office at Rewa and to facilitate timely credits of contract receipts and payments to suppliers, he opened a bank account also at Rewa.
(iv) However, the office and the bank account were closed once the contract was complete. Thereafter the assessee had no office, address or employee at Rewa.
(v) The assessee during that time was residing at Indrapuri, Bhopal, M.P and was assessed with ITO 3(1) Bhopal. The assessee filed his return of income on 15.10.2010 for assessment year 2010-11 with ITO 3(1), Bhopal declaring total income of Rs 8,87,485/-.”
- II. *“(i) ITO 3(1), Bhopal the jurisdictional AO received information through AIR that the assessee has made an investment in purchase of property for RS. 59,38,000/-. On receipt of such information ITO 3(1), Bhopal initiated proceedings u/s 147 by issue of notice on 27.03.2017. The said notice was issued*

after obtaining approval of PCIT-2, Bhopal dated 23.03.2017. The said notice was served on the assessee, due compliances were made by the assessee and after satisfying himself the ITO 3(1), Bhopal passed an order u/s 143(3)/147 on 26.07.2017 wherein the returned income was accepted and no addition was made. Demand note was issued displaying demand payable as NIL.

(ii) The assessee was not aware of any other proceedings pending against him during that period. Subsequently the assessee received a notice u/s 154 from ITO 2(1), Bhopal proposing rectification of mistake in order passed for A.Y 2010-11 u/s 144/147 on 11.12.2018.

(iii) The AO was informed that the notice has been wrongly issued as no order was passed on 11.12.2018 and/or u/s 144 on the assessee and the order was passed u/s 143(3)/147 on 26.07.2017 in which no demand was raised and no mistake has occurred."

III. (i) During subsequent interaction with the department the assessee came to know that ITO-Ward-2, Rewa has initiated proceedings u/s 147 on 22.03.2017 and no person attended the IT proceeding at any stage of the assessment and the AO passed an order u/s 144/147 on 11.12.2018 making addition of RS. 25,13,000/- and raising consequential demand.

(ii) After coming to know about these simultaneous proceedings and the order passed the assessee communicated with the department and obtained a copy of the assessment order passed and filed the present appeal before your good self".

IV. In light of above facts the assessee now contends before this Tribunal as follows following legal grounds which are as under:-

"1. Ground No 1: That on the facts and in the circumstances of the case of the assessee the initiation of proceedings under section 147/144 was illegal, invalid and bad in law and consequential assessment order is also illegal and invalid. The submission on this ground of appeal is merged in our submission in Ground 2

2. Ground No 2: That on the facts and in the circumstances of the case the notice issued under section 147 is without jurisdiction.

The assessee during that period was residing at 190, B Sector, Indrapuri, Raisen Road, Bhopal and have been submitting his ITR with ITO Bhopal since inception. The jurisdiction of the assessee had always been with PCIT- Bhopal and the return of the assessee for all past years including the year under consideration and in subsequent years was with assessing officers at Bhopal. Even at the time of issue of notice by the AO on 22.03.2017 the jurisdiction of the assessee was with PCIT-2, Bhopal as could be verified from the fact that PCIT-2, Bhopal accorded sanction for initiation of proceedings u/s 147 for the same year on 23.03.2017.

- *The assessment of the assessee for A.Y 2005-06 was completed by ACIT 3(1), Bhopal u/s 143(3) vide his order dated 20.12.2007.*
- *The assessment of the assessee for A. Y 2009-10 was completed by ITO 3(1), Bhopal u/s 143(3) vide his order dated 30.10.2012.*
- *The ITR for A.Y 2010-11 was filed by the assessee with DCIT/ACIT 3, Bhopal*
- *The order u/s 143(3)/147 for A.Y 2010-11 was completed by ITO 3(1); Bhopal vide his order dated 26.07.2017.*
- *Proceedings u/s 154 for rectification of mistake in the order passed by ITO Ward-3, Rewa was also undertaken by ITO 2(3), Bhopal*

- *The order for A.Y 2013-14 and 2014-15 was completed by the DCIT 5(1), Bhopal u/s 143(3) vide their order dated 12.02.2016 and 30.11.2016 respectively.*

Thus, it would be appreciated that the jurisdiction of the assessee at all times (prior to the assessment year under consideration, during the year under consideration as well as in subsequent years as also the period when proceedings u/s 148 were initiated) vested with the offices of Income Tax Department at Bhopal. The AO passing the order under consideration has also acknowledged that the assessee has filed his ITR on 15.10.2010, (which was filed by the assessee before DCIT/ACIT-3, Bhopal). Thus, the AO at Rewa had no jurisdiction in the case of the assessee.

The AO has stated in his order that the notice issued u/s 147 was served. however, this statement of the AO is not correct. No notice was ever served on the assessee and the assessee at no stage was aware of the proceedings initiated by

the AO at Rewa. This is obvious from the fact that once the notices issued by the department (ITO_3(2), Bhopal) was served on the assessee the assessee had promptly furnished all information and made all required compliances and there was no reason for the assessee not to have taken up this notice also. Even the assessment order was never served on the assessee.

Thus, the assessee never got an opportunity to challenge the jurisdiction of the ITO Rewa.

As would be obvious from the aforesaid facts that the ITO at Rewa had no jurisdiction to initiate any proceedings in the case of the assessee, consequently the initiation of proceedings and completion of assessment are illegal and invalid and are requested to be cancelled.

3. Ground No 3: That on the facts and in the circumstances of the case the assessment is invalid as no notice was ever served on the assessee.

The AO in the order has stated that notice u/s 148 was issued on 22.03.2017 and was served on the assessee. This statement of the AO is factually incorrect. No notice was ever served on the assessee and even the assessment order was not served on the assessee. It seems that the AO has issued notice u/s 148, all subsequent notices and the order passed u/s 144 on the address mentioned in the assessment order (5-2, Bhandari Complex, Dwarika Nagar, Rewa). This address in torn seems to have been copied from the address mentioned in the bank records, The said address was used as the office of the assessee when he was executing a contract at Rewa and was closed in 2014. After 2014 no office was running from that premises and as such the premises are locked since then. Thus, no notice could have been served on that address.

It may be submitted that the assessee had never filed any ITR with the Department mentioning the said address as its place of residence, business or otherwise and the said address is also not the address appearing in the PAN records of the assessee.

The assessee requests your good self to direct the AO to submit the proof of service of the notice on the assessee.

As no notice for initiation of proceedings was served on the assessee, the initiation of proceedings may kindly be held as illegal and invalid.

4. Ground No 4: That on the facts and in the circumstances of the case the assessment is invalid as no notice under section 143 (2) was ever issued.

This ground is not pressed.

5. Ground No 5: That on the facts and in the circumstances of the case the learned assessing officer was not justified in making addition of Rs 25,13,000.00,

It has been held by various courts that if no other contrary evidence is in possession of the revenue department about the utilization of cash for some other purpose than the re deposit of cash in the bank out of the previous withdrawal cannot be ruled out.

Reference in this regard may be made to the judgment of Rajasthan High Court in the case of Sindh Medical Store vs CIT (2015) 117 DTR (Raj) 78 wherein it was held by the court that "when any amount is paid, later withdrawn from the books, would be available for recycling and rotation, unless otherwise established as invested elsewhere by the revenue".

Reference in this regards may also be made to the decision of the Gujarat High Court in the case of CIT v Rajshibhai Meraman bhai Odedara (2014) 108 DTR 0265 wherein the court has agreed to the proposition that cash deposited out of income and withdrawals made from the bank account was correctly accepted as explained.

The Delhi Tribunal in the case of ACIT vs Buldev Raj Charla & Othrs (2009) 121 TTJ 366 and the Ahmedabad Bench of ITAT in the case of Saurin Nandkumar Shodhan vs ITO in ITA No 2075 /Ahd/ 2012 in its decision dated 30.04.2013 held that "if revenue has not established that cash available was utilized elsewhere than on basis of preponderance of probabilities, it can be assumed that that very cash was re deposited in bank".

Similar finding has been given by the Jurisdictional Indore bench of the ITAT in the case of Dr. Ashok Sharma (2017) 31 ITJ 385, Varjinder Singh Chabra v DCIT (2019) 36 ITJ

424(Indore) in its judgment dated 14.10.2019 and by the Jabalpur bench of the ITAT in the case of Smt. Sushma Singh v ITO (2017) 31 ITJ 603.

Thus the cash deposits of the assessee are all out of recorded sources and the addition made is requested to be deleted”.

3.2 Per contra Ld. DR has contended that in view of submissions now made before this Tribunal it would be just fair and convenient that the whole gamut of the case be re-examined afresh by Ld. CIT(A).

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 upon examining the contentions are of the considered opinion that **“Impugned order”** must be set aside and all the contentions canvassed before us in form of paper book filed before us be refiled before the Ld. CIT(A) **in a manner known to law who shall deal with the same in appropriate manner by following**

due process of law and then shall pass a fresh order on *denovo basis*.

4.4 In the premises set out herein above we set aside the “impugned order” as and by way of remand *on denovo basis*.

5. Order

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

5.2 Appeal of the assessee is allowed for statistical purpose.

Order pronounced in open court on 30.04.2025.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक/ Dated : 30/04/2025

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