

**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.734/Ind/2024 (AY: 2014-15)**

Nepal Singh Kushwah, B-157, LIG Colony, Indore  <b>(PAN: AKUPK8255H)</b>	<b><u>बना</u></b> <b><u>म/</u></b> <b><u>Vs.</u></b>	CIT(A), NFAC, Delhi
(Appellant)		(Revenue)
Assessee by	Shri Milind Wadhvani, 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/250/2023-24/1061037770(1) dated 16.02.2024 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 2014-15 and the corresponding previous year period is from 01.04.2013 to 31.03.2014.

2.

**FACTUAL MATRIX**

2.1 That as and by way of an assessment order made U/s 147/143(3) of the Act, the assessee's total assessed income was computed at **Rs.47,94,070/-**. Additions were made to the return of income. That the assessment order is dated **10.12.2018** which is hereinafter referred to as the "**impugned Assessment order**".

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 1<sup>st</sup> appeal of the assessee on grounds specified therein.

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

*"1.The addition of Rs. 40,00,000/- to the appellant's income was made without providing an opportunity to cross-examine Mr. Saurabh (Sonu) Agrawal, whose initial statement formed the basis of the addition. The right to cross-examine a person*

*whose testimony is relied upon is a fundamental principle of natural justice. Courts have repeatedly held that a failure to provide such an opportunity violates the principles of fairness, and any addition made under such circumstances should be struck down.*

*2. The entire addition is based on the statement given by Mr. Agrawal during the search proceedings, which he later retracted in a sworn affidavit. The appellant submits that this statement, made under duress, cannot form the sole basis for an addition, especially when the person retracts it and clarifies the actual position under oath. Judicial precedents affirm that retracted statements hold little probative value unless supported by independent corroborating evidence, which is absent in this case.*

*3. The addition of Rs. 40,00,000/- is based solely on a loose paper found at the premises of Mr. Agrawal and his retracted statement. The AO failed to corroborate this information with any substantive, independent evidence such as bank statements, financial records, or other documentation that could validate the existence of such a loan transaction. Courts have consistently ruled that additions based on mere suspicion or unsubstantiated third-party statements are not sustainable.*

*4. The affidavit filed by Mr. Agrawal, dated 12/10/2018, categorically states that his earlier statement implicating the appellant was made under fear and duress. The AO completely ignored this affidavit without providing any reasons or conducting further investigation. The Hon'ble Supreme Court has held that when a sworn affidavit contradicts earlier statements, it must be examined, and if found credible, it should override previous contradictory evidence.*

*5. The appellant's financial records for the relevant financial year (FY 2013-14) do not reflect any transaction of Rs. 40,00,000/- or any financial dealing with Mr. Agrawal. The AO has not identified any such entry in the appellant's books of account or any evidence to show that the appellant had this amount of cash available to lend during the relevant period.*

*6. In the assessment of Mr. Agrawal, conducted under section 153A of the Income Tax Act for the same assessment year, the alleged loan of Rs. 40,00,000/- was not added to his income. This indicates that the department itself did not consider the*

*loan to be real or valid in the hands of the recipient, yet the same amount was arbitrarily added to the appellant's income. This inconsistency highlights a contradiction in the department's approach.*

*7. The addition of Rs. 40,00,000/- was based on a loose paper found at Mr. Agrawal's premises. It is settled law that loose sheets or unsubstantiated documents, without corroborative evidence, cannot be used as conclusive evidence to make an addition to the income of any person. The Hon'ble Supreme Court has held in multiple cases that loose papers are not admissible unless backed by substantive and credible evidence.*

*8. The department did not provide any valid explanation for its failure to consider the affidavit submitted by Mr. Agrawal, retracting his earlier statement. The Hon'ble CIT(A) has observed in several cases that an affidavit cannot be dismissed without inquiry or evidence to the contrary. Ignoring this affidavit without proper examination amounts to a violation of due process and weakens the department's case.*

*9. The AO has not established a direct link between the appellant and the alleged cash loan. The assertion that the appellant provided cash to Mr. Agrawal lacks any concrete proof, making the allegation speculative. The absence of a clear connection further weakens the case against the appellant.*

*10. Judicial pronouncements, such as in M/s. M. A. Jaleel vs. ITO, emphasize the right to cross-examine witnesses whose statements adversely affect a taxpayer. The failure to allow this right in the present case further infringes upon the appellant's rights and calls into question the integrity of the assessment.*

*11. Given the above grounds, the appellant requests a reasonable opportunity to put its case before the lower authority, which aligns with principle of natural justice. The appellant seeks relief from the unwarranted addition of Rs. 40,00,000/- to his income and requests the appeal to be allowed in favor of the taxpayer."*

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 at the outset and at the threshold contended that there is a delay of 176 days in preferring the present appeal. In the application for condonation of delay explanation is first given about exparte nature of the **"Impugned Order"**. It was brought to our notice that in **Form No. 35** it was stated expressly that notice(s) should be send on [Cariteshjain10@gmail.com](mailto:Cariteshjain10@gmail.com) and **not on Indorencs@gmail.com**. No notices and **"impugned order"** however came on [Cariteshjain10@gmail.com](mailto:Cariteshjain10@gmail.com). It was further contended that when jurisdictional Assessing Officer initiated recovery proceedings vide letter dated 13.08.2024 which came by post on 24.08.2024 the assessee contacted his erstwhile counsel learnt that the 1<sup>st</sup> appeal is dismissed by **"impugned order"** due to non appearance. Thereafter the present second appeal was filed on 09.10.2024 **albeit with a delay**. Reliance was placed on an affidavit of ertwhile counsel Shri Niranjan Purandare which too supports the contentions of the assessee on the delay. We have perused the condonation of delay application on page 25 to 26 of paper book filed wherein total delay calculated is of **8**

**months (235 days).** Per contra Ld. DR has not seriously contested the delay part. After hearing both the Ld. AR & Ld. DR and so also after carefully perusing condonation of delay application, affidavits placed on record and examining the rival contentions we are of the considered view that assessee has shown reasonable and sufficient cause hence **we condone the delay and admit the appeal.**

3.2 Thereafter Ld. AR for and on behalf of the assessee contended that the **"impugned order"** under challenge is bad in law, illegal and not proper. It is in violation of the principles of natural justice. The **"impugned order"** deserves to be set aside. It was contended by the Ld. AR that no notice(s) with regard to **"opportunities"** were ever received. In **Form No.35** the assessee had provided e-mail id as [cariteshjain10@gmail.com](mailto:cariteshjain10@gmail.com) whereas department served notice(s) at email id [indorencs@gmail.com](mailto:indorencs@gmail.com) the necessary proof in this regard was **tendered across bar**. A perusal of same shows that email address on which notice(s) were sent was [indorencs@gmail.com](mailto:indorencs@gmail.com) and not [cariteshjain10@gmail.com](mailto:cariteshjain10@gmail.com) where infact notice(s) from office of Ld. CIT(A) ought to have come. But unfortunately that did not happens.

Consequently opportunity notice(s) dated 29.01.2021, 03.10.2023, 16.10.2023, 17.10.2023 and 24.01.2024 remained uncomplished with by the assessee. Therefore no opportunity **in effective manner** was provided to the assessee and hence **"impugned order"** deserves to be set aside as being in the violation of the principles of natural justice. Per contra Ld. DR for and on behalf of Revenue has agreed with the contention of Ld. AR on issues raised by him. In rejoinder Ld. AR has repeated and reiterated that no communication with regard to hearings/opportunities were ever received by the assessee on e-mail provided in Form No.35 (supra) consequently **no effective hearing on merits could take place** and hence **"impugned order"** should be set aside, in order to meet ends of justice.

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 so also upon examining the contentions are of the considered opinion that **"Impugned order"** has just not examined the merits of the case which assessee could have presented had the notice(s) of opportunities would have come to him on correct e-mail address as provided in Form No.35. In any event the **"impugned order"** is in violation of the principles of natural justice as none of the notice(s) (supra) was received by the assessee. Under these circumstances we set aside the **"impugned order"** and remand the case back to the file of Ld. CIT(A) to pass a fresh order on *denovo basis* after giving a reasonable opportunity to the assessee to present case. The assessee to cooperate with the Income Tax Department and not to seek any unnecessary adjournment. The Ld. CIT(A) is expected to pass a detailed reasoned and speaking order according to law by following due process of law.

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