

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

**ITA No.800/Ind/2024 (AY: 2018-19)**

Shashi Prabha Singhania, 8, Shastri Nagar, Neemuch <b>(PAN: ABWPS2140L)</b> (Appellant)	<b><u>बनाम/</u></b> Vs.	Income Tax Officer, Neemuch  (Revenue)
Assessee by	Shri Arpit Gaur, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	29.04.2025	
Date of Pronouncement	05.05.2025	

**आदेश / O R D E R**

**Per Paresh M Joshi, J.M.:**

The assessee has filed the present appeal Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the "**Act**" for sake of **brevity**) 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/250/2024-25/1065972504(1) dated 24.06.2024 of the Ld. CIT(A) passed u/s 250 of the Act which is hereinafter referred to as the "**Impugned order**". The relevant Assessment Year is 2018-19 and the corresponding previous year period is from 01.04.2017 to 31.03.2018.

2.

**FACTUAL MATRIX**

2.1 That the case of the assessee was selected for complete scrutiny assessment order e-assessment scheme, 2019 on the following issues:-

<b><u>S.No.</u></b>	<b><u>Issues</u></b>
<b>(i)</b>	<b>Refund claim</b>
<b>(ii)</b>	<b>Capital Gain/Income on sale of property</b>

2.2 That the assessee is an individual and had e filed her original return of income in ITR3 for Assessment Year 2018-19 on 31.08.2018 declaring the total income of Rs.8,46,690/- after claiming the deduction of Rs.10,000/- under Chapter VI-A. That later on the assessee **revised the return** on 08.09.2019 by reducing the total income to Rs.6,74,520/- after claiming deduction of Rs.1,82,066/- **under Chapter VI-A.**

2.3 That the case was selected for **complete scrutiny**. Since the assessee had filed her return of Income for AY-2018-19, a notice u/s 143(2) of the I.T Act was issued to the assessee on 22.09.2019 for conducting the assessment proceedings. The assessee did not submit any letter in response to notice u/s 143(2). Accordingly a

notice u/s 142(1) of the I.T. Act was issued to the assessee on 18.12.2000 requiring to furnish or cause to be furnished certain documents/details specified therein. The assessee did not make any response to the said notice. Therefore another letter was issued to assessee on 06.01.2021 requesting to submit the details called for in the notice dated 18.12.2020. The assessee vide letter dated 24.01.2021 electronically furnished the details in the ITBA system.

2.4 That during the course of scrutiny E-proceedings the assessee submitted a reply along with computation of income, supporting documents for claim of deduction U/s 80C, few Bank statements & copy of purchase and sale deeds. The assessee's reply in response to notice u/s 142(1) and the relevant part is reproduced as under:

- \*1. During the year, assessee is engaged in stocking and trading of Gerlic.*
- 2. Copy of computation of income is enclosed for your kind perusal.*
- 3. The assessee has claimed deduction u/s 80C at R.1,50,000/-and u/s 80D at Rs.22,066/-. The supporting documents are enclosed herewith for your kind perusal.*
- 4. The assessee has unabsorbed losses from under Heed house property at Rs 393,700/- and same is set off during the year.*

7. The assessee has deposited Advance tax during the year at Rs.2,00,000/- and IT refund is claimed out of advance tax.

8. All the bank statement is enclosed for your kind perusal

9. The details as required in para is submitted hereunder:

<i>i. Description of the property sold.</i>	<i>Agriculture land bearing S.No. 47/2, 49-19, 59/4 &amp; 49/Mean-6 Total area 0.212. ½ areas sold to two parties viz Murtaza and Yusufali.</i>
<i>ii. Sale consideration</i>	<i>36,84,000/- Sold to Murtaza 36,84,000/- sold to Yusufali</i>
<i>iii. Fair market value</i>	<i>36,84,000/- Sold to Murtaza 36,84,000/- sold to Yusufali</i>
<i>iv. Date of purchase of above property &amp; cost of purchase</i>	<i>16.03.2012 Rs. 19,11,622/-</i>
<i>v. TDS</i>	<i>Not applicable being the agriculture land.</i>
<i>vi. Cost of purchase deed of above two property</i>	<i>Purchase deed is one for 0.242 hectare and 1/2 sold to Murtaza and 1/2 sold to Yusufali.</i>
<i>vii. Cost of improvement</i>	<i>Nil</i>
<i>viii. Calculation of capital gain</i>	<i>Nil</i>

*Copy of purchase deed and sale deed is enclosed for your kind perusal. The said land is situated at village Bharbhadia and more than 6 kms from the local limits of Municipality of Neemuch. The population of Neemuch more than 10,000 but less than 1,00,000. Further there is no cantonment area or having population of more than 10,000. The area is not notified too. Hence capital gain is Nil being agriculture land.*

*11. Due to technical mistake deduction under chapter VI-A was remains to claim in ITR, hence revised."*

2.5 That the above reply of the assessee is perused. On examination of the documents it is noticed that the assessee is having trading business under the name and style-M/s Jagdish

Trading company. She has declared **profit u/s 44AD @35.37%** of profit i.e. 6,42,021/-. But the assessee has not submitted the relevant books of account such as balance sheet, profit and loss account or capital account for verification. Further Income from house property to the tune of Rs.2,52,000/- has been declared due to let out of two houses. The assessee has claimed a total deduction of Rs.1,82,066/- due to **80C** of Rs.1,50,000/- and **80D** of Rs.22,066/- and **80TTA** of Rs. 10,000/-. **Against this claim of deduction the assessee has provided documentary evidence in support for 80C. The claim of 80D could not be verified.** Further it is noticed that as per specific information available, the assessee has also made transaction with respect to Non-agricultural land having transaction amount of Rs.73,68,000/- which was effected on 08.01.2018. In view of the same, another letter was issued to assessee on 05.02.2021 for further clarification and submissions of details.

2.6 That the assessee vide letter dated 06.02.2021 submitted electronically a reply stating that ***"During the year I had not sold any Non agricultural land and also copy of Mediclaim***

*was submitted for verification. On the basis of the reply and the submissions it was noticed that the assessee in actual had made sale of two Non-agricultural land having survey Number 47/2, 59/4 & 49/19, 49 respectively and which was situated in Neemuch Bharbhadia, Nagarpalika Neemuch. On verification of the population of Neemuch it is found to be having approximately around 8,00,000/- population density. Further from the sale deed copy submitted by the assessee it could be seen that the stamp duty paid by the assessee is Rs.2,39,460/- for each of the Non agricultural lands. The assessee has received a total consideration of Rs.36,84,000/- for each Non agricultural lands. From the stamp duty value of Rs.2,39,460/- it is clear that the rate of the said properties required to be Rs.47,89,200/-. In view of the same, a letter of opportunity was issued to assessee on 15.02.2021 for explaining as to why the amount of Rs.47,89,200/- should not be considered as sale consideration in terms of the provisions of section 50C(1) of the Income Tax Act."*

2.7 The assessee vide reply dated 16.02.2021 received electronically on -16.02.20121 stated ***"We have gone through the entire sale deed and not in a position that how the amount of Rs.47,89,200/- for each sale deed has been determined. The sale deed was executed by us for sale value of Rs.36,84,000/- and Id. Registrar has also applied the DLC Value of Rs.36,84,000/-"***, The reply of the assessee is considered. On verification it is seen that the total stamp duty paid against the **both the properties** is Rs.2,39,460/- and therefore the stamp duty **on each property is Rs.1,84,200/-**. Hence the value of the property by stamp authorities for sale works to as follows:

Registration Number	Sale consideration	Stamp duty Amount	Value of property
MP279462018A1014263	Rs.36,84,000/-	Rs.1,84,200/-	Rs.36,84,000/-
MP279462018A1014353	Rs.36,84,000/-	Rs.1,84,200/-	Rs.36,84,000/-

From the above details it is observed that the assessee has not undervalued the properties however the assessee has not paid

the Long term capital gain arising out of the sale from the said properties.

2.8 In view of the above findings, a show cause notice dated 05.03.2021 was issued to the assessee giving an opportunity as to why the long term capital gain should not be taxable **as the assessee had not declared the Long term capital gain arising due to the sale of two lands to two people for a sale consideration of Rs.36,84,000/- for each property aggregating to Rs.72,68,000/-** and for the fact that no agricultural details are provided by the assessee and also no agricultural income is shown in the ROI filed by assessee in the earlier period prior to sale of the land. The assessee was requested to submit the reply either accepting the proposed modification or file written reply objecting to the proposed modification on or before 18.03.2021. **The assessee did not submit any response to the showcause notice till the date of passing of order. In view of the above circumstances it is presumed that the assessee has no objection and therefore the case is decided on the merits and above findings.**

2.9 The above lands sold by the assessee is Non-Agriculture land. However, the assessee in the reply submitted on 20.01.2021 had held that the said lands were agricultural land and further it was situated at village Bharbhadia and it is more than 6kms away from local limits of municipality of Neemuch and

that the population of Neemuch is less than 1,00,000/-. Hence capital gain is nil being Agricultural land. **There is no evidence** that the sale instances given by the assessee is for agriculture land. The assessee has not given any copy of 7/12 to validate that the sale is made for agricultural land. Further on examination of the sale deed the said land were situated in Nagarpalika Neemuch and the registration of the lands were by Sub registrar Neemuch. The population of Neemuch is approximately 8,00,000/- which is contradiction to the claim made by the assessee. The assessee has not declared any capital gain by citing the above lands as agricultural lands. This is not accepted due to the above foregoing discussion. **Hence the long term capital gain is computed:**

S.No.	Property Reg.no.	Long term capital gain
1	MP279462018A1014263	Sale consideration Rs.36,84,000/- Less:Indexed cost of acquisition <u>Rs.25,99,806/-</u> (as per working given below) Long term capital gain = Rs.10,84,194/-
2	MP279462018A1014353	Sale consideration Rs.36,84,000/- Less:Indexed cost of acquisition <u>Rs.25,99,806/-</u> (as per working given below) Long term capital gain = Rs.10,84,194/-

Thus, Long term capital gain of Rs. 21,68,388/- is taxable and added to the total income.

2.10 On verification of the computation of the income provided by the assessee it is seen that the assessee has claimed a loss of

House property which is brought forward from earlier AY-2013-14 amounting to Rs.93,700/-. The assessee has set off the brought forward loss of Rs.93,700/- aggregating Income from house property, Profits and gains due to business, and income from other sources. In this case the Loss from House Property has not been adjusted in the same year, such loss will be carried forward to the next year and allowed to be set off with income arising other the same head i.e. House Property.

It should be noted while setting off the Loss under head House Property in the same year, it can be set-off with any other head of income but in case the loss is being carried forward to the next assessment year, **it can only be set-off against incomes arising under the same head ie. Income from House Property only.** Thus the assessee claim of loss of set off of House property requires to be reworked as under:

Income from House property for AY-2018-19.....	Rs.2,52,000/-
Less: Loss from house property set off carried	
from AY-2013-14	..... <u>Rs. 0.93.700/-</u>
Total House property income.	<u>Rs. 1.58.300/-</u>

2.11 That the Ld. A.O basis above computed total income of the assessee as follows:

Income from House property....	Rs. 1,58,300/-	
Business income....	Rs.6,42,021/-	
Income from other sources...	<u>Rs.56.265/-</u>	
		Rs.8,56,586/
Add: Long term capital gain as per para 6 above		<u>Rs.21.68.388/-</u>
GROSS TOTAL ASSESSED INCOME		<u><b>Rs.30,24,974/-</b></u>

Long term capital gain of Rs.21,68,388/- to be taxed separately

2.12 That the aforesaid assessment order of Ld. A.O bears No.ITBA/AST/S/143(3)/2020-21/1031627237(1) and is dated 20.03.2021 which is hereinafter referred to as the "**impugned assessment order**".

2.13 That the assessee being aggrieved by the aforesaid "**impugned assessment order**" prefers first appeal before Ld.

CIT(A) who by “**impugned order**” has **dismissed** the 1<sup>st</sup> appeal of the assessee on reasons stated therein.

2.14 That the assessee being aggrieved by the “**impugned order**” has preferred this 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. The Ld. AO has erred in treating the Ag. Land into Non Agriculture Land In spite of clear finding given in the Sale deed and the same is on record and Ld. CIT(A) has erred in confirming the same without appreciating the facts available on record*

*2. The Ld. AO has erred in treating the population of entire District as population of only Neemuch City without appreciating the facts and Ld. CIT(A) has erred in confirming the same.*

*3. The Ld. AO has erred in not allowing the Deduction under Chapter VI for Rs 1,82,066/- without assigning any reasons while the same had been allowed in processing of ITR.*

*4. The Ld. CIT(A) has erred in deciding the appeal in limine without discussion on merits and records available on record.*

*5. Your appellant craves leave to add, alter, modify or withdraw any of the grounds of appeal on or before the date of hearing”*

3. **Record of Hearing**

3.1 At the outset and at threshold in respect of **delay of 76 days** as pointed out by the registry in preferring the present appeal the Ld. AR submitted that a **condonatiuon of delay**

**application along with affidavit in support has been placed** on record of this Tribunal and interalia contended that the assessee is a house wife and so also partner of firm called M/s Jagdish Trading Company. That she has two son(s) and due to family disputes both are not in taking terms with each other. **She is however living with eldest son Amit Kumar Singhania.** That mobile Number and e-mail Id on Income Tax portal was **of her youngest son Shri Sumit Singhania and e-mail Id on portal also belonged to my youngest son business.** That her youngest son did not informed her anything about notice(s) of the Income Tax Department for hearing and so also about **"impugned order"**. The fact of passing of the ex-parte "impugned order" came to her knowledge when local Assessing Officer pressurised her for payment of outstanding tax dues. Thereafter she contacted a tax consultant who advised preferring an appeal to this Tribunal. She has also requested tax consultant to change e-mail Id and mobile number on portal. Delay is thus bonafide and same may please be condoned. Affidavit in support was relied upon. Per contra Ld. DR has no objection if delay is condoned. We after hearing both Ld. AR and Ld. DR and so also

after perusing the application and affidavit are of the considered view that sufficient cause is shown for condonation of delay. Hence delay is condoned. Appeal is admitted and taken up for further hearing. The Ld. AR for the assessee then took us through the “**impugned order**” and contended that same is bad in law, illegal and not proper. It is passed in violation of the principles of natural justice. The “**impugned order**” should therefore be set aside, as no notice(s) of hearing ever came to her knowledge and an ex parte order came to be passed by Ld. CIT(A). The Ld. AR for assessee canvassed same argument about non communication about notice(s) of hearing which he had canvassed for the condonation of delay I.e. no cordial relationship with youngest son whose e-mail Id and mobile number was on portal. The Ld. AR also stated that the “**impugned order**” is not on merits despite the fact that law is clear on it. Per contra Ld. DR for revenue has not disputed the contentions canvassed by Ld. AR and has no objection if case is remanded back to 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 rival contentions are of the considered opinion that the **"impugned order"** has just not examined the merits of the case as contemplated by law i.e **Under Section 250(6) of the Act**. Further though the opportunities were afforded to the assessee but due to the reasons as stated above, she could not utilise the opportunity given. Under these peculiar facts and circumstances of the case we set aside the impugned order and remand the case back to the file of CIT(A) to pass a fresh order on *denovo basis* after giving reasonable opportunity to the assessee to present her case on merits. Assessee is directed to give her new e-mail address and mobile number to the Ld. CIT(A) office as soon as possible and amend the Form No.35 suitably to provide for her new e-mail Id and mobile number for communication purposes. Assessee is directed to cooperate with the department and not to seek any unnecessary

adjournment.

**Order**

5.1 Impugned order is set aside as and by way of remand on *denovo basis*.

5.2 Appeal of the assessee is allowed for statistical purpose.

**Order pronounced in open court on 05.05.2025.**

Sd/-

**(BHAGIRATH MAL BIYANI)**  
**ACCOUNTANT MEMBER**

Indore

दिनांक/ Dated : 05/05/2025

Dev/Sr. PS

Sd/-

**(PARESH M JOSHI)**  
**JUDICIAL MEMBER**

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