

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.901/Ind/2024
Assessment Year: 2011-12

Rajesh Baghela House No.4, Khandwa Road, Umari Kheda, Indore	<u>बनाम/</u> Vs.	ITO-2(4) Indore
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AZHPB3228K		
Assessee by	Shri S.S. Solanki, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	13.05.2025	
Date of Pronouncement	14.05.2025	

आदेश / O R D E R

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

Feeling aggrieved by order of first appeal dated 25.11.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 24.12.2018 passed by learned ITO-2(4), Indore ["AO"] u/s 147 r.w.s. 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2011-12, the assessee has filed this appeal on following grounds:

"1. That the learned CIT(A) erred in passing ex parte order on account of no compliance. The fact is that the notices were not sent at proper mail id. which was mentioned in Form no35. The ex parte order so passed without giving

proper opportunity of being heard is illegal and wrong. The order so passed may very kindly be quashed.

2. WITHOUT PREJUDICE TO THE ABOVE That the learned CIT(A) erred in confirming the disallowance of Rs. 41,81,390/-made by the AO. The addition so confirmed without verifying the merit of the case is illegal and wrong. The same may very kindly be allowed."

2. The background facts leading to present appeal are such that the assessee-individual is stated to be an agriculturist having income from agriculture only. For AY 2011-12, the assessee did not file any return of income. On the basis of an information available in AIR reflecting that the assessee had deposited cash exceeding Rs. 10 lakh in bank a/c, the AO raised a query to assessee but in absence of any response from assessee, the AO ultimately took action u/s 147 through a notice u/s 148 dated 07.03.2018. The AO also issued notices u/s 142(1) from time to time. But all notices issued by AO remained un-complied and finally, the AO completed assessment u/s 144 determining total income at Rs. 41,81,390/- consisting of (i) Income of Rs. 41,70,900/- on account of unexplained deposits made in bank accounts and (ii) Income of Rs. 10,490/- on account of interest earned by assessee from bank accounts. Aggrieved, the assessee carried matter in first-appeal but could not make compliances of notices issued by CIT(A). The CIT(A) therefore dismissed assessee's appeal vide Para 5.3 & 5.4 of impugned order. Still aggrieved, the assessee has come in next appeal before us.

3. Ld. AR for assessee at the outset submitted that both of the lower-authorities have passed ex-parte orders because the assessee could not

make compliances to the respective notices issued by them but the fact is that the assessee is residing in a smaller village; earning income only from agriculture; and does not know the compliances of tax laws. So far as the proceedings of first appeal is concerned, Ld. AR also filed the notices of hearing issued by CIT(A) to show that those notices were issued to a different email id than the email id supplied in assessee's Form No. 35. Ld. AR submitted that the assessee of assessee is quite meritorious and does not call for the heavy additions made by AO but due to inability of assessee to make representation, the lower-authorities have made/upheld the additions. He submitted that the AO has made addition of Rs. 41,70,900/- on account of deposits made by assessee in two bank a/cs i.e. Rs. 11,69,900/- in SB A/c No. 882110100013734 and Rs. 30,01,000/- in SB A/c No. 882110110005377. He submitted that the first SB a/c is belongs to assessee but the second SB a/c is jointly owned by assessee and his brothers. He submitted that an agricultural land jointly owned by assessee's mother/assessee/assessee's brothers was sold and part amount of consideration was received through a/c payee cheques but a substantial part was received in cash by way of 'on money' and the cash received by way of 'on money' was mainly deposited in those two bank a/cs. He submitted that the underlying agricultural land sold by assessee's mother/assessee/assessee's brothers was not taxable in income-tax and therefore the 'on money' portion, forming part of total consideration of land, was also not taxable. Further, the cash withdrawals made from bank accounts was also

re-deposited. Ld. AR also pointed out a serious anomaly in the assessment-order. He submitted that the AO has made entire addition in assessee's hands whereas the second SB A/c 882110110005377 in which deposit of Rs. 30,01,000/- was made, belonged to assessee and his brothers and therefore the AO is apparently wrong in making entire addition of such deposit in assessee's hands. Ld. AR filed following Written-Submission in this regard:


Hearing fixed on 13/05/2025

S.S. SOLANKI & CO. **OFF:402 Trade House**
CHARTERED ACCOUNTANT **14/3, South Tukoganj, Indore**
BEFORE THE HON'BLE TRIBUNAL, INDORE BENCH, INDORE

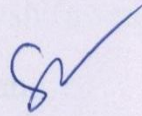
Reg: Shri Rajesh Baghela, Indore
Assessment Year 2011-2012
ITA NO.901/IND/2024

Facts of the case

- 1.1 That assessee's mother Smt Tulsibai was having an agricultural land admeasuring .818 Heactare at Umrikheda jointly with Shri Ramchandra (assessee's uncle) & Shri Jagdish (assessee's uncle). Assessee's mother was having 1/3rd share in that land.
- 1.2 The assessee was having 1/4th share of agricultural land owned by her mother effectively the assessee was having 1/12th share in agricultural land situated at Umrikheda.
- 1.3 The land was sold vide Regd Sale Deed dt 04.01.2011. The assessee's mother received Rs.10,50,000/- through account payee cheques and remaining amount of Rs.34,90,000/- was received in cash.
- 1.4 The cash received of Rs.34,90,000/- was deposited by the assessee in his personal account and in joint account maintained with brothers.
- 1.5 The AO added Rs.41,70,900/- being cash deposited in bank and interest on SB#A/c of Rs.10,490/-.



- 1.6 That the assessee received cash of Rs.34,90,000/- from the transaction of sale of rural agricultural land and Rs.5,32,200/- out of cash withdrawn from bank and from mother. The cash deposit therefore stands proved.
- 1.7 Aggrieved by the order of the AO, the assessee filed an appeal before learned CIT(A).
- 1.8 Learned CIT(A) passed an exparte order by holding that the assessee has chosen not to submit anything as there were non compliance on 5 occasions.
- 1.9 That the notices were served at address different for mentioned in Form No. 35. Therefore the same could not be complied.



4. Ld. AR also filed an Application under Rule 29 of Income-tax (Appellate Tribunal) Rules, 1963, the same is scanned and re-produced below:

Shailendra Singh
Solanki
F.C.A.



S.S. SOLANKI & Co.

Chartered Accountants

402, Trade House, 14/3, South
Tukoganj, Indore

Ph. : 0731-4263270, 4957503, 9826052321

e-mail : shailendrasolanki123@gmail.com

Hon'ble Members

13/05/2025

ITAT Indore Bench

INDORE

Hon'ble Sir,

Sub:Application for acceptance of additional Evidence
under Rule 29 of the Income Tax (Appellate Tribunal)
Rules, 1963

Re:Shri Rajesh Baghela, INDORE,

Assessment Year 2011-2012 ITA NO.901/IND/2024

The Income Tax appeal in the case of our abovenamed client for the Asst Year 2011-12 has been fixed for hearing on today before your honour.

Hon'ble your Honour, we are filing some documents for the first time alongwith this application, details of which are as under:-

(1) Copies of Bank Statements of :-

- (i) Shri Rajesh Madanlal Baghela.
- (ii) Shri Jagdish Rajput.
- (iii) Shri Rajesh Baghela.
- (iv) Shri Ramchandra.
- (v) Smt Tulsi Bai


- (2) Copies of FD of Shri Rajesh Madanlal Baghela & brothers.
- (3) Copy of Sale Deed.
- (4) Copy of Form no 35 alongwith Acknowledgement of Receipt.
- (5) Copy of the Screenshot of the Income Tax Portal notice served by Learned CIT (A).

As these documents goes to the root of the matter and may prove helpful in deciding the issues, we very humbly request your honour to kindly allow us to submit these documents and oblige.

Thanking you,

Yours' Faithfully

For S. S. Solanki & Co.


(Shailendra Singh Solanki)

5. Ld. AR made a humble prayer for admission of assessee's Application and remanding this case back to the file of lower authorities for adjudication afresh so that the lower authorities can make a proper adjudication after considering assessee's facts and documents.

6. Ld. DR for revenue does not have any objection if the Application of assessee is accepted but he requests that since the assessee has produced additional evidences by means of this Application, this appeal should go

back to the file of AO for factual examination of documents being filed by assessee and thereafter adjudication afresh. Ld. DR also prays to direct the assessee to ensure adequate participation before AO.

7. In rejoinder, Ld. AR for assessee also agrees to the proposal of Ld. DR for revenue for remanding this case to AO.

8. We have considered submissions of both sides and perused the case record. We find that the orders passed by both of the lower authorities are *ex-parte*. We also find that the AO has made an addition of Rs. 41,70,900/- on account of unexplained cash deposits in bank a/cs of assessee. But one of the bank a/c in which the major portion of deposit amounting to Rs. 30,01,000/- was made is claimed to be a joint a/c owned by assessee and his brothers. It is further being claimed that the deposit so made was sale proceed of a land jointly owned by assessee's mother/assessee/assessee's brothers. Looking to these facts, the entire addition of Rs. 30,01,000/- made in assessee's hands is apparently wrong. Further, the assessee wants to explain the sources of entire deposit of Rs. 41,70,900/- to AO with reference to the documents filed as additional evidences. Ld. Representatives of both sides are in agreement to remand this matter to the file of AO. Thus, considering the entire conspectus of case and in the interest of justice, we admit assessee's Application of additional evidences and also agree to the proposal agreed by both sides to restore this matter back to the file of AO. The AO shall adjudicate this matter afresh after giving necessary

opportunities to assessee and after considering assessee's all submissions including the evidences filed as above. In doing so, the AO shall not be influenced by his previous order in any manner. The assessee is also directed to ensure adequate participation before AO failing which the AO shall be entitled to pass order as he thinks fit in accordance with law.

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

Order pronounced in open court on 14/05/2025

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 14/05/2025

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