

**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 Nos.595 to 599/Ind/2024**  
**Assessment Years: 2013-14 to 2016-17 & 2019-20**

Prasam Rakesh Choudhary, 5, 125 Girnar Society, Bapurao Galli, Itwari, Nagpur	<b><u>बनाम/</u></b> Vs.	DCIT, Central-1, Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
<b>PAN: AIUPC4893M</b>		
Assessee by	Shri Gagan Tiwari, Adv. & AR	
Revenue by	Shri Anoop Singh, CIT-DR	
Date of Hearing	07.05.2025	
Date of Pronouncement	08.05.2025	

**आदेश / O R D E R**

**Per Bench:**

This bunch of five (5) appeals for Assessment-Years ["AY"] 2013-14 to 2016-17 & 2019-20 has been filed by assessee against a single consolidated order of first appeal dated 14.06.2024 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["CIT(A)"] which in turn arises out of a consolidated assessment-order dated 03.03.2021 passed by learned DCIT-Central-I, Bhopal ["AO"] u/s 153C/144 of Income-tax Act, 1961 ["the Act"].

2. Since these appeals arise from common orders of lower-authorities and the underlying facts/controversies for adjudication by us are also identical, they were heard simultaneously and are being disposed of by this single order for the sake of convenience, clarity and brevity.

3. The grounds raised in first appeal being **ITA No. 595/Ind/2024** are re-produced below for reference:

*"1. That under the facts and law, the learned CIT(A) erred in passing ex-parte order dated 14/06/2024 in breach of principle of natural justice as no proper opportunity of hearing was granted before adjudicating the present Appeal.*

*1.1 That under the facts and law, the order of the Ld. CIT(A) is perverse, erroneous and is not tenable on facts and in law and also in breach of principle natural justice.*

*1.2 That the Ld. CIT(A) has erred in passing order without application of mind and without looking into grounds challenging the initiation of proceedings u/s 153C of the Act.*

*1.3 That under the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the Ex-parte order passed by the Ld. AO under Section 153C/144 as the re-assessment was itself bad in law, illegal and in violation of natural justice.*

*1.4 That under the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the Ex-parte order passed by the Ld. AO under Section 153C/144 as the impugned assessment was passed without giving the assessee reasonable opportunity of being heard and in breach of principle of natural justice.*

*2. That the Ld. CIT(A) erred in not appreciating that the order passed by the learned AO is bad in the eye of law as the same was passed in violation of circular no. 19/2019 issued by CBDT which mandates that no order shall be passed without there being Valid Document Identification Number (DIN).*

*3. That the Ld. CIT(A) erred in not appreciating that the proceedings initiated under Section 153C against the appellant and the assessment framed under Section 153C/144 are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.*

3.1 That the Ld. CIT(A) erred in not appreciating that the proceedings initiated u/s 153C and order passed by the Ld. AO under Section 153C is itself bad in law, perverse, without jurisdiction and liable to be quashed as the same has been framed consequent to a search (At the premises of Saneer Group, D-1, Machna colony, Bhopal) which itself was unlawful and invalid in the eye of law.

3.2 That the Ld. CIT(A) erred in not appreciating that the proceedings initiated under Section 153C is itself bad in law and without jurisdiction in the absence of any incriminating material belonging to the assessee being found during the course of the search on 19/02/2019 at the premises of Saneer Group, D-1, Machna colony, Bhopal and case of M/s Saneer Infrastructure Pvt. Ltd, Bhopal.

3.3 That the Ld. CIT(A) erred in not appreciating that the proceedings initiated under Section 153C and the assessment framed under Section 153C is bad in law and liable to be quashed in the absence of any satisfaction being recorded by the AO of the searched person that the Incriminating material belonging to the assessee was found during the course of the search on 19/02/2019 at the premises of Saneer Group, D-1, Machna colony, Bhopal and case of M/s Saneer Infrastructure Pvt. Ltd, Bhopal.

3.4 That the Ld. CIT(A) erred in not appreciating that the proceedings initiated under Section 153C and the assessment framed under Section 153C is bad and liable to be quashed in the absence of any satisfaction being recorded by the AO of the assessee that the incriminating material belonging to the assessee was found during the course of the search.

3.5 That the Ld. CIT(A) erred in not appreciating that the Ld. AO has erred in making additions and disallowances in the assessment proceedings u/s 153C r.w.s 153A, without there being any incriminating material found during the course of search which belong to Assessee.

4. On the facts and circumstances of the case, the Ld. CIT(A) & Ld. A.O. has erred, both on facts and in law in assessing the income of the assessee at Rs. 63,36,470/- as against income of Rs. 4,29,370/- declared by the assessee.

5. Because the Ld. CIT (A) erred in not appreciating following issue :-

(i) The learned AO has erred both on facts and in law in making the addition of Rs. 58,67,100/- by treating the turnover declared by the assessee u/s 44AD as unexplained receipts under section 68 of the Act.

(ii) That the Ld. AO has erred in law as well as in facts, wrongly rejected the transactions declared u/s 44AD on presumptive basis as turnover.

(iii) That the assessee had not been given due opportunity to defend its case on income being charged under the provision of 68 of the Act.

6. That the Ld. CIT(A) & Ld. A.O. has erred in law and circumstance of the case in making addition of Rs. 58,67,100/- by saying that assessee has failed to produce the documents of receipts whereas assessee has filed his return of income u/s 44AD of the Income Tax Act and he is not required to maintain books of accounts as per provisions of section 44AD of the Income Tax Act, 1961.

6.1 On the facts and circumstances of the case, the Ld. CIT & Ld. AO has erred on both facts and in law in making the addition in respect of receipts from the various contractors even when the same has already been offered by the assessee in its regular course of income.

6.2 That the said action of the Ld. AO, leads to double taxation in the hands of the assessee which is not permissible under the Act.

6.3 On the facts and circumstances of the case, the Ld. CIT (A) erred in not appreciating that the entire addition has been made by the Ld. AO without bringing any adverse material against the assessee on record which has been impounded during search at third party premises.

6.4 On the facts and circumstances of the case, the Ld. CIT (A) erred in not appreciating that the Ld. AO was justified in using the material and evidences collected at the back of the assessee without confronting the same and giving proper and adequate opportunity to the assessee to rebut the same.

7. The appellant craves leave to add, amend or alter any of the grounds of appeal."

4. The facts of case have been neatly noted by Ld. CIT(A) in Para 3 of impugned order, we re-produce the same:

"3. The conspectus of the case is that a search & seizure operation u/s 132 of the Income Tax Act was conducted on 19.02.2019 in the case of Sane Group, D-1, Machna Colony, Bhopal. On perusal of the Ledgers and ITRs furnished by the appellant it came in cognizance that ITRs furnished by the appellant were not commensurate with the transactions shown by the SANEE Infrastructure Pvt. Ltd. Accordingly, the reason for initiation of assessment proceedings u/s 153C of the act was recorded on 29.01.2020 and duly served to the appellant. The case of the appellant was centralized with the O/o Deputy Commissioner of Income Tax (Central)-1, Bhopal. Accordingly, notice u/s 153C of the Act was issued on 09.11.2020 to prepare a true and correct return of income for AYs 2013-14 to 2018-19. Notice u/s 143(2) of the Act was issued to the appellant on 29.09.2020 for AY 2019-20. In response to the said notices the appellant has not filed any returns for the relevant AYs. The details of ITR filed u/s 139(1) of the Act by the appellant for AY 2013-14 to 2016-17 and AY 2019-20 are as follows:-

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A.Y	Date of filing of return u/s 139(1)	Returned income (in Rs.)	Date of filing of return u/s 153C of the Act	Income declared u/s 153C (in Rs.)	Additional income (in Rs.)
2013-14	13.10.2013	4,69,370/-	Not filed	-	-
2014-15	22.03.2015	6,25,250/-	Not filed	-	-
2015-16	15.03.2016	4,21,500/-	Not filed	-	-
2016-17	12.05.2017	2,69,320/-	Not filed	-	-
2019-20	21.08.2019	3,21,520/-	Not applicable	-	-

*During the course of search action u/s 132 and scrutiny of the profit and loss account of M/s Sanee Infrastructure Pvt. Ltd., it was revealed that the company has shown huge payments to sub-contractors including the appellant Shri Prasham Rakesh Choudhary during AY 2013-14 to AY 2014-15. The same payments are also noticed from the tally data seized from the premises of M/s Sanee Infrastructure Pvt. Ltd which is as reproduced under:*

A.Y.	Payment made by Sanee Infrastructure Pvt. Ltd.
2013-14	58,67,100/-
2014-15	37,69,870/-

*In this regard, vide Notice u/s 142(1) of the Act dated 01/01/2021, the appellant was requested by the AO to furnish the details of all the financial transactions made with M/s Sanee Infrastructure Pvt. Ltd during the AY 2013-14 to 2019-20. However, the appellant has failed to comply the same.*

*Similarly, the appellant has failed to furnish any details regarding receipts earned by him between AY 2015-16 to AY 2019-20 from other persons. The AO also found that the receipts from the other persons in AY 2015-16 to AY 2019-20 which are offered in ITR are not matching the receipts as appearing in form 26AS of the appellant.*

*The AO observed that even after lapse of considerable time neither the appellant has submitted any reply nor offered any genuine reason for non-compliance. After considering the various facts, circumstances of the case and non-compliance on part of the appellant, the AO treated the gross receipt*

*for AY 2013-14 to 2016-17 and AY 2019-20 as unexplained and accordingly made additions of Rs. 58,67,100/-, Rs. 76,34,526/-, Rs. 19,86,400/- and Rs. 30,50,980/- for AY 2013-14 to 2016-17 respectively. The AO also made the addition of Rs. 20,08,170/- on account of unexplained receipt for AY 2019-20.*

*Being aggrieved with this order, the appellant preferred this appeal which is under consideration."*

5. The AO passed *ex-parte* assessment order u/s 153C/144 with the previous approval of the Addl./Jt. Commissioner of Income-tax, Central, Bhopal u/s 153D.

6. The CIT(A) also passed *ex-parte* order of first-appeal by making following observation:

*"2. The appeals were fixed for hearing on 04.01.2022, 12.04.2022, 08.11.2023 and 13.06.2024. The appellant did not respond any of the notices. It is quite evident from the chronology of events that despite several opportunities on being granted from time to time, there has been absolutely no compliance on part of the appellant to give detailed explanation regarding ground of appeals taken for the years under consideration. This clearly shows that the appellant is not keen to pursue the above-mentioned appeals and co-operate in finalization of the appeals."*

7. Before us, learned Representatives of both sides made their submissions. We have carefully considered their submissions and perused the case-record including the orders of lower-authorities.

8. Ld. AR for assessee instantly agrees that the orders of both of the lower authorities are *ex-parte* due to non-representation by assessee. He, however, draws us to Para 8 of assessment-order to show that the AO issued various notices on 09.11.2020, 01.01.2021, 20.01.2021 and 09.02.2021 fixing the dates of compliances as 09.12.2020, 11.01.2021, 28.01.2021 and

15.02.2021 respectively. He submitted that all these dates of compliances were during Covid-2019 pandemic due to which the assessee could not make compliances which has led the AO to pass ex-parte assessment order on 03.03.2021. Ld. AR referred a letter dated 22.03.2021 filed by assessee's counsel to AO, after passing of assessment-order, intimating therein that the assessee was tested positive for Covid-19 and even after recovering, the assessee got his finger fractured and also mentioning therein that despite adverse conditions, the assessee nevertheless filed submission on 02.03.2021 through online mode (Paper-Book Page 111). Ld. AR also drew us to a copy of assessee's submission dated 01.03.2021 (claimed to have been filed on 02.03.2021) placed at Pages 62-65 & 68 of Paper-Book for five assessment years (one-page submission for each assessment-year). Ld. AR submitted that the AO has not considered these submissions of assessee in assessment-order.

9. Ld. AR next submitted that during first-appeal, the assessee could not make representation before CIT(A) leading to passing of ex-parte order by CIT(A) but the CIT(A) has not adjudicated the grounds raised by assessee adequately. He submitted that in the grounds raised before CIT(A), the assessee has raised substantial grievances of legality as well as merit. He submitted that one of the ground raised by assessee before CIT(A) was such that the proceeding initiated and consequentially assessment framed by AO u/s 153C was bad and liable to quashed in absence of any satisfaction

having been recorded by the AO of searched person in terms of section 153C(1). However, the Ld. CIT(A) has not adequately resolved assessee's grounds. He requested that in this situation, the Bench may direct the revenue/respondent to produce assessment-record/satisfaction note recorded by AO and decide these cases on merit.

10. Per contra, Ld. DR for revenue very strongly opposed the submissions of Ld. AR. He submitted that these cases emanate from search proceedings but the assessee has not responded to both of the lower-authorities in response to statutory notices issued by them. He emphasized that even during Covid-19 period, the compliances of notices were not stopped. He submitted that the AO applied his best judgement and made proper assessments based on material available with him. He submitted that in any case, the assessee has no explainable reason for non-prosecution of his appeals before CIT(A). He submitted that when the lapses are attributable to assessee, the orders of lower authorities must be upheld without giving any relief to assessee and the bench should not entertain any request for production of assessment-order/satisfaction note. However, he left the matter to wisdom of bench if the bench deems it fit to remand these matters to CIT(A). He, however, requests the bench to direct the assessee to ensure participation before CIT(A) without seeking unnecessary adjournments.

11. During arguments, Ld. AR for assessee submitted that if the bench remands these matters to CIT(A), a direction must be given to the CIT(A) to

provide satisfaction note recorded by AO to assessee. Ld. DR, however, objected that such a direction cannot be given.

12. We have considered rival submissions of both sides and carefully perused the orders of lower-authorities. We find that these cases of assessee have originated from a search u/s 132 undertaken by department in the case of other person. We find that the CIT(A) has issued four notices on different dates to assessee fixing the hearings of first-appeal but the assessee has not come forward and ultimately the CIT(A) has passed ex-parte order of first-appeal. We have perused the order of appeal in open court during hearing and find that the assessee has raised meritorious grounds in first-appeal before CIT(A) challenging the legality of proceedings conducted by AO as well as merits which require an apt adjudication by CIT(A). Therefore, the present cases need to be restored at the level of CIT(A) for adjudication afresh. Being so, we remand these matters back to the file of CIT(A) for a proper adjudication after hearing assessee. The CIT(A) shall give necessary opportunities of hearing to assessee and pass an appropriate order uninfluenced by his earlier order. The assessee is also directed to ensure participation in the hearings as may be fixed by CIT(A) and do not seek unnecessary adjournments failing which the CIT(A) shall be at liberty to pass appropriate order in accordance with law. So far as the prayer of Ld. AR that the CIT(A) should be directed to provide satisfaction note recorded by AO to assessee, we are not inclined to interfere in the function of CIT(A) and

give any such direction. The assessee may make such a request/submission to CIT(A) and we expect that the CIT(A) shall consider the same judiciously in accordance with law. Ordered accordingly.

**13. Resultantly, these appeals are allowed for statistical purposes in terms mentioned above.**

Order pronounced in open court on 08/05/2025

Sd/-

(PARESH M. JOSHI)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 08/05/2025

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