

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.700/Ind/2024 (AY: 2017-18)

Rajesh Mangal, 2/8, New Palasia, Indore (PAN: ABWPM2674D) (Appellant)	<u>बनाम/</u> Vs.	ACIT-3(1), Indore (Respondent)
Assessee by	Shri Ayush Garg, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	14.05.2025	
Date of Pronouncement	16.05.2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an appeal filed by the assessee in terms of 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/250/2024-25/1065423764(1) dated 06.06.2024 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 2017-18 and the

corresponding previous year period is from 01.04.2016 to 31.03.2017.

2.

FACTUAL MATRIX

2.1 That as and by way of an assessment order bearing No. ITBA/AST/S/143(3)/2019-20/1022798178(1) dated 20.12.2019 made u/s 143(3) of the Act the assessee's total assessed income was computed at Rs.63,44,887/- (Rs.47,81,340/- (ROI) + Rs.15,63,547/- (unexplained cash u/s 69A), which is hereinafter referred to as the "**impugned assessment order**". The broad issue is deposit of cash during the period of demonetization.

2.2 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 first appeal of the assessee on reasons and grounds specified therein.

2.3 That the assessee being aggrieved by the "**impugned order**" has preferred the instant second appeal before this Tribunal and has raised following grounds in Form No.36 (which is a form of

appeal to this Tribunal) against the “**impugned order**” which are as under:-

“1. That, the learned CIT(A) grossly erred, both on facts and in law, in passing the ex-parte order without giving proper and effective opportunity of being heard to the appellant.

2. That, without prejudice to the above, the learned CIT (A) grossly erred in not adjudicating the appeal of the appellant on merits of the case.

3. That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the Id. ACIT-3(1), Indore in determining the total income of the appellant u/s. 143(3) of the Income-Tax Act, 1961 at Rs. 63,44,887/-, as against the Returned Income of Rs. 47,81,340/- thereby making additions of Rs. 15,63,547/-, which is quite unjustified, unwarranted, excessive, arbitrary and bad-in-law.

4. That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the Id. ACIT-3(1), Indore for maintaining the addition of Rs.15,63,547/- in the appellant's income on account of alleged unexplained cash deposits in the bank accounts by treating the same as unexplained money under s.69A r.w.s. 115BBE of the Act without considering and appreciating the material fact that neither during the course of the assessment proceedings nor under any other proceedings, the appellant was found to be in possession of any unexplained money, bullion, jewellery or other valuable article and therefore, in the case of the appellant, the provisions of s.69A could not have validly been invoked.

5. That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the Id. ACIT-3(1), Indore for maintaining the addition of Rs. 15,63,547/-in the appellant's income without properly considering and appreciating the material fact that during the course of the assessment proceedings, the appellant had duly established the sources of the cash available in his hand, by furnishing all the necessary documentary evidences, which got deposited in his bank account(s).

6. That, the appellant further craves leave to add, alter or amend the foregoing ground of appeal as and when considered necessary”.

3.

Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 14.05.2025 when the Ld. AR for and on behalf of assessee appeared before this Tribunal and interalia contended that there is a delay of 38 days in preferring the present appeal before this Tribunal which may kindly be condoned. Reason for delay was that assessee’s counsel attending tax matters logged in on 31.7.2024 on income tax portal for some other purposes and found that the 1st appeal proceedings which was pending for Assessment Year 2017-18 was already disposed off by the Ld. CIT(A) by passing the **“impugned order”** in an ex-parte manner on 06.06.2024. Further the **“impugned order”** was not served by speed post or registered post or by hand or by e-mail to him. It can therefore be said that the **“impugned order”** was received by assessee on 31.07.2024. That the present appeal was filed on 13.09.2024. Delay of 39 days pointed out by the registry may please be condoned if reckoned from 06.06.2024 the date when

the **“impugned order”** was passed. An affidavit in support too has been placed on record in support of COD application. Per contra Ld. DR appearing for and on behalf of revenue has no objection if such small delay occurred due to above reason be condoned by this Tribunal if they deem fit and proper. After persuing COD application along with affidavit in support which is not effectively controverted by Ld. DR we are of the considered view that delay of 39 days be condoned.

3.2 Thereafter the Ld. AR for and on behalf of the assessee interalia contended that the **“impugned order”** is illegal, bad in law and not proper. It is passed in violation of the principles of natural justice. It should therefore be set aside. The Ld. AR contended that no notice of any hearing ever came to assessee from office of Ld. CIT(A) at the address including e-mail Id given in Form No.35. Further **“impugned order”** is silent about any opportunity being afforded to the assessee by Ld. CIT(A). Hence **per se “impugned order”** is bad in law, illegal and so also in violation of the principles of natural justice and thus deserves to be set aside by this Tribunal. Entire 1st appeal is disposed off by one page order. Per contra Ld. DR appearing for and on behalf of

revenue was defenceless and his studded silence on “**impugned order**” spoke volumes about illegal nature of “**impugned order**”. The Ld. DR finally left it to the wisdom of this Tribunal to pass such order as it thinks fit.

4. **Observations, findings & conclusions.**

4.1 We now have to adjudge and adjudicate the present appeal filed by the revenue on basis of the records of the case and contentions canvassed before us during the course of hearing. In brief we have to decide the legality, validity and the propriety of the “**impugned order**”.

4.2 We have carefully perused the records of the case as presented to this tribunal by both Ld. AR and Ld. DR to determine the legality, validity of the “**Impugned Order**” basis law and by following due process of law.

4.3 We basis records of the case and after hearing and upon examining the contentions of both Ld. AR and Ld. DR are of the considered view that it was incumbent upon the Ld. CIT(A) to have at least given a opportunity of hearing to the assessee before passing the “**impugned order**”. Admittedly no opportunity was given. There is not even a whisper of any opportunity being

afforded to the assessee in the “**impugned order**”. Accordingly we have no hesitation in holding that “**impugned order**” is bad in law and illegal. It is passed in violation of principles of natural justice. Resultantly we set aside the “**impugned order**” and remand the case back to CIT(A) to pass a fresh order after giving opportunity of hearing to the assessee.

5. **Order**

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

5.2 In result appeal of the assessee is allowed for statistical purpose.

Order pronounced in open court on 16.05.2025.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore
दिनांक/ Dated : 16/05/2025
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