

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.762/Ind/2024 (AY: 2012-13)

Brajendra Sharma, 1, Chowbe Mohalla, Segaon, Dist. Barwani, Barwani (PAN: CCTPS3361M)	<u>बनाम/</u> Vs.	Income Tax Officer, Sendhwa
(Appellant)		(Revenue)
Assessee by	Shri Venus Rawka, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	08.05.2025	
Date of Pronouncement	14.05.2025	

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 No.ITBA/NFAC/250/2024-25/1064062256(1) dated 12.04.2024 passed by the Ld. CIT(A) u/s 250 of the Act which is hereinafter referred to as the "**Impugned order**". The relevant

Assessment Year is 2012-13 and the corresponding previous year period is from 01.04.2011 to 31.03.2012.

2.

FACTUAL MATRIX

2.1 That as and by way of an assessment order made u/s 147/147 of the Act, the assessee's total assessed income was computed at Rs.36,31,880/-. That the assessment order is dated 26.12.2017 which is hereinafter referred to as "**impugned assessment order**".

2.2 That the assessee had **purchased** agricultural land on 11.11.2011 for **Rs. 30 lakh**. Stamp duty paid on land was **Rs.2,91,880/-**. The return of income was at **Rs.2,40,000/-**. This transaction of land was not disclosed in the return of income. Notice u/s 148 dated 30.03.2017 was issued, however same was not complied with by the assessee. As and by way of letter dated 13.06.2017 the assessee was requested to furnish to the department **sources of investment of Rs.30 lakh** and was called upon to produce necessary evidence in support of such sources of income. The personal hearing in the matter was fixed on 23.06.2017 however the assessee remained non compliant. A

notice u/s 143(2) dated 22.09.2017 by speed post was too served on the assessee for 05.10.2017 but then also assessee remained non compliant. Notice u/s 142(1) dated 06.10.2017 for 17.10.2017 was too not complied with. On 20.11.2017 a show cause notice was issued to the assessee calling upon him to show cause why under the facts and circumstances of the case **“best judgment assessment”** order should not be made u/s 144 of the Act. However this show cause notice too remained non compliant by the assessee. A final show cause notice dated 11.12.2017 and summons u/s 131 of the Act too were issued but same remained non compliant by the assessee **for 14.12.2017, on merits and only adjournment request was made for 19.12.2017. On 19.12.2017 a statement of the assessee was recorded.**

2.3 That during the assessment proceedings it became evident that the assessee had borrowed sum of Rs.20 lakh from a friend **whose name, PAN Number, address were not disclosed to Ld. A.O.** The reply of the assessee was so poor that he even does not even remembered the name of his friend who had paid him a loan of Rs.20 lakh for purpose of buying land, as transaction was

about 6 years old. This explanation of the assessee was found unacceptable by the Ld. A.O which was also accompanied by the explanation that the subject land was made in to 7 plots and were sold and proceeds realised were used for paying remainder balance money due to seller of land. **No documentary evidence was however produced before Ld. A.O in support by the assessee for any of his assertions.** The Ld. A.O rightly has observed in his aforesaid **"impugned assessment order"** that generally plots are sold only after title is passed on to the owner/assessee. It was also observed by Ld. A.O that in order to defeat revenue collection the assessee has cooked up a story which is untenable and unbelievable. In ultimate analysis sources of Rs.30 lakhs have gone unexplained. Consequently aforesaid **"impugned assessment order"** was passed by Ld. A.O.

2.4 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 appeal of the assessee on grounds and reasons stated therein.

2.5 That the assessee being aggrieved by the “**impugned order**” has preferred the 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. That the Ld. CIT (A) erred in law and facts of the case and Confirmed the addition made of Rs.32,91,880/- by Assessing Officer and taxed the same u/s 115BBE without considering the facts and explanation submitted by the assessee the addition made by Assessing Officer and confirmed by CIT(A) is totally wrong and illegal on facts.

2. That the Ld. CIT (A) failed to decide the issue for reopening of assessment. Thus the order passed by CIT(A) is bad in law on facts.

3. That the Ld. CIT(A) passed the appeal order without appreciating the fact that no hearing notice was served upon the Assessee on physical mode. The action therefore of CIT(A) is illegal. That the appellant craves to leave, add, alter or amend any of the ground at or before hearing”.

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 08.05.2025 when the Ld. AR for and on behalf of the assessee appeared before us and interalia contended that there is delay of 132 days in filing the present appeal. The “**impugned order**” is dated 12.04.2024 whereas appeal was filed on 21.10.2024. That the Ld. AR contended that the assessee’s previous counsel did not inform him about any matter relating to income tax and

consequently the assessee changed his counsel for the Assessment Year 2024-25. That subsequently a defective notice u/s 139(9) of the Act for Assessment Year 2024-25 came to be issued on 17.08.2024 and therefore the income tax portal was logged in and e-proceedings tab was viewed where upon it was noticed that the **"impugned order"** for Assessment Year 2012-13 was passed. Further **mother** of the assessee was **critically ill** and was hospitalised wherein he was attending her. That subsequently the assessee approached **a counsel at Indore** and submitted to him all his tax related papers hence Ld. AR prayed that the delay of 132 days in preferring the present appeal be condoned. An affidavit in support is too placed on record. Per contra Ld. DR has left it to this Tribunal to take appropriate call according to law. We have heard both sides. We have perused the condonation of delay application and so also affidavit in support thereof. After hearing both sides and taking in to consideration material on record we are of the considered opinion that the assessee has shown reasonable and sufficient cause in support of **COD** of 132 days, accordingly we condone the delay and admit the appeal for hearing.

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 principles of natural justice. It should therefore be set aside. The Ld. AR contended that no notice(s) of hearing came to assessee at ashishjain_ca@yahoo.com which was provided for in Form 35 instead notice(s) came at imposthelp@gmail.com a specimen copy of same was shown and filed across bar today to demonstrate the fact that no notice(s) for hearing ever came to assessee. It was also submitted that e-mail Id mentioned in Form 35 was of a old counsel who never informed the assessee. The Ld. CIT(A) has simply **upheld** the **"impugned assessment order"**. The Ld. AR finally urged this Tribunal that **"impugned order"** be set aside and matter be remanded back to the file of Ld. A.O on *denovo basis* and small cost be imposed for which this Tribunal may exercise wisdom, discretion and law. The Ld. AR in rejoinder stated that there is no doubt that **"impugned order"** is ex-parte, no hard copy of notice(s) ever came to the assessee.

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 contentions of both Ld. AR and Ld. DR are of the considered view that number of opportunities were afforded to the assessee by Ld. CIT(A) but notice(s) are demonstrated before us to have gone to e-mail address, while some may have gone to old e-mail address of previous counsel who was engaged by the assessee but he never ever bothered to inform the assessee. In brief notice(s) went to different e-mail Ids. **Be that as it may** we are of the considered view that opportunity in **real terms** was not afforded to the assessee. Simultaneously when we peruse minutely the **"impugned assessment order"** we notice that at majority of times the assessee has remained non compliant. **Under these circumstances we set aside the** "impugned order" with a direction to assessee to first deposit sum of Rs.5000/- to **"PM Relief Fund"** and then remand the matter

back to file of Ld. AO who shall re-examine the case on **denovo basis** and pass a fresh order.

Order

5.1 In the result "**impugned order**" is set aside as and by way of remand back to the file of Ld. A.O on *denovo basis* after assessee has shown proof of payment of cost of Rs.5000/- as directed (supra).

5.2 Appeal of the assessee is allowed for statistical purpose.

Order pronounced in open court on 14.05.2025.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक/ Dated : 14/05/2025

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