

**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.475/Ind/2024 (AY: 2015-16)**

Ashwani Shrivastava, 169 Crystle Ideal City, Awadhपुरी, Bhopal <b>(PAN: AEMPS0026G)</b>	<b><u>बनाम/</u></b> Vs.	Income Tax Officer- 2(5), Bhopal
(Appellant)		(Revenue)
Assessee by	S/Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	08.05.2025	
Date of Pronouncement	15.05.2025	

**आदेश / ORDER**

**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 No.ITBA/NFAC/250/2023-24/1059975856(1) dated 22.01.2024 of Ld. CIT(A) passed u/s 250 of the Act which is hereinafter referred to as the “**Impugned order**”. The relevant

Assessment Year is 2015-16 and the corresponding previous year period is from 01.04.2014 to 31.03.2015.

2. **FACTUAL MATRIX**

2.1 That as and by way of an assessment order made u/s 144 of the Act, the assessee's total assessed income was computed as below:-

Income shown in the Return	Rs. 19,18,051/-
Add: Disallowance of sale	
Consideration - Long Term Capital Gain	<u>Rs. 3,65,00,000/-</u>
	Rs.3,84,18,051/-
	Rounded of Rs.3,84,18,050/-

2.2 The aforesaid assessment order is dated 28.12.2017 which is hereinafter referred to as "**impugned assessment order**".

2.3 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 1<sup>st</sup> appeal of the assessee on the grounds and reasons stated therein.

2.4 That the assessee being aggrieved by the “**impugned order**” has preferred instant second appeal before this Tribunal and has raised following grounds of appeal in Form No.36 (which is a form of appeal to this Tribunal) against the “**impugned order**” which are as under:-

*“1. The Ld AO was not justified in passing the order. which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled*

*2. The Ld CIT(A) was not justified in confirming the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

*3. The Ld CIT(A) was not justified in ex-parte dismissing the appeal of the appellant, without deciding the appeal on merits, and that a fair and meaningful opportunity was not available to the appellant to present his case.*

*4. The Ld CIT(A) was not justified in not deciding the grounds of appeal before him.*

*5. The Ld CIT(A) was not justified in confirming the addition of Rs. 3,65,00,000/- as long term capital gain.*

*6. The appellant carves leave to add, amend or modify any of the grounds of appeal.”*

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

47 days in preferring the present appeal before this Tribunal and prayed for condonation of delay. It was contended that the **“impugned order”** is dated 22.01.2024 which was received by the assessee on 12.02.2024. That the appeal was to be filed up to 12.04.2024 i.e. within 60 days however the instant appeal was filed on 29.05.2024 and that there was a delay of 47 days in preferring this appeal. It is pertinent to note that the notice(s) for hearing and the “impugned order” were sent to on e-mail Id [ashvinninchitransh@gmail.com](mailto:ashvinninchitransh@gmail.com) and [gajendrasaratha2010@gmail.com](mailto:gajendrasaratha2010@gmail.com). However these e-mail Ids were related to earlier counsel, who was engaged by the assessee to represent him before CIT(A). Copy of e-mail Ids where notice(s) and orders were sent were shown to us, which mentions aforesaid e-mail Ids. It was therefore contended that the delay was unintentional for no fault of the assessee and was inadvertent. Further there was no malafide intention of filing appeal belatedly. Hence delay be condoned. Per contra Ld. DR for and on behalf of the Revenue has left the issue to be decided by this Tribunal according to law since delay is 47 days. We have examined the records and have heard rival contentions. We are of the considered opinion that

delay is required to be condoned and accordingly we condone the delay for which the assessee has shown reasonable cause. Delay condoned. Appeal admitted for hearing. The Ld. AR for and on behalf of the assessee then contended that the **“impugned order”** is ex-parte one and there is no elaborate finding on merits of the case as per law. All notice(s) including **“impugned order”** went to e-mail Id of previous counsels who never informed them about the notice(s) and **“impugned order”** came to be passed in an ex-parte manner. Hence it would be just fair and convenient that the **“impugned order”** be set aside and matter be appropriately remanded **so that merits of case can be thrashed out**. Per contra Ld. DR for and on behalf of the Revenue contended that matter be remanded to Ld. A.O if this Tribunal deems fit and proper for the purpose of examining case on merits.

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). We notice that in Form No.35 two e-mail Id are provided one is [ashwinishrivastava@yahoo.com](mailto:ashwinishrivastava@yahoo.com) and another is [manishkoul@rediffmail.com](mailto:manishkoul@rediffmail.com). During the hearing as and by way of **four e-mails print outs** it is demonstrated before us that notice(s) went to ashvinnin[chitransh@gmail.com](mailto:chitransh@gmail.com) & [gajendra.saratha2010@gmail.com](mailto:gajendra.saratha2010@gmail.com). Hence we are of the considered view that it would be just fair, convenient and so also in the interest of ends of justice that the **"impugned order"** be set aside and matter be remanded to Ld. A.O to examine the case on merits. Accordingly the *"impugned order"* is set aside and matter is remanded to Ld. A.O for fresh adjudication on *denovo basis*. The Ld. A.O is directed to adjudge and adjudicate the case according to law. Assessee is directed to cooperate with the department and not to seek any adjournment on flimsy grounds.

5.

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*.

5.2 Appeal of the assessee is allowed for statistical purpose.

**Order pronounced in open court on 15.05.2025.**

Sd/-

**(BHAGIRATH MAL BIYANI)  
ACCOUNTANT MEMBER**

Sd/-

**(PARESH M JOSHI)  
JUDICIAL MEMBER**

Indore

दिनांक/ Dated : 15/05/2025

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