

**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.828/Ind/2024 (AY: 2012-13)**

Rajeev Kapoor, C/o Arera Auto Centre, E-5, Arera Colony, Bhopal <b>(PAN: ADUPK1034D)</b>	<b><u>बनाम/</u></b> Vs.	ACIT-2(1), Bhopal
(Appellant)		(Respondent)
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	15.05.2025	
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/250/2024-25/10691604971) dated 27.09.2024 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 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 penalty order dated 30.09.2015 a penalty of Rs. 12 lakh was imposed upon the assessee u/s 271(1)(c) of the Act by Ld. A.O which order is hereinafter referred to as the **"impugned penalty order"**.

2.2 That it is recorded in the **"impugned penalty order"** that a notice u/s 271(1)(c) of the Act was issued on 26.03.2015. A show cause notice too was issued on two occasions i.e. 22.06.2015 and 24.09.2015. It is also recorded that no response has been received from the assessee.

2.3 That the assessee being aggrieved by the **"impugned penalty 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.

2.4 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 on the facts and circumstances of the case learned Commissioner of Income Tax (Appeals) is arbitrary, unjust, unlawful and perverse.*

*2. That on the facts and circumstances of the case and in law, the order (appealed against) of the learned Commissioner of Income Tax (Appeals) has erred in law as well as facts in confirming the penalty of Rs.12,00,000 without application of mind and without even reacting the facts of the case.*

*3. That on the facts and circumstances of the case and in law, the order (appealed against) of the learned Commissioner of Income Tax (Appeals) has erred in law as well as facts in confirming the penalty, completely ignoring the laid down law and the cases cited by the Appellant during the appellate proceedings, that no penalty is exigible under section 271(1)(c) in case of addition under section 50C of the Income Tax Act, 1961.*

*4. That on the facts and circumstances of the case the AO had erred in levying and the learned Commissioner of Income Tax (Appeals) has erred penalty u/s 271(1)(c) of the Act, where, in the show cause notices issued, the AO has not specified the limb of Section 271(1)(c) under which he has issued the notice for levying the penalty, completely ignoring the laid down law and the cases cited by the appellant during the appellate proceedings.*

*5. That on the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) has erred in law as well as on facts in confirming the penalty u/s 271(1)(c) of the Act, completely ignoring the laid down law (section 274) and the cases cited by the appellant during the appellate proceedings, that no penalty can be imposed unless the assessee has been given a reasonable opportunity of being*

*heard. The penalty order has been confirmed by the learned Commissioner of Income Tax (Appeals) in complete violation of the principles of natural justice.*

*6. That on the facts and circumstances of the case and without prejudice to the above grounds of appeal the learned Commissioner of Income Tax (Appeals) has erred in law as well as on the facts in confirming the penalty order under section 271(1)(c ) of the Act completely ignoring the fact that the quantum appeal in this case is still subjudice and is pending decision.*

*7. The appellant craves leave to add/alter or amend any of the grounds of appeal before or at the time of hearing”.*

3.

### Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 15.05.2025 when the Ld. AR for and on behalf of assessee appeared before this Tribunal. The Ld. AR has placed on record of this Tribunal a paper book containing pages 1 to 40 and a brief write up containing 4 pages in support of the case of the assessee. The Ld. AR then interalia contended before us that the assessee is an individual and derives income from petroleum products and is running a petrol pump. Besides the business income the assessee has income from interest and capital gains. That the return of income of the assessee for Assessment Year 2012-13 was filed and then the ROI was processed u/s 143(1) of the Act. The assessment was reopened u/s 147 of the Act on the basis of

annual information report (AIR) that the assessee had sold a plot to one Shri Pradeep Sharma for Rs.35,50,000/- whereas the fair market value of the property in question was Rs.86,85,000/-. Therefore as per the provisions of Section 50C of the Act, the capital gain should be calculated on the basis of fair market value and therefore, the income of Rs.51,35,000/- has escaped assessment (Rs.86,85,000/- (-)Rs.35,50,000/-). The Ld. AR then stated that though the quantum of assessment order is passed against the assessee but 1<sup>st</sup> appeal before Ld. CIT(A) is still pending hearing and final disposal. In so far as the **“impugned order”** of the first appellate authority is concerned on penalty the Ld. CIT(A) has not adjudged and adjudicated all grounds raised. The **“impugned order”** is two page order. Submissions made are not considered. In brief Ld. CIT(A) has not taken in to consideration entire gamut and facts and the circumstances of the assessee’s case. The Ld. CIT(A) has passed the **“impugned order”** in mechanical manner. Per contra Ld. DR appearing for and on behalf of revenue contended that it would be just fair and convenient that in the circumstances basis contentions canvassed by Ld. AR, it would be prudent that the **“impugned**

**order”** be set aside and matter be remanded back to the file of Ld. CIT(A) as quantum assessment first appeal is pending for hearing and final disposal before Ld. CIT(A). In rejoinder Ld. AR too fairly concedes that issue may be remanded back to the file of CIT(A) wherein all issues including legal would be thrashed out properly.

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

4.1 We now have to adjudge and adjudicate the present appeal filed by the assessee on the 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 when quantum assessment order is under challenge before Ld. CIT(A) in first appeal which is pending for hearing and final disposal we hold that so called satisfaction

contemplated by virtue of Section 271(1) of the Act either with regard to concealment of particulars of assessee's income or furnishing inaccurate particulars in course of any proceedings under the Act **is still at large and no finality is achieved even at least** at the 1<sup>st</sup> appellate stage under the Act. Further the Ld. CIT(A) should have examined all the contentions including legal submissions before passing the **"impugned order"** that too in a mechanical manner wherein all grounds raised and contentions made in Form No.35 along with submissions made before CIT(A), during the course of the 1<sup>st</sup> appellate penalty proceedings (PB page 1 to 8), **were just not considered and that there is no whisper of it in the "impugned order"** which is a two page order. We therefore hold that the **"impugned order"** is **non speaking** and **unreasoned order** in as much as contentions canvassed before him before passing of **"impugned order"** were just not examined and appreciated. It was incumbent upon the Ld. CIT(A) in quasi judicial capacity to have considered the same before passing the **"impugned order"**. We therefore hold that same having been not done so, the **"impugned order"** deserves to be set aside. Resultantly we set aside the **"impugned order"**

and remand the case back to the file of Ld. CIT(A) with a direction to pass a fresh order on *denovo basis* wherein he should consider, examine and pass a speaking order on merits after taking in to consideration all submissions made before him including legal if any.

5.

**Order**

5.1 In result **basis premises drawn up** by this Tribunal the impugned order is set aside as and by way of remand on *denovo basis*.

5.2 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