

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR  
(Through Virtual Mode)**

**BEFORE SH. KUL BHARAT, VICE PRESIDENT  
AND  
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA Nos.97, 98, 99 & 100/JAB/2025  
A.Ys. 2018-19 & 2019-20

M/s Sehkari Vipadan Samiti Maryadit, Near Branch School, Indra Ward, Kandeli, Narsinghpur Madhya Pradesh-487001	vs.	Dy. Commissioner of Income Tax, Circle-2(1), Jabalpur, Madhya Pradesh
<b>PAN:AADAS7349Q</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. Hemant S. Modh, Advocate
Revenue by:	Sh. Alok Bhura, Sr. DR & Sh. Shrawan Kumar Meena, CIT DR
Date of hearing:	22.05.2025
Date of pronouncement:	30.06.2025

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.**

These four appeals have been filed against the various orders of the Id. CIT(A), NFAC dismissing its appeals against orders passed under section 147 r.w.s. 144 of the Income Tax Act, 1961 for the assessment years 2018-19 and 2019-20 and orders passed dismissing the appeals filed by the assessee against penalties levied under section 270A of the Income Tax Act and 271AAC(1) of the Income Tax Act, 1961 for the assessment year 2019-20. As the issues involved in all these cases is similar and they are inter-related as they were all heard together, the same are being taken up together for disposal for the sake convenience. The grounds of appeal in all the above four appeals are as under: -

**ITA No.97/JAB/2025**

- “1. That the NFAC has grossly erred in facts and circumstances of the case to passed the order ex-party as the administrative staff were arrested and are in jail during the assessment and appeal proceeding.*
- 2. That the NFAC has grossly erred in facts and circumstances of the case to confirm the assessment at an income Rs. 52,84,474/- as against the loss appearing as per audited account.*
- 3. That the addition of Rs. 40,71,788/- confirmed by Ld CIT(A) without allowing the expenses claimed in audited account is arbitrary and bad in law.*
- 4. That the confirmation of estimation of profit at Rs. 96,846/- on the contractual business receipts duly recorded in books of account at Rs. 12,10,582/- is not justified.*
- 5. That the addition confirmed U/s 69A of IT Act, 1961, at Rs. 11,15,840/- on account of cash deposit in bank account out of the book transaction is arbitrary and bad in law.*
- 6. That the Assessee craves leave to raise any other ground/s on or before the date of hearing to prove that the order is bad.”*

**ITA No.98/JAB/2025**

- “1. That the NFAC has grossly erred in facts and circumstances of the case to dismiss the appeal without considered the merits of case.*
- 2. That the National Faceless Assessment Unit of Income Tax department has grossly erred in facts and circumstances of the case to assessed income at Rs. 4,24,16,633/- as against the LOSS of Rs. 3,21,97,352/- as per audited account.*
- 3. That the confirmation of penalty at Rs. 25,13,436/-U/s 271AAC(1) of IT Act, 1961, which 10% of the taxes levied U/s 115BBE of IT Act, 1961 at Rs. 2,51,34,360/- is not justified.*
- 4. That the Assessee craves leave to raise any other ground/s on or before the date of hearing to prove that the order is bad.”*

**ITA No.99/JAB/2025**

- “1. That the NFAC has grossly erred in facts and circumstances of the case to dismiss the appeal without considered the merits of case.*
- 2. That the National Faceless Assessment Unit of Income Tax department has grossly erred in facts and circumstances of the case to assessed income at Rs. 4,24,16,633/- as against the LOSS of Rs. 3,21,97,352/- as per audited account.*
- 3. That the confirmation of penalty at Rs. 9,207/- U/s 270A of IT Act, 1961, on account of income under reported at Rs. 5,26,033/- is not justified.*

4. That the Assessee craves leave to raise any other ground/s on or before the date of hearing to prove that the order is bad.”

**ITA No.100/JAB/2025**

“1. That the NFAC has grossly erred in facts and circumstances of the case to reject the application of condonation of delayed as the administrators are arrested and unable to file the appeal in due time during the assessment and appeal proceeding.

2. That the NFAC has grossly erred in facts and circumstances of the case to dismiss the appeal without considered the merits of case.

3. That the National Faceless Assessment Unit of Income Tax department has grossly erred in facts and circumstances of the case to assessed income at Rs. 4,24,16,633/- as against the LOSS of Rs. 3,21,97,352/- as per audited account.

4. That the addition of Rs. 4,15,90,600/- confirmed by the NFAC on account of cash deposit U/s 69A of IT Act, 1961, pertained to business receipts without allowing the expenses claimed in audited account is arbitrary and bad in law.

5. That the confirmation of addition U/s 56 of IT Act, 1961, at Rs. 5,26,033/- is not justified.

6. That the Assessment Unit of Income tax Department has levied the taxes U/s 115BBE of IT Act, 1961, is not justified.

7. That the Assessee craves leave to raise any other ground/s on or before the date of hearing to prove that the order is bad.”

**ITA No.97/JAB/2025**

2. The facts of the case are that upon noticing that the assessee had not filed its return of income for the assessment year 2018-19 and receiving information that the assessee had made deposits during the financial year 2017-18 amounting to Rs. 63,98,210/-, the ld. AO issued notices under section 148A of the Income Tax Act after following the necessary procedures. The ld. AO records that a number of opportunities were given to the assessee to respond to the queries of the Department but on each occasion, the responses to the notices were not received. Therefore, the ld. AO proceeded to complete the assessment in a best judgment manner adding back amounts which had been deposited by the assessee or paid to the assessee or

received by the assessee on account of contractual receipts / commission. Thus, the ld. AO made three separate additions amounting in total to Rs.52,84,474/- and completed the assessment of the assessee at this amount.

3. Aggrieved with the same, the assessee went in appeal to the ld. CIT(A). The ld. CIT(A) records in his order that there was a delay in the filing of the appeal and the appeal in Form No.35 was unaccompanied with any cogent or tenable evidence or averments with regard to the reason for delay. Therefore, he had requested the assessee to file an application for the condonation in delay alongwith evidences. In view of the fact that the assessee did not respond to this notice, the ld. CIT(A) dismissed the appeal.

#### **ITA No.98/JAB/2025**

4. Upon noticing that the assessee had not filed the return but deposited cash in one or more accounts of Rs.4,18,90,600/- during the financial year 2018-19 and received commission or brokerage of Rs.5,24,333/-, the ld. AO issued notice under section 148 to the assessee for the assessment year 20019-20. The ld. AO thereafter records the fact that though the assessee filed a return in response to the notice under section 148 at rupees nil. Thereafter, the assessee did not respond to any of the notices sent by the ld. AO. Therefore, the ld. AO proceeded to complete the assessment in a best judgment manner under the provisions of section 144 and he added the sum of Rs. 4,18,90,600/- as unexplained cash deposit under section 69A and sum of Rs.5,26,033/- as income from other sources under section 56 on account of commission or brokerage received of Rs.5,24,333/- and payments made to contractors amounting to Rs.17,00/-. He also initiated penalty proceedings under section 271AAC and under section 270A.

5. Aggrieved with this assessment order, the assessee went in appeal before the ld. CIT(A). The ld. CIT(A) observed that the appeal was filed late and therefore,

requested the assessee to file a condonation petition alongwith cogent reasons to explain the said delay. In response, the assessee filed a reply in which it was submitted that there had been misappropriation of funds within the organization and the administrative staff had been arrested, the work of the cooperative society had been suspended and the Government had appointed an Administrator for the society. Due to these facts, no real time communication had been received on SMS by the Administrator appointed by the Government and therefore, the delay of 162 days was beyond the control of the assessee and therefore, it was prayed that the delay may be condoned. The Id. CIT(A) observed that the FIR that have been filed by the assessee in support of its contention was dated 1.12.2019 but the appeal as per Form No. 35 was to be filed by December, 2024. Therefore, the FIR did not explain the delay in the filing appeal since it reported the incident of more than five years back and the Id. CIT(A) held that because an Administrator had been appointed, there was no justification to state that there was no one to look after the affairs of the cooperative society. He, therefore, held that specially because all orders were transmitted electronically to the assessee, there was no justification for holding that they had not been received by the Administrator and accordingly, he dismissed the appeal of the assessee for failing to explain the delay of 162 days in the filing of the appeal.

### **ITA No.99/JAB/2025**

6. This appeal relates to a penalty under section 270A imposed by the Id. AO on account of the fact that the assessment had been completed by making an addition of Rs.5,26,033/- on account of contractual receipts of Rs.1700/- and earned commission / brokerage of Rs.5,24,333/- during the financial year 2018-19 which obliged the assessee to file a return of income. The Id. AO issued several notices to the assessee but did not receive any response on account of the same. Therefore, he proceeded to levy a penalty of Rs.9,207/- under section 270A upon the assessee for this default.

7. Aggrieved with the said levy of penalty, the assessee filed an appeal before the NFAC. The ld. CIT(A) records that he offered the assessee an opportunity to submit a reply but the assessee did not aware of this notice. Accordingly, noting that the assessee had not raised any submissions relating to the merits of the matter, the ld. CIT(A) confirmed the penalty and dismissed the appeal of the assessee.

**ITA No.100/JAB/2025**

8. This appeal pertains to the levy of penalty of Rs.25,13,436/- under section 271AAC of the Act on account of the total addition of Rs.4,18,90,600/- being the income chargeable to tax under the provisions of section 115BBE.

9. The facts of the case are that following the completion of assessment for the assessment year 2019-20, the ld. AO issued notices to the assessee under section 271AAC(1) of the Act but did not receive response to this notice or any follow up notices issued by him. Accordingly, the ld. AO proceeded to levy the penalty on the basis of the additions made in the assessment order and the failure of the assessee to show cause why penalty should not be levied on account of the said additions. He, therefore, computed the penalty at 10% of the tax payable under section 115BBE(1)(i) at Rs.25,13,436/- and levied the penalty accordingly.

10. Aggrieved with this order, the assessee went in appeal to the NFAC. The ld. CIT(A) NFAC records that he issued a notice to the assessee affording him an opportunity to submit as to why penalty should not be levied and also asking him to file the copies of all his accounts for his perusal. However, the assessee did not respond to the said notices and therefore, the ld. CIT(A) held that as the findings in the quantum proceeding had not been controverted in any legally cogent manner, the penalty was fit to be confirmed. Accordingly, he dismissed the appeal and confirmed the penalty.

11. All these cases were taken up for hearing together. Sh. Hemant S. Modh, Advocate appearing on behalf of the assessee submitted that there were good reasons for the non-compliance before the lower authorities in view of the fact that an embezzlement had been detected in the funds of the cooperative society due to which an FIR had been registered against some of the employees of the cooperative society which had been involved in the embezzlement of funds, that had been detected during the course of audit. A copy of the audit report and the FIR which have been filed by the assessee in his paper book was shown to us. The Id. AR also submitted that as a result of the said FIR, the administrative staff of the cooperative society had been arrested and the Government had appointed an Administrator from among the Government officers. As such the cooperative society stood in a state of suspended animation i.e. it has stopped working and there was no one to look after its affairs. It was as a result of this that no real time communication had been received from the Income Tax Department and could not be attended to during the course of assessment or appeal proceedings. It was further submitted that the delays in the filing of the appeals before the Id. CIT(A) and the failure to furnish the facts before either the Id. AO or the Id. CIT(A) was entirely on account of these facts. Our attention was also invited to Form No.35 that have been filed before the Id. CIT(A) where in the condonation application accompanying the same, the facts relating to misappropriation of funds and the audit report pointed this out had been filed before the Id. CIT(A) alongwith the copy of the FIR. It was, therefore, prayed that the assessee was severely handicapped in making compliance before the lower authorities. It was prayed that the additions that had been made and the penalties that had been levied were not reflective of the actual state of affairs and therefore, in view of the circumstances that have befallen the assessee, it was prayed that the matter may kindly be restored to the Id. AO for fresh consideration. Id. AR also undertook to ensure that compliance was made during the remanded proceedings, if the same were to be remanded.

12. On the other hand, Sh. Shrawan Kumar Meena, Id. CIT DR submitted that the assessee had been habitually non-compliant during the course of proceedings before the lower authorities and had not made any submission on the merits of the case at any point during the course of proceedings. Hence, the additions were fit to be confirmed. However if, in its wisdom, the Tribunal decided to send the matter back to the Id. AO for fresh consideration, then it should direct the assessee to make due compliance before the Id. AO before the Id. AO, failing which the lack of compliance should be held to be the failure to explain the said deposits that had been held back.

13. We have duly considered the facts and circumstances of the case. It is fairly evident from the documents submitted before us that as a result of embezzlement of funds by the administrative staff of the society, which was detected during audit, the Government had suspended the functioning of the society and after registering an FIR and placing the staff members under rest, appointed an administrator to look after the affairs of the society. Due to these upheavals in the functioning of the society, it appears that the various notices sent by the Department were either not responded to, or not responded effectively resulting in a situation where the society has been saddled with huge tax and penal liabilities without any detailed examination into the facts of the case. Therefore, in the interest of justice, we deem it appropriate to restore all these matters back to the file of the Id. AO for fresh consideration of the issues before him after receipt of proper reply from the assessee and for thereafter taking an appropriate decision in accordance with law. We wish to make it clear to the Administrator of the assessee society, that the failure to respond to departmental notices would be considered a failure to explain the various issues raised by the Department and could result in adverse inference been drawn with regard to the same. Accordingly, we direct the Administrator of the assessee society to ensure due compliance before the Id. AO so that the true facts are brought on record and a decision can thereafter be taken in accordance with law. Accordingly, all

the four appeals namely ITA No.97, 98 99 & 100/JAB/2025 are restored to the file of the ld. AO for fresh consideration in accordance with law.

14. In the result, all four appeals are allowed for statistical purposes.

**Sd/-**  
**[KUL BHARAT]**  
**VICE PRESIDENT**

DATED:30/06/2025

<sup>Sh</sup>

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CITDR , ITAT,
4. CIT,
5. The CIT(A)

**Sd/-**  
**[NIKHIL CHOUDHARY]**  
**ACCOUNTANT MEMBER**

By order  
Sr. P.S.