

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No.786/Ind/2024 (AY: 2015-16)

Shree Rajendra Suri Sah Sakh Santha Myd, Dimond Park Colony, Rajgarh, Dhar (PAN: AABAS6487M)	बनाम/ Vs.	Income Tax Officer, Dhar
(Appellant)		(Respondent)
Assessee by	Shri S.N. Agrawal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	07.07.2025	
Date of Pronouncement	09.07.2025	

आदेश / ORDER

Per Paresh M Joshi, J.M.:

This is an appeal filed by the assessee Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the “**Act**” for sake of **brevity**) before this Tribunal. The assessee is aggrieved by the order bearing Number ITBA/NFAC/S/250/2024-25/1068079610(1) dated 28.08.2024 passed by the Ld. CIT(A) 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 dated 29.12.2017 passed **u/s. 143(3) of the Act**, the assessee's total income exigible to the tax was computed and assessed at **Rs.28,91,173/-**. That the aforesaid assessment order is hereinafter referred to as the "**impugned assessment order**".

2.2 That the assessee being aggrieved by the "**impugned assessment order**" prefers first appeal **u/s 246A of the Act** before the Ld. CIT(A) who by the "**impugned order**" has dismissed the appeal of the assessee on the grounds and reasons stated 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 of appeal in Form No.36 **against** the "**impugned order**" which are as under:-

"1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not condoning the delay in filing of appeal even when there was justifiable reason for delay in filing of the said appeal

2. That on the facts and in the circumstances of the case and in law, the Ld. Assessing Officer erred in making addition of Rs.

17,11,287/- to the total income of the appellant on account of rejection of deduction claimed by the appellant under section 80P of the Income-Tax Act, 1961 without properly appreciating the facts of the case and submissions made before him

3. That on the facts and in the circumstances of the case and in law, the Ld. Assessing Officer erred in making addition of Rs. 2,32,096/- to the total income of the appellant on account of disallowance of annual general meeting expenses claimed in the Profit and Loss account by treating it as fictitious without properly appreciating the facts of the case and submissions made before him

4. That on the facts and in the circumstances of the case and in law, the Ld. Assessing Officer erred in making addition of Rs. 36,012/- to the total income of the appellant on account of ad-hoc disallowance of 25 percent of travelling expenses of Rs. 1,066/-and telephone expenses Rs. 1,42,985/- claimed in the Profit and Loss account in view of personal utilization of vehicle and telephone without properly appreciating the facts of the case and submissions made before him

5. That on the facts and in the circumstances of the case and in law, the Ld. Assessing Officer erred in making addition of Rs. 2,99,477/- to the total income of the appellant on account of ad-hoc disallowance of 25 percent of depreciation expenses of Rs. 11,97,909/- claimed in the Profit and Loss account under section 38(2) of the Income-Tax Act, 1961 in view of leakage and personal utilization of vehicle without properly appreciating the facts of the case and submissions made before him

6. That on the facts and in the circumstances of the case and in law, the Ld. Assessing Officer erred in making addition of Rs. 51,988/- to the total income of the appellant on account of ad-hoc disallowance of 25 percent of other expenses of Rs. 2,07,953/-claimed in the Profit and Loss account in view of leakage and personal effect without properly appreciating the facts of the case and submissions made before him

7. That on the facts and in the circumstances of the case and in law, the Ld. Assessing Officer erred in making addition of Rs. 74,203/- to the total income of the appellant on account of estimation of expenses against commission income to be 100 percent ercent of such commission income by invoking the provisions of section 37 of the Act without properly appreciating the facts of the case and submissions made before him

8. That on the facts and in the circumstances of the case and in law, the Ld. Assessing Officer erred in making addition of Rs. 2,84,930/- to the total income of the appellant on account of estimation of expenses against locker rent income to be 100 percent of such locker rent income by invoking the provisions of section 37 of the Act without properly appreciating the facts of the case and submissions made before him

9. The appellant reserves the right to add, alter and modify the grounds of appeal as taken by it".

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 07.07.2025 when the Ld. AR for and on behalf of the assessee appeared before us and interalia brought to our notice that the **"impugned assessment order" u/s 143(3) of the Act** is a bi-partite order whereas **"impugned order" u/s 250 of the Act** is in violation of the principles of natural justice, illegal, bad in law and deserves to be set aside. The Ld. AR then interalia contended that the **"impugned assessment order"** is dated **29.12.2017** and that first appeal in terms of Section 246A was filed on 21.09.2023 and total number of delay is 2066 days. The Ld. CIT(A) while deciding the first appeal as and by way of the **"impugned order"** did not condone the delay in filing the first appeal under the Act and dismissed the appeal u/s 249(3) of the Act. The Ld. AR for the assessee contended that the assessee's

CA did not file the appeal despite the instructions and further due to several FIR is filed against the assessee/management there was a complete dead lock. The Ld. AR has placed reliance on the order dated 28.10.2024 of the ITAT, Indore Bench in ITA No.360 & 361/Ind/2023 (Assessment Year 2013-14 and 2014-15) in **assessee's own case** dated 28.10.2024 wherein in similar circumstances the matter was remanded. Hence for this Assessment Year 2015-16 under consideration too identical order by this Tribunal too should be passed (paper book page 24-35). The Ld. AR also invited our attention that there is yet another order of ITAT, Indore dated 24.03.2025 in respect of assessee's own case pertaining to (Assessment Years 2016-17, 2017-18 & 2018-19) wherein too matter was remanded (ITA No.781 to 785/Ind/2024 titled Shree Rejendra Suri V/s ITO, Dhar). The Ld. AR contended that the assessee had lot of difficulties hence there was a dead lock for several years and finally dead lock was resolved on 13.09.2023. It was stated and emphasized that "**impugned assessment order**" is dated 29.12.2017 and the same was received on 29.12.2017 itself. The 1st appeal was filed on 25.09.2023. (Appeal fee paid on 23.09.2023). The Ld. AR

attributed the delay in filing the 1st appeal from 2017-19 due to lapse on part of counsel as he did not file an appeal despite instructions of the assessee and post 2019 the criminal and other legal proceedings which the assessee had to face, as a result of which there was a complete lock down/dead lock and the management was totally non functional. The Ld. AR contended that on **23.09.2023** a letter was issued to JAO and the copy of the "**impugned assessment order**" was sought (page 21 of paper book). The Ld. AR then placed reliance on the affidavit of one Suresh Tated, **Chairman/President of the assessee on page 44** of paper book and contended that the copy of the "**impugned assessment order**" was handed over to the **erstwhile CA** Suresh Chand Bhandari for filing of an appeal before CIT(A) however such an order inadvertently remained with him and no appeal was filed before CIT(A) within the prescribed time. Subsequently a FIR was registered on **30.08.2019** against the assessee by the Inspector in the office of the Registrar, Societies & Firms alleging that the financial irregularities were committed by the assessee in the year 2018. Subsequently **six more FIR's** were registered with similar allegations. As a result the Dy. Director, Co-

operative Society, Dhar passed an order on **15.10.2019** directing all office bearers of the assessee to vacate their office with immediate effect as a result of which functioning of the assessee society came **to a stand still**. Subsequently upon representation to the Dy. Commissioner, Cooperative Society, Dhar for a **reinvestigation** it was found that no irregularities had been committed in the assessee society. The State Government too supported assessee society in a PIL. EOW (Police) too found no irregularity by the Society. On 21.10.2022 the Joint Registrar, Co-Operative Society **restored** the assessee society. High Court of MP in WP No.9623 of 2023 vide order dated 25.08.2023 **quashed all seven FIR** and allowed the writ petition. After that elections were conducted and on 13.09.2023 assessee society recommenced its full-fledged activities. It is at this point of time the assessee society came to know that several orders were passed both in assessment and in the appellate proceedings. The assessee society was advised to file appeal in case of Assessment Year 2015-16. The Ld. AR submitted that it was due to aforesaid reasons that there was a delay in filing the first appeal. Reliance was placed on ITAT, Chhattisgarh Bench order dated 16.04.2025

in **ITA No.71/RPR/2025 in case of late Shanti Mohta v/s ITO**
and in particular para 9 which was read out and is quoted as
below:-

"9. On a perusal of the order of the Ld.CIT(Appeals)/NFAC, it is observed that the Ld.CIT(Appeals)/NFAC dismissed the appeal of the assessee in limine for non-compliance without dealing with the merits of the case. In my considered view, once an appeal is preferred before the CIT(Appeals), it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. In fact, a perusal of Sec.251(1)(a) and (b), as well as the "Explanation" to Sec.251(2) of the Act reveals that the CIT(Appeals) remains under a statutory obligation to apply his mind to all the issues which arises from the impugned order before him. As per the mandate of law the CIT(Appeals) is not vested with any power to summarily dismiss the appeal for non-prosecution. The aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom). In the aforementioned case the Hon'ble High Court had observed as under:

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of s. 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under s. 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact w.e.f. 1st June, 2001 the power of

the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the s. 251(1)(a) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."

3.2 The Ld. AR then submitted that the "impugned order" should be set aside as has been done in own case of the assessee by ITAT Indore (supra). Further the assessee is a society. It had made a representation before the Ld. A.O. The delay initially was on account of counsel not filing the appeal which further continued till dad lock as discussed (supra). If the "**impugned order**" is set aside no prejudice would be caused to the revenue. A prayer for remand was too made.

3.3 Per contra Ld. DR contended that in so far as delay is concerned revenue has no objection but small cost of Rs.2500/- be imposed on the assessee society.

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 as presented to this Tribunal by both Ld. AR & Ld. DR to determine the legality, validity of the “**impugned order**” basis law and by following due process .

4.3 We observe and note that in the “**impugned order**” the Ld. CIT(A) has held as under:-

“6.2 In view of the aforesaid legal discussion and observations, I believe in the present case, cause of substantial justice would not be served by condoning inordinate delay of 2066 days for which no cogent reason has been given. Therefore, appeal stand dismissed in limine in view of provision of section 249(3) of Income tax Act, 1961 read with Faceless Appeal Scheme 2021 Paragraph 5(1)(ii) (a)”.

4.4 We also observe and note that by virtue of two orders of ITAT, Indore as aforesaid in assessee’s own cases pertaining to several assessment years dealt therein and in identical circumstances the delay was condoned.

4.5 We also further observe and note that the “**impugned order**” is not on merits as contemplated by law.

4.6 In view of the aforesaid and the premises drawn up by us delay before the Ld. CIT(A) is condoned on grounds of sufficient cause. However due to peculiar facts and circumstances we deem it fit to impose cost of Rs.2500/- on assessee as assessee is also expected to be vigilant and the **"impugned order"** is set aside and matter is remand back to Ld. CIT(A) on *denovo basis*. The Ld. CIT(A) is directed to give full and complete opportunity to the assessee and to pass a speaking order.

5.

Order

5.1 The **"impugned order"** is set aside and matter is remanded back to the file of Ld. CIT(A) who shall pass a speaking and reasoned order after cost of Rs.2500/- is paid to P.M. Relief Fund and necessary proof is filed before Ld. CIT(A).

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

Order pronounced in open court on 09.07.2025.

Sd/-

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक/ Dated : 09/07/2025

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