

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

ITA No.693& 697/Ind/2024
(AYs: 2018-19 & 2019-20)

Santosh Chaturvedi, C/o Adv. Hitesh Chimnani, UG-37, Trade Centre, 18 South Tukoganj, Indore (PAN: AAAJM1277D)	बनाम/ Vs.	Dy. Commissioner of Income Tax, CPC, Bengaluru
(Appellant)		(Revenue)
Assessee by	Shri Yash Kukreja, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	21.07.2025	
Date of Pronouncement	22.07.2025	

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 **breivity**) before this Tribunal. The assessee is aggrieved by the order bearing Number ITBA/APL/S/250/2024-25/1066707475(1) dated **15.07.2024** 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 2018-19

and the corresponding previous year period is from 01.04.2017 to 31.03.2018.

2. FACTUAL MATRIX

2.1 That as by way of an intimation Order No.CPC/1819/A3/1918860698 dated 13.12.2019 an amount aggregating to Rs.1,45,55,100/- was disallowed on account of inconsistencies more specifically described in the said order dated 13.12.2019 at page-6 which is hereinafter referred to as the **"impugned intimation order"**.

2.2 That the assessee being aggrieved by the aforesaid **"impugned intimation 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 stated therein. **The core ground and reasons for dismissal** of first appeal under the Act was **non condonation of delay in preferring the first appeal within the statutory time limit**. In para 7.9 and 8 of the "impugned order" it is held by the Ld. CIT(A) as follows:-

"7.9 In view of the above discussions and decisions, the request for condonation of delay is rejected as the same is not maintainable in view of the provisions of Section 249(2) of the I.T Act and therefore the appeal is dismissed.

Since the appeal has been found not maintainable as per discussion made in the preceding paras, therefore, no decision on merits on the grounds of appeal is given.

8. In the result, the appeal is dismissed"

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 circumstances of the case and in law the Ld. CIT(A) erred in not granting the assessee a proper opportunity of being heard to present its case.

2. That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in not condoning the delay in filing of appeal without properly appreciating the facts of the case.

3. That the Ld. CIT erred in confirming the additions by way of adjustment while processing the return u/s. 143(1) of Rs. 1,45,55,100/- on account of contribution to provident fund, ESICGST without properly appreciating the facts of the case and submissions made before him.

4. The Ld. CIT(A) erred in confirming disallowance of Rs. 82,43,986/- made by the CPC invoking Sec.36(1)(va) of the Act, on account of delayed payment of contribution to ESIC & PF without appreciating the facts of the case. The disallowance mechanically/automatically made by the CPC and sustained by Ld. CIT (A) is against the factual matrix and thus not justified.

5. That on the facts and in law, the Ld. CIT(A) erred in confirming additions/adjustments of Rs. 57,74,491/- on the account of GST Payable, Contribution towards ESIC, PF u/s. 43B of the Act without appreciating the facts of the case and submission made before him.

6. That on the facts and in law, the Ld. CIT(A) erred in confirming additions/adjustments of Rs. 5,36,616/- u/s. 43B without appreciating the fact that the assessee had already made disallowance of the same amount while computing his income thus resulting in double addition of the same amount.

7. That on the facts and circumstances of the case and in law, Ld. CIT (A) erred in not appreciating the fact that no disallowance of GST can be called for as the assessee had not debited/claimed the gst amount in his profit and loss account, thus the disallowance of gst u/s. 43B is unjustified.

8. The appellant seeks to leave, add, alter, amend, abandon or substitute any of the above grounds during the hearing of the appeal”.

3. Record of Hearing

3.1 Since facts and circumstances are more or less common both the appeals were heard together for sake of ease.

3.2 The hearing in the matter took place before this Tribunal on 21.07.2025 when the Ld. AR for and on behalf of the assessee brought to our notice that there was a delay of 1064 days in preferring the first appeal before Ld. CIT(A) which was not condoned in the “**impugned order**” consequently the first appeal of the assessee came to be dismissed on ground of delay in filing the first appeal. The Ld. AR submitted that he is making common submissions for ITA No.693/Ind/2024 (Assessment Year 2018-19) and for ITA No.697/Ind/2024 (Assessment Year 2019-20) as in respect of both the appeals the ground for dismissal of first appeal are common i.e. delay in preferring the first appeal. In Assessment Year 2018-19 the delay was 1064 days and in Assessment Year 2019-20 the delay was 910 days. In the written

submission which is accompanied by an affidavit dated 14.07.2025 it is stated that the assessee is not well acquainted and conversant with one line procedures and e-mail technology. Further he had entrusted all the compliance related responsibilities including the filling of Income Tax Returns and receipt of official communication to one Mr. Abhinav Chaturvedi who was his nephew, who was employed by the assessee in the capacity of Administrative head for the business affairs. Owing to the extra ordinary disruptions caused by Covid-19 pandemic and other personal circumstances Mr. Abhinav Chaturvedi failed to diligently discharge his responsibilities with the result that the intimations u/s 143(1) of the Act were not brought to the notice of the assessee at the relevant time and place. It was stated that the assessee became aware of the **"impugned intimations orders"** only upon **receipt of demand notice(s) dated 07.12.2022** and upon realizing lapse attributable to the negligence on the part of Mr. Abhinav Chaturvedi, the assessee approached his counsel and filed first appeal on 10.12.2022. The Ld. AR has also taken the assistance of judgment of Hon'ble Supreme Court in case reported in (2022) 134 Taxmann.com

307(SC)/(2022) 441 ITR 722 (SC) wherein due to **Covid** the time limit under various laws including tax laws were extended as a result the **period from 15.03.2020 to 28.02.2022 together with grace period of 90 days stands excluded.** During the hearing the Bench noticed that the intimations are dated **13.12.2019 for Assessment Year 2018-19** and **15.05.2020 (for Assessment Year 2019-20)** respectively whereas appeal was filed on 10.12.2022 much after even the expiry of 90 days grace period given by Supreme Court from 28.02.2022 onwards and hence the query was raised why there was an abnormal delay to which the Ld. AR had no plausible explanation to offer to the Bench. The Bench also pointed out that the delay before the Ld. CIT(A) is admitted position as same is recorded in the **“impugned order”** to which also the Ld. AR had no explanation to offer. The Ld. DR for and on behalf of the Revenue submitted that the revenue has no objection subject to that cost be imposed by the Tribunal on assessee which the Ld. AR agreed to though reluctantly. We notice that the assessee has filed additional evidence application before us which we reproduce as below:-

"July 20, 2025

To
Hon'ble Members
Income Tax Appellate Tribunal,
Indore Bench.
Re: Santosh Chaturvedi
ITA No: 693/IND/2024 & 697/IND/2024
A.Y 2018-19 & 2019-20

Subject: Application for Additional Evidence u/s 29 of the Income Tax Appellate Tribunal Rules
Sir,

1. The assessee is an individual engaged in the business and profession and has duly filed his returns of income for the relevant assessment years on 31.10.2018 for Assessment Year (AY) 2018-19 and on 31.10.2019 for Assessment Year (AY) 2019-20.

2. For the relevant previous years, the assessee declared total income of ₹26,32,590/- and *40,88,090/-, respectively.

3. The books of account of the assessee were duly audited by independent Chartered Accountants, and the tax audit reports for the respective previous years are placed on record at Page Nos. 38-57 and Page Nos. 62-79 of the Paper Book.

4. The returns of income were processed under section 143(1) of the Income Tax Act, 1961, and intimations were issued by the CPC wherein certain additions/disallowances were made.

Sr. No	Particulars	A.Y 2018-19	A.Y 2019-20
1	Addition u/s 43B on account of GST, PF, ESIC	Rs. 57,74,491/-	Rs. 57,30,206/-
2	Addition on account of PF and ESIC contribution u/s 36(1)(va)	Rs. 82,43,986/-	Rs. 73,17,620/-

5. During the appellate proceedings before the Hon'ble CIT(A), the assessee made various submissions; however, certain documents having a direct and material bearing on the issues under consideration could not be submitted at that stage.

6. *These vital documents have now been duly compiled and presented before this Hon'ble Bench in the form of a Paper Book, filed on 18.07.2025.*

7. *It is pertinent to highlight that the disallowance made under section 143(1) on account of employees' contribution to PF/ESIC also inadvertently includes an element of employer's contribution, which is not liable for disallowance under section 36(1)(va) of the Act.*

8. *Sample challans evidencing this fact are placed in the Paper Book at Page Nos. 84-93, clearly demonstrating the inadvertent inclusion of employer's contributions in the impugned disallowance.*

9. *In light of the above, a fresh and detailed re-computation of the disallowance is imperative to correctly determine the amount liable to be added under the respective provisions.*

10. *Furthermore, the other supporting documents annexed in the Paper Book - including the sales ledgers, sample vouchers, schedules to the audited books of account, and the tax audit reports - are relevant and crucial for the proper computation of income and directly impact the adjudication of the issues at hand.*

11. *It is respectfully submitted that the admission of these additional evidences is essential for a just, fair, and comprehensive adjudication of the present appeal, as they bear a direct nexus to the disputed additions and are instrumental in determining the correct taxable income.*

12. *Since these documents were not available before the Hon'ble CIT(A) at the earlier stage, it is humbly prayed that this Hon'ble Bench may consider setting aside the matter to the file of the CIT(A) for proper adjudication after taking into account all the additional evidences and any further material that may be deemed necessary in the interest of justice.*

For this act of kindness your assessee shall forever remain obliged.

Thanking You,

*Sincerely,
CA Yash Kukreja"*

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 are of the considered opinion that “**impugned order**” has simply dismissed the appeal on ground of delay in preferring the first appeal. We basis contentions canvassed before us on aspect of delay are not much convinced by the arguments canvassed by the Ld. AR as assessee has blamed the delay attributable to his nephew Abhinav Chaturvedi who was negligent in promptly informing, to the assessee. We find **basis records** that he was a paid employee of the assessee. No affidavit of Abhinav Chaturvedi is placed on record. Assessee by blaming other cannot say in law that there is sufficient cause for the delay. In the circumstances keeping in mind that ends of justice at least requires assessee’s first appeal to be heard on merits instead of getting dismissed on ground of delay in filing the 1st appeal. We deem it fit to impose the cost of Rs.7500/- in

each appeal on the assessee as and by way of deterrent measure. We therefore set aside the “impugned order” and condone the delay with a direction to the assessee to pay Rs.7500/- in respect of each appeal to the “**Prime Minister National Relief Fund**” and to show necessary proof of same to the Ld. CIT(A) before he takes up the appeals for hearing. We also direct the assessee to file additional evidence application (supra) before the Ld. CIT(A) in accordance with law and the Ld. CIT(A) is directed to dispose off the said application in accordance with law applicable rules in this regard under the Act.

5. **Order**

5.1 In the premises, we set aside the “**impugned order**” as and by way of remand back to the file of Ld. CITA) with directions as aforesaid on *denovo basis*.

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

ITA No.697/Ind/2024 (Assessment Year 2019-20)

The facts in above appeal are almost similar and finding in Appeal No.693/Ind/2024 shall apply *mutatis mutandis* to this appeal too.

In result both the appeals are allowed for statistical purpose as and by way of remand back to the file of Ld. CIT(A) on *denovo basis* with directions as aforesaid.

Order pronounced in open court on 22.07.2025.

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore
दिनांक/ Dated : 22/07/2025
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