

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.771/Ind/2024 (AY: 2012-13)

Shivnarayan Rajput, House No.33, Village Boratalai, Hoshangabad (PAN: EJXPS6177Q)	बनाम/ Vs.	ITO, Ward-1, Itarsi
(Appellant)		(Respondent)
Assessee by		Ms. Priyal Jain, AR
Revenue by		Shri Ashish Porwal, Sr. DR
Date of Hearing		17.07.2025
Date of Pronouncement		22.07.2025

आदेश / O R D E R

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/250/2024-25/1065122347(1) dated 24.05.2024 passed by the Ld. CIT(A) 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 an assessment order **u/s. 144/147 of the Act** the total income of the assessee exigible to tax was computed and assessed at **Rs.1,75,85,028/-**. That the aforesaid assessment order is dated 12.12.2017 which is hereinafter referred to as the **“impugned assessment order”**. A bare simple perusal of the **“impugned assessment order”** shows that despite several opportunities given to the assessee as and by way of number of the notice(s) issued under the Act, the assessee has remained **NON COMPLIANT** which led the Ld. A.O to pass the **“impugned assessment order”** by exercising the power u/s 144 of the Act which is conferred upon the Ld. A.O under the Act called **“best judgment assessment”**.

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 first appeal of the assessee on the grounds and reasons stated therein. The core reason for dismissal of the first

appeal was once again non-compliance to the notice(s) of opportunity which were issued to the assessee by the Ld. CIT(A) from time to time.

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 the learned NFAC (Appeals) was not justified in upholding the order of the Ld. AO in view of the fact that the order passed u/s 144 was illegal, void and in breach of principle of natural justice.

1.1 That, the Commissioner of Income-Tax (Appeals) erred in conferring to the ex-parte order passed in violation of principle of natural justice and is also in violation of provision of Section 250 & 251 where it clearly provides that the Ld. CIT (A) has to pass a speaking order on the merits of the case by examining, verifying and analyzing the material on record. Since there is no meritorious finding given by the Ld. CIT(A) thus the ex-parte order passed without giving opportunity of being heard is illegal, bad in law and perverse.

2. That, the issuance of notice under section 147 for re-opening of assessment is invalid, arbitrary and without any substance as there has been no 'escapement of income' and the same has not been corroborated by the assessing officer.

2.1 That the Learned AO had no substantial rational behind the re-opening of assessment and merely a ground of assumption or suspicion is not adequate for re-opening of assessment and the same is reiterated by the ITAT Delhi in the case of Shri Mahavir Prasad Vs ITO, ITA No. 924/DEL/2015, herein the instance the learned AO solely relied on an erroneous assumption and added cash credit while assessing the income of the assessee, whereas factually the assessee did not receive any income from the purchaser.

3. That the Ld. AO order lacked on merits as the order was solely based on assumption as to the source of deposit in the Assessee's account without scrutinizing the credibility of the assumption thus the Ld. CIT(A) has erred in upholding the order passed by Learned AO and thereby levying penalty.

3.1. That the Ld. Assessing officer erred in law and facts of the case as the Income Tax Act does not work on the lines that whatever is cash/deposit received by a person must be regarded as income and shall be liable to tax and the same is laid down by the Apex Court in the case of Parimisetti Sethramamma Vs CIT, 57 ITR 532. Yet, in the case the actions of the learned AO implies that any source of deposit in the account of Assessee was treated as cash credit and was charged for tax in assumption or presumption, without making any further investigation or inquiry to bring on record any report of competent authority.

4. The Appellant reserves the right to, add, amend or alter any ground of appeal”.

3. Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 17.07.2025 when the Ld. AR for and on behalf of the assessee interalia contended at the outset that there is delay of 87 days in filing the instant second appeal and in this regard a condonation of delay application is placed on record and the attention was invited to para 7 of the said application wherein the following averments were made:-

"7. That the delay in filing the present appeal is partly attributable to the conduct of the Appellant's counsel, Shri Dharmendra Kumar Gupta, who was entrusted with handling the matter. Although the said counsel had duly informed the Appellant about the passing of the impugned order dated 24/05/2024 in a timely manner, the necessary steps for filing

the appeal were not undertaken promptly due to lack of proper coordination and follow-up. The delay was primarily caused firstly the counsel misplaced the relevant documents required for filing, including Form 36 and the Vakalatnama, which had already been duly signed by the Appellant. Secondly the counsel was preoccupied with the filing of Input Tax Returns and conducting audits during the months of July to September 2024. As a result, the preparation and filing of the appeal could not be complete, despite the Appellant's consistent willingness and intention to pursue the matter, ultimately leading to the delay”.

Basis above it was contended that delay of 87 days be condoned in the interest of justice. An affidavit dated 05.01.2025 is too placed on record in support of condonation of delay. The Ld. DR appearing for Revenue fairly submitted that the Revenue has no objection if the delay is condoned. Accordingly this Tribunal condones the delay of 87 days in filing the present second appeal. Appeal is admitted and taken up for hearing.

3.2 The Ld. AR then submitted that the assessee is a senior citizen and lacks adequate knowledge. Notice(s) of the Ld. A.O could not be complied with due to depression which was on account of death of his wife and daughter. It was contended that the Ld. A.O has added entire sale consideration proceeds to the income assessed and has not added the capital gain portion. It was further contended that in Form No.35 the e-mail id of his tax consultant was given for communication purpose and despite

notice(s) he did not appear before the Ld. CIT(A). It was submitted that para 3 of the **"impugned order"** be taken into account. The Ld. DR submitted that in the given facts and circumstances which have been debated today during the course of the hearing it would be fair and just that the matter be remanded to the Ld.AO for fresh adjudication.

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 basis records of the case and after hearing and so also upon examining the contentions are of the considered opinion that both the **"impugned assessment order"** of the Ld. A.O and so also the **"impugned order"** of Ld. CIT(A) are of such a nature that the real income of the assessee is not determined in real time basis. There is no opportunity in effective manner appears

to have been granted wherein the assessee could have explained nitty gritty of his income on merits. This Tribunal desires meritorious disposal of first appeal and so also determination of income of the assessee on hard facts basis material. Unfortunately in both orders of lower authority this has not been happened. Hence we concur with the submissions of both the Ld. AR as well as Ld. DR that it would be in fitness of things that the **“impugned order”** be set aside and matter be relegated back to the file of jurisdictional A.O where assessee could explain his case on his income in an effective manner by producing necessary papers, documents and information so that real income exigible to tax can be computed and assessed on merits. Accordingly we set aside the **“impugned order”** and remand the case back to the file of jurisdictional A.O on *denovo basis* who after giving opportunity to the assessee will pass a fresh order on merits which should be reasoned one and speaking too.

5.

Order

5.1 In the premises drawn up by this Tribunal as aforesaid we set aside the **“impugned order”** and remand the case to the Jurisdictional A.O on *denovo basis* with the directions as aforesaid.

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

Order pronounced in open court on 22.07.2025.

Sd/-

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

(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