

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.330/JPR/2024
Assessment Year:2010-11

Mahesh Khandelwal, Flat No.202, Tulsi Avenue, 130 Vidya Nagar, Indore	<u>बनाम/</u> Vs.	Addl. JCIT(A)-1 Jaipur
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AFNPK3252J		
Assessee by	Shri Rahul Jain, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.07.2025	
Date of Pronouncement	28.07.2025	

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 16.02.2024 passed by learned Commissioner of Income-Tax (Appeals)-Addl/JCIT(A)-1, Jaipur ["CIT(A)"] which in turn arises out of intimation of assessment dated 04.12.2010 passed by learned CPC, Bengaluru ["AO"] u/s 143(1) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2010-11, the assessee has filed this appeal on following ground:

"1. The AO is of the contention that I have adjusted settlement/speculation loss of Rs 2,70,000/- against the other than speculation business income and hence added it back to the Total Income. However, as per the original return submitted by me for AY 10-11 on 17th September 2010 electronically, it can be clearly seen that I have added back the speculation loss to the total income and not adjusted. Hence the Ld. AO has erred in adding the same and effectively taxing it twice. The AO is also of the contention that since intimation u/s 143(1) was issued on 4th December 2010, appeal against the same on 9th


October 2023 is well beyond the stipulated time as allowed under the provisions of Income tax act and hence untenable. However, I have repeatedly stated and confirmed during the faceless proceedings that I had not received any communication from the department and also have submitted an affidavit confirming the same. Hence, the appeal rejected on the grounds of delay is not justified."

2. The present appeal was filed by assessee/appellant to ITAT, Jaipur bench and it was registered as ITA/330/JPR/2024. However, the same was transferred to ITAT, Indore Bench through a U.O. dated 24.12.2024 of the office of ITAT, Jaipur Bench citing that the jurisdictional AO in this case was DCIT, Circle-1, Indore and therefore the Hon'ble President of ITAT has, in the hearing which took place on 06.12.2024, allowed to transfer this appeal to Indore Bench. Accordingly, the case records have been transferred to Indore Bench and today this appeal has come before us for hearing with original registration number i.e. ITA/330/JPR/2024. The case was heard and we proceed to dispose of by this order.

3. The background facts leading to present appeal are such that the assessee-individual e-filed his return of AY 2010-11 u/s 139(1) on 17.09.2010 declaring a total income of Rs. 4,74,040/-. The same was acknowledged by AO vide E-filing Acknowledgement No. 155207281170910. The return so filed was processed by AO u/s 143(1) determining total income at Rs. 7,44,040/- after making an addition of Rs. 2,70,000/-. Aggrieved, the assessee carried matter in first-appeal before CIT(A). The CIT(A), however, dismissed assessee's appeal on the ground of inordinate delay of more than 12 years in filing. Now, the assessee has come before this bench for redressal of grievance.

4. Ld. AR for assessee submitted that the assessee filed first-appeal to CIT(A) on 12.04.2023 against the impugned intimation passed by AO u/s 143(1). He drew us to the copy of intimation u/s 143(1) issued by AO, placed in original appeal set filed to ITAT and once again re-filed in the Paper-Book

of assessee. For the sake of immediate reference, we have scanned the relevant pages of intimation:



आयकर केन्द्र
CENTRALIZED PROCESSING CENTER
INCOME TAX DEPARTMENT

10

Post Bag No.2, Electronic City Post Office, BENGALURU-560500


पोस्ट बैग २, इलेक्ट्रॉनिक सिटी पोस्ट ऑफिस, बंगलूर ५६०५००
Telephone: 18001030025, 18004190025 (Toll Free) or 080-61464700 फ़ोन- १८००१०३४४५५ (टॉलफ्री) ०८० ४६६०५२००

INTIMATION U/S 143(1) OF THE INCOME TAX ACT, 1961 आयकर अधिनियम 1961 की धारा 143(1) के अधीन आदेश

Name & Address: MAHESH CHAND KHANDELWAL FLAT NO. 202 TULSI AVENUE 130 VIDHYA NAGAR INDORE MADHYA PRADESH 452009 Ph		नाम और पता मोह चंद खंडेलवाल फ्लैट नं. २०२ तुल्सी बन्दु १३० विद्या नगर इंदौर मध्य प्रदेश ४५२००९	
Gender: सिंग MALE	ITR Type: आई टी आर प्रकार ITR-4 ORIGINAL	PAN: स्थायी खाता संख्या AFNPK3252J	Document Identification No: पत्र संदर्भ संख्या CPC/1011/14/1006382741 Demand Identification No: 2011201037005336541T
Status: प्रास्थिति INDIVIDUAL	Return filed under section 139(1): धारा 139(1) के अन्तर्गत	E-Filing Acknowledgement No: 155207281170910	A.Y. निर्धारण वर्ष 2010-11
Residential Status: आवासीय स्थिति RESIDENT	Due Date for Filing Original Return: मूल विवरणी दाखिल करने की देय तिथि 15-10-2010	Date of Filing Return: विवरणी दाखिल करने की प्राप्ति तिथि 17-09-2010	Date of Order: आदेश की तिथि 04-12-2010

INCOME TAX COMPUTATION (IN RUPEES)				
Sl.No. क्र.सं.	Particulars विवरण	Reporting Heads विवरण देने वाले शीर्ष	As Provided by Taxpayer in Return of Income करदाता द्वारा आय विवरणी में दिए ब्यौरे	As Computed Under Section 143(1) धारा 143(1) के अधीन रुगणित
1	HEADS OF INCOME	INCOME FROM SALARY वेतन से आय	0	0
2		INCOME FROM HOUSE PROPERTY गृह संपत्ति से आय	0	0
3		INCOME FROM BUSINESS OR PROFESSION व्यवसाय या वृत्ति से लाभ एवं प्राप्ति	5,24,683	7,94,683
4		INCOME FROM CAPITAL GAINS पूँजीगत प्राप्ति	0	0
5		INCOME FROM OTHER SOURCES अन्य स्रोतों से आय	3,766	3,766
6	INCOME DETAILS	INTRA HEAD ADJUSTMENTS	NA	0
7		GROSS TOTAL INCOME(AFTER INTRA HEAD ADJUSTMENTS)	5,28,449	7,98,449
8		LOSS OF CURRENT YEAR ADJUSTED	0	0
9		LOSS OF PREVIOUS YEARS ADJUSTED	0	0
10		GROSS TOTAL INCOME	5,28,449	7,98,449
11		DEDUCTIONS UNDER CHAPTER VIA	54,413	54,413
12		TOTAL INCOME AFTER DEDUCTIONS	4,74,040	7,44,040

*NOTE: Always quote Document Identification Number, Date of Order and PAN.



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Page 1 of 5

Document Identification No. CPC/1011/I4/1006382741

पत्र संदर्भ संख्या

PAN: स्थायी खाता संख्या AFNPK3252J	Name नाम MAHESH CHAND KHANDELWAL	A.Y. निर्धारण वर्ष 2010-11	Date of order आदेश की तिथि 04-12-2010
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Sl.No. क्र.सं.	Particulars विवरण	Reporting Heads विवरण देने वाले शीर्ष	As Provided by Taxpayer in Return of Income करदाता द्वारा आय विवरणीमें दिए ब्यौरे	As Computed Under Section 143(1) धारा 143(1) के अधीन संगणित
13		LOSS IN CURRENT YEAR TO BE CARRIED FORWARD	2,70,000	2,70,000
14		AGRICULTURAL INCOME	2,80,740	2,80,740
15	TAX DETAILS	TAX ON NORMAL INCOME	1,30,434	2,11,434
16		TAX ON SPECIAL INCOME	0	0
17		NET TAX PAYABLE	0	2,11,434
18		AGRICULTURAL REBATE	0	42,148
19		ADJUSTED TAX LIABILITY	88,286	1,69,286
20		EDU CESS+SECONDARY & HIGHER EDU CESS	2,649	5,079
21		GROSS TAX LIABILITY BEFORE TAX RELIEF	90,935	1,74,365
22		TAX RELIEF	RELIEF U/S 89	0
23	RELIEF U/S 90		0	0
24	RELIEF U/S 91		0	0
25	TOTAL TAX RELIEF		0	0
26	TOTAL INCOME TAX LIABILITY	TOTAL INCOME TAX LIABILITY	90,935	1,74,365
27	INTEREST PAYABLE	234A INTEREST	0	0
28		234B INTEREST	0	7,587
29		234C INTEREST	825	3,749
30		TOTAL INTEREST LIABILITY	825	11,336
31		AGGREGATE INCOME TAX LIABILITY	91,760	1,85,701
32	PRE-PAID TAXES	TDS	0	0
33		TCS	0	0
34		ADVANCE TAX	90,000	90,000
35		SELF ASSESSMENT TAX	1,760	1,760
36		TOTAL TAX CREDIT	91,760	91,760

Mahesh Khandelwal
ITA No. 330/JPR/2024 - AY 2010-11

Document Identification No. CPC/1011/14/1006382741

पत्र संदर्भ संख्या

PAN: स्थायी खाता संख्या	Name नाम	A.Y. निर्धारण वर्ष	Date of order आदेश की तिथि
AFNPK3252J	MAHESH CHAND KHANDELWAL	2010-11	04-12-2010

Notes:

- 1)The Refund, if any, is issued by State Bank of India on behalf of the Income Tax Department. Interest under section 244A of the Income Tax Act, 1961 is computed up to the date of issue of the refund. Refunds will be issued only for amounts exceeding Rs. 100.
- 2)The Refund status details can be obtained from website www.tin-nsdl.com, under "Status of Tax Refunds". In case of any difficulty or delay in the receipt of refund, kindly call the State Bank of India Call Center number 18004259760 to know the status of refund.
- 3)In case of Demand, this intimation may be treated as Notice of Demand under section 156 of the Income Tax Act, 1961. Accordingly, you are requested to pay the entire Demand within 30 days of receipt of this intimation. The payment can be made using the printed challan enclosed. The Tax Payment challan is enclosed where the Tax Payable exceeds Rs. 100.
- 4)If you are not satisfied with the intimation under section 143(1), you may seek rectification under section 154 by filing an **application electronically** for rectification to CPC, for which the details are available on website <https://incometax.gov.in/>.
- 5)To know the Common Errors that are made while filing Income Tax Return, you may log on to <https://incometax.gov.in/portal/downloads10-11/ITR%20V1.1%20Common%20Errors%20Guide%20for%20Rectification%20Request.pdf>
To know the Common Errors noticed in E filed rectification requests, you may log on to https://incometax.gov.in/portal/downloads/Common%20Errors_Efiled%20Rectification.pdf
- 6)For any further clarification regarding demands adjusted (if any) where the AO (Intimating Demand)[column 6 of the table showing details of adjustments of refund infra] is other than CPC, please contact your current jurisdictional Assessing Officer (AO). In order to know your current jurisdictional Assessing Officer (AO) you may log on to <https://incometax.gov.in> and click on "Know Jurisdiction" under "SERVICES" menu. Any rectification/correction of the demand can be made only by the jurisdictional Assessing Officer. CPC cannot carry out any modifications to the above demands nor can it clarify issues regarding these demands.

Digitally signed by N SAIRAJ
Date: 20230831 24:06:
Reason: DIGITALLY SIGNED
Location: BENGALURU - CPC

N SAIRAJ
Deputy Director of Income Tax, CPC

This communication is computer generated and may not contain signature. Where sent by email, this is signed with the digital signature of the Income Tax Department - CPC, which is obtained from a certifying authority under the Information Technology Act, 2000. For any queries, please quote the Document Identification Number and call on the telephone number provided above.

5. Ld. AR referred the last page of the intimation to demonstrate that the digital signature affixed thereon by the AO contains "Date: 20230403124606", which clearly shows that the intimation was generated and issued to assessee on 03.04.2023 and since the assessee filed first-appeal to CIT(A) on 12.04.2023 within 30 days' time-period as prescribed in section 249(2), there was no delay in filing first-appeal. Ld. AR submitted that the assessee filed an affidavit dated 11.01.2024 duly stamped, notarized and witnessed, to CIT(A) and in Para 3 of same, a solemnized averment was made that the impugned intimation was received through online mode on 04.04.2023 and prior to this date, the same not received. A copy of assessee's affidavit is filed at Pages 21-23 of Paper-Book. Further, the assessee made following reply to CIT(A) in response to the deficiency letter dated 08.01.2024 issued by CIT(A) seeking explanation of delayed filing; this reply of assessee is re-produced by CIT(A) in para 4.6 of impugned order:

"Please note that there is no delay in filing the appeal and hence application for condonation of delay was not required to be filed and hence was not filed. Please note that I have preferred the Appeal within the prescribed time-limit allowed of 30 Days from Receipt of the Order. The Order was received online on 04.04.2023 and the Appeal was filed on 12.04. 2023 which is well within the time limit prescribed. There is no delay in filing the Appeal. I attach an Affidavit in the matter which is self-explanatory. In view of the above, please note that the Appeal filed is within the time allowed and there is no delay in filing the Appeal and hence on this point the Appeal should not be treated as invalid."

6. However, the Ld. CIT(A) passed following order and ultimately dismissed assessee's appeal:

"5. Decision:

The facts of the case and the grounds raised by the appellant have been considered carefully. There is inordinate delay in the filing of appeal for which the appellant has stated that there is no delay in filing the appeal hence application for condonation of delay is not required. The appellant has stated that the intimation order was received online on 04.04.2023. On careful perusal of the intimation order u/s 143(1) dated 04.12.2010, it is seen that the address as mentioned on the intimation order is as under:-

Mahesh Chand Khandelwal

Flat no. 202, Tulsi Avenue, 130, Vidhya nagar,

Indore, MP-452009.

Here, it is pertinent to mention that the address as per the Form 35 dated 12.04.2023 is exactly the same as mentioned in the intimation order u/s 143(1) dated 04.12.2010. Thus, it can be seen that the intimation was duly served on the appellant at the correct address."

7. Ld. AR submitted that the CIT(A) has made a wrong presumption that since the address of assessee was same in the intimation and Form No. 35, the intimation passed by AO was duly served on assessee's address whereas the correct position is such that there was no physical service of intimation upon assessee. Ld. AR emphasized the averment made by assessee in Para 3 of affidavit and submitted that the intimation was received for the first time through online mode only on 04.04.2023 and prior to that date, no intimation was received from department.

8. The narration made by Ld. AR was deliberated and the Ld. DR for revenue was himself surprised that he has seen for the first time that the intimation issued by AO mentions "Date of Order: 04.12.2010" but digital

signature affixed thereon contains date of "03.04.2023". He submitted that the time gap is more than 12 years and it is an exceptional case. In response to a query raised by bench as to whether any assistance can be received from AO in this regard, Ld. DR narrated that the matter is quite old and there have been time-to-time migrations/switching of departmental records from physical to digital, etc., hence no fruitful assistance is likely to come. He left the matter to the wisdom of bench.

9. Ld. AR for assessee, however, repeatedly and forcefully submitted that the intimation u/s 143(1) bears digital signature dated 03.04.2023 and the assessee's has made a factual and true averment in the affidavit that the impugned intimation was received only on 04.04.2023 and no intimation was received from department before that date. He also asserted in open court that he has himself downloaded the intimation from e-filing portal of income-tax department placed before bench containing digital signature dated 03.04.2023; that this intimation is still available in e-filing portal and can be verified; and that there is no other intimation available in e-filing portal. Therefore, his/assessee's submission is very much correct and the bench can rely.

10. Ld. AR thereafter went ahead to explain that the case of assessee involves a very small dispute and that too can be resolved instantly on the basis of documents held on record. He carried us to Page 1 of intimation (re-produced above) to demonstrate that the AO has made an addition of Rs. 2,70,000/- and thereby increased business income from Rs. 5,24,683/- to Rs. 7,94,683/- and total income from Rs. 4,74,040/- to Rs. 7,44,040/-. He referred copy of the computation of total income of assessee placed at Page No. 2 of Paper-Book, the same is scanned and re-produced for an immediate reference:

NAME OF ASSESSEE : MAHESH CHAND KHANDELWAL
IDENTIFICATION NUMBER : AFNPK3252J
ASSESSEE'S NAME : SHRI SHRINARAYAN KHANDELWAL
IDENTIFICATION ADDRESS : FLAT NO. 202, TULSI AVENUE, 130, VIDHYA NAGAR, INDORE, MADHYA PRADESH-452009
NATURE OF BUSINESS : INDIVIDUAL ASSESSMENT YEAR : 2010 - 2011
IDENTIFICATION NO : ITO-3(1)INDORE FINANCIAL YEAR : 2009 - 2010
SEX : MALE DATE OF BIRTH : 03/04/1961
RESIDENTIAL ADDRESS : kogata12@yahco.com
IDENTIFICATION STATUS : RESIDENT
NATURE OF BUSINESS : MANUFACTURING PRESSING OF COTTON
NAME OF BANK : STATE BANK OF INDORE
CITY CODE : 451002507
RESIDENTIAL ADDRESS : PANSEMAL
IDENTIFICATION NO : 53025508814
STATUS OF RETURN : ORIGINAL

COMPUTATION OF TOTAL INCOME

PROFITS AND GAINS FROM BUSINESS AND PROFESSION 524683

<u>SHRI GINNING UDHYOG-COTTON GINNING PRESSING</u>	
NET PROFIT AS PER PROFIT & LOSS ACCOUNT	554906
ADD : LOSS ON SETTLEMENT	270000
	824906
LESS : ALLOWED DEPRECIATION	-300223
	524683
<u>COTTON BUSINESS (SPECULATION BUSINESS)</u>	
LOSS ON SETTLEMENT	-270000
	-270000
	NIL

<u>SPECULATION BUSINESS LOSS C/F Rs. 270000</u>	
<u>INCOME FROM OTHER SOURCES</u>	
INTEREST ON NSC	3766
TOTAL	3766

GROSS TOTAL INCOME 528449

<u>LESS DEDUCTIONS UNDER CHAPTER-VIA</u>	
80C DEDUCTION	54413
TOTAL DEDUCTIONS	54413
TOTAL INCOME	474036
TOTAL INCOME ROUNDED OFF U/S 288A	474040

AGRICULTURE INCOME	
NET AGRICULTURAL INCOME	280740

COMPUTATION OF TAX ON TOTAL INCOME

TAX ON RS. 160000		NIL
TAX ON RS. 140000 (300000-160000) @ 10%		14000
TAX ON RS. 200000 (500000-300000) @ 20%		40000
TAX ON RS. 254780 (754780-500000) @ 30%		76434
TAX ON TOTAL INCOME RS. (474040 + 280740 = 754780)		130434
REBATE OF TAX ON AGRICULTURE INCOME RS. (160000 + 280740 = 440740)		42148
TAX ON RS. 474040		88286

11. Referring to above computation of total income, Ld. AR pointed out that the assessee has, before filing return of income, voluntarily made an addition/disallowance of Rs. 2,70,000/- under the caption "ADD: LOSS ON SETTLEMENT" and claimed carry forward of loss with the caption "SPECULATION BUSINESS LOSS C/F Rs. 2,70,000". This adjustment/disallowance was made because as per provisions of law, the speculation loss cannot be adjusted against any other income and the same can only be carried forward to next year for set off against similar income. However, the AO has again made addition of Rs. 2,70,000/- in the intimation u/s 143(1). Thus, Ld. AR submitted, the addition made by AO is nothing but a double addition of what the assessee had already made before filing return of income. Ld. AR further pointed out that on Page No. 2 of intimation, the AO has, however, rightly allowed the carry forward of loss of Rs. 2,70,000/- as claimed by assessee and the assessee does not have any dispute so far carry forward of loss is concerned. With this submission, Ld. AR made a straightforward prayer that the addition made by AO deserves to be deleted as the same had already been made by assessee. Ld. DR for revenue was fair enough in quickly agreeing to this submission made by Ld. AR.

12. We have considered submissions of both sides and carefully perused the documents to which our attention has been drawn. The undisputed fact is that the intimation u/s 143(1) bears digital signature dated 03.04.2023 and the assessee filed first-appeal to CIT(A) on 12.04.2023. The CIT(A) issued a deficiency letter to assessee seeking explanation qua the delay of more than 12 years and in response the assessee filed an affidavit stating that the impugned intimation was received on 04.04.2023 and no intimation was received prior to that, therefore the appeal was filed within time and there was no delay. The CIT(A) has, however, compared the address of assessee in the impugned intimation and Form No. 35 and noted that since the address is same, the intimation was duly served on assessee's correct address but this observation by CIT(A) is, as rightly contended by Ld. AR, a

mere presumption. There is no basis mentioned by CIT(A) to conclude that the intimation was in fact served by department through physical mode at assessee's address. Hence, the rejection of assessee's submission by CIT(A) is not proper. On the contrary, the Ld. AR has successfully demonstrated that the intimation issued by AO itself contains digital signature dated 03.04.2023 and the appeal was thereafter filed on 12.04.2023 within statutory time period of 30 days. Although the intimation contains "date of order" as 04.12.2010 and the time gap in digital signature is more than 12 years which was a surprise for all persons available in court but the fact remains that the intimation is dated 03.04.2023 and there is no other intimation having been passed by AO available in e-filing portal as categorically asserted by Ld. AR for assessee in open court. Further, the case of assessee involves a petty dispute of Rs. 2,70,000/- and that too is well explained by Ld. AR. Therefore, looking into these peculiar aspects, we treat the first appeal filed by assessee to CIT(A) as having been filed within statutory time period or alternatively, in the interest of justice, we condone the delay if at all there be.

13. So far as the dispute involved is concerned, on perusal of documents as noted above, we agree that the assessee has already made addition of Rs. 2,70,000/- before filing return of income and the addition made by AO in the intimation u/s 143(1) has resulted in double addition which is liable to be deleted. Faced with this situation, we direct the AO to delete the addition of Rs. 2,70,000/-. The assessee succeeds in this appeal.

14. Resultantly, this appeal is allowed.

Order pronounced in open court on 28/07/2025
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Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 28/07/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore