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

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

ITA Nos.195 & 196/JAB/2025
A.Y. 2013-14

Dinesh Jat, Gandhi Chowk Bazar, Sagar, Madhya Pradesh-470002	vs.	Commissioner of Income Tax (Appeals)
PAN: AQHPJ5323Q		
(Appellant)		(Respondent)

Assessee by:	Sh. Jaiswal Sancheti, C.A.
Revenue by:	Shri. N.M. Prasad, Sr. DR
Date of hearing:	19.08.2025
Date of pronouncement:	28.08.2025

O R D E R

PER NIKHIL CHOUDHARY, A.M.

These two appeals have been filed by the assessee against the separate orders of the ld. CIT(A), NFAC under section 250 of the Income Tax Act, 1961 dated 23.10.2024 and 18.03.2025, dismissing the appeals of the assessee against the assessment order passed under section 147 r.w.s. 144 on 17.09.2021 and the penalty order passed under section 271(1)(c) on 9.02.2022, both for the assessment year 2013-14. As both the orders emanate out of common issues, they are being taken up together for the sake of convenience. The grounds of appeal are as under: -

ITA No.195/JAB/2025

"1. That 1. Prayer to Restore the Appeal and Consider Submission on Merits
The appellant most respectfully submits that the Hon'ble CIT(A) erred in dismissing the appeal dated 23.10.2024 under section 250 solely on the ground of non-compliance, despite a genuine and timely submission in response to the first notice u/s 250 dated 20.06.2024. Due to lack of technical knowledge and new portal interface, the submission was mistakenly uploaded under a different assessment year. This is a bona fide error and not an act of non-cooperation.

2. Prayer Based on Identical Matter for AY 2014-15-Consistency of Approach
It is most humbly submitted that the appellant's case for AY 2014-15 involved an identical fact pattern, including reopening under section 147 r.w.s. 144 based on AIR information of cash deposits, and was decided ex parte. In that case, the Hon'ble CIT(A) (vide order dated 24.02.2025) set aside the reassessment and referred the matter back to the AO for fresh consideration under the newly inserted proviso to section 251(1)(a). It is respectfully prayed that a consistent approach may kindly be adopted in the present appeal for AY 2013-14 as well.
3. Non-Receipt of Notices - Assessment Made in Violation of Natural Justice
The appellant respectfully submits that no notice under sections 148, 142(1), or 144 was served at his correct residential address, and therefore, he was unaware of the reassessment proceedings. The order passed ex parte under section 144, without providing an effective opportunity of hearing, is violative of the principles of natural justice and liable to be set aside.
4. Reassessment is Without Proper Foundation - Absence of Tangible Material
The reopening of the assessment under section 147 is purely based on AIR-reported bank deposits without any independent verification or tangible evidence. This amounts to a borrowed satisfaction, which has been consistently held by judicial forums (including Harmeet Singh vs. ITO) as invalid and unsustainable in law.
5. Addition of ₹31,24,799/- as Income is Arbitrary and Unjust
The entire cash deposit has been wrongly treated as income under section 69A. The AO failed to consider the nature of business, source of receipts, debit entries, withdrawals, and cash flow cycle. Even under presumptive taxation u/s 44AD, only 8% of gross turnover can be considered as profit. It is humbly prayed that the addition may be deleted or referred back for proper assessment.
6. Prayer to Set Aside the Penalty as the Quantum Order Was Passed Ex Parte.
The penalty initiated is arbitrary as there was no intent to conceal income or furnish inaccurate particulars. The proceedings were ex parte due to technical and procedural lapses beyond the appellant's control. It is respectfully prayed that the penalty order to be set aside."

ITA No.196/JAB/2025

"1. Prayer to Set Aside the Penalty as the Quantum Order Was Passed Ex-Parte Without Proper Service of Notice
The penalty order is a direct consequence of an ex parte assessment under section 144, which was passed without valid service of notice upon the appellant. The reassessment proceedings were initiated solely on AIR information, and the assessment was completed without giving the appellant an effective opportunity of being heard. Therefore, the penalty u/s 271(1)(c) is unsustainable in law and facts.
2. Penalty Confirmed Without Establishing Concealment or Inaccurate Particulars
The Hon'ble CIT(A) erred in confirming the penalty under section 271(1)(c) without demonstrating that the appellant had either concealed income or furnished inaccurate particulars thereof. The appellant had no willful intent or knowledge of

non-compliance, and in fact, made multiple efforts to clarify and participate once the matter came to light.

3. Prayer for Parity With AY 2014-15: Same Facts, Penalty Not Levied Post-Set Aside

In a factually identical situation for AY 2014-15, involving similar deposit-based additions and non-compliance due to lack of technical knowledge, the Hon'ble CIT(A) set aside the reassessment order and referred the matter back to the AO. Consequently, no penalty could arise in that year. It is prayed that the appellant be afforded the same equitable treatment for AY 2013-14.

4. Genuine and Bona Fide Error, Not Wilful Non-Compliance - No Mens Rea

The appellant is a small trader, not well-versed in digital systems. His failure to respond was due to genuine ignorance and technical challenges, not due to deliberate default. There was no attempt to mislead the Department or hide income. Thus, imposition of penalty is harsh, unjust, and against the principle of natural justice.

5. Prayer for Condonation of Errors and Relief on Merits in Interest of Justice

The penalty is based on an addition which itself was challenged. The appellant made written submissions (albeit late), and attempted to explain the nature of deposits and his commission business. Even assuming the income was assessable, the profit element cannot be the entire gross deposit. The penalty on such disputed and unverified basis is excessive and deserves to be deleted.

6. Additional Ground: Application of Section 273B-Reasonable Cause Exists

The appellant humbly invokes section 273B of the Act, which provides that no penalty shall be imposed if there was a reasonable cause for the failure. In this case, the lack of notice, lack of technical skills, and the appellant's prompt rectification efforts all point to a reasonable cause. The penalty is therefore not leviable under the law."

2. It is noticed that both the appeals have been filed after a delay. While the appeal against the quantum is delayed by 153 days, the appeal against the penalty is delayed by 13 days. It was submitted that the delay in filing the appeal before the Hon'ble Tribunal occurred due to his lack technical knowledge and inability to understand and navigate the new income tax e-filing portal. It was further submitted the assessee was not well versed in digital filing procedures and the submission made by him, in response to notice under section 250 on 20.06.2024, had been mistakenly uploaded under a different assessment year. It was submitted that the assessee came to know about the dismissal of the appeals only after receiving communications with relation to another matter. He tried filing the appeal on 31.05.2025, but due to his portal related issues, he was unable to file the same. It was submitted that the delay in filing the appeal was neither intentional nor deliberate, but due to aforesaid genuine

and bona fide reasons. Accordingly, it was prayed that the delay may kindly be condoned and the appeals admitted for hearing. After considering the applications of the assessee and the affidavits sworn by him, we admit the appeals for adjudication in the interest of justice.

3. The facts of the case are that the assessee did not file a return of income for the assessment year 2013-14. The ld. AO received information that the assessee had deposited cash of Rs.31,24,799/-, in his bank account with ICICI Bank. Therefore, the case was reopened under section 148 of the Act. The assessee did not comply with the said notice therefore, penalty proceedings under section 271F were separately initiated against him. Subsequently, the case was transferred to the Faceless Assessment Officer and notices under section 142(1) were issued to the assessee on four occasions. However, the assessee did not make any compliance to the same. Therefore, a show cause notice under section 144 of the Income Tax Act, 1961 was issued to the assessee, requiring him to make compliance on or before 8.09.2021. Since, the assessee did not reply to the show cause notice also, the ld. AO added back a sum of Rs.31,24,799/- to the income of the assessee and assessed his income at that amount. He separately initiated penalty proceedings under section 271(1)(c) for concealment of income.

4. Aggrieved by the said assessment order, the assessee went in appeal to the ld. CIT(A). Several grounds were raised before the ld. CIT(A), but the ld. CIT(A) records that he gave three notices to the assessee for compliance but the same were not complied with. Thereafter, relying upon the decision of the Hon'ble ITAT in the case of M/s Chhabra Land and Housing Limited (ITA No.1025-1027/CHD/2005) for the A.Y. 2022-23, which, in turn, was based on the decision of the Hon'ble Supreme Court in the case of B.N. Bhattacharjee, 118 1TR 461 (SC), the ld. CIT(A) held that the appeal did not mean mere filing of the same but that it should be effectively pursued and since the assessee had not effectively pursued the appeal, no material fact had been brought

on record in support of the grounds of appeal, or to rebut the findings of the ld. AO. Therefore, he confirmed the additions and dismissed the appeal of the assessee.

5. Subsequent to the passing of the assessment order, the ld. AO issued a show cause notice under section 271(1)(c), asking the assessee to show cause as to why an order imposing penalty under that section should not be passed, in respect of the tax sought to be concealed by the assessee. Since, there was no response from the assessee, the ld. AO escalated the matter to the verification unit to communicate the notice to the assessee vide speed post and he confirmed that this notice had been served upon the assessee. Since, there was no response to the same, an *ex parte* letter was also issued to the assessee, but as there was no response, he concluded that the assessee had concealed particulars of income of Rs.31,24,799/- and computed the tax on the same at Rs.9,65,653/-. He, thereafter, proceeded to levy penalty of Rs.9,65,563/- upon the assessee under section 271(1)(c).

6. The assessee, thereafter went in appeal against this penalty order also before the ld. CIT(A). Before the ld. CIT(A), he filed a written submission in which he submitted that he was engaged in the business of commission and brokerage (aarhtiya) in the textile / cloth market and there was no taxable income during the year, therefore, the return of income was not filed originally. It was further submitted that the ld. AO should have added the income based on presumptive taxation rates @ 8%, rather than adding the entire deposit amount. It was further submitted that the information shared by the Investigation Wing at Mumbai, was general information and the ld. AO could not have resorted to re-assessment proceedings without any preliminary enquiry. The ld. CIT(A) considered these submissions and observed that the assessee had never made submissions on any of these issues at the time of either the assessment or the appeal pertaining to the assessment. Now, for the first time, during the appeal proceedings against levy of penalty, the assessee had made such submissions, which essentially makes the case on issues taken up in the appeal against

the quantum order. He further observed that even in such submission, the assessee had made a factually incorrect assertion, that he had submitted a paper book during the appeal proceedings, relating to the quantum but the ITBA system did not show that any submission was made by the assessee. Nevertheless, the ld. CIT(A) decided to consider these submissions so made before him and came to the conclusion that the assessee had made a general submission about the nature of his business, but did not attempt to bring on record any explanation about the particular credit entries which totaled to Rs.31,24,799/-. Since, the assessee has not made any submissions, the demand to be assessed under the presumptive taxation rates could not be satisfied, because he had not shown how he met the conditions of the presumptive taxation scheme as given under the Act. Therefore, the ld. CIT(A) dismissed the appeal of the assessee.

7. The assessee is aggrieved with this dismissal of his appeals by the ld. CIT(A) and has accordingly come before us. Shri. Jaisal Sancheti, C.A. (hereinafter referred to as the ld. AR) submitted before us, that the assessee was not an educated person and not at all well-versed with computer work. As such, he was unable to access the computers. It was submitted that since the Departmental notices were sent through internet, the assessee incapable of accessing or replying to them. It was further submitted, that the in-person notices had not been received by the assessee. The ld. AR further submitted that on 26.11.2022, the assessee received a text message regarding the issue of order under section 154 on 17.11.2022 for the assessment year 2014-15. Later on, the assessee visited the Income Tax Department and came to know about the various notices and assessment order that was passed *ex parte.* Thereafter, he filed the appeal before the ld. CIT(A). However, due to inexperience and inability to navigate the portal, this submission was mistakenly made by him under assessment year 2014-15 instead of assessment year 2013-14. The appeal against the quantum had accordingly been dismissed for want of compliance, but the assessee had filed a

rectification petition on 15.01.2025, explaining the full background with documentary evidences. The ld. AR further submitted that in the assessment year 2014-15, where the facts, reopening basis and assessment methodology were identical, the ld. CIT(A) in his order dated 24.02.2025 recognized the case as a best judgment assessment and set aside the re-assessment to the ld. AO for fresh consideration. It was, therefore, prayed that the same principle may kindly be applied to the assessment year 2013-14 and the matters be restored to the file of the ld. AO, so as to allow the assessee to explain his case on merits.

8. On the other hand, Sh. N.M. Prasad, Sr. DR (hereinafter referred to as the ld. Sr. DR) submitted that the assessee was habitually non-compliant and therefore, the additions made by the ld. AO should be confirmed, because the assessee had not been able to bring any evidence on record to show how the conclusions reached by the ld. AO were unjustified.

9. We have duly considered the facts and circumstances of the case. After considering the submissions of the assessee regarding his state of education and his unfamiliarity with the Income Tax Portal and also after considering the fact that the ld. CIT(A) has restored the matter in assessment year 2014-15 back to the file of the ld. AO for fresh consideration after examining the evidences that may be produced by the assessee, in the interest of justice, we feel it would be appropriate if the quantum appeal is restored to the file of the ld. AO for fresh consideration of any evidences that the assessee may wish to produce to explain the deposit of Rs.31,24,799/-. In view of the fact that the quantum is being restored to the file of the AO for de novo assessment, the penalty order is unsustainable as it is premature. We therefore delete the penalty under section 271(1)(c) with liberty to the Department to take such penal actions as may be appropriate after the completion of assessment and depending on the findings in assessment. We would, however make it clear to the assessee, that since the assessment is restored to the file of the ld. AO primarily on his request, it is incumbent

upon him to make due compliance before the ld. AO, to satisfy him regarding the merits of his case. Failure to make submissions before the ld. AO or making of incomplete submissions in the restored proceedings, would create a presumption that the assessee had no explanation to offer with regard to the amounts deposited in the bank account. Accordingly, the assessee is advised to make due compliance before the ld. AO in the restored proceedings.

10. As the assessment has been restored to the file of the ld. AO and the penalty deleted, ITA No. 195/JAB/2025 is held to be allowed for statistical purposes while ITA No.196/JAB/2025 is held to be allowed.

Order pronounced on 28.08.2025 in the open Court.

Sd/-	Sd/-
[KUL BHARAT]	**[NIKHIL CHOUDHARY]**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

DATED: 28/08/2025
Sh
Copy forwarded to:

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

By order
Sr. P.S.