

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.424/Ind/2025
(AY: 2018-19)

| | | |
|---|----------------------------|--|
| Yogesh Sood, R-4, Zone-1 M. P. Nagar, Bhopal(M.P.) (PAN: AOGPS6781L (Appellant) | <u>बनाम/</u> Vs. | ITO -1(2), Bhopal (Respondent) |
| Assessee by | Shri P.K. Jain, CA | |
| Revenue by | Shri Ashish Porwal, Sr.DR | |
| Date of Hearing | 06.01.2026 | |
| Date of Pronouncement | 09.01.2026 | |

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,[herein after referred to as the Act for the sake of brevity] before this tribunal as & by way of a second Appeal. The Assessee is aggrieved by the order bearingNumber:-ITBA/NFAC/S/250/2024-25/1071370637(1) dated 19.12.2024 passed by the Ld. CIT(A) u/s 250 of the Act, which is herein after 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 and by way of an Assessment order **made u/s 147 rws 144/144B** of the Act, the total income of the Assessee was computed & assessed at **Rs. 62,74,180/-**. The total income as per the return of income was at **Rs.12,74,180/-**. **The addition/variation of Rs.50,00,000/-** was made as **unexplained investment u/s 69C**. The aforesaid Assessment order bears No. ITBA/AST/S/147/2022-23/1050187201(1) & that the same is dated 28.11.2022 which is herein after referred to as the **"Impugned Assessment Order"**

2.2 That the Assessee being Aggrieved by the aforesaid **"Impugned Assessment Order"** prefers the **first appeal u/s 246A of the Act** before the Ld. CIT(A) who by the **"Impugned Order"** has dismissed the 1st appeal of the Assessee on the grounds & reasons stated therein. The core

ground & reasons for the dismissal of the 1st appeal was as under:-

"4.Decision: I have carefully considered the ex-parte assessment/reassessment order, statement of facts, grounds of appeal and submissions furnished during the appellate proceedings.

4.2 As stated in earlier paragraph of this appeal order, this office has issued various notices and letters for hearing/filing written submission but neither any adjournment letter was filed nor filed any written submissions. The notices were issued on email i.e. ssaa.clients@gmail.com, yogeshsood500@gmail.com available in the ITBA Module of the Income Tax Department. In fact, a final show cause letter was also issued on 13.12.2024, which is as under-

"It is seen from the record that notices/letters for hearing for filing written submission on merit were issued to you on the e-mails available on ITBA portal i.e. ssaa.clients@gmail.com, yogeshsood500@gmail.com you have not filed any written submission till date. The details of such notices/letters are as under;-

| <i>Date of notice/letter</i> | <i>Date of service</i> |
|------------------------------|------------------------|
| <i>01.05.2023</i> | <i>01.05.2023</i> |
| <i>04.06.2024</i> | <i>04.06.2024</i> |
| <i>06.12.2024</i> | <i>06.12.2024</i> |

This shows that you are not interested in pursuing your present appeal. In view of the above, you are hereby granted a final opportunity of being heard to furnish your written submission on or before 18.12.2024, otherwise your present appeal shall be decided as per the material available on record.

No reply has been received in response to this final show cause notice."

From the above conduct of the appellant, it is evident that the appellant is no more interested in pursuing its appeal. The Hon'ble Supreme Court in the case of CIT-Vs B. N. Bhattacharjee & Others [1979] 10 CTR 354 (SC) observed that preferring an appeal, means effectively pursuing it. The Hon'ble M.P. High Court in the case of Estate of Late Tukojirao Holkar Vs CWT [1979] 223 ITR 480 (MP) dismissed the reference filed at the instance of the assessee for default and for not taking necessary steps. Considering the conduct of the assessee in the present

circumstance, I am of the view that the appellant is not interested in pursuing the appeal. This view has been affirmed by the ITAT Delhi Bench in the case of CIT Vs Multiplan India Pvt. Ltd. [1991] 38 ITD 320 (Del) wherein the ITAT had dismissed the appeal filed by the assessee for want of persuasion. Under these circumstances, the present appeal of the appellant is hereby dismissed.

4.3 Since there is no submission or material available on record relating to merit and in support of grounds on appeal as well as statement of facts, no decision is being rendered on merit.

5. In the result, the appeal of the appellant is dismissed."

2.3 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 the form No. 36 against the **"Impugned Order"** which are as under:-

"01. On the facts and in the circumstances of the case, the Id. CIT-Appeals has erred in deciding the Appeal ex-parte without providing adequate, fair & meaningful opportunity which is against the principles of natural justice. The date fixed for hearing Le. 12.12.2024, was in pursuance of only Second Notice issued by the Id. CIT-Appeals to the Appellant, which could not be seen on ITBA by the Tax Consultants of the Appellant.

02. That the Re-opening of Assessment u/s 147 r.w.s. 148 is based on flimsy/false/baseless grounds, which have no relevance with the facts and thereby unlawful.

03. That Re-assessment Proceedings u/s 147 r.w.s. 148 have been initiated without ensuring proper service of Notice u/s 148 on the Appellant and thereby entire Re-assessment Proceedings have vitiated and become null and void.

04. That the Re-opening of Assessment Proceedings have been commenced on the basis of a Cheque of Rs. 50.00 Lakhs in the name of Appellant, seized from the place of Sh. Santosh Ramtani during a Search Operation u/s 132 and his (Santosh Ramtani's) Statement recorded u/s 132(4) without providing a copy of Statement and affording an opportunity to Cross Examine Sh. Santosh Ramtani and as such the Re-assessment Order dated 28.11.2022 is unlawful and void, which may please be quashed.

05. That an addition of Rs. 50.00 Lakhs made in the hands of Appellant u/s 69 on the basis of Cock and Bull story of the Id. A.O. is absolutely baseless and unlawful, which deserves to be deleted.

06. That on the facts and circumstances of the case, Hon'ble CIT-Appeals has erred on facts and in law in sustaining the Total Addition of Rs. 50,00,000/- proposed by the Id. A.O. on account of variation in respect of Unexplained Investment u/s 69A. Therefore, above Addition of Rs. 50,00,000/- being arbitrary and unlawful deserves to be deleted.

07. That on the facts & in the circumstances of the case & in law, levy of interest u/s.234A, 234B & 234C is illegal and unsustainable in law and, therefore, be cancelled.

08. That the appellant craves leave to raise additional grounds and/or make amendment in the existing grounds on or before the date of hearing."

3. Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 06.01.2026 when the Ld. AR for & on behalf of the Assessee appeared before us & interalia contended that the "**Impugned Order**" is bad in law, illegal & not Proper. It is in the violation of the principles of natural justice. It therefore deserves to be set aside. It was next contended that the registry has pointed out the delay of **66 days** in filing the instant second appeal. It was submitted that the "**Impugned Order**" is dated **19.12.2024** & instant appeal ought to have been filed on or before **17.02.2025** however the instant appeal was filed on **05.05.2025**. A condonation of delay

application along with an affidavit in support is placed on record of this Tribunal. With regard to the delay it was submitted that the Assessee is not a IT savy person. He does not even know how to operate a computer/laptop. Consequently he does not even visit the Income Tax site nor does he checks his ITBA/e-mail account to ascertain if any Income Tax proceedings are going on & or notices/orders are served upon him. That for all the income tax related works the Assessee had engaged a chartered Accountant Shri Saurabh Shrivastava, who used to e-file the return of income & was supposed to keep an eye on ITBA Portal for the compliances which Shri Saurabh Shrivastava, CA did not do so. The Assessee was not informed about the dismissal of the first appeal by Shri Saurabh Shrivastava, CA as in the ITR his e-mail id ssaa.clients@gmail.com belonging to said Saurabh Shrivastava, CA was mentioned. The **“Impugned Order”** was also not delivered to the Assessee by way of Reg. Post/courier service as well. The assessee came to know about the dismissal of the **“Impugned Order”** by the Department officials only. It was submitted that the Assessee

is a chronic patient of higher BP sugar & depression which have led him to huge financial losses also. Hence he could not follow up properly with his counsel also to ascertain the fate of his first appeal pending with the CIT(A). It was also submitted that the delay in filing of first appeal is not wilful & that there is no malafide intention. Delay is not deliberate. The prayer was made to condone the delay. Affidavit dated 03.05.2025 was relied upon & placed on record too. In **summation** following was also submitted with regard to issue of delay:-

- (i) On the Assessee's e-mail id yogeshsood500@gmail.com no notice received, no order received too.
- (ii) Assessee is not tech savvy.
- (iii) Blame put on earlier counsel saurabh shrivastava, CA.
- (iv) Even the Assessee e-mail Id is on record.**
- (v) Not visiting/seeing the ITBA portal.
- (vi) 66 days delay in filing the appeal.

The Bench then invited attention of the Ld. AR to para 4.2 of the **"Impugned Order"** where in it is recorded that notices were issued on e-mail i.e. ssaa.clients@gmail.com &

yogeshsood500@gamil.com. It was pointed out that whether it is Assessee's e-mail id to which it was replied by the Ld. AR in the Affirmative i.e yogeshsood500@gamil.com. Per contra the Ld. DR appearing for & on behalf of the Revenue submitted that delay be condoned but with **heavy cost**. We after hearing both the parties condone the delay & direct the Assessee to pay the cost of Rs. 10,000/- under category "**Other head**" in challan to the Revenue. We direct that no credit of such amount would be taken by the assessee for any purposes whatsoever.

3.2 In the final analysis of the arguments it was submitted by the Ld. AR that in sum & substance the "**Impugned Order**" is exparte & that same should be set aside. The matter should be remanded back to the file of the Ld. AO for passing a fresh order on merits on denovo basis. The Ld. AR assured that the assessee would cooperate with the department.

4. **Observations Findings & conclusions**

4.1 We now have to decide the legality, validity and propriety of the **"impugned order"** basis records of the case & the rival submission canvassed before us.

4.2 We have carefully perused the records of the case and have heard the submissions.

4.3 We basis records of the case & after hearing & upon examining the rival contentions of the Ld. AR & the Ld. DR canvassed before us, are of the considered opinion that the **"Impugned Assessment Order"** is under section **144/144B** of the Act & and the matter **has not been adjudicated & adjudged basis merits**. Even the **"Impugned Order"** is not on Merits. This Tribunal desires that the total income of the assessee should be computed & and assessed on the real time basis **exigible to tax** in accordance with law by following due process of law under the Act. This Tribunal also expects the assessee to be complaint & should cooperate with the Department as & when notices, etc. are issued. In brief this tribunal desires the meritorious disposal of both the **"Impugned Assessment Order"** as well as the

“Impugned Order”. The Assessee cooperation in this regard assumes importance. **The Assessee cannot go in slumber mode**. In the result we are of the considered opinion that the **“Impugned Order”** should be set aside & the matter should be remanded back to the file of the Ld. AO for passing a fresh order on merits of the case. It is the expectation of this Tribunal that the Assessee would give his full & complete **details including latest e-mails of his & and his counsel** where the notices could be served effectively by the Department. The Assessee to attend hearings as & when fixed & file reply & details as sought by the Ld. AO.

4.4 In view of the above, we set aside the **“Impugned Order”** & remand the case back to file of the Ld. AO on denovo basis, who shall now pass a speaking & well reasoned order.

5

Order

5.1 In result-Impugned order is set aside as and by way of remand back to the file of the Ld. AO.

5.2. In result, appeals are allowed for statistical purpose.

pronounced in open court on 09.01.2026.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

Dated : 09/01/2026

Patel/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