

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.678/Ind/2025
(AY: 2010-11)

Radhakishan, S/10 Radhaki Shan Vill- Behadi, Vill-Behadi Khategaon, Dewas (PAN: CLOPR1955C	<u>बनाम/</u> Vs.	ITO -2, Dewas
(Appellant)		(Respondent)
Assessee by	Shri Kaide Kangsawala, CA	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	07.01.2026	
Date of Pronouncement	16.01.2026	

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/250/2023-24/1056950105(1) dated 10.10.2023 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 2010-11 and the

corresponding previous year period is from 01.04.2009 to 31.03.2010.

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. 12,40,000/-**.

2.2 That the basis "**AIR**" the department had information that for the A.Y.2009-10 the assessee had deposited **Rs.12,40,000/-** in his saving bank account. Accordingly a notice u/s 148 of the Act dated **24.03.2017** was issued to the assessee & that the assessee was called upon to furnish the ITR. However, the assessee remained **non-compliant**. Thereafter the department issued to the **assessee notices** dated **17.04.2017, 03.08.2017 & 09.10.2017** which too were not complied by the assessee & no reply was furnished. The assessee also failed to avail the opportunities offered by the Ld. AO. Thereafter department issued a show cause notice dated **20.11.2017 for 27.11.2017** however this show

cause notice too was not replied to by the assessee & the assessee also did not avail the opportunity so offered. In view of these facts & circumstances of the case the Ld. AO computed & assessed total income of the assessee at **Rs.12,40,000/-**. That the aforesaid assessment order is dated 12.12.2017 u/s 144 r.w.s 147 of the Act which is hereinafter referred to as the **“Impugned Assessment Order”**.

2.3 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. Details of Proceeding.

Notices were issued to the appellant to get appellant's point of view, as per following details:-

S. No.	Notice issue date	Date of compliance	Response of appellant
--------	-------------------	--------------------	-----------------------

	(through ITBA)		
1	30.12.2019, 02.03.2020, 06.01.2021, 28.09.2022, 17.04.2023, 02.06.2023 and 04.09.2023	10.01.2020, 06.03.2020, 15.01.2021, 13.10.2022, 28.04.2023, 13.06.2023 and 19.09.2023	No written submission filed in support of grounds of appeal. No request of adjournment made.

5. Decision

(a) It is important to mention that in order to decide this appeal in a timely manner a number of notices/ communications through ITBA portal were sent to the appellant, as mentioned above. However, there evidently has been no response from the appellant till date. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. It is clear that the appellant has not even bothered to pursue this appeal in any productive manner. Hence, in view of the aforesaid total non-compliance of the instant appeal on the part of the appellant, the instant appeal is adjudicated and disposed off, as under, ex-parte, primarily on the basis documentation available on record.

(b) It is stated at the outset, that in the situation as in the instant case, as evidently seen from the above, this appeal is liable to be dismissed in terms of the ratio of the judgements of the Hon'ble Apex Court and the various High Courts including the Hon'ble Apex Court which held in CIT v. B. N. Bhattacharjee and Another (10 CTR 354) that an appeal means an effective appeal and that to "prefer an appeal" would mean effectively prosecuting an appeal. Purposefully and constructively interpreted, preferring an appeal means more than formally filing it but effectively pursuing it and if a party retreats before the contest begins, it is as good as not having entered the fray.

(c) It is pertinent to add here that laws assist those who are vigilant and not those who sleep over their rights. This principle is embodied in the well-known maxim "Vigilantibus Non Dormientibus Jura Subveniunt". It means law comes to the aid of the vigilant and not the slumbering. In all actions, suits and other proceedings at law and in equity, the diligent and careful plaintiff is

favoured and prejudicial of him who is careless. Viewed thus, it is presumed that the appellant has no further cogent reasoning or/and evidence to substantiate the grounds taken in this impugned appeal. It is trite that the onus is on person making the claim, and the primary responsibility/onus/burden for proving the claim made before the tax authorities (Assessing Officers/Appellate Authorities) lies with the assessee/appellant. In the present case, the appellant has not been able to even discharge the primary onus/burden statutorily & judicially cast upon him to substantiate the claims made in the grounds of appeal in spite of adequate time and opportunities given as brought out in the foregoing paras.

(d) It is, thus, evident that the appellant has no evidence to substantiate the grounds taken and it has not even once argued with any supporting, relevant and cogent arguments/averments, constraining me to, therefore, go through the extremely brief non-speaking submission appearing in the grounds of appeal and statement of facts filed along-with the impugned appeal to decide on the merits while adjudicating the same. But the narrative submission/contention made vide the statement of facts/grounds of appeal is by and large on the very same basis which was made at the time of instant assessment which the Assessing Officer (AO) after considering, has duly rejected or found without much merit leading him/her to add the same i.e., the disallowance/additions made in the said assessment order and enumerated in the impugned grounds against which I am constrained to concur with the AO's findings of fact and decisions thereof, more particularly in the absence of any meaningful and worthwhile submissions/documentations even during the instant appellate proceedings in this case to counter effectively the position adopted by the AO on the concerned issues and reduced in writing in the assessment order. In this view of the matter, the decision of the AO is upheld. Consequently, all the Grounds of appeal are dismissed.

6. In result, the appeal of the assessee is dismissed.

Commissioner of Income-tax (Appeals)
Income Tax Department

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:-

“1.That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs. 12,40,000/- made by the AO under section 69A of the Act without appreciating the explanation, documentary evidence and AO Remand Report provided that the said amount represents consideration received on account of sale of agricultural land.

2.That the Ld. CIT(A) failed to provide sufficient opportunity to the Appellant for substantiating her claims, especially in light of the personal hardship and the genuine inability to present evidence at the relevant time.

3.That the reopening of assessment under section 148 was bad in law and devoid of fresh tangible material; the additions made are arbitrary, excessive, and lack proper justification.

4.That the Appellant has now gathered the relevant documents and evidence, which could not be furnished earlier due to unforeseen circumstances, and prays for their admission in the interest of justice.

5.That the Appellant craves leave to add, amend, alter, OR withdraw any of the above grounds at the time of hearing.”

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on **07.01.2026** 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 **586 days** in filing the instant second appeal. A condonation of delay application is placed on record of this Tribunal which reads as under:-

Date: 05-08-2025
From: Radhakishan Gurjar
S/10 Radhaki Shan Vill-Behadi
Khatagaon
Dewas 455339 (M.P.)
PAN: CLOPR1955C

To,
The Hon'ble Members,
Income Tax Appellate Tribunal,
Indore

COP cep

Sub: Application for condonation of delay in filing appeal under Section 253(5) of the Income-tax Act, 1961 – A.Y. 2010–11 – Reg.

Hon'ble Sir,

The Appellant respectfully submits the following:

1. The appellant is a senior citizen aged 72 years, residing in a remote village with limited access to legal and technical assistance.
2. The appellant is primarily engaged in agricultural activities and is not well-versed with the complex procedures of income tax law and e-filing mechanisms.
3. The order of the CIT(A) was passed in a faceless manner, and although the appellant's Authorized Representative had submitted a reply during the hearing at Ratlam Camp on 06.03.2020, the same was not considered by the NFAC while passing the order ex-parte. The appellant was under the impression that the matter was being addressed.
4. There was a delay in understanding the implications of the appellate order and obtaining appropriate professional advice for further remedy.
5. As soon as the appellant became aware of the necessity and right to appeal before the Hon'ble ITAT, steps were immediately taken to file the present appeal.
6. As per the provisions of Section 253(3) of the Income-tax Act, 1961, the appeal before the Hon'ble Tribunal was required to be filed within **60 days** from the date of receipt of the order, i.e., on or before **09.12.2023**.
7. However, due to circumstances beyond the control of the Appellant, the appeal could only be filed on **05-08-2025**, resulting in a delay of **605 days**.

The delay is neither intentional nor deliberate, but solely due to the above-mentioned unavoidable circumstances. It is humbly prayed that this Hon'ble Tribunal may kindly condone the delay in filing the appeal in the interest of justice and fair opportunity.

The appellant places full faith in the justice system and assures full cooperation in further proceedings.

PRAYER

In view of the above, it is respectfully prayed that the delay in filing the appeal may kindly be condoned and the appeal be admitted and heard on merits.

Yours faithfully,

Radhakishan Gurjar

राधाकृष्ण

With regard to the delay it was submitted by the Ld. AR that the assessee is an "**Agriculturist**" by profession & is not much aware of the income tax laws & the procedure connected with it. The assessee was not aware about the "**Impugned Order**" of the Ld. CIT(A). The Ld. DR appearing for & on behalf of the revenue submitted that the revenue has no objection if this Tribunal deems fit & proper to condone the delay looking to the profile of the assessee being **senior citizen & agriculturist**. After considering the submission of both the Ld. AR & Ld. DR we condone the delay as sufficient cause is shown. Hence the appeal is admitted & taken up for hearing.

3.2 The Ld. AR for & on behalf of the assessee has placed on record of this Tribunal a paper book containing pages **1 to 81** & a four pages written submissions in support. Few orders of ITAT are also placed on record. It was contended & submitted that the "**Impugned Assessment Order**" of the AO is an ex parte order. The assessee is an agriculturist. An amount of Rs.12.40 lakhs was deposited by him in cash in his bank account during the year under consideration. It was submitted that in the earlier

years before the introduction of the Faceless Regime in the Income Tax Department first appeal before the Ld. CIT(A) was filed **physically/hard copy**. The entire cash deposit of Rs.12.40 lakhs represents sale consideration received from the sale of agricultural land situated at village **"Chipher"** Dist:- Harda which was sold for Rs.13,75,800/- & the amount came to be deposited on different date from 01.05.2009 to 11.03.2010 in the SB account no.013410100010869 with Narmada Jhabua Gramin Bank which was opened on 01.05.2009. Our attention was invited to page 47 of the P.B. filed wherein there are total nine deposits from 01.05.2009 to 11.03.2010 of different amounts aggregating to Rs.12.40 lakhs. Next our attention was invited to Bank statement of the assessee of a/c no.013410100010869 [agriculture & allied a/c] & correlation was done with page 47 of P.B. The Ld. AR then invited our attention to page 43 of paper book which was a **copy of remand report of the Ld. AO submitted to Ld. CIT(A)**. It was contended that it is recorded by the Ld. AO in his remand report dated 21.01.2020 page 43 of PB that assessee had sold two pieces of agriculture land for total of Rs.13,75,800/- (Rs.6,87,900/- **each**) on **06.06.2008** whereas

deposits found in **F.Y.2009-10 (A.Y.2010-11)** no sale deed & bank statement were furnished during the course of assessment proceedings. Time gap between sale of agricultural land & deposit of cash is seen & visible on presusal of the papers. It was then submitted by the Ld. AR that faceless CIT(A) in the impugned order has not taken into consideration the remand report of the Ld. AO dated 21.01.2020 page 43 of P.B. It was finally pleaded that one more opportunity be provided to the assessee to explain his stand before Ld. CIT(A) (faceless) wherein the assessee would file all the relevant papers, material, evidences, documents so that his income could be computed & assessed accordingly to law. It was assured that in these fresh proceedings before the Id. CIT(A) the assessee would file copy of remand report dated 21.01.2020 [P43 of PB]. Per contra the Ld. DR appearing for the revenue submitted that the revenue has no objection for the matter being remanded to the Ld. CIT(A) **as remand report is already on record**. The remand to the Ld. AO however was opposed. The Ld. DR submitted that the assessee should now file remand report to Faceless CIT(A) & update the records. The hearing was then closed.

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 submissions 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 as presented to this tribunal & 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 of the Act & at the original stage the matter has not been adjudicated & adjudged basis merits of the case. Even the Impugned order is not on merits. After going through the PB pages 1 to 81 the index of which we reproduce as below:-

Radhakishan Gurjar

INDEX

S.NO.	PARTICULARS	PAGE NO.
6	Copy of Notice u/s 148 by ITO-1 Dewas, Dt: 24-03-2017	1
7	Copy of Notice u/s 148 by ITO-2 Dewas, Dt: 17-04-2017	2
8	Copy of Notice u/s 142(1) by ITO-2 Dewas, Dt: 03-08-2017	3-5
9	Copy of Show Cause Notice by ITO-2 Dewas, Dt: 20-11-2017	6
10	Copy of Assessment Order u/s 144 r.w.s. 147 by ITO-2 Dewas, Dt: 12-12-2017 Along with Computation & Demand Notice u/s 156 Filed with Appeal	
11	Copy of CIT Appeal Form 35 along with Ack. Dt: 13-01-2018 Filed with Appeal	
12	Copy of our Prayer for Admission of Additional Evidences Before CIT Dt: 27-02-2018	7
13	Copy of our Written Submission Before CIT Dt: 27-02-2018	8-9
14	Copy of Sale Deed of Agriculture Land	10-36
15	Copy of Saving Bank Accounts	37-39
16	Copy of Hearing Notice u/s 250 by CIT(A), Ujjain Dt: 12-04-2018	40
17	Copy of Deficiency Letter in respect of Appeal Dt: 30-12-2019	41
18	Copy of Hearing Notice u/s 250 by CIT(A), Ujjain Dt: 30-12-2019	42
19	Copy Remand Report By ITO-2, Dewas Dt: 21-01-2020	43
20	Copy Remand Report u/r 46A By Jt. CIT-1, Ujjain Dt: 18-02-2020	44
21	Copy of Hearing Notice u/s 250 by CIT(A), Ujjain Dt: 02-03-2020	45
22	Copy of our Reply Submitted at Ratlam Camp Dt 06-03-2020	46-47
23	Copy of CIT, ujjain Appeal Order in Case of Punam Chand Parasram Dt: 12-09-2019, Alongwith Copy of Appeal Effect	48-59
24	Copy of Hearing Notice u/s 250 by NFAC Dt: 06-01-2021, 01-11-2022, 28-09-2022, 17-04-2023, 02-06-2023 & 04-09-2023	60-80
25	Copy CIT Appeal Order u/s 250 by NFAC Dt: 10-10-2023 Filed with Appeal	
26	Authority letter.	81

We observe that all these documents indexed as above has not been considered by lower authorities in their respective orders. We observe that at serial no:- 12 page 7 of PB there is an additional evidence application before the Ld. CIT(A). We also observe & notice sale deeds on pages 10 to 36. We also observe & notice copy of saving bank accounts. We observe & notice remand report of the Ld. AO on page 43 dated 21.01.2020. The assessee has filed reply to remand report pages (46 -47 of PB). In view of our above observations, we are of the considered view that above papers & proceedings including sale deed copies & bank statements together with remand report should now be once again seen by the Ld. CIT(A) afresh. Accordingly we set aside the **"Impugned Order"** & remand the case back to the file of the Ld. CIT(A) as & by way of remand. The Ld. CIT(A) is directed to pass fresh order on merits which order should be a reasoned one basis merit of the case. The assessee is directed to update the records before the Ld. CIT(A) & file papers relating to remand report.

4.4 In view of the premises drawn up by us as aforesaid, we set aside the “**Impugned Order**” & remand the case back to the file of the Ld. CIT(A) who shall pass a fresh order basis merit of the case. The assessee is directed to cooperate with the department & follow directions as per para 4.3 (supra).

5

Order

5.1 In view of above, the Impugned order is set aside as & by way of remand back to the file of Ld. CIT(A).

5.2 In result, appeals are allowed for statistical purpose.

pronounced in open court on 16 .01.2026.

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

Dated : 16/01/2026

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