

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.549/Ind/2025
Assessment Year:2012-13

Azizur Rahman Khan, 13/1, Nayapura, Indore (Assessee/Appellant)	<u>बनाम/</u> <u>Vs.</u>	ITO 4(4) Indore (Revenue/Respondent)
PAN: AXCPR0947E		
Assessee by	Ms. Shelly Maheshwari, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	14.01.2026	
Date of Pronouncement	22.01.2026	

आदेश / O R D E R

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

Feeling aggrieved by order of first-appeal dated 05.03.2025 passed by learned Commissioner of Income-Tax (Appeals)-Addl/JCIT(A)-13, Mumbai ["CIT(A), NFAC"] which in turn arises out of assessment-order dated 05.12.2019 passed by learned ITO-4(4), Indore ["AO"] u/s 144/147 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2012-13, the assessee has filed this appeal on following grounds:

"1.The Id. CIT(A) was not justified in confirming the addition of Rs. 9,88,160/- as unexplained cash deposits u/s. 69 without considering the facts and circumstances of the case and without hearing the appeal on merits.

2 The Id. CIT(A) was not justified in dismissing the appeal in limine by not condoning the delay.

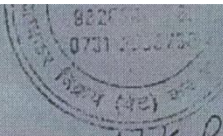
3.The CIT(A) was not justified in dismissing the appeal without 3 deciding the appeal on merits, and that a fair and meaningful opportunity was not available to the appellants to present his case."

2. The background facts relating to present appeal are such that the AO, on the basis of information in possession revealing cash deposit of Rs. 11,73,090/- made by assessee in bank a/c during the previous year 2011-12 relevant to AY 2012-13 under consideration, issued notice u/s 148 dated 29.03.2019 to initiate the proceeding of assessment u/s 147. Thereafter, the AO issued notices u/s 142(1) and show-cause notice u/s 144. However, all notices issued by AO remained uncompiled by assessee. Ultimately, the AO passed assessment-order dated 05.12.2019 u/s 144 assessing the deposits of Rs. 11,73,090/- in bank a/c as unexplained investment u/s 69. Aggrieved, the assessee carried matter in first-appeal before CIT(A). However, the CIT(A), NFAC dismissed assessee's first-appeal *in limine* on the premise that there was a delay of 869 days in filing appeal. Now, the assessee has come in next appeal before us.

3. We have heard learned Representatives of both sides and carefully perused the case record.

4. It emerged during hearing that the assessee paid fee of Rs. 1,000/- on 05.01.2020 and filed first-appeal to CIT(A), Indore on 05.01.2010 under "physical mode" then prevailing, which was within the statutory period of 30 days against the assessment-order dated 05.12.2019 passed by AO. Copy of Form No. 35 (Appeal Memo of First-appeal) duly acknowledged by official seal of CIT(A), Indore is filed at Pages 1-2 of Paper-Book and the same is scanned and re-produced below:

INCOME-TAX RULES, 1962
FORM NO. 35
(See rule 45)
Appeal to the Commissioner of Income-tax (Appeals)


M.K. Rathore
 98269
 40126

Personal information	First Name	Middle Name	Last Name or Name of Entity	Permanent Account Number or Aadhaar Number	AXCPR 0947E	
	Flat/Door/Block No.	Name of Premises/Building/Village		Road/Street/Post Office		
	Area/Locality		Town/City/District	State (Select)		
	Country (Select)	Pin Code	Phone No. with STD code/Mobile No.	Email Address		
	INDIA 452007 0731-2533756			Whether notices/communication may be sent on email? Yes/No		
Order against which Appeal is filed	1 Assessment year in connection with which the appeal is preferred/Enter financial year in case appeal is filed against an order where assessment year is not relevant			Assessment Year	2012-13	
	2 Details of the order appealed against			Financial Year	2011-12	
	a	Section and sub-section of the Income-tax Act, 1961		144 & 147		
Pending Appeal	b	Date of Order		5-12-2019		
	c	Date of service of Order/Notice of Demand		6-12-2019		
	3 Income-tax Authority passing the order appealed against			VRINDA RAJESH ITO (4(4))		
	4 Whether an appeal in relation to any other assessment year/financial year is pending in the case of the appellant with any Commissioner (Appeals)			Yes/No NO		
	4.1 If reply to 4 is Yes, then give following details -					
	a	Commissioner (Appeals), with whom the appeal is pending		-		
	b	Appeal No. and date of filing of appeal		-		
	c	Assessment year/financial year in connection with which the appeal has been preferred		-		
	d	Income-tax Authority passing the order appealed against		-		
	e	Section and sub-section of the Income-tax Act, 1961, under which the order appealed against has been passed		-		
f	Date of such Order		-			
Appeal Details	5 Section and sub-section of the Income-tax Act, 1961, under which the appeal is preferred					
	6 If appeal relates to any assessment					
	a	Amount of Income Assessed (in Rs.)		1173096		
	b	Total Addition to Income (in Rs.)		-		
	c	In case of Loss, total disallowance of Loss in assessment (in Rs.)		-		
	d	Amount of Addition/Disallowance of Loss disputed in Appeal (in Rs.)		-		
	e	Amount of Disputed Demand (in Rs.) - Enter Nil in case of Loss		-		
7 If appeal relates to penalty:						
a	Amount of penalty as per Order (in Rs.)		182265 + 194835			
b	Amount of penalty disputed in Appeal (in Rs.)		-			
Details of Taxes paid	8 Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full					
	Yes/No/Not Applicable					
	8.1 If reply to 8 is Yes, then enter details of return and taxes paid					
	a	Acknowledgement number		25850483020115		
b	Date of filing		01-11-2019			
c	Total tax paid		950/-			
9 Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act, 1961 has been paid					Yes/No/Not Applicable	

by CIT(A), NFAC dismissing assessee's first-appeal on the footing of delayed filing is not correct. We agree with Ld. AR's submission that the assessee had originally filed appeal within the statutory time of 30 days. Faced with this situation, we set aside the impugned order passed by CIT(A), NFAC and remit this matter to the file of CIT(A), NFAC for adjudication afresh. Needless to mention that the CIT(A), NFAC shall give full opportunities to assessee and the assessee shall also avail those opportunities without seeking unnecessary adjournments. Ordered accordingly.

6. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 22/01/2026

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 22/01/2026

Patel/Sr. PS

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

By order
Sr. Private Secretary

Azizur Rahman Khan
ITA No. 549/Ind/2025 - AY 2012-13

Income Tax Appellate Tribunal
Indore Bench, Indore