

**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.429/Ind/2025  
(AY: 2018-19)

Dhandeep Concretes, 409-410, Jaipur centre 4 <sup>th</sup> Floor, B2 Bypass Junction, Tonk Road, Jaipur.	<b><u>बनाम/</u></b> Vs.	ITO -(TDS), Bharatpuri, Ujjain.
(Appellant)		(Respondent)
Assessee by	Ms. Priya Agrawal, CA	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	15.01.2026	
Date of Pronouncement	30.01.2026	

**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 bearing Number:-ITBA/APL/S/250/2024-25/1074425314 (1) dated 12.03.2025 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 order made **u/s 201(1)/1(A)** of the Act, the total demand payable by the assessee u/s 201(1)/201(1A) was computed & determined at Rs. 12,34,585/- in respect of which **Assessee was treated in default**. The total tax payable for **"Non-deduction of TDS amounts to Rs. 7,21,980/-**. The statutory interest payable u/s 201(1A) on such non deduction of tax from the due date till date of order amounts to **Rs. 5,12,605/-**. That the aforesaid under section **u/s 201(1)/1(A)** of the act is dated **28.02.2023** which is herein after referred to as the **"Impugned default"** order.

2.2 That in case of the assessee an information was received by ITO(TDS) Ujjain MP from DCIT, CC-3 Jaipur vide letter dated 08.10.2021 that a search & seizure u/s 132 of the Act 1961 was carried out in the case of **"Sitaram Agarwal Group, Kotputli on 23.01.2019**. During the course of

search proceedings, several incriminating documents were found and seized. On perusal of seized documents, it has been observed that the assessee M/s Dhandeep Concretes has made following payments without deducting TDS in A.Y. 2018-19 relevant to F.Y. 2017-18. Details of the same are as under-

S.No.	Name	Amount	A.Y. involved
1	Jojan Labour contractor	2145000	2018-19
2	Jojan Labour contractor	892000	2018-19
3	Mehta Filling Station	10447000	2018-19
4	Mahavir Motors	1000000	2018-19
5	Nursing Bearing	362161	2018-19
6	Shahpura Diesels	295000	2018-19
7	Gurukripa Conveyers	244700	2018-19
8	Kanchan Metal Casting	785140	2018-19
9	Vishwakarma Industries	918000	2018-19
10	Sitaram Aggrawal	918000	2018-19
	Total	18007001	

2.3 In the aforesaid **"Impugned default order"** at para 3 it is recorded as under:-

*"3. The assessee is liable for tax deduction on the following payments/expenses  
a) Contract (u/s 194C)  
b) Professional/Technical fees (194))"*

2.4 That in the aforesaid the **"Impugned default order"** following is too recorded:-

4. After getting necessary approval from Hon'ble Commissioner of Income Tax (TDS), Bhopal, a letter for calling of information u/s 133(6) of the I.T. Act was issued on 16.03.2022 for submitting the reply on or before on 21.03.2022 along with TDS return and deductee breakup & month wise details of deductees. In response to above said letter, neither appeared nor submitted any of submission.

5. Further, a notice u/s 201(1)/201(1A) of I.T. Act, 1961 alongwith query dated 09.12.2022 and 21.12.2022 have been issued and fixing the case for hearing on 20.12.2022 and 27.12.2022 and duly served. In response to above said notices, assessee submitted reply on 02.01.2023 vide letter dated 27.12.2022 through DAK and stated that *allow us some time to collect all the information as desired by your honour and furnish the same and requested to please allow us time upto 15.01.2023 and assessee also informed new address and along with e-mail id. As per request of the assessee, a letter issued to the assessee on 09.01.2023 in new address and allowing the time up to 20.01.2023 for furnishing the reply.*

6. In response to letter dated 09.01.2023, assessee submitted reply on 30.01.2023 vide letter dated 19.01.2023 through DAK and further stated that *allow us some more time to collect all the information as desired by your honour and furnish the same and requested to please allow us time upto 15.02.2023 and oblige. However, assessee mailed the same by e-mail too on 20.01.2023. All documents or correspondence placed on record. Furthermore, As per request of the assessee, a letter issued to the assessee on 06.02.2023 in new address and allowing the time up to 17.02.2023 for furnishing the reply as final and last opportunity.*

7. A letter as final and last opportunity alongwith query which was issued on 06.02.2023 and fixing the case for hearing on 17.02.2023 and duly served requiring various details as well as requesting you to explain the payments made to various parties without deducting TDS in A.Y. 2018-19 relevant to F.Y. 2017-18. The details of the payments without deducting TDS are as under:-

S.No.	Name	Amount	A.Y. Involved
1.	Jojan Labour contractor	2145000	2018-19
2.	Jojan Labour contractor	892000	2018-19
3.	Mehta filling station	10447000	2018-19
4.	Mahavir Motors	1000000	2018-19
5.	Nursing Bearing	362161	2018-19
6.	Shahpura Diesels	295000	2018-19
7.	Gurukripa Conveyers	244700	2018-19
8.	Kanchan Metal Casting	785140	2018-19
9.	Vishwakarma Industries	918000	2018-19
10.	Sitaram Aggrawal	918000	2018-19
	TOTAL	18007001	

8. In response to the various letters and notices, neither the assessee nor his representative has taken interest in complying the above notices/ letters. On perusal of the information available on record it is found that no TDS was deducted on the above payments.

9. Since the assessee had failed to deduct tax at prescribed rate at the time of payment, therefore assessee is in default for Non-deduction of tax u/s 201(1)/201(1A) of IT Act. As per information, date of payment and nature of payment (payment made u/s 194C/194J) has not been prescribed. The detailed calculation of non-deduction of TDS u/s 201(1) & interest payable u/s 201(1A) is given below:-

S.No.	Name	Amount	TDS Deducted	Nature of Payments	TDS to be deducted	Non deduction	Interest u/s 201(1)/(1A) of IT Act, 1961 from 01.04.2017 to till date	Total
1.	Jojan Labour contractor	2145000	0	194C	42900			
2.	Jojan Labour contractor	892000	0	194C	@10% 17840	42900/-	30459	73359
3.	Mehta filling station	10447000	0	194C	@10% 208940	17840/-	12666	30506
4.	Mahavir Motors	1000000	0	194J	@10% 100000	208940/-	148347	357287
5.	Nursing Bearing	362161	0	194J	@ 10% 36216	100000/-	71000	171000
6.	Shahpura Diesels	295000	0	194J	@ 10% 29500	36216/-	25713	61929
7.	Gurukripa Conveyers	244700	0	194J	@ 2% 24470/-	29500/-	20945	50445
8.	Kanchan Metal Casting	785140	0	194J	@ 2% 78514	24470/-	17374	41844
9.	Vishwakarma Industries	918000	0	194J	@ 10% 91800	78514/-	55745	134259
10.	Sitaram Aggrawal	918000	0	194J	@ 10% 91800	91800/-	65178	156978
	TOTAL	18007001			@ 2% 721980/-	91800/-	65178	156978
						721980/-	512605	1234585

10. As discussed above, the total tax payable for non-deductible payments is Rs. 721980/-.

2.5 That the assessee being aggrieved by the aforesaid the **“Impugned default order”** prefers the first appeal **u/s 246A of the Act** before the Ld. CIT(A) who by the **“Impugned order”** has dismissed the first appeal of the assessee on the grounds & reasons stated therein. The core grounds & reasons for the dismissal of the first appeal are as under:-

**Decision-**

On perusal of records, it is noticed that during the course of appellate proceedings, appellant had not filed or uploaded any response and written submissions in the office of the undersigned to substantiate its claim made in the grounds of appeal. Only he remained silent since filing this appeal to till date. The non-compliance of the appellant in response to the notices issued u/s 250 of the Act on various dated is summarized as under:

<b>Sr. No.</b>	<b>Notice issuing Date</b>	<b>Date fixed for Hearing</b>	<b>Way of Service of Notice</b>	<b>Result</b>
1	28.04.2024	08.05.2024	E-mail	No compliance
2	24.02.2025	03.03.2025	E-mail	No compliance
3	06.03.2025	11.03.2025	E-mail	Seeking Adjournment

Considering the non-compliance as detailed above by the appellant, it seems that the appellant is not interested to pursue the appeal. Therefore, it cannot be kept pending adjudication for indefinite period. The Appellant has not bothered to comply to the notices issued during the course of appellate proceedings. If the appellant is not availing opportunities given, they cannot allege contravention of principles of natural justice as held in the case of P.N. Balasubramaniam (AP) 112 ITR 512. Therefore, the appeal of the appellant is liable for dismissal. Such view is further supported by the following judicial pronouncements: -

i) Hon'ble Supreme Court in the case of CIT vs. B.N. Bhattacharjee and another, reported in 118 ITR 461 (relevant pages 477 and 478) wherein their Lordships have held that: -

*"An appeal means an effective appeal. An appeal withdrawn is an appeal non-est as judicial thinking suggests. Purposefully interpreted, preferring an appeal means more than formally filing it but effectively prosecuting it. Mere institution followed by withdrawal would cancel the effect and result in non-prosecution and obliteration of appeal which is the same as not preferring an appeal"*

ii) Hon'ble M.P. High Court in the case of Estate of Late Tukoji Rao Holkar vs. CWT, 223 ITR 480 (MP), while dismissing the reference made at the instances of the assessee in default made following observation in their order: -

*"If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."*

Under the circumstances, it is presumed that the appellant is not interested to pursue this appeal and it has nothing to say in defence of the grounds of appeal taken. Therefore, I have no option but to decide the appeal on merits on the basis of materials on record.

The present appeal is against the order u/s 201 of the Income Tax Act, 1961 passed by the Assessing Officer. I have carefully perused the grounds of appeal and statement of facts as well as the assessment order made by the Assessing Officer. It is apparent from the record that the appellant has failed to furnish his submissions in support of the grounds raised in this appeal during the assessment proceedings and also to provide submission before the undersigned to represent the case despite adequate opportunities having been provided.

In the result, the appeal of the appellant is **dismissed**.

2.6 The Assessee being aggrieved by the **“Impugned order”** has preferred the instant second appeal before this Tribunal & has raised following grounds of appeal in the Form No. 36 against the **“Impugned order”** which are as under:-

*“1. On the facts and circumstances of the case and in law, Id. CIT(A) grossly erred in law and on facts by passing the impugned order which is bad in law and liable to be quashed, as it has been passed in undue haste without affording the appellant an adequate opportunity to furnish explanations, supporting documents, and legal submissions.*

*1.1 That the Id. CIT(A) erred in law and on facts in dismissing the appeal without considering the merits of the case, thereby violating the principles of natural justice.*

*2. On the facts and in the circumstances of the case, Id. CIT(A) has grossly erred in confirming the actions of the Id. AO in treating the appellant as an assessee in default under section 201(1) & 201(1A) of the Income-tax Act, 1961, despite the fact that the alleged payments were not recorded in the regular books of accounts, and no TDS liability arose.*

*2.1 That the Id. CIT(A) erred in confirming the application of a flat TDS rate of 10% on all alleged payments without verifying the nature of payments, thereby leading to an unjust demand of Rs. 12,34,585/-.*

*3. The appellant craves the right to add, delete or amend any of the grounds of appeal either before or at the time of hearing of appeal.”*

3. **Record of Hearing**

The hearing in the matter took place before this Tribunal on 15.01.2026 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

passed in haste without affording the assessee an adequate opportunity to furnish explanations, supporting, documents & legal submissions. Merits of the case have not been considered. **"Impugned order"** is in the violation of the principles of natural justice. The nature of payment made by the assessee have not been verified by the Ld. CIT(A) & flat rate of TDS 10% has been upheld, leading to the demand of Rs. 12,34,585/-. Per contra the Ld. DR has pointed out to this Tribunal para 8 of the **"Impugned default order"** which is on account of non-deduction of TDS by the assessee. It was pointed out that even the **"Impugned default order"** is exparte. The hearing was then concluded.

4. **Observations Findings & conclusions**

4.1 We 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 and after hearing & upon examining the rival contentions of the Ld. AR & the Ld. DR

canvassed before us, are of the considered opinion that the both the **“Impugned default order”** as well as **“Impugned order”** of both the lower authorities **are exparte in nature. Both the orders of the lower authorities have not been adjudicated & adjudged basis merits of the case & we find prima facie fault of the assessee in this regard. During the course of hearing no legitimate explanation is given by the Ld. AR as to why the assessee remained non-compliant before both the lower authorities.** Both orders are not on merits. Even the Ld. DR has pointed out basis para 8 of the **“Impugned default order”** the exparte nature of the impugned default order. This Tribunal has repeatedly emphasised that both the lower authorities under the Act i.e. the Ld. AO & the Ld. CIT(A) must pass speaking & well-reasoned order basis merits of the case. The assessee’s cooperation in this regard assumes importance. The assessee cannot go in **slumber mode**. In the given facts & circumstances since no **plausible reason** has come forth on record by the Ld. AR as to why the assessee was not compliant at both the levels we deem it fit & proper to

impose cost of Rs. 5000/- on the assessee as and by way of a **deterrent measures** so that such mistake & non-compliant behaviour is not repeated in future by the assessee & others too. In the result we set aside the **"Impugned order"** & remand the case back to the file of Ld. AO for fresh adjudication & ad judgement on denovo basis. The Assessee shall first pay cost of Rs. 5000/- to the department under challan "others" & shall not take any credit of such cost in taxes, interest & penalties etc. The assessee shall then give all the material particulars, information, details, evidences and books of account, bills etc & such other details as requisitioned by the Ld. AO so that he/she can pass a fresh order on remand basis merits of the case. The fresh order shall be speaking & well-reasoned order. Assessee is directed to cooperate with department & not to seek unnecessary adjournment on flimsy grounds. The assessee is at liberty to make all plausible submissions which are reasonable & worth credence.

4.4 In the premises drawn up by us, the “**Impugned order**” is set aside as and by way of remand back to the file of the Ld. AO on denovo basis with directions as per para 4.3 supra.

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**Order**

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

5.2. The appeal of the assessee is allowed for statistical purpose.

**Pronounced in open court on 30.01.2026.**

Sd/-

**(BHAGIRATH MAL BIYANI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PARESH M JOSHI)**  
**JUDICIAL MEMBER**

**Indore**

Dated : 30/01/2026

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