

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.536/Ind/2025
(AY: 2012-13)

Hari Singh, S/o Sh. Dhara Singh, 86,Vill- Semri khurd, Tehsil- Sultanpur, Raisen,Bhopal, MP (PAN: AIAPS1986M)	<u>बनाम/</u> Vs.	ITO, Raisen
(Appellant)		(Respondent)
Assessee by	None	
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/250/2024-25/1072367517 (1) dated 21.01.2025 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 2012-13 and the

corresponding previous year period is from 01.04.2011 to 31.03.2012.

2.

Factual Matrix

2.1 That as and by way of an Assessment order **made u/s 144 of the Act**, the total income of the Assessee was computed & assessed at Rs. 12,00,000/-. **The income tax return was not filed**. The addition of Rs. 12 lakh was made as per para 5 of the aforesaid order is dated 09.12.2019 [PAN: AIAPS1986M] which is herein after referred to as the **"Impugned Assessment Order"**.

2.2 The case of the assessee is re-opened by issuing Notice u/s 148 of the Income Tax Act, 1961 after recording of reasons u/s 148(2) of the Income Tax Act, 1961 by the Income Tax Officer Ward 1(3), Merrut. The reasons for re-opening the case is depicted as the assessee has deposited cash Rs. 12,00,000/- in his savings bank account during the previous year relevant to the assessment year 2012-13.

2.3 In the **"Impugned Assessment Order"** at para 4 it is recorded as under by the Ld. AO which is reproduced by us:-

"4.As the assessee has been given sufficient opportunity and has been repeatedly informed that the assessment proceedings will be completed ex-parte u/s 144 if the reply is not received, the assessee however failed to comply with any of the Notices issued. In view of the aforementioned situation, I am left with no alternative but to complete the assessment proceedings ex-parte u/s 144 considering the facts available on records. Accordingly the same is made."

2.4 In the **"Impugned Assessment Order"** at para 5 it is also recorded as under by the Ld. AO which is reproduced by us as below:-

"5.The case was selected for cash deposits amounting to Rs. 12,00,000/- in his saving bank account during the year under consideration. During the course of assessment proceedings Notice u/s 133(6) of Income Tax Act, 1961 dated 09/08/2019 was issued to the information filer branch i.e. Central Bank of India, Mumbai asking for the Bank account statement and other relevant details of the assessee. Reply from the Bank is received and is considered and placed on record. On perusal of the Bank statement for the year under consideration, it is found that the assessee has deposited cash amounting to Rs.12,00,000/-in his Bank account NO. 2077436045 with Central Bank of India, Goharganj. As such he failed to furnish his explanation in respect of the sources of such cash deposits; it is held that he has nothing to say about this. Therefore, it is required to ascertain his total income of the year with the help of the documents available on record. Accordingly the same is made; going through the information available in ITD/ITBA/E-filing database, it is found that the assessee has never filed his return of income for any preceding years. Despite providing ample opportunity, he has not been able to explain the source of such cash deposit, thus it is clear that the same is made from his undisclosed sources of income and not been offered for taxation. Thus the same is required to be added to the total income of the assessee for the year under consideration."

2.5 That the assessee being aggrieved by the aforesaid the **“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 first appeal of the assessee on the grounds & reasons stated therein. The core grounds & reasons for the dismissal of the first appeal were as under:-

“4. During appellant proceedings, the hearing notices were issued to the appellant from time to time to furnish his submission on the grounds of appeal taken by him. In response thereto, the appellant has not furnished any submission whatsoever on the grounds of appeal raised by it. The details of the hearing notices issued to the appellant are as under-

Sr. No.	Date of notice issued	Date of hearing
1	29.10.2024	13.11.2024
2	10.12.2024	18.12.2024
3	30.12.2024	06.01.2025

From the above details, it may be seen that more than due opportunities were given to the appellant and rules of natural justice were duly adhered to. However, no written submission has been filed by the appellant till now on the portal. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the following maxim- "vigilantibus non dormientibus jurasubveniunt."

7.1 During the course of appeal proceedings, no reply has been filed by the appellant spite of sufficient opportunities provided as detailed above.

7.2 Held:-During the course of appeal proceedings, no reply has been filed by the appellant. I have perused the order of the Assessing Officer and considered the facts of the case. The Assessing Officer has passed a speaking order with detailed discussion on the issue involved therein. The appellant has not pursued the appeal. No details, documents or submissions have

been provided by the appellant substantiating its grounds of appeal. Moreover, mere facts mentioned in Form No. 35 cannot be considered in the absence of any supporting documentary evidence and submissions.

The AO has passed a reasoned and speaking order considering all the facts and the circumstances of the case. Also, the appellant has failed to bring anything on record to support its grounds of appeal and to counter the additions made by the AO. Therefore, there is no reason to interfere with the order passed by the AO. Accordingly, the grounds of appeal is dismissed.

8. In result, the appeal is dismissed."

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

"1. Appeal is filed against the Order u/s 250 of the Learned Addl/JCIT (A)-2 Chandigarh in which Addition of Rs 1200000/- made by the Learned AO made vide his order u/s 147 r.w.s 144 was upheld.

2. The orders of the authorities as above in so far as these are against the appellant are opposed to law, weight of evidence, probabilities, facts/ circumstances of the appellant's case.

3. Appellant denies himself liable to be assessed on an income of Rs 1200000/- under the facts and circumstances of the case and owing to the under given reasons:

a) The Learned Addl/JCIT (Appeals)-2 's Order is based completely only on the findings of the Learned AO, whose Order in turn was framed only and only on the basis of a fishing & roving enquiry, being mostly finalized on grounds of non- compliance of Notices and consequent non-response.

b) The assessee was physically incapable to attend to the hearings of the assessment proceedings, as at that very time he was suffering from Urinary Cancer and was under hospitalization and bed-ridden most of the time during that very phase of the initial assessment proceedings u/s 148 which had commenced in the last week of March 2019 (Copies of his medical records are

being enclosed which shall corroborate the period of illness with the period of assessment proceedings),

c) Currently too his illness continues and is also facing severe financial constraints due to the critical nature of his illness.

d) That, the Order u/s 250(6) by the Learned AddVJCIT (A)-2 CHD has been based majorly upon lack of evidence and submission of tangible proofs which the appellant failed do so due to his lack of response to various Notices and consequent non-compliance. The appellant so far, has'nt got any real opportunity of being heard before any of the Assessment/Appellate Authorities, also very crucial evidence in his support may not have been brought to the knowledge of the assessment appellant authorities, for whatever reasons, whether due to his incapacitation because of his critical illness and not being in a physical situation to personally follow up on the appellate proceedings and, being totally dependent upon his Legal Counsel, who acted very negligently, by failing to respond to various Notices issued from the Learned Office of the JCIT(Appeals) and mainly by failing to submit very clinching evidence in the form of Mandi Samiti receipts which clearly establish the genuinity of the Paddy Sale transactions and the consequent collection of cash from the Recipient of Paddt viz M/s Dawat Foods Limited

e) The appellant has been made to suffer severe agony and harassment for no fault of his primarily because he has been an agriculturist and only an agriculturist all through his life, having income purely from agricultural activities which has been a family vocation passed on to him through his ancestors and not been engaged in any business activity whatsoever during his entire life. Added to this, further, never ever having filed his Income Tax Return as he was not mandated to do so having no other income other than that from agricultural activities, was completely ignorant about Income Tax matters having no knowledge of assessment/appellate procedures;

4. Even in the Order u/s 250 framed and delivered by The Learned Addl/JCIT (Appeals)-2 CHD has been kind enough to explicitly acknowledge that the appellant had submitted the following facts in both the Grounds of Appeal and in the Statement of Facts forming part of Form 35 in the support of his appeal:

f) That the appellant had submitted that he was a small farmer and not well versed in assessment proceedings;

g) Due to lack of knowledge could not appoint a legal Counsel;

h) That only proceeds of his agricultural activities carried out by himself and his son had been deposited in his savings bank account that the appellant submitted that he and his family were agriculturists ancestrally and were not engaged in any other activity besides agriculture. That he has deposited cash of Rs.12,00,000/- in his saving account, which has been realized from sale proceeds of agriculture crops paddy from M/s Dawat Foods Limited;

i) That the assessee could not attend the assessment proceedings due to his lack of knowledge of the Income tax Act;

j) Further and most importantly, the Learned Appellate Authority has also been kind enough to acknowledge that Quote "the adversity in his Order was solely and only due to the appellant's inability to respond to Notices issued to him from time to time as also his failure to furnish written submissions in favour of his appeal. However no written submissions has been filed by the appellant till now on the Portal. The Law assists those who are vigilant and not those who sleep over their rights. The principle is embodied in the following maxim-" vigilantibus non dormientibus jurasubveniunt" - Unquote.

5. The appellant, aged about 75 years, has been suffering from Cancer (Bladder Tumor) since FY 2014-15, and frequently been undergoing treatment at Apollo Hospital Indraprastha since long and has mostly remained bed-ridden. Added to this, further, he is also illiterate, more importantly computer illiterate, residing in a Village, completely unaware of the subject of Income Tax, nor having any knowledge or experience of assessment procedures, resultingly was not able to respond to various Notices issued during the proceedings u/s 148 and u/s 250 of the Act.

6. The undersigned, who is the newly appointed Counsel for the appellant, has found it painful that the appellant has become an innocent victim to a Counsel who had acted extremely negligently and did not respond to various Notices issued from time to time by the O/O the Learned Addl/JCIT (A) -2 CHD, nor did he the inform the appellant of the Order u/s 250 passed by the Learned Addl/JCIT (A) -2 CHD, also did not on his own fulfil his ethical

responsibility to file an appeal before the Hon'ble ITAT, which he later acknowledged after being confronted, due to the appellant's inability to be able to meet his professional charges. Not being computer educated and not having any access to computer technology, was solely dependent upon his Legal Counsel who failed to fulfil his responsibility.

7. That it is now pleaded that for whatever reasons or circumstances that may have arisen, or the fact that he has on account of circumstances beyond his control, been unable to avail of the opportunity to submit proper and irrefutable evidences which shall once and for all clearly establish that he genuinely was not liable to be penalized with the imposition of the tax liability so created on account of the assessment proceedings, one fact that comes out clearly established is that appellant so far, has'nt got any real opportunity of being heard before any of the Assessment/Appellate Authorities and therefore has been truly deprived of natural justice.

8. The Appellant craves to plead that the Hon'ble ITAT in all its wisdom, and in the interest of natural justice, provide the appellant an opportunity to enable him to come up with required documentary evidence and explanations in support of his appeal, especially considering the medical condition of the appellant and the exorbitant medical costs that he is bearing inspite of very meagre resources, mostly unable to handle such affairs due to time and financial constraints, as also the fact that he does not understand the nuances of the Income tax Law, probably due to which, as also due to his naivety and ignorance has placed himself in this precarious position.

9. That this would be the last opportunity available to the appellant to seek redressal, failing which he would be placed in a situation beyond his control and capacity considering his present extenuating circumstances.

12. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

13. The Learned Appellate Authority's kind and considerate action would go a long way in serving natural justice to the aggrieved."

2.7 The statements of facts as is given in the appeal memo is reproduced by us as below:-

"1. The Department, on the basis of AIR Information, regarding cash deposits of Rs 1200000/- (Rs Twelve Lacs) in the assessee's Savings Bank account, re-opened the assessee's case u/s 148 for the FY 2011-12 (AY 2012-13) for scrutiny. Accordingly Notices were issued u/s 148 Dtd 28/3/2019.

2. The Learned AO on conclusion of hearing u/s 148 passed his Order u/s 144 dtd 09/12/2019 proceeding to make an addition of Rs 12 Lacs primarily on the grounds that no response was received from the assessee and therefore the case was decided on ex-parte basis. The addition was made on the following grounds:

1) Addition of Rs 1200000/- towards the purported unexplained cash deposits in Central Bank Savings Bank Savings Account Number 2077436045 vide two entries Rs 300000/- on 26/11/11 and Rs 900000/- on 13/12/11 respectively

3. Tax Demand of Rs 598380/- was consequently raised upon the assessee on the same date.

4. Subsequently, the assessee went into appeal on 19/01/22 against the said Order u/s 144 of the I.T. Act 1961. The appeal was migrated to the NFAC initially and subsequently transferred to the O/O the Learned JCIT(Appeals) -2 Chandigarh on 23/8/23.

5. That, both in the Grounds of Appeal and the Statement of Facts in the Form 35, the appellant submitted that he and his family were agriculturists ancestrally and were not engaged in any other activity besides agriculture. That he has deposited cash of Rs.12,00,000/- in his saving account, which has been realized from sale proceeds of agriculture crops paddy from M/s Dawat Foods Limited and also submitted evidence in the form of 5 Mandi Samiti receipts, which perhaps the Learned Authorities may not have taken cognizance of or which might have been ignored.

6. However and unfortunately for the appellant, just as what had happened in the assessment proceedings, the appellant, who is ill and is a patient of Bladder tumour and not in a physical situation to follow up on the appellate proceedings, here too, was totally dependent upon his Legal Counsel, who acted very negligently, failed to respond to various Notices issued from the Learned Office of the JCIT(Appeals) or to follow up the appellant's case, and the Learned Appellate Authority was left with no alternative than to pass an adverse Order u/s 250 of the Act against the appellant's appeal in which the Learned Appellate Authority acknowledged

that the adversity in his Order was solely and only due to the appellant's inability to respond to Notices issued to him from time to time as also his failure to furnish written submissions in favour of his appeal. It is also quoted from his Order- Quote However no written submissions has been filed by the appellant till now on the Portal. Unquote.

7. Material facts very relevant to the entire case which establish the genuine inability of the appellant to respond or to make compliances

i) The appellant has been suffering from Cancer (Bladder Tumor) since FY 2014-15 and undergoing treatment at Apollo Hospital Indraprastha since long, was going through extenuating circumstances, being mostly under hospitalization and bed-ridden, during that very phase of the initial assessment proceedings u/s 148 which had commenced in the last week of March 2019 (Copies of his medical records enclosed), Currently ill and bed-ridden and also facing severe financial constraints due to the critical nature of his illness.

ii) He has been an agriculturist and only an agriculturist all through his life, having income purely from agricultural activities which has been a family vocation passed on to him through his ancestors. Added to this, further, he is also illiterate, and aged about 75 years, completely unaware of the subject of Income Tax, never ever having filed his Income Tax Return as he was not mandated to do so having no other income other than from agricultural activities, coupled with this, he has never had any kind of exposure to Computers, nor having any knowledge or experience of assessment procedures either physically through online procedures, lives in a Village and most times inaccessible to govt correspondence.

The appellant so far, hasn't got any real opportunity of being heard before any of the Assessment/Appellate Authorities, also very crucial evidence in his support may not have been brought to the knowledge of the assessment/ appellant authorities, for whatever reasons, whether due to his incapacitation due to his critical illness and the consequent negligence of his Legal Counsel, it is undoubtedly very clear that he has been truly deprived of natural justice and deserves a final opportunity to secure the same.."

3.

Record of Hearing

3.1 The hearing in the mater took place before this Tribunal on **15.01.2026 when nobody appeared for & on behalf of the assessee.** The Ld. DR appearing for & on behalf of the revenue **assisted this Tribunal.** It was pointed out by the Ld. DR basis records of the case file that the assessee has made a request for condonation of the delay in filling the instant second appeal. The core reason for the condonation of delay is that the assessee was suffering from **cancer** & that his earlier counsel at the first appellate stage was not cooperative despite the assessee being **senior citizen**, suffering from cancer & **agriculturist.** The old counsel did not inform the assessee of the passing of the impugned order in time. Old counsel fee was not paid when new counsel confronted him. The assessee is not computer educated & depended on the old counsel. The Ld. DR also took us through the affidavit dated 09.06.2025 the assessee in support of COD application. The Ld. DR for the revenue under these the facts & circumstances stated that the delay be condoned as the department has no objection. Accordingly after perusing the condonation of delay application dated 11.06.2025 & so also

after perusing the affidavit dated 09.06.2025 of the assessee we deem fit to condone the delay & admit the appeal. The Ld. DR then submitted that both the **“Impugned Assessment Order”** as well as the **“Impugned Order”** of lower authorities are exparte, para 4 of the **“Impugned Assessment Order”** was read out to demonstrate exparte nature of order. The attention was invited to the **“Impugned Order”** para 4, 7.1, 7.2 & 8 to demonstrate that even the first appellate order i.e. the **“Impugned Order”** is exparte. It was finally prayed that the Revenue has no objection if the impugned order is set aside & the matter be remanded to the Ld. AO on denovo basis. 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 & after hearing & further upon examining the contentions of the Ld. DR as Ld. AR is absent are of the considered opinion that both the **“Impugned Assessment Order”** and **“Impugned Order”** of the lower authority are exparte. Accordingly we set aside the impugned order as & by way of remand back to the file of the Ld. AO on denovo basis. Needless to state this Tribunal desires speaking & reasoned order from the lower authorities. The income of the assessee is required to computed & assessed basis merits only. The assessee to cooperate with the department & file necessary material evidences, etc in support of his case before the Ld. AO.

4.4 In view of the premises drawn up by this Tribunal as aforesaid the **“Impugned Order”** is set aside as & by way of remand back to the file of Ld. AO on denovo basis. The Ld. AO is directed to pass speaking & reasoned order basis merits of the case.

5

Order

5.1 In the result "**Impugned order**" is set aside as and by way of remand back to the file of the Ld. AO on denovo basis.

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