

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.99 to 104/Ind/2025
(AYs: 2013-14 & 2014-15 & 2016-2017 & 2019-20)

Rohit Kumar Dharak, 9, Bhoj Nagar, Annapurna Road, Near Dwarka Garden, Indore (PAN: AXFPD4087L	<u>बनाम/</u> Vs.	ACIT Central-2 Bhopal
(Appellant)		(Respondent)
Assessee by	Shri Harsh Vijayvargiya, AR	
Revenue by	Shri Anup Singh, CIT-DR	
Date of Hearing	15.01.2026	
Date of Pronouncement	30.01.2026	

आदेश / O R D E R

Per Bench:

This Bunch of **06 appeals** has been filed by the Assessee under **section 253** of the income tax Act 1961 [herein after referred to as the Act for sake of brevity] before this tribunal as & by way of a second Appeal. The Assessee is aggrieved by the order bearing Number:-CIT(A)-3, Bhopal /IT/10134/2012-13,10314/2013-14,12130/2015-16, 13014 /2016-17, 12326/2017-18, 11937/2018-19 dated

13.12.2024 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 years’ involved in **above six** appeals are A.Y. 2013-14, 2014-15, 2016-17, 2017-18, 2018-19 & 2019-20 & the corresponding previous year periods are from 01.04.2012 to 31.03.2019 respectively for the aforesaid assessment year including the A.Y.2019-20 [A.Y.2015-16 is not there corresponding to previous year 01.04.2014 to 31.03.2015] as no additions are made in that A.Y.

2.1

Factual Matrix

That-as and by way of an Assessment order made **u/s 153A rws 144 of the Act-** for the A.Ys. 2013-14 to 2018-19 & 143(3) for A.Y.2019-20 the total income of the assessee was **computed & assessed** as per the following the **chart/schedule on page 14 & 15** of the “**consolidated Assessment Order**”, we reproduce the same as under:

(A.Y. 2013-14

Income shown in the return filed u/s 139(1) of the Act	Rs.	3,49,650/-
Income shown in the return filed in response to notice u/s 153A of the Act	Rs.	3,49,650/-
Addition: as per para 10	Rs.	67,500/-
Total income assessed	Rs.	4,17,150/-

A.Y. 2014-15

Income shown in the return filed u/s 139(1) of the Act	Rs.	3,65,750/-
Income shown in the return filed in response to notice u/s 153A of the Act	Rs.	3,66,370/-
Addition: as per para 10	Rs.	2500/-
Total income assessed	Rs.	3,68,870/-

A.Y. 2015-16

Income shown in the return filed u/s 139(1) of the Act	Rs.	2,34,140/-
Income shown in the return filed in response to notice u/s 153A of the Act	Rs.	2,34,140/-
Total income assessed	Rs.	2,34,140/-

A.Y. 2016-17

Income shown in the return filed u/s 139(1) of the Act	Rs.	2,58,260/-
Income shown in the return filed in response to notice u/s 153A of the Act	Rs.	2,58,260/-
Addition: as per para 10	Rs.	12,500/-
Total income assessed	Rs.	2,70,760/-

A.Y. 2017-18

Income shown in the return filed u/s 139(1) of the Act	Rs.	7,62,370/-
Income shown in the return filed in response to notice u/s 153A of the Act	Rs.	7,62,370/-
Addition: as per para 10	Rs.	11,500/-
Total income assessed	Rs.	7,73,870/-

A.Y. 2018-19

Income shown in the return filed u/s 139(1) of the Act	Rs.	6,49,400/-
Income shown in the return filed in response to notice u/s 153A of the Act		6,49,400/-
Addition: as per para 10	Rs.	1,15,375/-
Total income assessed	Rs.	7,64,775/-

A.Y. 2019-20

Income shown in the return filed u/s 139(1) of the Act	Rs.	5,76,900/-
Income shown in the return filed in response to notice u/s 153A of the Act	Rs.	5,76,900/-
Addition: as per para 10	Rs.	1,57,500/-
Total income assessed	Rs.	7,34,400/-

The aforesaid consolidated assessment order is dated **17.06.2021** which is hereinafter referred to as the

“consolidated Impugned Assessment Order”. [For the A.Y.2015-16 no addition is made.]

2.2 The facts of the case in brief as per the records are as under **as per the say of the assessee** which is stated in form No.35 which we reproduce as under:-

“Search u/s. 132 was conducted at residential premises of assessee on 16/05/2018. In response to notice u/s. 153A for the said year assessee duly filed the return of income u/s. 153A. Notice u/s. 143(2) dated 05/03/2021 and notice u/s.142(1) was issued on 19/02/2021. That due to covid epidemic in the month of March, April, May and part of June 2021 assessee could not responded the questionnaire. However, assessee vide letter dated 05/12/2020 has requested Ld.AO to provide the copies of statements of the assessee, incriminating documents relied upon by Ld. AO, other documents which have bearing in this matter etc. Ld. AO has not provided these documents to assessee till date. Ld. AO issued show cause notice u/s. 144 of the I.T. Act dated 28/05/2021 to assessee and asked to comply the same on or before 02/06/2021 during the full fledged lock down due to Covid 19 across the state. In absence of documents requested for and lock down across the state, assessee could not respond to this show cause notice u/s. 144 too. It is worth noting that assessee and his tax counsel are based at Indore while Ld. AO was based at Bhopal.Ld. AO alleged in the assessment order passed that assessee has earned commission at the rate of 2.5 percent of the total amount of accommodation entries provided by the companies of the assessee/related to the assessee during the year under consideration. The amount of commission at the rate of 2.5 percent determined by Ld. AO to Rs. 67500/-. Then Ld. AO went on to add Rs. 67500/- in the returned income of the assessee u/s. 69A of the I.T. Act, 1961 vide impugned assessment order dated 17/06/2021 in an arbitrary manner and against the principle of natural justice since the same has been added without affording any opportunity of being heard to the assessee. The said order passed by Ld. AO is illegal and liable to be struck down and therefore is this appeal.”

2.3 That the Assessee being aggrieved by the aforesaid **“Consolidated 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 was as under:-

“3. After taking into consideration the AO's findings, and the facts of the case the issues involved in appeal are discussed and decided as under:

3.1 Ground no. 1 for AY 2013-14, 2014-15 and 2016-17 to 2019-20:- Through these grounds of appeal, the appellant has challenged the income determined by the AO as against the returned income and accordingly denies his liability to pay tax, cess and interest demanded thereon. Since, the addition made by the AO has been dealt separately and therefore, this ground does not require any adjudication at this stage.

3.2. Ground No. 2.3 and 6 for AY 2013-14, 2014-15 and 2016-17 to 2019-20:- Through these grounds of appeal the appellant has challenged that the assessment order passed by the Ld. AO is bad in law, without jurisdiction and having no Incriminating material found as a result of search action.

3.2.1. I have considered the facts and circumstances of the assessment order and the case and the grounds of appeal filed by the appellant. The above grounds of appeal are considered together as they are similar in nature.

I have perused the para 2, 3, 4, 5,6,7 and 8 of the assessment order where I have found that the AO has discussed the issues emanating from search and seizure action Various bank accounts based on information unearthed during the search and survey action on Daraks have been confronted to the appellant for explanation but he failed to comply to the notices repeatedly. The

AO had issued final show cause too for assessing the case u/s 144 of the Act.

I find that the AO has correctly assumed the jurisdiction of the case and statutory notices have been issued correctly and timely manner. The AO has very clearly mentioned that the enquiries of bank accounts post search had been carried out based on search action only. Therefore, the claim of the appellant that no incriminating material was found is baseless and incorrect. I find in the assessment order enough reasons to initiate proceedings u/s 153A of the Act which is valid and as per law for (AY 13-14, 14-15, 16-17, 17-18, and 18-19) and u/s 144 of the Act (AY 19-20).

3.2.2 Accordingly, the grounds of appeal raised are dismissed.

3.3 Ground No. 4 and 5 for AY 2013-14, 2014-15 and 2016-17 to 2019-20: Through these grounds of appeal the appellant has challenged the various additions made on account of unexplained money u/s 69A of the IT Act, 1961 for the relevant AYs.

3.3.1 I have considered the facts and circumstances of the assessment order and the case and the grounds of appeal filed by the appellant. The above grounds of appeal are considered together as they are similar in nature.

The AO has discussed the issue of addition on account of accommodation entries at para 10 of the order. Based on seized material and the post search enquiries the AO has computed the amounts credited in the different bank accounts in AY 13-14, 14-15, 16-17, 17-18, 18-19 and 19-20. The appellant is a member of Darak family and had been involved in providing accommodation entries to various beneficiaries in different years. The AO has held that his bank accounts have been used to carry out transactions for providing accommodation entries and computed 2.5% on the amount of transaction appearing in such bank accounts as commission income of the appellant in different AYs. The AO has taken the extracts of decision in the case of Sharad Darak where addition at the rate of 2.5 percent of the total accommodation entry as commission income for relevant AY had been made. It is also mentioned that the same had been confronted to the appellant but no reply was filed inspite of numerous opportunities. Therefore, it was assumed that appellant has nothing to say in this matter. The AO therefore had held the commission income from such transaction (2.5% of gross receipts in bank accounts of

the appellant) to be undisclosed ones and treated the same as appellants undisclosed money u/s 69A in different AYs.

I find that there is no further submission made by the appellant before me apart from filing the grounds of appeal. It is very surprising that the appellant has just filed the appeals before me but is not interested in attending hearing or furnishing any reply before the AO or me.

I also find the ground that natural justice has not been rendered to the appellant during assessment to be totally untrue and mischievous as it is the appellant who needs to attend the hearings and comply with the notices. I find the track record of appellant and other entities of Darak to be very poor in compliance and appears to be part of their strategy during appeal and assessment proceedings.

3.3.2 Based on above discussion, the grounds of appeals are dismissed and the additions of undisclosed money u/s 69A of the Act made in AY 2013-14, 2014-15 and 2016-17 to 2019-20 are confirmed.

3.4 Ground No. 7 for AY 2013-14, 2014-15 and 2016-17 to 2018-19: Through these grounds of appeal the appellant has challenged that the AO has passed the assessment order without obtaining valid approval u/s 153D of the IT Act.

3.4.1 I don't find any truth in this ground of appeal as the AO has mentioned in last para of the order about the said approval of the assessment order being given by the JCIT. The ground of appeal is dismissed.

3.5. Ground No. 8 for AYs (2013-14, 2014-15 and 2016-17 to 2018-19) and Ground.no. 7. for 2019-20 Through this ground of appeal, the appellant has challenged the charging of Interest under various provisions of Act. It is settled position of law that charging of interest is mandatory and consequential in nature as held by Hon'ble Supreme Court in the case of CIT v/s Anjum M.H. Ghaswala 252 ITR 1(SC), However, the AO is directed to recalculate the correct Interest while giving effect to this order. Thus, appeal on this ground is allowed for statistical purpose.

3.6 Ground No. 9 for AYs (2013-14, 2014-15 and 2016-17 to 2018-19) and Ground no. 8 for 2019-20: Being general in nature this ground needs not any special adjudication.

4. Accordingly, the appeal is dismissed."

2.4 That 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 of A.Y. 2013-14 against the "**Impugned order**" which are as under:-

"1. That having regard to the facts and circumstances of the case Ld. AO has erred in law and on facts in making addition and Ld. CIT(A) has erred in confirming addition of Rs. 67,500 as Unexplained money U/s 69A of Income Tax Act, 1961 in the form of commission income alleged to be received for arranging accommodation entries.

2. That Ld. CIT (A)-3, Bhopal has erred in confirming the addition made by Ld. AO without considering the detailed written submissions along with documentary evidences filed by the appellant during the course of first appeal proceedings and therefore the impugned order is illegal and bad in law.

3. That the appellant craves leave to add, amend, alter or delete all or any of the grounds of appeal and all the above grounds are mutually exclusive to each other."

Similar grounds have been raised for other years with change of figures.

3. Records of Hearing

3.1 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 & Inter alia contended that the "**Impugned order**" is illegal, bad in Law & not Proper. It is in the violation of the Principles of natural justice too. It

thus deserves to be set aside. A paper book containing pages 1 to 108 is placed on record of this Tribunal. The Ld. AR for & on behalf of the assessee submitted that "**Consolidated Impugned Assessment Order**" is under **section 144** of the Act. In the unnumbered para on page 1 of the consolidated impugned assessment order" it is recorded that the search u/s 132 of the IT Act, 1961 was conducted at the residential premises of the assessee as well as **on the premises of other concerns / business associates on 16.05.2018** in pursuance of the warrant of authorization u/s 132 of the I.T. Act dated 14.05.2018 issued by the competent authority. Since, various financial activities and transactions executed by assessee are related and have business associations with group, hence, they have been put together under one common name: "**Asnani Group**".

3.2 In the "**Consolidated impugned Assessment Order**" at para 2 it is recorded as under:-

"2. E-notices as well as hard copies of notice u/s 153A for A.Y. 2013-14 to A.Y. 2018-19 was issued on 30.01.2020 and notice u/s 142(1) of the I.T. Act was issued on 04.03.2020 by the then Assessing Officer and served on the assessee to file the returns for assessment years as mentioned above. In response, the

assessee did not file the return, hence, show cause notices u/s 276CC were issued to the assessee on 29.02.2020. In response to this, assessee has stated that

"I have no knowledge for the notice and filing of return u/s 153A because I have not received any physical notice w/s 153A, I have received directly show cause notice w/ 276CC of the Income Tax Act, 1961 on 05.03.2020

In response to his above reply, an e-mail was sent to assessee to allow him to collect copies of documents on or before 13.03.2020 and file return on or before 17.03.2020. The assessor neither collected documents nor filed return, hence, again show cause notices u/s 276CC were issued on 14.05.2020 asking assessee to file return before 22.05.2020. However, the assessee again failed to file ITR for the years under consideration."

The above two paragraphs (supra) were read out by the Ld. AR & it was **emphatically contended** that e-mail dated **13.03.2020** was not received by the assessee. It was also urged that no incriminating documents were found & **nothing was provided to the assessee to set up his defences**. The Ld. AR contended basis para 3 of the **"consolidated Impugned Assessment Order"** that vide letter dated **15.12.2020** the assessee reiterated that vide the earlier letter dated **05.12.2020**. Copies of statements, relied upon documents & other relevant information were sought, we once request the department to provide information/documents as is sought.

3.3. The Ld. AR then read out following paragraphs from the **“Consolidated Impugned Assessment Order”** which we reproduce as below:-

3. Thereafter, again e-notices u/s 142(1) of the Income Tax Act, 1961 were issued on 04.11.2020 asking assessee to file return within 05 days of the receipt of notice. Notice u/s 143(2) for the A.Y. 2019-20 was issued to the assessee on 30.09.2020. A notice u/s 129 was issued on 28.11.2020 apprising the assessee about change of incumbency. A detailed questionnaire for A.Y. 2019-20 was issued to the assessee on 07.12.2020 calling for the various details relevant to the assessment. Thereafter, again on 09.12.2020, e-notices u/s 142(1) for the A.Y. 2013-14 to A.Y. 2018-19 were issued to assessee to file return within 05 days of receipt of this letter. Assessee in reply dated 15.12.2020 reiterated that -

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“the assessee has requested for copies of statement, relied upon documents and other relevant information/documents vide our letter dated 05/12/2020. We therefore humbly request your honour to kindly provide us information/documents mentioned in our letter dated 05.12.2020, so that we can file the returns in response to notice u/s 153A on time in informed manner.”

4. Further, notice u/s 133(6) of the IT Act was issued to all the concerned banks asking to furnish the bank statements from the period 01.04.2011 to 31.03.2019. A notice u/s 271(1)(b)/ 272A(1)(d) of the Income Tax Act, 1961 dated: 30.1.2021 was issued to the assessee as he failed to comply with notices u/s 142(1)/143(2) of the IT Act.

5. In response to notices u/s 153A, the assessee filed returns on 16.02.2021. The details of return of income are as under:-

A.Y.	Date of filing of return u/s 139(1)	Returned income (In Rs.)	Date of filing of return by the assessee against notice u/s 153A	Income Declared in Return u/s 153A (In Rs.)	Additional income offered by the assessee (In Rs.)
2013-14	30.07.2013	3,49,650/-	16.02.2021	3,49,650/-	Nil
2014-15	29.03.2015	3,65,750/-	16.02.2021	3,66,370/-	620/- ✓
2015-16	30.03.2016	2,34,140/-	16.02.2021	2,34,140/-	Nil
2016-17	30.03.2017	2,58,260/-	16.02.2021	2,58,260/-	Nil
2017-18	29.07.2017	7,62,370/-	16.02.2021	7,62,370/-	Nil
2018-19	31.08.2018	6,49,400/-	16.02.2021	6,49,400/-	Nil
2019-20	30.08.2019	5,76,900/-	NA	NA	NA

6. The aforesaid returns were examined and notices u/s 143(2) for AY 2013-14 to 2018-19 were issued on 19.02.2021 which were duly served on the assessee. A detailed questionnaire u/s 142(1) for A.Y. 2013-14 to 2019-20 was issued on 19.02.2021. Further, notice u/s 142(1) along with Part-B was issued on 22.02.2021. Assessee did not comply with the notices u/s 142(1) of Income Tax Act, 1961, hence, a reminder to questionnaire u/s 142(1) was issued to the assessee, on 27.02.2021 requesting him to file reply of queries by 03.03.2021.

7. The assessee has failed to make compliance with above such notice. Thereafter, show cause notices u/s 271(1)(b)/272A(1)(d) of the Income Tax act, 1961 were issued on 19.03.2021 for the years under consideration asking why penalty should not be imposed for such non compliance of statutory notices. The assessee did not reply to the notice, hence, penalty u/s 271(1)(b) of Income Tax Act, 1961 was imposed on assessee for A.Y. 2013-14 to A.Y. 2016-17 and penalty u/s 272A(1)(d) of the Income Tax Act, 1961 was imposed on assessee for A.Y. 2017-18 to A.Y. 2019-20 vide order dated: 26.03.2021.

3.4 During the course of the hearing the Ld. AR read out page 11 & 12 of the "**Consolidated Impugned Assessment Order**". Basis page 13 it was contended that seized material

is of Shri Sharad Darak **who is not the present assessee.** No material documents were provided to the assessee. There is no material against the assessee. In the absence of incriminating material additions cannot be made. Reliance was placed on the Apex court judgment in case of **Abhisar Buildwell.** It was submitted that no other additions can be made too. In so far as the **"Impugned Order"** of the Ld. CIT(A) is concerned it was stated that the issue of no incriminating material was found against the assessee as a result of search **was raised as ground no.3 (A.Y. 2013-14) & no adversarial material was shared by the department to the assessee.** It was therefore, submitted that the **"consolidated Impugned Assessment Order"** was bad in law, illegal & Ld. CIT(A) has erred in law in upholding the same. The reliance was placed on page 1 of PB [A.Y.2013-14] which is e-acknowledgment for written submission dated **04.01.2024 which was filed before the Ld. CIT(A) along with Annexure -1 & Annexure -2.** Simultaneously the attention was invited to the internal page 14 of the

“**Impugned Order**” were in it is wrongly recorded by the Ld. CIT(A) that no submission is made apart from filing the ground of appeal. Our attention was invited to page 11 of the P.B. too & internal page 14 of the Impugned Order. [para 3.3.2]. Per contra the Ld. DR appearing for & on behalf of the revenue submitting that the “**Consolidated Impugned Assessment Order**” & **Impugned Order**” are correctly passed & **relied upon it**. [In these appeals the Ld. DR has made common submission as other connected group matter covered by ITANo.181 to 186/Ind/2025 were listed & heard all together on 15.01.2026]. The Ld. DR finally prayed that the impugned order be upheld. 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 & after hearing & upon examining the contentions are of the considered view that the "**Consolidated Impugned Assessment Order**" is under **section 144 of the Act** & 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 & assessed on the real time basis exigible to tax in accordance with law by following the due process of law prescribed under the Act. This tribunal also expects the assessee to be compliant & should cooperate with the department of income tax as & when notice(s) summons, etc. are issued to him/them. In brief this Tribunal desires the meritorious disposal of both the "**consolidated Impugned Assessment Order**" as well as the "**Impugned Order**". 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 about his income. The assessee shall file the necessary & requisite replies. The assessee to attend the hearing as & when fixed by the Ld. AO & is directed not to seek any adjournments on any flimsy, grounds. The assessee to file reply submission & to provide all such details as may be sought by the Ld. AO while adjudicating & adjudging the case **a fresh** on denovo basis. The assessee to cooperate with the department in every manner possible so that department time, money, energy resources are not wasted in repeated manner time & again. Due to non cooperative attitude not only the assessee suffer but national resources are wasted. Economy of the nation suffers. **Systems get's clogged.** Needless to state that taxes are required to paid according to law simultaneously no tax should be levied & collected save & except according to law. The department to ensure that all the material, which are adversarial to the assessee is disclosed before any adjudication & adjudgement is made by the lower authorities. The principles of natural justice

requires disclosure of all adversarial material which is going to be used against the assessee is disclosed to him. Copy of statements, panchanama, etc. too should be disclosed to the assessee. The assessee in this regard too **should be prompt in seeking such documents**. It is equal responsibility of the assessee & the revenue. The issue of blame culture should be avoided as none benefits out of it. The resources & system suffers in the ultimate analysis of things.

4.4 In view of the premises, drawn up by us, we set aside the **“Impugned Order”** & remand the case back to the file of the Ld. AO on denovo basis, who shall now pass a speaking & reasoned order on merits of the case. In order to straighten the record we hold that all the necessary statements papers, documents, material etc, are now available with the assessee as stated by the Ld. AR during the course of hearing held before us & the assessee now on wards will not make any grievances about the non supply of documents, incriminating material etc. before tax authorities. The lower authority is

also directed to deal with the submissions of the assessee according to law.

5.

Order

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

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

5.3 In the ITANo.100, 101,102,103 & 104/Ind/2025 the facts & circumstances are almost identical & similar. Therefore, our findings in ITANo.99/Ind/2025 would apply mutatis mutandis to these appeals also with the counsel of the parties all appeals were heard together.

5.4 In the final result & conclusions all the six appeals are allowed for statistical purposes.

Order 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

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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