

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.181 to 186/Ind/2025
(AYs: 2013-14 to 2017-2018 & 2019-20)

Sharad Kumar Dharak, 9, Bhoj Nagar, Annapurna Road, Near Dwarka Garden, Indore (PAN: ABZPD4844P	<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 consolidated order bearing Number:-CIT(A)-3, Bhopal /IT/10142/2012-13,10268/2013-14, 10816/2014-15, 12193/2015-16, & 13024/16-17 dated **26.12.2024** 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 to 2017-18 & 2019-20 the corresponding previous year periods are from 01.04.2012 to 31.03.2017 & 31.03.2019 respectively for the aforesaid assessment year including A.Y.2019-20. [For the A.Y. 2018-19 no additions made.] Previous period 01.04.2027 to 31.03.2018 is excluded]

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 2017-18 including A.Y.2019-20 the total income of the assessee was computed & assessed as per the following chart/schedule on page 18 of the **"consolidated Assessment Order"** (supra) which we reproduce the same as under:

A.Y. 2013-14

Income shown in the return	Rs.	2,73,910/-
Addition as per para 17	Rs.	5,42,26,078/-
Total income assessed	Rs.	5,44,99,988/-
Rounded off	Rs.	5,44,99,990/-

A.Y. 2014-15

Income shown in the return	Rs.	4,81,340/-
Addition as per para 17	Rs.	4,96,72,150/-
Total income assessed	Rs.	5,01,53,490/-

A.Y. 2015-16

Income shown in the return	Rs.	2,92,190/-
Addition as per para 17	Rs.	2,33,60,976/-
Total income assessed	Rs.	2,36,53,166/-
Rounded off	Rs.	2,36,53,170/-

A.Y. 2016-17

Income shown in the return	Rs.	2,71,170/-
Addition as per para 17	Rs.	67,24,893/-
Total income assessed	Rs.	69,96,063/-
Rounded off	Rs.	69,96,060/-

A.Y. 2017-18

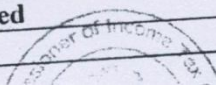
Income shown in the return	Rs.	8,14,440/-
Addition on account of para 17	Rs.	16,96,359/-
Total income assessed	Rs.	25,10,799/-
Rounded off	Rs.	25,10,800/-

A.Y. 2018-19

Income shown in the return	Rs.	6,78,390/-
Total income assessed	Rs.	6,78,390/-

A.Y. 2019-20

Income shown in the return	Rs.	6,52,840/-
Addition on account of para 14	Rs.	4,61,80,000/-
Addition on account of para 15	Rs.	12,44,420/-
Addition on account of para 15	Rs.	42,89,940/-
Addition as per para 16	Rs.	50,85,447/-
Total income assessed	Rs.	5,84,01,671/-
Rounded off	Rs.	5,84,01,670/-



The aforesaid **"consolidated assessment order"** is dated 22.06.2021 which is hereinafter referred to as the **"consolidated Impugned Assessment Order"**. In respect of A.Y.2018-19 the return of income was accepted & no addition 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 09/03/2021. 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 21/04/2021 to assessee and asked to comply the same on or before 24/04/2021 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. 54226078/-. Then Ld. AO went on to add Rs. 54226078/- in the returned income of the assessee u/s. 69A of the I.T. Act, 1961 vide impugned assessment order dated

22/06/2021 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:-

"3.3.1. During the course of appellate proceedings, the appellant has filed written submission through ITBA for the AY 2015-16 only which is reproduced hereunder:-

WRITTEN SUBMISSIONS BEFORE HON'BLE COMMISSIONER OF INCOME

TAX (APPEALS)

IN THE CASE OF SH. SHARAD KUMAR DARAK ASSESSMENT YEAR 2015-16

The only effective issue in the present appeal is against the addition of Rs. 2,33,60,976/- made by Ld. A.O. on the ground that the appellant has given accommodation entries aggregating to Rs. 93,44,39,070/- on which Ld. A.O. estimated the commission income at the rate of 2.5%.

It is pertinent to note here that I d AO in para 17 of the assessment order has given a bald finding that material available on record and material found during search proceeding as well as

post search enquiry, it was found that the various beneficiaries have taken accommodation entry through various companies, the details of which have been tabulated at page 15 and 16 of the assessment order.

It is submitted that this allegation of L.d.AO is without any basis, material or evidence which is evident from para 17 of the assessment order which makes a bald reference to post search enquiry, search proceeding and material available on record without bringing anything specific on record in this regard.

Therefore, action of Ld.AO in treating the transactions of the Companies as accommodation entry and that too in the hands of the assessee is highly unjustified.

Without prejudice to above, it is submitted that according to information of the assessee, the alleged beneficiaries of the transactions of the Companies have been saddled with tax liability by tax department which may be referred by your good self from the department. However, assessee has been able to collect some of assessment/appellate orders of some alleged beneficiaries which would support the appellant's contention and submissions. We are attaching herewith the copy of judgement of Hon'ble jurisdictional ITAT Indore Bench in the matter of ACIT Central-1, Indore Vs Shri Krishna Devcon Ltd. in IT(SS)A Nos.8 to 10/Ind/2022 which also incorporates all the other judgements of ITAT Indore and Mumbai Bench wherein alleged beneficiaries of the transactions of the Companies were saddled with tax liability and Hon'ble (ITAT held all these transactions as genuine ones. The copy of Judgement in 11(SS)A Nos. 8 to 10/ind/2022 is attached as Annexure-1 for your kind perusal

Therefore, for this reason also, addition cannot be made atleast in the hands of the assessee,

Without prejudice to above, It is also respectfully submitted that Ld. A.O, has computed/estimated the commission Income at an exorbitant figure of 2.5% and that too without any basis, material or evidence. It may please be seen from the plain reading of Para 17 of the assessment order that Ld. A.O. has not spelt out any basis for adopting the commission income at 2.5%. Ld. A.O. at Page 16 of the Assessment Order has made a vague reference of seized material but has not spelt out any seized material in support of the sale income estimated at the rate 2.5%. addition with cogent material or evidence which in the instant case is none. On the other hand, the statement of the appellant recorded during

the course of search/survey which is enclosed as Annexure-2 would clearly show in his reply to Question no. 76 that commission income was 0.02% and that too pertains to the amounts or facts and circumstances narrated in the said question while recording the statements ie. limited to references made while putting the question before assessee and not on the whole amount of transactions specified in relation to companies in Para 17 of the assessment order.

Therefore, in the backdrop of this statement of the assessee, estimation of the commission income @ 2.50% on the whole amount (not limited to amounts and facts narrated with reference to the above said question and not limited to commission of 0.02% of the amount as narrated in answer to Qu. No. 76 and other questions before Qu. No. 76 like Qu. No. 73, 74 & 75) is again unjustified. Copy of pages 120 to 147 of LPS-3 relating to Qu. No. 73 to 76 is attached as Annexure-3 for your kind reference.

It is therefore prayed that the addition made may please be deleted or such other relief as is warranted under the law may please be allowed.

3.3.2 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 commission income generated by the appellant from the accommodation entries at para 17 of the order. Based on seized material and the post search enquiries the AO has enlisted the different entities who have carried out transactions for the purpose of providing entries to different beneficiaries in AY 13-14, 14-15, 15-16, 16-17 and 17-18. The appellant is the key person and had been involved in providing accommodation entries to various beneficiaries in different years. The search and post search proceedings have unearthed the fact that the appellant had come out all these entry providing business and had admitted to have taken commission for such services of accommodation entry to different beneficiaries. The AO has held that different entities have carry out transactions for providing accommodation entries and computed 2.5% on the amount of transaction appearing in the accounts of those entities (as listed in the order) as commission income of the appellant in different AYs (13-14, 14-15, 15-16, 16-17 and 17-18). The AO has based on enquiries made during search and post search proceedings and admission made by Sharad Darak considered at rate of 2.5 percent of the

total accommodation entry as commission income for relevant AYs, it is also mentioned that the same estimation had been confronted to the appellant but no reply was filed in spite 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 transaction made in different entities related to Daraks in AY-13-14, 14-15, 15-16, 16-17 and 17-18 to be undisclosed ones and treated the same as appellants undisclosed money u/s 69A in different AYs

<i>A.Y.</i>	<i>Commission received @ 2.4 pc</i>
<i>13-14</i>	<i>54226078</i>
<i>14-15</i>	<i>49672150</i>
<i>15-16</i>	<i>2336976</i>
<i>16-17</i>	<i>6724893</i>
<i>17-18</i>	<i>1696359</i>

3.3.3. 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 find from record that enough opportunities have been given and the repeated pleas for asking for documents, RTI etc is plea to delay the proceedings and deviate from the issues in hand.

In AY 2015-16, the appellant has filed a response on 20.11.2024. The appellant has questioned the basis of adopting ratio of 2.5% as commission. The AO has enough justification for adopting the same. The mention by the assessee that certain beneficiary companies are genuine one and have made genuine transaction is not relevant here that there are many cases where it is clearly observed that the appellant was the key person managing such accommodation entry providing entities. I don't find any strength in the submission made by the appellant

I also find the claim in the ground of appeal 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 to 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 appellate and assessment proceedings to delay and deviate the proceedings.

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 13-14, 14-15, 15-16, 16-17 and 17-18 are confirmed.

3.3.4 Accordingly, these grounds of appeal are 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 [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. A.O. has erred in law and on facts in framing and Ld. CIT(A) in confirming the impugned assessment order u/s 153A/144 without assuming jurisdiction as per law and without recording requisite satisfaction as per law and without complying with the other mandatory conditions as envisaged under the Act.

2. That in any case and in any view of the matter, action of Ld. AO in framing the impugned assessment order u/s 153A/144 and Ld. CIT(A) in confirming, is bad in law and against the facts and circumstances of the case, more so when no incriminating material was found as a result of search.

3. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in making and Ld. CIT(A) in confirming addition of Rs.5,42,26,078/-account of unexplained money in the form of commission income on accommodation entries u/s 69A, more so when no incriminating material has been found as a result of search and impugned addition has been made by recording incorrect facts and findings and without providing the entire adverse material on record and in an arbitrary manner without observing the principles of natural justice since no opportunity of being heard was provided to the assessee.

4. That in any case and in any view of the matter, action of Ld. A.O. in making and Ld. CIT(A) in confirming addition of Rs. 5,42,26,078/ on account of unexplained money in the form of commission income accommodation on entries. u/s 69A, is bad in law and against the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in making and Ld. CIT(A) in

confirming the above additions and that too without finding any incriminating material as a result of search warranting such addition.

6. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in passing the impugned assessment order and Ld. CIT(A) in confirming and that too without obtaining the valid approval u/s 153D as per law.

7. 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 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 253 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. A 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**. Since, various financial activities and transactions executed by assessee are related and have

business associations with group, hence, department have been put together all under one common name: "**Asnani Group**". The Ld. AR basis para 4 of the "Consolidate Impugned Assessment Order" stated **that only statements were supplied by the department to the assessee.** Relevant extract of para 4 & 5 were then read out by the Ld. AR. It was emphatically submitted that **no incriminating documents were provided to the assessee.** It was fairly submitted by the Ld. AR that though at the initial stage of the proceedings incriminating materials were not provided to the assessee however the **same are provided now** & the assessee has now obtained the relevant papers which were required by them to set up their defences. With regard to cash & jewellery which issue is dealt at para 15 of the "**Consolidate Impugned Assessment Order**" **no Panchanama**" was provided to the assessee. It was therefore pleaded that "**consolidated impugned assessment order**" is violative of the principles of natural justice. The Ld. AR then laid emphasis on para 14 & 15 of the "consolidated

Impugned Assessment Order” & made his grievances. The Ld. AR then basis page 2 of the “Consolidated Impugned Assessment Order” placed reliance on **ground no.3 & 4 (A.Y.2013-14)** & made grievances of breach of principles of natural justice by not providing any adversarial material to the assessee. The Ld. AR then read out para 3.31 of the impugned order were in the written submission filed by the assessee before the Ld. CIT(A) are recorded. It was submitted that similar written submission for all years be treated in identical and similar manner except A.Y. 2018-19. It was re-emphasized that except statement nothing was given to the assessee in the form of material, documents etc. Basis internal page 12[para 3.2.1] of the impugned order it was contended by the Ld. AR that **basis of the “Impugned Order” is nothing but “Consolidated Impugned Assessment Order”**. It was submitted by the Ld. AR that on internal page 13 & 14 [para 3.3.1] of the “Impugned Order” where the assessee’s submission is reproduced by the Ld. CIT(A) but the same has not been considered while passing

the “**Impugned Order**”. It was finally prayed that since there are breaches of the principles of natural justice in form of not providing incriminating material & in not considering submission(supra) the impugned order should be set aside & prayer was made for remand to the file of the Ld. AO. Lastly para 3.3.3 of internal page 16 of the “impugned order” was read out by the Ld. AR & it was submitted that findings are all wrongly made as only the statements were given & not material & incriminating documents to set up defenses.

3.2 The Ld. CIT-DR appeared for revenue before us & stated that there **are no infirmities** with the Consolidated Impugned Assessment Order” & the “**Impugned Order**” & both are required to be upheld. Both the orders are just fair & equitable. They are speaking orders & well reasoned too. The Ld. CIT-DR for the revenue then invited our attention to internal page 10 of the “consolidate Impugned Assessment Order” & read out the extracts which we reproduce as below:-

" Assessee did not reply despite several notices to him electronically time to time but he kept on ignoring notices issued by the department. Neither he or his authorised representative submitted any reply any time during the assessment proceedings. In this scenario it can be assumed that:-

.Assessee has nothing to say in this regard. He overlooked the genuine notices issued by the department.

.He is not position to explain his transactions executed by him on behalf of his clients/beneficiaries as he is very well aware of his intention on which basis these transaction were performed.

.He was a person deeply engaged in the business of entry operator and he mainly engaged in these activities rotating money of various companies from account to accounts and finally providing credit in beneficiaries accounts as share capital/premium and unsecured loans.

. He has shown no interest in collection of the copies of seized documents he wanted for filing return and for further submissions in the departments. He only written letter but never came for collection of documents whenever time was given. His authorized representatives only turned up on 24.12.2021 & 02.02.2021 for collection of some documents (statements) after 01 year to 14 months of commencement of assessment proceedings. He could have collected copies of seized documents after search proceedings but he failed to do it. It shows that he has no interest to justify his point of view/representation before the Assessing Officer.

.Despite relying on e-notices he asked to provide physical copies of the notices to reply to this office. This is not acceptable because these are simply dilatory tactics

.He is aware of the facts that replying for his wrongdoings will have no effects on his savings from the department's penal actions."

In brief the Ld. CIT-DR contended that the assessee was never interested in collecting the documents & filling the

necessary replies to the authorities. The statements were received by the assessee & so also incriminating documents. The assessee has remained **non-compliant** during the proceedings. The assessee is falsely blaming the Ld. AO about non-receipt of the incriminating documents. The Consolidated Impugned Assessment Order is passed with the approval of higher authority. The Ld. AO has correctly & rightly passed the **“Impugned Consolidated Order” u/s 144** of the Act. Statements are all recorded under the Act. The Ld. CIT-DR then read out para 3.3.3 of the **“Impugned Order”** & submitted that the Ld. CIT(A) has dealt with the issue in the hand according to his own wisdom. In the rejoinder submission the Ld. AR submitted that the Ld. CIT(A) in the **“Impugned order”** has not taken into consideration the submissions made by the assessee(supra) & **“Impugned Order”** in the violation of the principles of natural justice. 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 which is emphasised by this Tribunal time again. This tribunal also expects the assessee to be compliant & should cooperate with the department of income tax as & when notice(s) summons, etc. are issue 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 on **a fresh on denovo basis**. The assessee to cooperate with the department in every manner possible so that department’s time, money, energy and resources are not wasted in the repeated manner time & again. Due to non cooperative attitude not only the assessee suffer but national resources too are wasted. Economy of

the nation suffers. Needless to state that taxes are required to be paid according to law simultaneously no tax should be levied & collected save & except according to law.

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 non supply of documents, incriminating material etc. before tax authorities in any manner whatsoever.** 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.182 to 186/Ind/2025 the facts & circumstances are almost identical & similar. Therefore, our findings in ITANo.181/Ind/2025 would apply mutatis mutandis to these appeals also. With consent of 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

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