

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.492/Ind/2025
(AY: 2013-14)

Deeya Agrotech Private Limited, 203, Bahadarpur Road, Burhanpur 450331, Madhya Pradesh, Indore (PAN:AADCD9603J)	<u>बनाम/</u> Vs.	ITO Burhanpur
(Appellant)		(Respondent)
Assessee by	Sh. Pankaj Mogra, CA	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	12.02.2026	
Date of Pronouncement	19.02.2026	

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 1962,[herein after referred to as the Act for the sake of brevity] before this tribunal as and by way of a second appeal. The Assessee is aggrieved by the order bearing Number:-ITBA/APL/S/250/2024-25/1074999215(1) dated 25/03/2025 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 2013-14 and the

corresponding previous year is from 01.04.2012 to 31.03.2013.

2.

Factual Matrix

2.1 That as and by way of an Assessment order made **u/s 143(3)/147 of the Act**, the total income of the Assessee was computed & assessed at **Rs14,53,230/-**. The aforesaid assessment order is dated 11.06.2019 which is hereinafter referred to as the **"impugned assessment order"**

2.2 That the assessee being aggrieved by the aforesaid **"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 and reasons stated therein. The core grounds and reasons for the dismissal of the first appeal were as under:-

"5.0 Decision:-Keeping in view the aforesaid factual and legal position, the appeal filed by the appellant is therefore decided on merits on the basis of documents available on record. It is reiterated that during the course of appellate proceedings appellant has not produced any documentary evidence in support of his contention, while burden of proof lies on the appellant to prove that the facts and findings of the AO are incorrect

5.1 On perusal of the impugned assessment order, ground of appeal and statement of facts, it is observed that the primary

dispute revolves disallowances of cash payment of Rs. 9.38,790/- under freight expenses. During the assessment proceeding, the A.O was found that assessee had made cash payment to various transport on account of freight expenses, which was made exceeds the limit provided for transporters in section 40A(3) of the Act. In response of the same, the assessee had submitted its reply which was not accepted by A.O during the assessment proceedings and disallowed the said expenses in violation of section 40A(3) and added into returned income of assessee.

5.2 During the course of appellate proceedings, the appellant has not produced any documentary evidence, which proves that the freight expenses was made under the provisions of section 40A(3). Appellant had not produced any bills or transport receipts which could be right prove the contention of appellant. Therefore, appellant has failed to disprove the findings of A.O. in lacks of the substantiate documents.

5.3 Further, it is pertinent to state that to decide this appeal in timely manner several notices/ communications through ITBA portal were sent to the appellant as noted above. Hence, in view of the aforesaid non-compliance of the instant appeal on the part of the appellant, the instant appeal adjudicated and disposed of, as under, ex-parte, primarily on the basis documentation available on record.

5.4 Further, it is settled law that where the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the addition back into the income of assessee as held in Kale Khan Mohammad Hanif v CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC). This onus on the tax payer has neither been discharged at the assessment stage nor at the appellate stage.

Therefore, I find no infirmity in the order made by the Ld. AO. In this view of the matter, the order u/s 143(3)r.w.s 147 of the Act dated 11.06.2019 is confirmed.

6.0 In the result, the appeal of the appellant is hereby dismissed."

2.3 The assessee being aggrieved by the **"impugned order"** has preferred the instant second appeal before this tribunal and has raised the following grounds of appeal in the form no. 36 against the **"impugned order"** which are as under:-

1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A)-NFAC erred in deciding the appeal ex-parte without giving proper opportunity of being heard. The order so passed by the Ld. CIT(A)-NFAC is therefore wrong and uncalled for.

2. That on the facts and in the circumstances of the case and in law the Ld CIT(A)-NFAC erred in confirming the act of Ld. AO w.r.t. issuance of notice under section 148 of the Act merely on the basis of case records of the case even when nothing new was comes in his notice. The notice so issued u/s 148 merely on the basis of case records and Reassessment order passed on the basis of said notice was not justified. The same requires to be quashed.

3. That on the facts and in the circumstances of the case and in law the L.d. CIT(A)-NFAC erred in confirming the act of Ld. AO for reopening of the assessment U/s 147/148 of the Act dr. 15.03.2019 i.e after four years from the end of the relevant 3 assessment year particularly when all the facts and documents with reference to expenses alleged to have escaped assessment were available while passing the order u/s 143(3). The said reopening is therefore without jurisdiction, illegal and bad-in-law. The same requires to be quashed

4. That on the facts and in the circumstances of the case and in law the Ld CIT(A)-NFAC erred in confirming the act of Ld. AO erred in issuance of the notice u/s 148 of the Act even after four years merely on the basis of change of opinion and to review the assessment order already passed u/s 143(3) of the Act. The same requires to be quashed.

5. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) NFAC erred in confirming the act of Assessing Officer w.r.t issuance of the notice under section 148 of the Act without proper sanction from the appropriate authority. The notice as issued and the assessment order so passed was therefore without jurisdiction. The same requires to be quashed.

6. That on the facts and in the circumstances of the case and in law the Ld CIT(A)-NFAC erred in confirming the act of Ld. AO erred in issuance of the notice u/s 148 of the Act with intend to review the assessment order already passed in absence of any fresh tangible material in his possession having live link in connection with income escaped assessment. The same requires to be deleted in full.

7. That on the facts and in the circumstances of the case erred in confirming the Act of Ld AO in respect of disallowance made by him in respect of freight expenses incurred in cash of Rs 9,38,790/- by invoking provisions of Sec. 40A(3) of the Act without properly appreciating facts of the case, submissions made before him.

8. That on the facts and in the circumstances of the case the Ld. A.O. erred in charging interest u/s 234B of Rs. 90,072 which is excessive, even when interest under this section is chargeable as per sub section (3) of section 234B of the Act.

9.The assessee reserve its right to add alter and modify the ground of appeal."

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 12.02.2026 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 the violation of the principles of natural justice. It therefore deserves to be set aside. The Ld. AR at the outset submitted that **"impugned order"** is an ex-parte order and was passed behind their back. It was prayed that a bi-parte order is always a fair and just order in so far as principles of natural justice are concerned as in ultimate analysis say of the assessee is of importance in tax matters. Per contra the Ld. DR appearing for and for and on behalf of the revenue submitted that on merits whatever contentions are raised can also be raised before the Ld. CIT (A) and the dept. of income tax has no objection if the impugned order is set aside and the matter is remanded back to the file of the Ld. CIT (A) for fresh adjudication on *de novo* basis.

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 rival contentions of the Ld. AR & the Ld. DR canvassed before us, are of the considered opinion that it is clearly recorded in the “**impugned order**” by Ld. CIT(A) that notice(s) u/s 29.01.2021, 10.08.2024, 21.08.2024 and 07.03.2025 were issued to assessee to file the submissions details/evidences in support of contention however at that first stage of appeal the assessee did not do anything even though it was assessee’s first appeal. Now the Ld. AR has pleaded before us that the assessee would now make good, the deficiencies made earlier in first appeal provided yet another opportunity is afforded before the first appellate authority. The DR for the revenue is at **ad idem** with the

contentions of the Ld. AR. Therefore under these facts and circumstances we are of the considered view that if the impugned order is set aside and matter is remanded back to the file of the Ld. CIT (A) the grievance of the assessee would be satisfied and for which even the revenue has no objection. Simultaneously we are also of the view that at the first appellate stage the assessee has a substantive right of appeal and his appeal should be heard and disposed off after he has made his say before first appellate authority. Since the assessee has undertaken to do so before this tribunal we deem it fit to set aside the impugned order and remand the case back to the file of the Ld. CIT (A) who shall then pass fresh order on *de novo* basis after hearing the submissions of the assessee. The assessee is directed to produce all the details, material/evidences in support of his defence before CIT (A). **The assessee to appreciate that by his acts and omissions the system is clogged and hence we impose a cost of Rs. 2500/- on the assessee as and by way of a deterrent measure .** So that in future assessee is more vigilante and cautious towards obligations towards the tax

authorities. The assessee is directed not to seek any adjournments on flimsy grounds.

4.4 In view of the premises drawn up by us, we set aside the **“impugned order”** and remand the case back to the file of the Ld. CIT(A) on *De novo* basis who is now expected to pass a well-reasoned order on merits after say of the assessee basis material/ evidences is taken into consideration. Needless to state this tribunal desires meritorious disposal of first appeal after say of assessee is made with evidence in support.

5

Order

5.1 In the result the **“Impugned order”** is set aside as and by way of remand back to the file of the Ld. CIT (A). The assessee is directed to pay cost of Rs. 2500/- to the income tax dept. under challan others and show necessary proof in support before CIT(A) before first appeal is taken up for hearing by Ld. CIT(A) on *De novo* basis. Order accordingly.

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

Pronounced in open court on 19.02.2026.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

Dated : 19/01/2026

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