

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.457/Ind/2025
Assessment Year:2012-13

Om Prakash Rathi, Mandi Road Pachore, Rajgarh (Assessee/Appellant)	<u>बनाम/</u> <u>Vs.</u>	DCIT/ACIT 2(1) Ujjain (Revenue/Respondent)
PAN: ACQPR9895J		
Assessee by	Shri Harsh Vijayvargiya, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	26.02.2026	
Date of Pronouncement	27/02/2026	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first-appeal dated 25.03.2025 passed by learned Commissioner of Income-Tax (Appeals)-Addl/JCIT(A), Prayagraj ["CIT(A)"] which in turn arises out of assessment-order dated 14.12.2019 passed by learned ACIT-2(1), Ujjain ["AO"] u/s 147/143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2012-13, the assessee has filed this appeal on the grounds mentioned in Appeal Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee is engaged in the business of trading of tractor spare parts, accessories, pesticides, oil, generators, etc. For AY 2012-13, the assessee filed return u/s 139 declaring a total income of Rs. 12,15,660/- which was assessed by way of scrutiny assessment at Rs. 12,80,370/-. Subsequently, on the basis of information available with him, the AO issued notice dated 28.03.2019 u/s 148 and re-opened assessee's case. In response to such notice, the assessee re-filed return. Thereafter, the AO issued notices u/s 142(1) to assessee which were duly complied by assessee. Finally, the AO passed order of re-assessment after making a disallowance of Rs. 3,69,272/- out of interest expenditure claimed by assessee. The basis of disallowance adopted by AO is that the assessee utilized borrowed funds for purchasing land, flat, plot, etc. for non-business use. Aggrieved, the assessee carried matter in first-appeal whereupon the CIT(A) dismissed assessee's appeal *in limine* for non-prosecution without adjudicating merit.

3. Ld. AR for assessee at first submitted that the section 250(6) of the Income-tax Act, 1961 provides "*The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*". He submitted that in present case, the Ld. CIT(A) has dismissed assessee's first appeal although due to non-prosecution by assessee on the dates of hearing but still without complying with the mandate of section 250(6). Therefore, the impugned first appeal-order passed by Ld. CIT(A) deserves to be set

aside and the matter is fit for restoring to him for a proper adjudication. In so far as the reason of non-prosecution by assessee is concerned, Ld. AR carried us to Para 8.1 of impugned order and demonstrated that the CIT(A) has given only three hearings on 18.02.2021, 28.02.2025 and 11.03.2025, out of which 1st hearing was during Covid-19 pandemic. Further, the 2nd and 3rd hearings were given after a gap of about 4 years and moreover the intervening time-period between them was a short-period of just 1 month. Hence, the assessee was not given necessary and reasonable opportunities due to which the assessee could not prosecute first-appeal before CIT(A).

4. Ld. AR next submitted that the AO's order is also an ex-parte order in the sense the AO issued a show-cause notice dated to assessee to which the assessee filed adequate reply which is re-produced by AO on Pages 3-4 of assessment-order. Thereafter, the AO straightaway rejected assessee's reply and made impugned disallowance without giving any further opportunity to assessee. Therefore, the present matter ought to be remanded to the file of AO for a fresh adjudication after giving opportunity to assessee and after considering assessee's submission.

5. Ld. DR for revenue agreed with the prayer of Ld. AR but made a request to direct the assessee to represent his case before AO and do not seek unnecessary adjournments.

6. In view of above submissions of parties; having regard to the principle of natural justice and also bearing in mind that no prejudice would be

caused to revenue if the present matter is restored at the level of AO, we remand this matter back to the file of AO for adjudication afresh, at the risk and responsibility of assessee. The AO shall give necessary opportunity of hearing to assessee and pass an appropriate order uninfluenced by his earlier order. The assessee is also directed to remain vigilant and ensure participation in the hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law. Ordered accordingly.

7. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 27/02/2026

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 27/02/2026

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore