

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.653 & 654/Ind/2025
(AY: 2014-15)

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|--|----------------------------|--------------------------|
| Lakhmichand Vaswani, G-51-52 Kalindi Park, Indore, Indore (PAN:AAOPV7670F) | <u>बनाम/</u> Vs. | ITO Ward 1(4), Indore |
| (Appellant) | | (Respondent) |
| Assessee by | Sh. Milind Wadhwani, CA | |
| Revenue by | Sh. Ashish Porwal, Sr.DR | |
| Date of Hearing | 19.02.2026 | |
| Date of Pronouncement | 27.02.2026 | |

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 1961,[herein after referred to as the **Act** for the sake of convenience & brevity] before this tribunal as and by way of a second appeal. The Assessee is aggrieved by the order bearing Number:-ITBA/NFAC/S/250/2024-25/1066044045(1) dated 26/05/2024 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 year is 2014-

15 and the corresponding previous year period is from 01.04.2013 to 31.03.2014.

2. **Factual Matrix**

2.1 That as and by way of an assessment order made u/s 147 rws 144B of the act, the total income of the assessee was computed and assessed at Rs. 6,96,510/-. The total income as per the return of income (ROI) was at Rs. 5,18,810/-. The addition of Rs. 1,77,700/- was made u/s 69 as unexplained investment. That the aforesaid assessment order bears no:- ITBA/AST/S/147/2021-22/1042316063(1) and that the same is dated 31.03.2022 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"** had dismissed the first appeal of the assessee on the grounds and reasons specified therein. The core grounds and reasons for the dismissal of the first appeal were as under:-

4. During the course of appellate proceedings, following hearing notices u/s 250 of the Act were issued to the appellant:

| S.No. | Date of notice/letter u/s 250 of the Act | Date of hearing | Remarks |
|-------|--|-----------------|-----------------------|
| 1 | 10.11.2022 | - | System enabled notice |
| 2 | 20.12.2023 | 29.12.2023 | No response |
| 3 | 02.01.2024 | 09.01.2024 | No response |
| 4 | 10.01.2024 | 17.01.2024 | No response |
| 5 | 15.02.2024 | 23.02.2024 | No response |
| 6 | 18.06.2024 | 24.06.2024 | No response |

It is pertinent that in order to decide this appeal in a timely manner a number of notices/communications through ITBA portal were sent to the appellant, viz. system enabled notice dated 20.12.2023, 02.01.2024, 10.01.2024, 15.02.2024 and 18.06.2024. It is pertinent to mention here that all the above hearing notices are also accessible to the appellant on his income tax e-filing portal. It is quite evident that many opportunities were given to appellant to file his submission but appellant neither filed adjournment nor submission in compliance to all the hearing notices. It is not out of place to mention that its more than two years have been lapsed since appellant has filed this appeal and still not in a position to file his submission.

4.1 Hence, this appeal is disposed off after considering the facts on record and position of law on the issue in the succeeding paras. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do.

5. At the outset, that in the situation as obtained in the instant case, as evidently seen from the above, this appeal is liable to be dismissed in terms of the ratio of the judgements of the Hon'ble Apex Court and the various High Courts including the Hon'ble Apex Court which held in CIT v. B.N. Bhattacharjee and Another (10 CTR 354) that an appeal means an effective appeal and that to "prefer an appeal" would mean effectively prosecuting an appeal. "Purposefully and constructively interpreted, preferring an appeal means more than formally filing it but effectively pursuing it and if a party retreats before the contest begins, it is as good as not having entered the fray.

6. It is pertinent to add here that laws assist those who are vigilant and not those who sleep over their rights. This principle is embodied in the well-known maxim "Vigilantibus non dormientibus jura subveniunt". It means equity comes to the aid of the vigilant and not the slumbering. In all actions, suits and other proceedings at law and in equity, the diligent and careful plaintiff

is favoured and prejudicial of him who is careless. Viewed thus, it is presumed that the appellant has no further cogent reasoning or/and evidence to substantiate the grounds taken in this impugned appeal. It is trite that the onus is on person making the claim, and the primary responsibility/onus/burden for proving the claim made before the tax authorities (Assessing Officers/Appellate Authorities) lies with the assessee/appellant. In the present case, the appellant has not been able to even discharge the primary onus/burden statutorily & judicially cast upon him to substantiate the claims made in the grounds of appeal in spite of adequate time and opportunities given as brought out in the foregoing paras.

7. It is, thus, evident that the appellant has no evidence to substantiate the grounds taken and it has not even once argued with any supporting, relevant and cogent arguments/averments, constraining me to, therefore, go through the extremely brief non-speaking submission appearing in the grounds of appeal and statement of facts filed alongwith the impugned appeal to decide on the merits while adjudicating the same. The submission/contention made vide the statement of facts/grounds of appeal is by and large same as made at the time of assessment proceedings. The AO after considering the same has duly rejected or found without any merit leading him to add the same i.e., the disallowance/additions made in the said assessment order. I am constrained to concur with the AO's findings of fact and decisions thereof, more particularly in the absence and worthwhile submissions/documentations even during the instant appellate proceedings in this case to counter effectively the position adopted by the AO on the concerned issues and reduced in writing in the assessment order a. Without prejudice to above, the appeal is decided on merits also.

8. The relevant paragraph of the assessment order is produced as under:

"1. The Information has been received from o/o DIT'(1&CI), Mumbai through email on 29.1.2019 with regard to misuse of National Spot Exchange Limited(NSEL) platform by unscrupulous brokers and traders to launder huge sums of black money. Many of these traders have merely Jent their PAN and name and are the front of someone else. Assessee Shri Laxmichand Vaswani, PAN-AAOPV7670F is one of the traders who have receivables of Rs. 1,77,700/- during the financial year 2013-14 relevant to A.Y 2014-15 in respect of transaction with NSEL In view of the above facts, it is seen that Shri Laxmichand Vaswani is one of the traders who have receivables of Rs. 1,77,700/- during the financial year 2013-14 relevant to A. Y 2014-15 in respect of

transaction with NSEL, Shri Laxmichand Vaswani, PAN-AAOPV7670F Considering statutory provisions and legal principles. In view of the above facts, I have therefore, reason to believe that the assessee has not disclosed fully and truly all the material facts necessary for completing the assessment of its income for the A.Y. 2014-15 due to which income of Rs. 1,77,700/- has escaped assessment within the meaning of provision of section 147 of the Act for the A.Y. 2014-15. To assess this and any other income in respect of an issue which comes to notice to Assessing officer subsequently in the course of reassessment proceedings, notwithstanding that the reasons for such issue have not been included in the reasons recorded, the case of the assessee is to be re-opened u/s 147 of the Act.

Reply: For the query above, I would like to explain by attaching the broker statement attached herewith, that there are two attachments explaining that the amount 1,77,700 was maturity amount of investment done earlier and we never hide anything in the Income Tax returns, it is part of Financial Statement like Balance Sheets and Statement of Affairs, So how Government can treat as Un-Explained investment,

Investment was 1,74,700 and with profit of Rs. 2362.94 we received 1,77,700/- you can cross check with the National level broker Arihant Futures and Commodities limited, and that Investment was done on reference of some one out of my savings of Hard earned money only. I don't know anything about National Spot Exchange Limited, and how people use that for black money and etc etc, I don't know whether my PAN is misused or not by unscrupulous brokers, as I did not know that, Arihant Broker Company was referred by someone, but I assure you that this Investment is out of my savings only.

In response to show cause order the assessee reply is consider however, the same is not acceptable. During the assessment proceeding issued notice u/s 142(1) dated 22.01.2022 was asked to furnish the details of investment made in the NSEL platform, further, the reason for selection was provided to the assessee on 14.01.2022, and ask to furnish the details about investment in the NSEL platform. The assessee submitted only computation of income, form no. 26AS and Acknowledgment copy of ITR filed but no explanation about investment in NSEL platform."

Discussion and Decision;

9. Through the ground of appeal no. 1 to 7, that the appellant denies his liability to be assessed at total income of 6,96,510/- against returned income of 5,18,810/- and

6. accordingly denies his liability to pay tax and interest demanded thereon. During the year the AO had added sum of Rs.

1,77,700/- u/s. 69 of the Act. The AO had received information DIT(I&CI) as per which the assessee is one of the individual who have lent his PAN and name as front for someone else. The assessee had a receivables of R.s 1,77,700/- during the financial year in respect of transaction with NSEL. The AO had found that the investment was not recorded in the books of accounts and the assessee could not offer any explanation about the nature and source of transaction with NSEL. The AO had considered the necessary material evidences available before passing the assessment order. During the appellate proceedings the appellant could not bring any contra evidences with respect to the claim made by him in grounds of appeal. Hence, I don't find any reasons to interfere in the assessment order passed by the AO. The grounds no. 1 and 7 of the assessee are liable to be dismissed. Hence, the grounds no. 1 and 7 are dismissed. 10. In the result, the appeal of the appellant is dismissed."

2.3 That 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. On the facts and in the circumstances of the case and in law, the Learned NFAC erred in upholding the addition of Rs. 1,77,700/- as unexplained investment under section 69 of the Income-tax Act, 1961, made to the income of the appellant.*
- 2. On the facts and in the circumstances of the case and in law, 2 the Ld. NFAC erred in not holding that the provisions of section 69 of the Income-tax Act, 1961, were not applicable.*
- 3. On the facts and circumstances of the case and in law, the reassessment order dated 31.03.2022 is bad in law, without jurisdiction, and liable to be quashed.*
- 4. On the facts and circumstances of the case and in law, the Ld. 4 CIT(A) has erred upholding the additions made on the basis of mere conjectures, surmises and suspicions.*
- 5. On the facts and circumstances of the case and in law, the reassessment was completed without complying with the statutory requirements of law.*
- 6. On the facts and circumstances of the case and in law, the reassessment order dated 31.03.2022 is contrary to law, facts and*

circumstances of the case and in any case is opposed to the principles of equity, natural justice and fair play.

7. On the facts and in the circumstances of the case and in law, the notice issued under section 148 of the Income-tax Act, 1961 dated 30.03.2021 is void ab initio, illegal, and therefore liable to be quashed.

8. On the facts and circumstances of the case and in law, the Ld. AO could not have information suggesting the income had escaped assessment in the hands of the appellant.

9. That the assessment was not reopened based on any new & tangible material.

10. That there was no live link between material available on record and reasons to believe.

11. For that the appellant craves leave to add, amend, alter vary and OR withdraw any OR all the above grounds of appeal."

3.

Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 19.02.2026 when the Ld. AR for & on behalf of the Assessee appeared before us and interalia contended that the **"impugned order"** is bad in law, illegal and not proper. It is passed in the violation of the principles of natural justice. It therefore deserves to be set aside. The Ld. AR then contended that the registry of this tribunal has pointed out the delay of 329 days in preferring the instant second appeal. In this regard the Ld. AR has placed reliance on an affidavit dated 14.02.2026 where in it is affirmed that the assessee is super senior citizen and is aged 83. The email id in the form 35 was keswanidsc@gmail.com and amongst notice(s) only notice(s) dated 18.01.2024 [erroneously mentioned in

impugned order as 15.02.2024] and 18.06.2024 came and rest of the notice(s) went to different email ids which did not belong to the assessee. Our attention was invited to Page 44 and 45 of the PB wherein only part compliance was made on 22.11.2022 to notice dated 10.11.2022. But subsequent notice(s) could not be replied to. It was stated that no notice(s) ever were served in physical mode. Hence the **“impugned order”** is ex-parte one both on Quantum and penalty. It was further submitted that on 24.07.2025 while filing the ROI for 2025-26 the assessee came to know for the first time that first appellate order has been passed in his cases. That thereafter the assessee filed the present appeals on 26.07.2025 with delay of 360 days. The delay in filing the appeal and non-appearance in first appellate proceedings was in advertent and unintentional due to lack of knowledge and factors which were beyond control of assessee. There was no negligence and or malafide intention on the part of the assessee. It was prayed that delay be condoned first and thereafter impugned order be set aside to the Ld. CIT (A) for De novo adjudication. In so far as ITA No: - 654/Ind/2025 is

concerned it was stated that penalty of Rs. 20,000/- has been imposed by the Ld. AO for non-compliance(s) of notice(s) dated 14.01.2022 and 22.01.2022. Time gap between two notice(s) was about 8 days. The period involved was covid-19. Notice(s) came in electronic forms. Per contra the Ld. DR stated that he leaves the issue of delay to the wisdom of the tribunal and with regard to **"impugned order"** there is only one compliance that too party and the CIT(A) should be competent enough to dispose off the first appeal on merits basis De novo proceedings and assessee be directed to make complete submissions. Hearing was then concluded ITA No:- 653/Ind/2025[quantum] and 654/Ind/2025 [Penalty] were heard together with consent of parties.

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 view that the impugned order of Ld. CIT (A) on Quantum [ITA No:- 654/Ind/2025] is an ex-parte order as only part submissions could be made that too only once amongst several opportunities afforded to the assessee. The assessee has made a grievance that majority of the notice(s) went to other e-mail ids other than the one provided in the form no:-35 and hence there was non-compliance before CIT (A). The opportunities though were afforded but could not be availed as notice(s) went to other email ids not belonging to assessee. From records only one reply before Ld. CIT (A) on 22.11.2022 is discernable. Under these peculiar facts and circumstances we deem it fit to set aside the impugned order on Quantum assessment proceedings and remand the case back to Ld. CIT (A) on De novo basis with direction to the assessee to do remaining compliances in such a way that Ld. CIT (A) can

dispose off the first appellate proceedings basis merits of the case in accordance with law. In so far as penalty proceedings are concerned for non-compliances of notice(s) u/s 142(1) is concerned where penalty of Rs. 20,000/- is imposed and upheld by Ld. CIT(A) we deem fit to reduce the penalty to Rs. 10,000/- as notices (supra) are in quick successions i.e. gap of 8 days .

4.4 In the premises drawn up by us, Impugned order [Quantum] in ITA No: - 653/Ind/2025 is set aside and matter is remanded to Ld. CIT (A) on De novo basis with directions as aforesaid. In so far as ITA No: - 654/Ind/2025 is concerned the Impugned order on penalty [penalty u/s 271(1)(b)][Impugned order no:- ITBA/NFAC/S/250/2024-25/1066048158(1) dated 26.06.2024 of Ld. CIT(A)] is partly set aside with penalty of Rs. 10,000/- as confirmed instead of Rs. 20,000/-.

5

Order

5.1 In the result ITA No:-653/Ind/2025 and "**Impugned order**" therein is set aside as and by way of remand to Ld. CIT (A) on De novo basis with directions as aforesaid to the assessee. ITA No: - 654/Ind/2025 is partly allowed.

5.2 Both appeals are accordingly disposed off ITA No:- 653/Ind/2025 allowed for statistical purpose and ITA No:- 654/Ind/2025 as partly allowed.

Pronounced in open court on 27.02.2026.

Sd/-

sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

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

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore