

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH "DB", JABALPUR**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.107/JAB/2024
Assessment Year:2014-15

Rajmata Kaviteshwari Devi Brijvilaas Palace, Maihar Kila Maihar, Satna-485771. PAN:ATLPD0092K (Appellant)	Vs.	ITO, Ward-1, Satna Central Revenue Building, Civil Lines Chowk Satna-485001. (Respondent)
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Appellant by	Shri Sapan Usrethe, Advocate
Respondent by	Shri N. M. Prasad, Sr. DR-1

ORDER

(A) This appeal vide I.T.A. No.107/JAB/2024 has been filed by the assessee for assessment year 2014-15 against impugned appellate order dated 16.04.2024 (DIN & Order No.ITBA/NFAC/S/250/2024-25/1064133918(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

(B) In this case, assessment order dated 05.12.2018 was passed *ex parte* qua appellant assessee u/s 144 of the Income Tax Act, 1961 ("Act", for short). In the aforesaid assessment order, the assessee's total income was assessed at Rs.1,54,80,000/- on the basis of information received in Annual Information Returns ("AIR", for short) received by the Income Tax Department from various agencies. Taking cognizance of the aforesaid information in AIR, notice u/s 147 of I. T. Act was issued to the assessee. In response to the notice, the assessee filed return of income, declaring Nil income. The dispute in the present case regarding the aforesaid addition of Rs.1,54,80,000/- arose on account of sale of property by the assessee during the year, for sale consideration of Rs.1 crores which was the lower

than the value ascertained Stamp Duty Authority at Rs.1,54,80,000/-. During the assessment proceedings, the assessee filed objection to the adoption of stamp duty valuation of Rs.1,54,80,000/-. The Assessing Officer made a reference to the District Valuation Officer (DVO). The assessee did not respond to the notices issued by the DVO. Taking adverse view of the same, the Assessing Officer assessed the entire aforesaid amount of Rs.1,54,80,000/- as assessee's income. The assessee initially filed a revision petition before the Ld. Principal Chief Commissioner of Income Tax ("PCIT", for short) u/s 264 of I.T. Act. Later, application for revision u/s 254 of I.T. Act was withdrawn by the assessee to seek other legal remedies with regard to assessee's assessment. However, the Ld. PCIT dismissed the assessee's revision petition u/s 254 of I.T. Act. The assessee agitated against the order of the dismissal of assessee's petition u/s 264 of I.T. Act, in writ petition filed in Hon'ble High Court of Madhya Pradesh. Vide order dated 02.09.2022, the Hon'ble High Court restored the matter to the file of the Ld. PCIT to reconsider the assessee's application for withdrawal of application u/s 264 of I.T. Act. The Ld. PCIT eventually passed an order dated 28.10.2022 allowing assessee's application for withdrawing revision petition u/s 264 of I.T. Act; and thereby restoring the aforesaid *ex parte* assessment order dated 05.12.2018 of the Assessing Officer.

(B.1) Thereafter, the assessee filed appeal in the office of the Ld. CIT(A). Vide impugned appellate order dated 16.04.2024, the assessee's appeal was dismissed by the Ld. First Appellate Authority ("FAA", for short) both on limitation ground and on merits. The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 16.04.2024 of FAA. The grounds of appeal are as under: -

"1. The learned Commissioner of Income tax (Appeal) (NFAC) erred on facts and in law in confirming the order of the Assessing Officer passed under sec. 144 dated 05.12.2018, which is ab initio void, bad in law, arbitrary, illegal and against the principles of natural justice.

2. *The learned Commissioner of Income tax (Appeal) (NFAC) erred in law and on facts in rejecting the application of the appellant for condonation of delay in filing the appeal before him without appreciating that the delay in filing the appeal was bona fide, beyond the control of the appellant and the appellant was not benefitted from filing the appeal belatedly and even otherwise after the order passed by Hon'ble High court which was implemented by the learned PCIT the date of filing appeal restored back to his original date and thus the learned Commissioner of Income tax (Appeal) (NFAC) violated the order passed by the higher authorities and this shows the biasness of the CIT (A) which is also reflecting in the decision of the CIT(A) on merit of the case.*

3. *The learned Commissioner of Income tax (Appeal) (NAFC) was not Justified in confirming the action of AO treating the cash deposits as unexplained income without considering the ITR filed by the appellant and determining the stamp duty value of Rs. 1,54,00,000/- on sale of land as income from other sources, when the transaction in capital asset called for assessment of capital gains tax only and when all the details are available with the lower authorities to determine the capital gains, the addition made by the AO itself is bad in law and is liable to be quashed.*

4. *The learned Commissioner of Income tax (Appeal) (NAFC) was not Justified in holding that, the appellant did not cooperate in assessment proceedings merely on the ground that she did not respond to the notices issued by the Departmental Valuation Officer, particularly when all the requisite documents necessary for valuation of the fair market value was already on record and detailed reply along with documents was filed before the AO in response to the SCN issued on 15.12.2017.*

5. *The learned Commissioner of Income tax (Appeal) (NAFC) was not Justified in confirming the addition without appreciating the facts that appellant have received only 70 lakhs and the power of attorney holder who is also one of the beneficiary of land as his wife had purchased the land and all the three purchasers is having their possession since long back and it is distress sale as appellant had no option but to sell them on their rates.*

6. *The learned Commissioner of Income tax (Appeal) (NAFC) was not Justified in upholding the action of the AO with regard to valuation of property without appreciating that as per section 142A(6) it is mandatory for the valuation officer to send the report within six months and when everything was on record, it is not known as to what more details were required for determining the cost.*

7. *The learned Commissioner of Income tax (Appeal) (NAFC) was not Justified in confirming the addition of Rs. 1,54,80,000 without appreciating that appellant had sold the land admeasuring 1.620 hectares and benefit of cost of acquisition as declared by appellant in ITR which is on the basis of registrar guidelines rates ought to have been allowed by the AO, but it appears from the reading of last paragraph of order that AO was of the view that appellant have not filed any ITR, whereas it was duly filed, and such observation in assessment order in the last para vitiates the whole assessment order. WITHOUT PREJUDICE TO ABOVE THE APPELLAN TIS RAISNG FOLLOWING ADDITIONAL LEGAL GROUNDS AS THESE GOES TO THE ROOT OF THE MATTER*

8. *The notice issued under section 148 itself is bad in law in as much as the AO himself is not satisfied on the reason to believe as two distinct reasons to believe were recorded which rendered the whole assessment invalid, ab -initio void, bad in law, arbitrary, illegal and against the principles of natural justice.*

9. *The assessment order passed is barred by limitation as the approval for issuance of notice under section 148 was given on 23.03.2017 and hence order*

should have been passed within 9 months in view of section 153(2) of the IT Act and mere issue of notice under section 148 after the lapse of more than one month from the date of approval did not give the AO right to pass order after more than 21 months and hence the assessment deserves to be quashed on this ground alone.

10. The order is also invalid in as much as no section under which the order was passed except section 144 is mentioned, whereas the case was reopened under section 148 and further no section is mentioned under which addition is made and hence the order passed by the AO deserves to be quashed.

11. The order passed by the AO is also invalid as section 2(23C) prescribes hearing includes communication of data and documents through electronic mode and it was inserted w.e.f. 01.06.2016 and CBDT have issued clear instruction in this regard whereas in the present case it was not passed through ITBA System online portal and AO failed to follow the mandatory procedure even though appellant was registered in the e-portal and AO is duty bound to issue notice through e-proceeding Tab and through the e-portal.

12. The appellant traverses for leave to amend, add to or omit any ground up to the time of hearing of the appeal."

(B.2) In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short), a paper book containing the following particulars was filed from the assessee's side: -

S.No.	Particulars
1.	Copy of Application for withdrawal of Revision Petition filed on 07.10.2019
2.	Copy of order passed under section 264 of the Act dated 10.10.2019
3.	Copy of order of Hon'ble High Court dated 02.09.2022 directing the PCIT to reconsider the application for withdrawal of petition filed under section 264 of the Act
4.	Copy of order passed under section 264 of the Act dated 28.10.2022 passed in effect of Hon'ble High Court direction
5.	Copy of acknowledgment of reply filed before CIT(A) for the order passed under section 144 of the Act
6.	Copy of written submission filed before CIT(A) on 27.03.2024 for the order passed under section 144 of the Act
7.	Copy of Submission dated 11.11.2016 filed before I&CI, Jabalpur regarding verification of transaction
8.	Copy of Inspector's report dated 15.11.2016 submitted before I&CI, Jabalpur
9.	Copy of information received by the department
10.	Copy of notice under section 148 of the Act dated 27.04.2017 alongwith reasons for issuance of notice
11.	Copy of intimation regarding change of incumbent dated 26.05.2017 issued by ITO Ward-1, Satna
12.	Copy of notice under section 142(1) of the Act dated 26.05.2017

	dated 19.09.2017
14.	Copy of notice under section 142(1) of the Act dated 15.12.2017 bearing detailed questionnaire
15.	Copy of ITR alongwith computation of income filed in response to 148 notice on 22.12.2017
16.	Copy of reply to show-cause notice filed before ITO Ward-1, Satna on 22.12.2017
17.	Copy of notice under section 143(2) dated 22.12.2017
18.	Copy of notice under section 142(1) dated 16.10.2018
19.	Copy of notice regarding assessment proceedings for the A.Y. 2014-15 dated 22.11.2018
20.	Copy of power of Attorney executed on 06.09.2013 by Smt. Kaviteshwari Devi in the name of Shri Brajesh Tiwari S/o Shri Rohani Prasad Tiwari
21.	Copy of sale deed dated 16.09.2013 of land sold by Smt. Kaviteshwari Devi to Sheshmani Urmaliya S/o Shri Ram Khelawan Urmaliya, and others
22.	Copy of guidelines of collector rate of land of Satna District, dated 01.07.1980
23.	Copy of order sheet entry
24.	Copy of Affidavit confirming the sale of property from the appellant
25.	Copy of Affidavit confirming the purchase of property from purchaser Smt. Neelam Tiwari
26.	Copy of Affidavit confirming the purchase of property from purchaser Shri Nitin Pandey
27.	Copy of Bank Statement

(C) At the time of hearing, the Ld. Counsel for the assessee submitted that the assessee had filed appeal in the office of the Ld. CIT(A) within reasonable time after the aforesaid order of the Ld. PCIT dated 28.10.2022, whereby the assessee was permitted to withdraw the revision petition filed u/s 264 of the I.T. Act. He therefore contended that this was a fit case for condonation of delay by the FAA in filing the appeal. Therefore, he submitted, the order of the Ld. CIT(A) dismissing the assessee's appeal on the grounds of limitation was unfair and unjust.

(C.1) On merits, the Ld. Counsel for the assessee submitted that the dispute regarding valuation of the property sold by the assessee should be restored back to the file of the Assessing Officer for fresh reference to the DVO and for passing *de novo* assessment order, after receiving the valuation report of the DVO. He further assured that the assessee would extend full cooperation to the DVO as well as to the Assessing Officer for expeditious conclusion of the proceedings.

(C.1.1) The Ld. Departmental Representative supported the orders of the Assessing Officer and the impugned appellate order of the Ld. CIT(A).

(C.1.2) Both sides have been heard. Materials on record have been perused. Relevant facts are not in dispute. The assessee filed appeal in the office of the Ld. CIT(A) on 11.11.2022 whereas the aforesaid order allowing the assessee to withdraw revision application u/s 264 of I.T. Act was passed by the Ld. PCIT. Thus, the appeal was filed by the assessee in the office of the Ld. CIT(A) within the 30 days of the aforesaid order dated 28.10.2022. It is readily seen that the assessee has acted with due alertness and speed in filing of appeal in the office of the Ld. CIT(A) after order passed by the Ld. PCIT. The delay in filing of the appeal in the office of the Ld. CIT(A) is attributable to the pendency of the assessee's application u/s 264 of I.T. Act and writ petition in the Hon'ble High Court. It is well settled that an assessee cannot simultaneously pursue both remedies, namely revision and appeal, under provisions of Income Tax Act. Thus, the assessee seeking revision u/s 264 of I. T. Act, could not have filed appeal in the office of the Ld. CIT(A) during the pendency of revision petition before the Ld. PCIT. The provisions of law as contained in Section 264(4) of I. T. Act are reproduced below, in order to make this abundantly clear: -

"The Commissioner shall not revise any order under this section in the following cases-

(a) where an appeal against the order lies to the [Deputy Commissioner (Appeals)] to the Commissioner (Appeals)] or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal, the assessee has not waived his right of appeal; or

(b) where the order is pending on an appeal before the [Deputy Commissioner (Appeals)]

(c) where the order has been made the subject of an appeal [to the Commissioner (Appeals) or to the Appellate Tribunal."

Therefore, the delay in filing of the appeal in the office of the Ld. CIT(A) on account of pendency of assessee's petition u/s 264 of I.T. Act before the Ld. PCIT and during pendency of assessee's writ petition in Hon'ble High Court is "sufficient cause" for the assessee not filing the appeal within the period of 30 days prescribed u/s 249(2) of I.T. Act. Further, it is not in dispute that

the assessee had filed application for revision u/s 264 of I. T. Act, within time limit prescribed u/s 264(3) of I. T. Act. The aforesaid facts, combined with the fact that the assessee filed appeal within the 30 days of the aforesaid order dated 28.10.2022 of the Ld. PCIT allowing the assessee to withdraw application u/s 264 of I.T. Act should have persuaded the Ld. CIT(A) to condone the delay in filing of the appeal in accordance with section 249(3) of I.T. Act. The Ld. CIT(A) has erred in not condoning the delay in filing of the appeal. In view of the foregoing, it is held that this was a fit case for condonation of delay in filing of appeal in accordance with section 249(3) of I.T. Act.

(C.2) On merits, the Assessing Officer as well as the Ld. CIT(A) have taken adverse view of the non-compliance on the part of the assessee to the various notices issued by the DVO. However, on perusal of the orders of the Assessing Officer and the Ld. FAA, it is not clear as to why the addition of the entire amount of Rs.1,57,80,000/- was made and why no deduction was made on account of (indexed) cost of acquisition. Assuming for the sake of discussion, that the (indexed) cost of acquisition was Nil; it is not clear from perusal of records, as to why the addition was not restricted to the difference in value, i.e., Rs.57,80,000/- being the difference between Rs.1,57,80,000/- as estimated by the Revenue authorities and Rs.1,00,00,000/- claimed by the assessee. These things should have been explained by the Assessing Officer, and the Ld. FAA through speaking orders; and in the absence of the same, a logical inference is that the orders have been passed by them in arbitrary and whimsical manner without due application of mind. Moreover, as the relevant facts are not available on the records of the ITAT, it is not possible to take a final view on these matters at this stage. In any case, if there was non-compliance on the part of the assessee in spite of reasonable opportunity given to the assessee by DVO, nothing prevented the DVO from taking a decision *ex parte* qua the assessee. The DVO has erred in not completing valuation of the property in

a timely manner; even if there was non-compliance on the part of the assessee. He ought to have completed the valuation *ex parte* in the absence of required assistance from assessee's side. Having regard to the specific facts and circumstances as discussed earlier; therefore, this case is found to be fit for restoring the entire issue in dispute regarding aforesaid additions of Rs.1,57,80,000/- to the file of the Assessing Officer, for fresh reference to the DVO and for *de novo* assessment order in accordance with law.

(C.2.1) Accordingly, in view of the foregoing discussion, the impugned appellate order of FAA is set aside and the issue in dispute regarding aforesaid addition of Rs.1,57,80,000/- is restored back to the file of the Assessing Officer with the direction to make fresh reference to DVO for valuation of property; and to pass *de novo* order in accordance with law after providing reasonable opportunity to the assessee. The Ld. Counsel for the assessee has assured that the assessee would extend full co-operation to the DVO and to the Assessing Officer. However, the DVO and the AO would be at liberty to proceed *ex parte* if there is non-compliance on the part of the assessee, despite reasonable opportunity. All grounds of appeal are treated as disposed of in accordance with law with aforesaid directions.

(D) In the result, the appeal of the assessee is partly allowed for statistical purposes

(Order pronounced in the open court on 12/03/2026)

Sd/-
(KUL BHARAT)
VICE PRESIDENT
Dated: 12/03/2026
Vijay Pal Singh, (Sr. PS)

Sd/-
(ANADEE NATH MISSHRA)
Accountant Member

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T., Jabalpur