

**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.667/Ind/2025  
(AY: 2011-12)

Jikar Hussain, 309, Gram Gogapur, Mahidpur, Ujjain Madhya Pradesh <b>(PAN: ACEPH0619L)</b> (Appellant)	<b><u>बनाम/</u></b> Vs.	ITO, Ujjain  (Respondent)
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	13.04.2026	
Date of Pronouncement	17.04.2026	

**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 brevity] before this tribunal as & by way of a second Appeal. The Assessee is aggrieved by the order bearing No:- ITBA/NFAC/S/250/2024-25/1074772105(1) dated **20.03.2025** 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 2011-12 and the corresponding previous year period is from 01.04.2010 to 31.03.2011.

2.

### **Factual Matrix**

2.1 That as & by way of an assessment order made **u/s 144 rws 147 of the Act**, the total Income of the assessee was computed & assessed at **Rs. 12,90,750/-**. **Rs. 12,90,750/-** was considered as **gross contract receipt. [194c]**. **No ITR was filed by the assessee u/s 139 of the act**. **Notices 148 was not replied & no ITR was filed in pursuance thereof too by the assessee. Notice(s) dated 12.06.2018, 10.10.2018, 15.11.2018, 22.11.2018 [last opportunity] u/s 142(1) were too not complied by the assessee**. **Ld. AO finally invoked S. 144 & computed & assessed Income of Rs. 12,90,750/- as exigible to Tax**. The aforesaid assessment order is dated **12.12.2018** which is herein after 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 for the assessee on the grounds & reasons stated therein. The core grounds & reasons for the dismissal of the first appeal was as under:-

## 2. Decision

During the course of appellate proceedings, the Notices were issued u/s 250 of the Act to the Appellant for hearing. The detailed chart regarding this is given as under-

Notice issued u/s 250	Issued date	Fixing for hearing	Remarks
ITBA/NFAC/S/62/2022-23/1046862957(1)	03.11.2022	-	Enablement notice
ITBA/NFAC/F/APL_1/2020 21/1030070103(1)	25.01.2021	09.02.2021	No reply
ITBA/NFAC/F/APL_1/2020 21/1030091034(1)	26.01.2021	10.02.2021	No reply
ITBA/NFAC/F/APL_1/2024 25/1074115753(1)	06.03.2025	17.03.2025	No reply

**2.1** During the appellate proceeding, the appellant assessee was given ample opportunities to furnish explanation in respect of grounds of appeal raised, the notices have been issued on regular basis, but the appellant assessee failed to make any compliance, but on many occasion adjournments was sought, a final opportunity was given on 06.03.2025, the appellant failed to comply any compliance. Therefore, the case is being decided on the details/documents available on record.

**3.** From the above, it is clear that sufficient opportunities of being heard were allowed to the appellant, but there was no response.

**3.1** In the appellate proceedings, burden of proof lies on the appellant to prove that the facts and the findings of the Assessing Officer are incorrect. If

the appellant fails to disprove or rebut with cogent evidence such facts and findings, no interference is required. In this case, the appellant did not choose to avail of the opportunities in the appellate proceedings which lead to the only conclusion that it had no evidence or explanation against the order of the Assessing Officer. The appellant should not be allowed to be enriched or benefited unjustly for act of its own wrongs i.e. non-compliance or non-attendance of hearing.

**3.7** From the afore-mentioned discussion, it is clear that no written submissions have been made at appellate level. Therefore, it is stated that no useful purpose would be served by keeping the appeal pending and therefore the appeal is decided on the basis of documents available on record. There may be various reasons with the appellant to remain absent at the time of hearing. One of the reasons may also be a desire or absence of need to prosecute the appeal or inability to assist in the appellate proceeding in a proper manner or to take benefit of vagaries of law. However, the exact reasons for non-attendance/non-submission are only known to the appellant. The CIT (Appeal) can under such circumstances, invoke the inherent powers vested therein. These powers are embedded with certain inherent obligations also. One of such obligations is that the appellant must not be deprived of being heard. Therefore, the easiest way for appellant in this case was to furnish the written submission in support of grounds of appeal. But instead, the appellant in this case not only chose to ignore the date of hearing but even did not furnish any submissions.

**3.8** Considering the above discussion and facts, it is clear that the appellant assessee is not pursuing its case on merits. In pursuance of its appeal the appellant assessee did not file any documents in support of its claim that why addition of Rs. 12,90,750/- is not sustainable. The appeal cannot be decided merely on the basis of grounds of appeals and statement of facts as no corroborative evidence of any kind has been submitted by the appellant assessee. Based on these observations the appeal filed by the appellant assessee is dismissed and the order of the AO is confirmed.

**In result the appeal is hereby dismissed.**

2.3 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 against the **"Impugned Order"** which are as under:-

*"GROUND NO. 01: That on the facts and in the circumstances of the case, the notice issued U/s. 148 and assessment order passed U/s. 147 r.w.s. 144 are wrong and invalid.*

*GROUND NO. 02: That on the facts and in the circumstances of the case addition of Rs. 1290750/- made to the total income of the appellant is also wrong, invalid and unjustified as: (a) the entire amount of gross contract receipt has been treated as income; (b) whereas as per section 44AD only 8% of gross contract receipts should have been considered as net profit/income.*

*GROUND NO. 03 (IN THE NATURE OF SUBMISSIONS): Both assessment and appeal orders have been passed without considering that:*

*(a) The appellant was engaged in labour contract work in which total gross contract receipts for AY 2011-12 were at Rs. 1290746/-. The TDS U/s. 194C (applicable on payment to contractors and sub-contractors) was also deducted at Rs.14788/- (@ about 1%) on the above gross contract receipts. Only net profit @ 8% as per Section 44AD at Rs. 103260/- was taxable income and not the entire gross receipt of Rs.1290746/-. This is a settled law and is also supported by various judicial decisions.*

*(b) The nature of above amount of Rs.1290746/- that it was gross contract receipt (i.e., payment to contractor and sub-contractor as mentioned U/s.194C) was very well on the record of the IT Department as; (i) the gross receipt nature was duly mentioned in Form No. 26AS as appearing in ITD portal (ii) The gross receipt nature was also reflecting on NMS module of i-taxnet portal of IT Department on the basis of which the case has been reopened. (iii) The gross receipt nature has also been mentioned at many places in the assessment order U/s. 147 r.w.s. 144 itself. Despite that the Ld. AO has wrongly and without application of mind, assessed the entire gross receipts (U/s. 194C) as total income.*

*(c) The assessment and CIT(A) appeal orders have been passed ex parte but it is a settled law that even in ex parte assessment /*

*appeal order, the material available on record should be considered, which has not been done in present case.*

*(d) The notice U/s. 148 is invalid because the apparent total income U/s. 44AD at Rs.103260/- (@8% on contract receipt) was much below basic tax exemption limit of Rs. 160000/-.*

*(e) The appellant has not received reasonable opportunity of being heard during assessment proceedings. The appellant is not literate and resides in rural area and was completely dependent on his counsel for notice compliances.*

*(f) The CIT(A) hearing notice dated 06.03.2025 was sent on email id ashish\_adv3373@yahoo.co.in of counsel Shri Ashish Trivedi who had already expired on 06.08.2021 (death certificate attached), therefore could not be responded. But full submissions were made on 25.03.2023 in response to immediately preceding hearing notice dated 03.11.2022. The 3rd ground of appeal was very well describing the issue and was in the nature of complete submissions. These have not been considered in CIT(A) order passed on 20.03.2025.*

*(g) The earlier CIT(A) appeal hearing notices dated 26.01.2021 and 25.01.2021 could not be responded as earlier counsel Shri Ashish Trivedi was regularly remaining ill. But non response to them is not major issue because full submissions were made later on, before passing of the appeal order.*

*PRAYER: The appellant craves leave to add, alter, amend or modify all or any of the above grounds of appeal at any time before completion of the hearing."*

3.

### **Record of Hearing**

3.1 The hearing in the matter took place before this tribunal on 13.04.2026 **when none for & on behalf of the assessee appeared before us.** In the absence of Ld. AR the **Ld. DR assisted this Tribunal** & submitted that basis perusal of the documents on the record both the **"Impugned Assessment Order"** & the **"Impugned Order"** are **exparte.** The assessee seems to be have been **non-compliant throughout.** The Ld.

DR for the revenue however stated that in such a circumstances it would be just, fair & convenient that the **“Impugned Order”** be set aside & matter is remanded back to the file of Ld. CIT(A)/Ld. AO as this tribunal deems fit. 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 of the Ld. DR canvassed before us, are of the considered opinion that the **“Impugned Assessment Order”** is under section 144 rws 147 of the act & some how or the other the matter has not been adjudicated & adjudged basis merits of the case. Even the **“Impugned Order” is not on merits.** This Tribunal desires that the total Income of the

assessee should be computed and assessed on the **real time basis exigible to Tax** in accordance with law **by following the due process of law under the act**. This Tribunal also expects the assessee to be compliant & should cooperate with the department of Income Tax as & when the notice(s) etc are issued. In brief this Tribunal desires the meritorious disposal of both the **"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 the merits of the case. It is the expectation of this Tribunal that the assessee would give his full & complete details about his affairs, including e-mails of his & his counsel where the notice(s) could be served effectively by the department. The assessee is directed to attend hearings as & when fixed & to file reply & **details as sought by the Ld. AO**.

4.4 In view of above premises drawn up by us, we set aside the **"Impugned Order"** & remand the case back to the file of Ld. AO on denovo basis, who shall now pass a speaking & well-

reasoned order. **All the materials adversial to the assessee to be disclosed by the department to assessee, so that assessee can meet the case of the department.**

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.

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

**Pronounced in open court on 17.04.2026.**

Sd/-

Sd/-

**(BHAGIRATH MAL BIYANI)  
ACCOUNTANT MEMBER**

**(PARESH M JOSHI)  
JUDICIAL MEMBER**

**Indore**

Dated : 17/04/2026

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