

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.128/Ind/2026
(AY: 2018-19)

Laxminarayan Patidar, Gandhigram mangliya, Behind Tagore School, Sanwer, Indore (PAN:DWRPP6267A)	<u>बनाम/</u> Vs.	ITO 1(1), Indore
(Appellant)		(Respondent)
Assessee by	Shri Milind Wadhvani, & Ms. Shraddha Piplodiya, ARs	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	21.04.2026	
Date of Pronouncement	30.04.2026	

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 number:- ITBA/NFAC/S/250/2025-26/1083405833(1) dated 08-12-2025 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 2018-2019 and the corresponding previous year period is from 01-04-2017 to 31-03-2018.

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 & assessed at **Rs. 15,22,259/-**. The income as per the return of Income filed **u/s 139** was at **Rs 288/-**. The Income as per the return of Income filed **u/s 148** was **too** at **Rs 288/-**. The addition/variation was made at **Rs 15,21,971/- u/s 69A of the Act**. The broad issue was **"Unexplained source of money"**. That the aforesaid assessment order bears number:- ITBA/AST/S/147/2023-24/1063537846(1) & that the same is dated **28-03-2024** 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 of the

Assessee on the grounds & reasons stated therein. The core grounds & reasons for the dismissal of the first appeal were as under:-

"5.0 Decision

5.1 During the appellate proceedings, the following notices u/s 250 were issued. The details of compliances to the notices are tabulated as under:

Sl. No.	Date of notice	Date for compliance	Remarks
1	08.07.2025	15.07.2025	No response
2	04.09.2025	11.09.2025	No response
3	29.10.2025	05.11.2025	No response
4	07.11.2025	14.11.2025	Assessee has requested
5	14.11.2025	27.11.2025	No response
6	28.11.2025	05.12.2025	No response

As and As can be seen from the above table as many a granted. On verification of the ITBA portal, it is observed that all the above-mentioned s many as SIX opportunities have been hearing notices got delivered to email dwrpp6267a@gmail.com MAHENDRAMITTALANDCO@GMAIL.COM successfully it is evident that the appellant is neither filing any details nor availing the opportunity to seek adjournment to file the same during the appellate proceedings under the principle of natural justice.

5.2 In this regard, the reliance is place on the decision of the Hon'ble Supreme Court in the case of B.N. Bhattacharjee and Another (118 ITR 461) wherein it has been held that appeal does not mean merely filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of M/s Chemipol vs. Union of India in Excise Appeal No. 62 of 2009. While deciding the issue, the Hon'ble High Court of Bombay has referred to the observations of Hidayatullah, Chief Justice (as His Lordship then was) in Sunderlal Mannalal Vs. Nandramdas Dwarkadas AIR 1958 MP 260 wherein it was observed: -

"Now the Act does not give any power of dismissal. But it is axiomatic that no court or tribunal is supposed to continue a proceeding before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every tribunal possesses..."

5.3 This appeal has been filed by the appellant claiming that the action of the Assessing Officer is not supported by facts and laws and that it is unjust. In such a situation, it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, to support the claim. The 'burden of proof is always on the person who makes the claim. In this case, it is the appellant who has made the claim by filing the appeal. Thus, in cases where a particular receipt is sought to be taxed as income, the initial onus is on the Assessing Officer to prove that it is taxable. Since an appeal is nothing but the claim of the appellant that he has been unduly unjustifiably taxed, it is for the appellant to prove its case. The appellant has not availed any opportunity to do so.

5.4 From the conduct of the appellant as per the facts noted above, the appellant does not wish to pursue the appeal. Though the appellant filed appeal but remained non-compliant during the appellate proceedings also and not furnished any evidences to satisfy the appellate authority. Even otherwise on the merits of it also, I do not see any reason to differ with the findings of the AO since no attempt has been made by the appellant to discharge its onus. Hence, respectfully following the above-mentioned judicial pronouncements and in view of the facts of the case, the appeal is hereby not allowed.

6.0 In effect, the appeal filed by the appellant is not allowed."

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 circumstances of the case and in law, The Ld. 1 NFAC erred in upholding the action of Ld. AO in making an addition of Rs. 15,21,971/- u/s. 69A.*
- 2. On the facts and circumstances of the case and in law, the provisions of Section 69A cannot be invoked.*
- 3. On the facts and circumstances of the case and in law, the provisions of Section 115BBE cannot be invoked.*
- 4. On the facts and circumstances of the case and in law, the assessment order dated 28.03.2024 is bad in law, without jurisdiction, and liable to be quashed.*
- 5. On the facts and circumstances of the case and in law, the additions are made on mere conjectures, surmises and suspicions.*

6. On the facts and circumstances of the case and in law, the assessment was completed without complying with the statutory requirements of law.

7. On the facts and circumstances of the case and in law, the assessment order dated 28.03.2024 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.

8. On the facts and circumstances of the case and in law, the notice u/s. 148 dated 27.03.2022 is erroneous, void and illegal and liable to be quashed.

9. On the facts and circumstances of the case and in law, the initiation of penalty proceedings u/s. 271AAC is bad in law.

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

11. HUMBLY PRAYERS For these grounds and such other grounds that may be urged before OR during the hearing of the appeal it is most humbly prayed that this Hon. Tribunal may be pleased to: 1. Quash the reassessment order dated 28.03.2024. 2. Accept the returned income as filed by the appellant. 3. DELETE the addition of Rs. 15,21,971/- 4. Hold that the provisions of section 69A are not invocable. 5. Quash the penalty proceedings initiated u/s. 271AAC. 6. Hold that provisions of section 115BBE are not invocable. 7. Any other relief that may be deemed fit and proper by this Honble Authority."

3.

Record of Hearing

3.1 The hearing in the matter took place before this tribunal on 21-04-2026 when the Ld AR for & on the behalf of the Assessee appeared before this tribunal and interalia contended that the **"Impugned Order"** is bad in law, illegal and not proper. It is in the violation of the principles of the natural justice. It therefore deserves to be set aside. The Ld AR has placed on the record of this tribunal a paper book containing pages 42 to 62. The Ld AR for& on the behalf of the Assessee submitted that in the

"Impugned order" the Notice(s) were issued to the assessee six times on different dates which is already specified by us as aforesaid. Out of the 6 notice(s) the four notice(s) came on the email provided as **per form no:- 35** which was dwrpp6267a@gmail.com. It was submitted that notice dated 28-11-2025 & 14.11.2025 P57 & P58 PB came on email address Mahendramittalandco@gmail.com which did not belong to the Assessee. Whereas the Notice(s) dated 07-11-2025, 29-10-2025, 04-09-2025,08-07-2025 (pages 59 to 62) however came at email as per the form No:- 35. **It was submitted that last two notice(s) dated 14-11-2025 & 28-11-2025 came at different email id which fact must be noted & appreciated.** The Id AR in the final analysis pleaded that the Impugned Order be set aside & that the matter may kindly be remanded back to the file of Ld CIT(A). Per Contra the Ld DR for & on behalf of the revenue submitted that the Dept. Of Income tax has no objection if this tribunal deems fit to remand the matter back to the file of Ld CIT(A). Hearing was over & closed.

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 & further upon examining the rival contentions of the Ld AR and the Ld DR canvassed before us, are of the considered opinion that the **“Impugned Order”** is an exparte order as the assessee could not get opportunities of hearing on 27-11-2025 & 05-12-2025 as notice(s) 14-11-2025 & 28-11-2025 **were not served upon** his email address as per the form no:- 35. In so far as the hearing fixed for 14-11-2025 is concerned the assessee had sought adjournment in response to notice dated 07-11-2025 on 13-11-2025. The Id AR fairly conceded that for 15-07-2025, 11-09-2025 & 05-11-2025 through the opportunities were given by the notice(s) dated 08-07-2025, 04-09-2025 & 29-10-2025, the Assessee could not comply with. Under these peculiar facts & circumstances we set aside the **“impugned order”** as the same was passed in the violation of the principles of natural justice.

However we remand back the matter back to the file of Ld CIT (A) **for denovo adjudication**. We however direct the assessee to participate in the hearing which will now be fixed by giving fresh notice(s) on the email address provided in the form no:- 35. The Assessee will not seek any adjournment on any flimsy grounds. The Ld CIT(A) is directed to pass a fresh order on denovo basis which order should be on merits of the case. The order to be a speaking & a reasoned one.

4.4 In view of the above, we set aside the "Impugned order" & remand the case back to the file of Ld CIT(A) on denovo basis, with directions as aforesaid.

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) on De novo basis with directions as aforesaid.

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

Pronounced in open court on 30 .04.2026.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

Dated : 30/04/2026

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