आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI PARESH M JOSHI, JUDICIAL MEMBER
AND
SHRI ARVIND SONI , ACCOUNTANT MEMBER

ITA No.1101/Ind/2025
(AY: 2017-18)

Rajlaxmi Jewellers, Shop No 20-21, Jawahar Bhawan Roshanpura, Bhopal **(PAN:AAUFR1150J)**	बनाम/ Vs.	ITO-1(4),
(Appellant)		(Respondent)
Assessee by	Sh. Rk Mangal,CA	
Revenue by	Shri Binay Kumar Rai, Sr.DR	
Date of Hearing	16.10.2026	
Date of Pronouncement	22.10.2026	

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,[hereinafter 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/250/2025-26/1079627127(1) dated **14.08.2025** passed by the Ld. CIT(A) u/s 250 of the Act, which is hereinafter referred to as the **"Impugned order".** The Relevant Assessment year is 2017-18 and the

corresponding previous year period is from 01.04.2016 to 31.03.2017.

2. **Factual Matrix**

2.1 That as and by way of an Assessment order **made u/s 147 rws 144/144B of the Act,** the total income of the assessee was computed and assessed at **Rs. 35,80,756/-.** The total income **as per the ROI filed was at Rs. 30,756/-**. **Variation of Rs. 35,50,000/-** was done by the virtue of **Para 3.2** of the aforesaid order. **The core issue was of the cash deposit of Rs. 35,50,000/-** in bank account no. 35960250380 which was maintained by the assessee with **the SBI Bhopal M.P., during the demonetization period in FY 2016-17.** That the aforesaid assessment order bears number: - ITBA/AST/S/147/2023-24/1052814081(1) and that the same is dated **13.05.2023,** which is hereinafter referred to as the **"Impugned Assessment Order" for the sake of brevity.**

2.2 That **the initial notice was issued on 13.04.2021** and thereafter by virtue of direction of Hon'ble Supreme Court Of India in case of **Ashish Agrawal** a new procedure was required to be followed in cases where the notices were issued from 01.04.2021 to 30.06.2022 and thereafter in the compliance of the directions of the Hon'ble Supreme Court of India a fresh notice was notice on 24.05.2022 and **an order u/s 148A (d) was passed.** That further in response to a notice **issued u/s 148 on 04.07.2022** assessee had filed ITR on 04.08.2022 declaring income of **Rs. 30,756/-.**

2.3 That in regard to the opportunities the Ld. Assessing Officer in the Impugned Assessment Order has tabulated a chart which is reproduced by us as below:-

Type of notice/communication	Date of notice/communication	Date of compliance given	Response of the assessee received/not received	Date of response if received	Response type (Full/part/adjournment)
u/s 148	04.07.2022	03.08.2022	No	-	-
u/s 144(B)	02.11.2022	-	-	-	-
u/s 142(1)	05.01.2023	13.01.2023	No	-	-
u/s 142(1)	20.01.2023	27.01.2023	No	-	-
u/s 143(2)	23.01.2023	07.01.2023	No	-	-
Non-compliance of initial notice u/s 142(1)	03.02.2023	08.02.2023	No	-	-
Show Cause u/s 144	27.02.2023	06.03.2023	No	-	-
Show Cause u/s 144	10.03.2023	16.03.2023	No	-	-
Non response to notice u/s 142(1)	10.04.2023	-	No	-	-

2.4 That the above chart so tabulated by the Ld. Assessing Officer shows that the assessee **was non-compliant throughout in respect of core issue of cash deposit of Rs. 35,50,000/- in SBI during the period of the demonetization in FY 2016-17. NO reply was filed.**

2.5 In view of the above facts and circumstances the Ld. Assessing Officer had no other option left but to pass the **"Impugned Assessment Order"**.

2.6 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 and the reasons stated therein. The core grounds and the reasons for the dismissal of the first appeal were as under:-

> ***"7. Limitation***
>
> ***The appeal has not been filed within the stipulated period of thirty days from the date of service of the notice of demand relating to the assessment order. It is noticed from Form No. 35 that the appeal was filed on 21.10.2023, whereas the date of the order is 13.05.2023. Thus, the appeal in present case has been filed after delay of 131 days. The***

appellant has sought condonation of delay in Form 35 as under:

Respected Sir,

Your appellant is a partnership firm in the name of Rajlaxmi Jewelers, Bhopal. The learned A.O. has passed an assessment order U/s 147 r.w.s. 1448 having din-ITBA/AST/S/147/2023-24/1052814081(1) Dt-13/05/2023. The appellant is not aware of the fact that the assessment order has been passed by the learned A.O. and the same is came to the knowledge of the appellant when the notice of penalty is served to the appellant. Immediately on getting the penalty notice the appellant has taken necessary action on filing of the appeal before your honour. Therefore, the delay in filing of the appeal may please be condoned and the impugned appeal be heard on merits by accepting the appeal and an opportunity of haring may kindly be granted.

Findings

6. On perusal of the aforesaid reasons, I find that there has been a delay of 131 days in presenting this appeal. It is a well settled legal principle that ignorance of law is no excuse. In absence of any substantiation, the grounds for condonation of delay as mentioned by the appellant, is merely a bald assertion without any basis, which is not supported by cogent and proper evidence, and the same would not, as such, constitute "sufficient cause" within the meaning of section 249 (3) of the Act. In fact, the reasons put forward only show lack of due diligence on part of the appellant in making statutory compliances within the prescribed period and the reasons stated by the appellant for not filing the appeal within the prescribed time are found to be bereft of any merits.

6.7 From the above decisions it becomes clear that in the case of condonation of delay, where the appeal was filed beyond the limitation of period, the courts are empowered to condone the delay, provided that the appellant can prove his claim of inability to file appeal within the prescribed period. Litigant must be able to demonstrate that there was "sufficient cause "which obstructed his action to file appeal, beyond the prescribed time limit.

6.8 In the present case, the appellant has not adduced any reasonable cause which prevented it from filing the appeal within the prescribed period of thirty days. It has filed the present appeal after a delay of 131 days.

Unless and until it is demonstrated that there was sufficient cause that prevented the appellant from exercising its legal remedy of filing appeal within that prescribed period of

thirty days, the delay thereafter cannot be condoned without there being compelling grounds, as laid down by the Hon'ble Courts.

6.9 On the given facts of the case, it is clear that the statutory right to appeal which was vested with the appellant has not been exercised within the stipulated time under section 249(2). Thus, this is clearly a case of lapses, which are directly the result of deliberate inaction on the part of the appellant.

7. The appellant has stated the reason for the delay in filing appeal is on account of the fact that the appellant was unaware that the order was passed. The said reason is not acceptable since it is not supported by any evidences. As a result reasons as placed by the appellant are not treated as sufficient and reasonable cause for delay in filing of appeal by 131 days

8. On the facts and circumstances of the case, and in view of the position of law applicable on the given facts, I am satisfied that the appeal has not been presented within the period prescribed under section 249(2) of the Act, i.e. thirty days from the date of service of the notice of demand relating to the assessment order. I am also satisfied that the appellant has not been able to show any "sufficient cause" for not presenting the appeal within the said prescribed period, within the meaning of section 249(3) of the Act, read with section 5 of The Limitation Act. Accordingly, the appeal is not admitted for adjudication on merits.

8. In the result, the present appeal is dismissed in limine."

2.7 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. That the learned CIT(A), NFAC erred in not holding that the order was bad in law. It was perverse; (2) it was based on 1 irrelevant material; (3) it was un-reasonable; (4) there was mis-application of the provisions of law; (5) the authority misdirected

2.That the learned CIT(A), NFAC erred in not holding that the party order passed U/s 147) r.w.s. 144 WITH Section 144B of the Income Tax Act, 1961 by the A.O. was an Ex-party order and without following rule of natural justice and fair play and was therefore a nullity and the same may be declared null and void.Ground

3. That the learned CIT(A), NFAC erred in rejecting the appeal in limine being delay in

filing of appeal and confirming the 3 addition of Rs.35,50,000/- made by the learned A.O. U/s 69A of the Income Tax Act, 1961 towards cash deposit in bank account which was duly recorded in books of accounts. Ground

4. That the learned CIT(A), NFAC erred in confirming the tax levied 115BBE of the Act.

5.That the learned CIT(A) NFAC erred in confirming the interest and penalty levied U/s 234A, 234B of the Act.Ground

6.That the learned CIT (A) NFAC erred in confirming proposal to levy penalty U/s 272A(A)(d) of the Act.

7.That in the alternative and without prejudice to the grounds stated above, the additions made and assessed as income of the appellant

be held to be high, unreasonable and unjustified and be deleted.

8. The appellant craves leave to add, amend OR alter any Ground of 8 Appeal before OR during the course of appellate proceedings. Ground"

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 16.10.2026 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 in the violation of the principle of natural justice**. It therefore deserves to be set aside.

3.2 The Ld. AR has placed on the record of this tribunal a paper book containing pages 1 to 57 and other paper book containing pages 1 to 110 on the record of this tribunal in support of the appeal. In so far as present appeal is concerned registry has pointed out the delay of 45 days. We

have perused the condonation of delay application filed by the assessee before us wherein the plea of the ex-parte nature of the Impugned Order, appeal order served on portal but assessee firm dissolved on 01.12.2018 and not opening regular portal, Knowledge came about the Impugned Order only upon demand for recovery over telephone by department, are all found to be reasonable and just by us. Accordingly we condone delay as **"sufficient cause"** is shown to us and even the Ld. DR has not opposed such an application for the condonation which is accompanied by an affidavit dated 13.12.2025 . Delay is therefore condoned and the appeal is admitted.

3.3 The Ld. AR then submitted before us that the assessee is/was a **partnership firm of father and son. The father died on 05.09.2018 and copy of the dead certificate is at PAPER BOOK page 57.** The Impugned Order is an ex-parte order and the merits of the case has not been considered by **any of the two lower authorities** i.e. the real nature of income of the assessee exigible to tax. **The assessee has**

filed a delayed first appeal before the Ld. CIT (A) by 313 days and in this regard an condonation of delay was requested whose contents are reproduced on the internal page 3 of the Impugned Order. It was submitted that it was averred therein that the Impugned Assessment Order was passed on 13.05.2023 but the assessee was not aware of the fact of passing of the impugned assessment order and that he came **to know of it only when the notice of penalty was served upon him** and thereafter he took all the necessary steps in filing the present appeal. Therefore there was a delay which deserve to be condoned as merits of the case is required to be considered. However the said condonation of delay application which is at Paper book page 1 [PAPER BOOK dated 04.10.2026/16.10.2026] ought to have been considered as assessee has a good case on the merits too. The Ld. AR also **submitted that due to the death of father entire responsibility came upon the son which lead to ex-parte Impugned Assessment Order**. PAPER BOOK dated 18.05.2026 was relied upon to demonstrate that cashbook, VAT challan, Bank statement of

SBI etc. are all now placed on the record & the Assessee now desires to place all these documents before the Ld. Assessing Officer & therefore a prayer was made to set aside. The Impugned Assessment Order and remand of the case back to the file of Ld. Assessing Officer on de novo basis. Per contra the Ld. DR stated that the revenue relies on the **"Impugned Assessment Order"** and **"Impugned Order"** and finds no infirmities therein. The assessee was non-compliant throughout and no bonafide explanation is given till date and hence second appeal should not be allowed. The Ld. AR in the **rejoinder undertook before this tribunal that if** this tribunal remands the matter back to the Ld. Assessing Officer the assessee would furnish all the required and the necessary financial information statements etc. so that fair adjudication can take place basis merits. The Ld. AR made **a request one more chance as and by way of final** opportunity before assessment officer further additionally undertook that the assessee would not seek any unnecessary adjournment too. The hearing was then over and closed.

4. **Observations Findings & conclusions**

4.1 We have to decide the legality, validity and proprietary 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 & the Ld. DR canvassed before us are of the considered opinion that the **"Impugned Assessment Order" is under section 144 of the Act** and **that matter has not been adjudicated and adjudged basis merits**. Even the **"Impugned Order"** is not on the merit. This Tribunal desires that the total income of the assessee should be computed & 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 as & when notices, 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 cooperation in this regard assumes importance. **The Assessee cannot go in the 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 now give his full & complete details including **latest e-mails of his & and his counsel** where the notices could be served effectively by the Department. The Assessee to attend hearings as & when fixed & file reply & details as sought by the Ld. AO.

4.4 In view of the above, we set aside the **"Impugned Order"** and remand the case back to the file of the Ld. AO on de novo basis. In so far as the **"Impugned Order"** is concerned we condone the delay as basis condonation of delay application the assessee had shown the sufficient cause even before the Ld. CIT (A).

5 **Order**

5.1 In the result **Impugned Order** is set aside as and by way of remand back to the file of the Ld. AO on de novo basis.

5.2 **The appeal of the Assessee is allowed for statistical purpose.**

Pronounced in open court on 22.10.2026.

Sd/-	**Sd/-**
(ARVIND SONI)	**(PARESH M JOSHI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Indore
Dated : 22/10/2026

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

www.taxcode.in