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.899/Ind/2025
(AY: 2009-10)

Trimurti Associates, 74, Chimanganj Mandi, Ujjain (M.P.)-456001 **(PAN:AALFT9291K)**	बनाम/ Vs.	ITO, Ward-1(1), Ujjain.
(Appellant)		(Respondent)
Assessee by	Sh. Pavan Ved, Adv.	
Revenue by	Shri Binay Kumar Rai, Sr.DR	
Date of Hearing	06.10.2026	
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/250/2025-26/1080190232(1) dated **30.08.2025** 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 2009-10 and the

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corresponding previous year period is from 01.04.2008 to 31.03.2009.

2. **Factual Matrix**

2.1 That as & by way of an assessment order dated 30.11.2016 passed **u/s 144/147** of the Act dated 30.11.2016 the total Income of the assessee exigible to Tax was computed and assessed at **Rs. 78,94,000/-.** The Department of the Income tax basis **AIR** had an information that the assessee **had purchased a immovable property of a value of Rs. 78,94,000/-.** A notice **under section 148 dated 18.03.2016** was issued incorporating therein **"the reasons**" basis AIR entries. The said notice u/s 148 was issued by the regd. Post. **The said notice was however not replied nor complied with by the assessee.** Consequently a notice **u/s 142(1) dated 26.10.2016 was issued for compliance by 03.11.2016 however same was too not complied by the assessee.** Once again by notice dated 07.11.2026 "sources" were sought for Rs. 78,94,000/- for 15.11.2016, **however no reply and/or appearance was**

made by the assessee. Assessee was found to be a Non filer too. Due to the non-compliant attitude of the assessee the Revenue too proposed to issue notice(s) u/s 271(1)(C) and u/s 217(F) which fact is recorded in the aforesaid assessment order. The Ld. AO basis aforesaid material & due to non-compliance attitude of the Assessee to the notice(s) dated 26.10.2016 & 07.11.2016 (Supra), the Ld. AO computed and assessed Income of the assessee at Rs. **78,94,000/- as no information on sources were given by the assessee despite opportunities. Action u/s 271(1)(C) was too proposed to be initiated.** That the aforesaid assessment order is dated 30.11.2016 which is herein after referred to as the **"Impugned assessment order"** for the sake of brevity & ease**.** Information on **"Sources"** & **"reply"** to the notice(s) were not placed on record by the assessee despite opportunities. Hence **"Impugned assessment order" u/s 144/147 of the Act.**

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 & the reasons stated therein. The **core grounds & the reasons** for the dismissal the first appeal was as under:-

> ***5.1 The assessee has been provided several opportunities of hearing to submit relevant evidence to substantiate the grounds of appeal. The order sheet reflects that hearing notices were generated on various dates, including 01/01/2020, 04/10/2023, 20/02/2024, 25/04/2024, 17/08/2024, and 18/12/2024. In response to these notices, the assessee submitted detailed submissions along with annexures on 16/10/2023, which referred to submissions originally filed on 04/08/2017. The assessee repeatedly requested that these submissions be considered and offered to provide further information if required.***
>
> ***5.2 However, despite these opportunities, the appellant has largely relied on the initial submissions filed on 16/10/2023 (which primarily re-iterated the 04/08/2017 submissions). While some documents were submitted, the various "Seek Information" notices from the NFAC, starting from 27/05/2022 and continuing until 04/10/2023, requested specific documents such as FORM 35, DN, AO, GOA, SOF, and email ID of the assessee. Although the initial 16/10/2023 submission enclosed Form 35, Grounds of Appeal, Statement of Facts, and the Assessment Order, subsequent responses merely re-iterated the same submissions, and no fresh***

or more specific evidence was submitted to comprehensively address the points raised in the notices or to further substantiate the complex grounds of appeal beyond the initial filing. The appellant's repeated statement "If any further information or documents is required by Your Honour the appellant may please be intimated so that necessary compliance could be made" indicates a passive approach, rather than actively providing all necessary material proactively.

5.3 It can be seen that despite numerous opportunities and sufficient time given to the appellant to file submissions and relevant evidences in support of their grounds of appeal, the appeal has not been effectively pursued to bring on record all material facts and evidence necessary for a thorough adjudication on merits. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known dictum, "VIGILANTIBUS ET NONDORMIENTIBUS JURA SUB VENIUNT". Numerous courts have held that the effective pursuance of appeal is the responsibility of the Appellant. In the case of CIT vs B.N. Battacharya (118 ITR 461), the Hon'ble Supreme Court held that "appeal does not mean, mere filing of the memo of the appeal but effectively pursuing the same". The Hon'ble ITAT, Delhi in the case of Whirlpool India Ltd vs DCIT (ITA No. 2006/Del/2011, dated 19.12.2011), has dismissed appeals for non-attending hearing, inferring that the appellant is not effectively pursuing the appeal.

5.4 In light of the above, even though initial submissions were filed, the appellant has not diligently brought on record further specific

details or evidences that might have been required to fully substantiate the grounds of appeal or to clarify the points raised in various notices. The continued re-iteration of previous submissions without fresh, comprehensive documentation to effectively pursue the appeal or sufficiently respond to implied needs for more information indicates a lack of vigilant pursuit. Consequently, the grounds of appeal remain unsubstantiated for want of effective prosecution and specific evidence.

6. Accordingly, I proceed to decide the appeal based on the material available on record, which, as discussed, is insufficient for a conclusive adjudication in favour of the appellant. I have carefully perused the Assessment Order, Form No.35, grounds of appeal, statement of facts and the material available on record. My observations in respect of the grounds raised by the appellant are detailed as under:-

Dismissal of Grounds: In the absence of effective pursuance of the appeal and the failure to provide comprehensive and specific evidence to substantiate the grounds of appeal as per the requirements of law, all grounds raised by the appellant are deemed unsubstantiated.

7. In the result, the appeal is dismissed.

2.3 That 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. 1

That on the facts and in the circumstances of the case, the Ld. CIT(A) (NFAC, Delhi) erred in confirming the addition of Rs. 78,94,000/- on account of alleged unexplained amount, made by the Assessing Officer vide ex-parte order U/s 144 r.w.s. 147 of the Act in summary and mechanical manner.

GROUND NO. 2

That on the facts and circumstances of the case and in law, the Ld. CIT(A) (NFAC, Delhi) erred in passing the appeal order without considering the submissions made by the appellant during the appellate proceedings before him and also the submissions made before the Ld. Predecessor CIT(A), Ujjain during the physical hearings.

GROUND NO. 3

That the Ld. CIT(A) erred in confirming the invocation of provisions of Sec 147 r.w.s. 148 of the Act and also upholding the Assessment completed by the Assessing Officer U/s 144 r.w.s. 147 of the Act without service of notice U/s 148 of the Act.

GROUND NO. 4

The appellant craves leave to add, amend, alter or vary all or any of the grounds of appeal on or before the date of hearing.

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 06.10.2026 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 principles 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 90 in support of form no. 36.

3.3 The Ld. AR brought to our attention PB page 70 which was copy reasons for the purpose of reopening of assessment u/s 147/148 & read out the same.

The same is reproduced below:-

Reason for initiating proceedings under section 148 of the I. Tact

Name and Address of the assessee	Trimurti Associates, 74/1, Chimanganj Mandi, 1, Agar Road, Ujjain (M.P.)-456001
AY	2009-10

In the above case, through (ITD) AIR Non-PAN information regarding cash deposit of Rs.7894000/- in his saving bank account in the F.Y 2008-09 relevant to the A.Y 2009-10 was found. For verification of the said financial transaction notice u/s 133(6) of the 1.T Act dated 26.02.2016 was issued to the assessee but the said notice remained non-complied. Thus the source and nature of cash deposits remained unexplained.

In light of above facts, I am satisfied and have reason to believe that income amounting to Rs. 7894000/- has escaped assessment as per the meaning provided to these words under section 147 of the Income Tax Act.

3.4 The Ld. AR then brought to our notice PB page 43 & pointed out that in reasons (supra) there is a mention of **"saving bank account"** whereas in Bank of India statement from 27.08.2008 to 22.03.2016 there is a reference to **"current account"** therefore reasons are wrongly recorded, vitiating the entire proceedings.

3.5 Per contra Ld. DR appearing for & on behalf of the revenue submitted that while recording reasons u/s 148 only, Prima Facie some material alone is required to be seen basis which the department could reopen the case. **The sufficiency or correctness of the material is not a thing to be considered at this stage.** The Burden of proof is on

assessee which assessee herein has failed to do so at prior stages of proceedings both before the two lower authorities. The facts & the circumstances **are gross** which are all recorded in the **"Impugned assessment order"** and **"Impugned order".** In the rejoinder argument Ld. AR failed to offer any explanation including on the compilation of case law filed/tendered by Ld. Sr. DR in the form of precedent laws like judgement of Hon'ble Supreme Court of India reported in Raymond woollen mills Ltd. v/s ITO (1999)236 ITR 34(SC) which was relied upon by Ld. Sr. DR in course of hearing held. We record that apart from above nothing was contended by the Ld. AR on merits of the case & nothing was explained about the reasons for non-compliances before the Ld. AO & Ld. CIT (A). The Hearing was then over & 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 Ld. AR has seriously attempted **to make out a fresh case at second appellate stage by raising contention as recorded aforesaid. This tribunal is not a first fact finding authority but is a final fact finding authority. Nothing was on record by the Assessee on merits** before the **"Impugned assessment order"** was passed & so also before the **"Impugned order"** despite opportunities. A altogether a new case was sought to be made before us for the first time basis PB filed. Nothing was before two lower authorities i.e. Ld. AO & Ld. CIT(A). Facts & circumstances show that the assessee was non-compliant before Ld. AO & Ld. CIT(A).

4.4 We observe and note that the assessee was in the slumber mode throughout and the records speak for it in the

form of **"Impugned assessment order"** and **"Impugned order".** We have to adjudge and adjudicate the case basis reasons given in the orders of the lower authorities while the assessee has right to assail the same but in the instant case not a single meritorious ground were urged before us basis merits and argued basis merits, which we could even adjudicate and adjudge on merits and Demerits of the case, as there is no material on the record in form of a meritorious Impugned order. Our mandate is confined to reasons given in the **"Impugned order"** and premises of the case is laid down basis the **"Impugned assessment order"** and the **"Impugned order"**. However, we further observe and note basis Para 5.1 of the "Impugned Order" that the earlier submission were made before the Ld CIT(A) before the Faceless Regime that the same were filed before the present CIT(A) on 16.10.2023 i.e. original submissions before the Ld CIT(A) dt 04.08.2017 [PB 2 to 68] & the Assessee requested that the faceless CIT(A) that these submissions be considered by the faceless CIT(A) but same were not considered by the Faceless CIT(A). The Ld CIT(A) Faceless however still wanted

some thing more than what was already on record and filed from 27.05.2022 till 04.10.2023 correspondingly the Assessee repeated & reiterated that their primary submissions dated 04.08.2017 before Non-Faceless CIT(A) be considered but the Faceless CIT(A) wanted the Assessee to comprehensively address the points raised in the Notice(s) or to further substantiate the complex grounds of appeal beyond **initial filling**. **It is this aspect which is treated by Ld CIT(A) as Non-Compliance.** In this regard we observe that once the stand of the Assessee was basis **initial filling dt 04.08.2017 the Ld CIT(A) (Faceless) ought to have adjudged & adjudicated the initial filling dt 04.08.2017** which he did not do so despite statutory mandate of Section 250 by virtue of which Ld CIT(A) is to Adjudge & Adjudicate the case basis merit. **[Section 250(6)]** but in Para 6 of the impugned Order he did not do that. Hence, we hold that "Impugned Order" is not on merits & is contrary to Section 250(6). Therefore, we set aside the impugned order as & by way of remand back to the file of Ld CIT(A) on the denovo basis. We simultaneously direct the assessee to cooperate

with CIT(A) & give all material information in support of first appeal to him.

4.6 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 who shall now pass a speaking & a well-reasoned order on merits.

5 **Order**

5.1 In the Result, **"Impugned Order"** is Set Aside back to the file of the Ld. CIT(A) as & by way of Remand on Denovo basis with directions as aforesaid.

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

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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