

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.38/Nag./2025**  
(Assessment Year : 2016-17)

Income Tax Officer  
Ward-4(1), Nagpur

..... Appellant

v/s

Sanjay Meemraj Agrawal  
Shop no.UG-1, Jagat Chambers  
Central Avenue Road, Near Ambedkar Suqre  
Nagpur 440 006 PAN – AANPA9471C

..... Respondent

Assessee by : Shri Shubham Jain  
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 03/04/2025

Date of Order – 04/04/2025

**ORDER**

**PER V. DURGA RAO, J.M.**

This appeal by the Revenue is directed against the impugned order dated 13/11/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2016-17.

2. Following grounds have been raised by the Revenue:-

*"1. The Ld. CIT(A) had erred on the facts and in the circumstances of the case and in law, in setting aside the assessment order as per the provisions of section 251(1)(a) of the Income Tax Act, 1961, in the factual matrix of the AO having submitted remand report during the course of appellate proceedings, thus making provisions of section 250(4) and section 251(1)(a) no longer applicable.*

2. Any other ground that may be raised during the course of appellate proceedings."

3. In this appeal, the case of the Revenue is that the learned CIT(A) has wrongly remitted the matter back to the file of the Assessing Officer. While going through the assessment order, we find that the Assessing Officer has passed ex-parte order under section 144 of the Income Tax Act, 1961 ("the Act"). When the matter reached before the first appellate authority, the learned CIT(A) while restoring the matter to the file of the Assessing Officer held as under:-

"6. Decision:

6.1 I have carefully considered the ex-parte assessment order, statement of facts, grounds of appeal and submissions furnished during the appellate proceedings.

6.2 It is an undisputed fact that the assessment order was passed ex-parte u/s 144 of the Act in the present case and the appellant didn't furnish any written submission or evidences during the assessment proceedings before the AO. Now, the appellant has made a written submission with documentary evidences during the appellate proceedings, which were not furnished before the AO and the AO had passed the ex-parte order without having any opportunity to consider these submissions / evidences in the present case. Since the written submission and documentary evidences has direct bearing on the issue in the present case,

6.3 In order to tackle such cases so that proper justice is done to the assessee, Finance Act, 2024 inserted in new provision in the Income Tax Act, 1961. Section 251 of the I.T. act was amended as under:

In section 251 of the Income-tax Act, in sub-section (1), in clause (a), the following proviso shall be inserted with effect from the 1st day of October, 2024, namely:-

"Provided that where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment;" [Emphasis supplied]

6.4 I hereby set-aside the aforesaid assessment order by invoking the powers under the proviso below to clause (a) of sub-section (1) of section 251 of the Income Tax Act, 1961. Therefore, the Assessing Officer is hereby directed to make fresh assessment order after providing sufficient opportunities of being heard and considering all the material facts, written submission and documentary evidences submitted by the appellant during the

*appellate proceedings as well as set-aside assessment proceedings. Nonetheless to say that the appellant shall furnish complete written submission and documentary evidences in support of its contention before the AO during set-aside assessment proceedings.*

*7. Accordingly, the appeal is hereby set aside for fresh re-assessment order De-Novo."*

4. Keeping in view the overall facts and circumstances of the case and more specifically in view of the findings of the learned CIT(A) in Para-6.3 above, we find no reason to interfere with the order passed by the learned CIT(A). Consequently, upholding the impugned order passed by the learned CIT(A), the grounds of appeal raised by the Revenue are treated as dismissed.

5. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open Court on 04/04/2025

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**NAGPUR, DATED: 04/04/2025**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur