

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA Nos. 755 & 754/Del/2024
निर्धारणवर्ष/Assessment Year: 2011-12**

BHAGWAN, VPO, Shikohpur, Gurgaon, Haryana.	<u>बनाम</u> Vs.	ITO, Ward-4(2), HSI IDC Building, Vanijya Kunj, Udyog Vihar, Gurgaon, Haryana.
PAN No.BUQPS3004P		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Assessee by	Shri K Sampath, Adv. & Shri V. Rajakumar, Adv.
Revenue by	Shri Ajay Kumar Arora, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	27.05.2025
उद्घोषणाकीतारीख/ Pronouncement on	29.05.2025

आदेश /O R D E R

PER C.N. PRASAD, J.M.

These two appeals are filed by the assessee against the order of the Ld. CIT(Appeals)-NFAC dated 27.12.2023 for the AY 2011-12 arising out of the assessment order passed u/s 144 and penalty order passed u/s 271(1)(c) of the Act.

2. Ld. Counsel for the assessee, at the outset, submits that the assessee did not receive any notice from the Assessing Officer and therefore could not file the requisite documents. Ld. Counsel for the assessee submitted that this fact was also brought to the notice of the Ld. CIT(Appeals) who also taken note of this fact in para 6.6 of the appellate order.

3. Ld. Counsel for the assessee further submitted that even though the assessee has filed some written submissions before the Ld. CIT(Appeals), the Ld. CIT(Appeals) stated that in spite of multiple opportunities, the assessee failed to respond. Ld. Counsel further referring to para 6.9 of the appellate order submitted that the Ld. CIT(Appeals) simply sustained the addition made by the Assessing Officer in respect of cash deposits observing that the assessee has not filed return of income and has not filed any documentary evidences to prove the genuineness of cash deposits. Ld. Counsel for the assessee submitted that when the assessee is contending that no notice has been served upon the assessee, how could the assessee file return in response to notice u/s 147 which was never served on the assessee? Therefore, the Ld. Counsel for

the assessee submitted that in the interest of justice the matter may be restored to the file of the AO for *denovo* assessment.

4. The Ld. DR has no serious objection.

5. Considering the rival submissions and perusing the orders of the lower authorities it is observed that the assessment was completed u/s 144 as best judgment assessment and the Ld. CIT(A) even though recorded the contention of the assessee that the notices were never served on the assessee by the AO to respond to the notices dismissed the appeal of the assessee observing that return was not filed. He agree with the contentions of the Ld. Counsel that the notices were never served on the assessee the assessee could not have filed the return of income and respond to the notices which were issued in the course of assessment proceedings. In the circumstances and in the interest of justice, we set aside the order of the Ld. CIT(A) and restore the issues in appeal to the file of the AO for *denovo* assessment after providing adequate opportunity of being heard. Since the quantum appeal is set aside to the file of the AO the penalty order will not stand and the same is also set aside and restore to the file of the AO.

6. In the result, both the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 29/05/2025

**Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 29.05.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**