

**THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER &  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.6062/Del/2024  
(Assessment Year: 2012-13)**

Jai Shree Balaji Builders Private Limited Gali No. 5, 05/138A Shakti vihar, New Delhi - 110044	Vs.	Income Tax Officer, Ward 13(1) C.R. Building Delhi - 110002
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AACCCJ5201F		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Sh. Om Prakash, Sr. DR

Date of Hearing	30.07.2025
Date of Pronouncement	30.07.2025

ORDER

**PER MADHUMITA ROY, JM:**

The instant appeal filed by the assessee is directed against the order dated 24.10.2024 passed by the Ld. National Faceless Appeal Centre (NFAC), Delhi, arising out of the Assessment Order dated 07.11.2019 passed by the ITO, Ward 13(2), New Delhi, under Section 147/144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for Assessment Year 2012-13.

2. Brief facts leading to the case is this that the proceeding under Section 147/148 was initiated by the recording reasons and upon taking necessary approval from the competent authority notice under Section 148 of the Act dated 31.03.2019 was issued and served upon the assessee. No return in response to the said notice was filed by the assessee. It is found that the assessee had contractual receipts of Rs.2,21,24,708/- under Section 94H as income from commission or brokerage and under Section 94C as contractors etc. in support of notice being sent to the assessee no compliance was made and as per the individual transactions statement (ITS) in 26AS assessee received a sum of Rs.2,21,24,708/- as above has been treated as undisclosed/unexplained income of the assessee and added in the hands of the assessee.

3. Such order was passed ex-parte under Section 144 of the Act. The assessee challenged the reopening of the assessment on account of reasons that the company was struck off from ROC w.e.f 06.07.2017 and therefore, notice under Section 148 of the Act issued upon a non-existent company is not valid.

4. None appeared on behalf of the assessee at the time of call. It appears from the record that previously on very many occasions the assessee did not appear. The Ld. First Appellate Authority came to a finding that various facts mentioned by the assessee were not properly appreciated by the Ld. AO neither considered that the entire credits cannot be assessed as income of the appellant etc. Having regard to the amendment brought by the Finance Act, 2024 to Section 251 wherein power to set aside the issue to the Ld. AO has been given to the Ld.

CIT(A) for assessment completed under Section 144 of the Act w.e.f 01.10.2024, the Ld. CIT(A) has been pleased to set aside the issue to the file of the Ld. AO for re-adjudication of the matter with the following observations:

“9.4 As regards the other grounds related to the addition on merits of the case, I have considered the assessment order and find that the assessment has been completed u/s 144. It is also seen that the various facts mentioned by the appellant have not been properly appreciated by the AO before making the above additions. The AO has also not considered that the entire credits cannot be assessed as income of the appellant, may be the same was done on account of noncompliance of the appellant during the assessment proceedings. Various judicial pronouncements have consistently held that the issue of giving opportunity and hearing to the appellant, is vital for the assessment of income arrived at by the Assessing Officer and the same has to be also used by the appellant by providing proper submissions and not only as a dilatory tactic so that the issue of not giving the proper opportunity should not be raised at a subsequent level.

9.5 It is worthwhile to point out that by Finance Act 2024, amendment has been made to section 251 wherein power of set-aside has been given to CIT(A) for the assessments completed u/s.144 of the Act, with effect from 01-10-2024. The relevant part of the amendment to section 251 is as under:

“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;”.

9.6. Considering the facts of the case and the assessment order completed u/s.144 being under-challenge in the present appeal and the observations made above with respect to the grounds of appeal challenging the merits of the addition, to meet the ends of justice, I find it fit to set-aside the assessment to the Assessing Officer and refer the case back to the Assessing Officer to complete the fresh assessment after giving proper opportunity and hearing to the appellant. The appellant is also directed to ensure that proper compliance and furnishing of the required documents is made during the set-aside assessment proceedings before the Assessing Officer. However, no decision is being given on the merits of the case to cause any prejudice on the same. Subject to the above decision to set-aside the assessment as discussed above, the other grounds of appeal are disposed off.”

5. Having regard to the facts of the matter as narrated as above and considering the amendments brought by the Finance Act, 2024 allowing the CIT(A) to set aside the issue for assessment completed under Section 144 of the Act, the order impugned is found to be just and proper so as not to warrant inference. Hence, the same is upheld. The assessee's appeal is, therefore, frivolous and hence, dismissed.

6. The appeal preferred by the assessee is dismissed.

Order pronounced in the open court on 30.07.2025

Sd/-  
(Avdhesh Kumar Mishra)  
ACCOUNTANT MEMBER

Sd/-  
(Madhumita Roy)  
JUDICIAL MEMBER

Dated 30.07.2025  
Rohit, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI