

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE – PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA Nos. 1094 & 1095/Bang/2025
Assessment Year : 2012-13

Shri Syed Irfan Gulab Jan Pasha, 6-14, Opp. Bharathi High School, Behind KEB, Subhash Nagar, Anekal, Bangalore – 562 016. PAN: APFPP0584A	Vs.	The Income Tax Officer, Ward – 1(2)(3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri H. Guruswamy, ITP
Revenue by	:	Shri Thamba Mahendra, JCIT-DR

Date of Hearing	:	24-07-2025
Date of Pronouncement	:	22-10-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

These are the appeals filed by the assessee challenging the separate orders of NFAC, Delhi both dated 20/03/2025 in respect of the A.Y. 2012-13 and raised the following grounds:

ITA No. 1094/Bang/2025 –Quantum appeal:

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal (see note below)</i>
1.	<i>The impugned Order u/s. 250 of the Act dated: 20-03-2025 passed by the Ld.CIT(A), NFAC, Delhi is opposed to law, facts and circumstances of the case.</i>	-
2.	<i>The Ld. CIT(A) NFAC has erred in confirming the Addition made by the AO u/s 69A of the Act amounting to Rs.19,45,915/- without appreciating the facts and circumstances of the Case.</i>	Rs.8,61,195/-
3.	<i>The Ld. CIT(A) NFAC has erred in holding that the Appellant has not produced any documentary evidence in support of the source of Cash deposit without appreciating the facts and circumstances of the Case.</i>	Rs.8,61,195/-
4.	<i>The Ld. CIT(A) NFAC has erred in not considering the explanation offered by the Assessee in support of the Cash deposit of Rs.19,45,915/-</i>	Rs.8,61,195/-
5.	<i>Without prejudice to the ground no. 2 to 4 it is urged that the Ld.CIT(A) has not appreciated the fact that the Assessment completed was barred by limitation of time.</i>	Rs.8,61,195/-
6.	<i>The Ld. CIT(A) has erred in holding that the AO has issued a Notice u/s 148 of the Act dated 31-03-2019 without appreciating the fact that the said date 31-03-2019 happened to be a closed holiday being Sunday and No Assessment Order was passed on the alleged Notice dated 31-03-2019 which was not served upon the Assessee.</i>	Rs.8,61,195/-

7.	<i>Without prejudice to Ground No. 2 to 5, it is urged that the Ld. CIT(A) NFAC has erred in holding that the date mentioned as 30-03-2019 in Notice u/s 148 was as typographical error as against 31-03-2019 which was uploaded on the ITBA portal on 10-10-2019.</i>	,
8.	<i>The Ld. CIT(A) has erred in dismissing the Ground urged relating to the invalidity of Notice u/s 148 of the Act, which was barred by limitation of time since it was uploaded 10-10-2019.</i>	
9.	<i>The Ld. CIT(A) has erred in dismissing the appeal filed against the impugned Assessment order which was said to have been passed on the Notice dated 30-03-2019 issued u/s 148 of the Act, which was an in correct view.</i>	
10.	<i>The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.</i>	-
<i>Total Tax Effect</i>		<i>Rs. 8,61,195/-</i>

ITA No. 1095/Bang/2025 – Penalty appeal:

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal (see note below)</i>
1.	<i>The impugned Order u/s. 250 of the Act dated: 20-03-2025 passed by the Ld.CIT(A), NFAC, Delhi is opposed to law, facts and circumstances of the case.</i>	-

2.	<p><i>The Ld.CIT(A) NFAC has erred in confirming the Penalty Order dated 01-08-2021 passed by the AO of the Act imposing Penalty of Rs. 4,48,539 /- without appreciating the facts and circumstances of the Case that the Penalty so levied was based on the time barred Assessment Order.</i></p>	Rs. 4,48,539 /-
3.	<p><i>The Ld. CIT(A) NFAC has erred in confirming the Penalty of Rs. 4,48,539 /- imposed by the AO merely based on the Assessment without appreciating the fact that the Assessment order by itself was not justifiable Ground.</i></p>	Rs. 4,48,539 /-
4.	<p><i>The Ld.CIT(A) NFAC has erred in confirming the penalty imposed by the AO without appreciating the fact that no assessment order was passed on the basis of the notice said to have been issued u/s 148 of the Act dated 30-03-2019 as a result of which the appellate order dated 20-03-2025 is not justifiable in Law.</i></p>	Rs. 4,48,539 /-
5.	<p><i>The Ld. CIT(A) has erred in confirming the penalty u/s 271(1)(c) of the Act on the basis of the Assessment order which was ab-initio vide since no assessment was made by the AO upon a Notice u/s 148 of the Act said to have been issued on 30-03-2019 and also without appreciating the fact that the date 31-03-2019 happened to be a closed holiday being Sunday and No Assessment Order was passed on the alleged Notice dated 31-03-2019 which was not served upon the Assessee.</i></p>	Rs. 4,48,539 /-
6.	<p><i>The Ld. CIT(A) has erred in confirming the penalty imposed by the AO on the Ground of non-submission of explanation in support of amount credited into the bank without appreciating the fact that the AO has not caused the service of the notice u/s 148 of the Act dated 31-03-2019 and further no Assessment order was passed on the basis of the Notice u/s 148 of the Act said to have been issued on 30-03-2019.</i></p>	

7.	<i>The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.</i>	-
<i>Total Tax Effect</i>		<i>Rs. 4,48,539 /-</i>

2. Both these appeals are heard together and are being disposed of by way of this common order for the sake of convenience.

3. The brief facts of the case are that the assessee is an individual and not filed his return of income. The case of the assessee was reopened u/s. 147 of the Act based on the information that the assessee had deposited huge amounts of cash in the bank account. Previously, notice u/s. 148 was issued on 30/03/2019 after getting the prior approval from the Ld.PCIT. The assessee had not responded to the said notice and thereafter a notice u/s. 142(1) was issued on 11/10/2019. The assessee had not responded to this notice also. Thereafter a show cause notice was issued to the assessee proposed to treat the cash deposits as unexplained money u/s. 69A of the Act. Even for this notice also, the assessee had not responded and therefore the AO had treated the cash deposits made into the bank accounts as unexplained money u/s. 69A of the Act. As against the said order, the assessee filed an appeal before the Ld.CIT(A).

4. The assessee made an allegation that the AO had not issued any such notice u/s. 148 on 30/03/2019 and therefore the order passed u/s. 144 is ab-initio-void. The assessee also contended that another notice u/s. 148 dated 31/03/2019 was issued on 02/04/2019 and uploaded on 10/10/2019 and the assessment was not based on the said notice and therefore the initiation of proceedings is barred by limitation. The assessee also contended that the cash deposits are recycled deposits out of the earlier withdrawals and the LIC premiums received from the clients. Insofar as the deposit in HDFC Bank, the assessee submitted that it is a joint account and he has not remitted any money into the said account. The Ld.CIT(A) not

accepted the grounds raised by the assessee and dismissed the same for not uploading the supporting documents in connection with the arguments made. As against the said order, the present appeal has been filed insofar as the quantum appeal is concerned.

5. In the appeal in ITA No. 1095/Bang/2025, the AO had imposed penalty u/s. 271(1)(c) of the Act on the ground that the assessee had concealed the particulars of income. The said order was also challenged before the Ld.CIT(A). The Ld.CIT(A) confirmed the penalty. As against the said order, the present appeal has been filed challenging the levy of penalty u/s. 271(1)(c) of the Act.

6. At the time of hearing, the Ld.AR argued that the notice u/s. 148 dated 30/03/2019 was not served on the assessee and therefore the consequential assessment order made u/s. 144 is ab-initio-void. The Ld.AR draw our attention to the another notice issued u/s. 148 on 31/03/2019 itself. But the said notice was issued on 02/04/2019 and uploaded on 10/10/2019. On the said facts, the Ld.AR submitted that the entire assessment is bad in law. The Ld.AR submitted that the Ld.CIT(A) had not properly appreciated the fact and prayed to set aside the assessment order as well as the consequential penalty order.

7. The Ld.DR relied on the orders of the lower authorities and prayed to dismiss the appeals.

8. We have heard the arguments of both sides and perused the materials available on record.

9. It is the main contention of the assessee that notice dated 30/03/2019 u/s. 148 has not been served on the assessee and therefore the assessment made u/s. 147 r.w.s. 144 of the Act is bad in law. The documents relied on by the assessee also not clear whether the notice has

been served on the assessee or not. In the assessment order as well as the Ld.CIT(A) order, these facts were also not clear. Even in the assessment order, it was mentioned that notice u/s. 148 was issued on 30/03/2019 whereas in the Ld.CIT(A) order, he has mentioned that another notice u/s. 148 was issued on 31/03/2019. The Ld.CIT(A) further stated that the said notice was issued and served on 02/04/2019 and uploaded on 10/10/2019. The Ld.CIT(A) also mentioned about the DIN No. given to the said notice also. From the said facts, we cannot ascertain the correct facts of the case. In the assessment order, the AO had stated that notice has been issued u/s. 148 on 30/03/2019 whereas in the appeal order, the Ld.CIT(A) had mentioned that another notice dated 31/03/2019 was issued and served on 02/04/2019 and uploaded on 10/10/2019 whereas the 147 order was made based on the notice dated 30/03/2019. From the said facts, it is not clear whether the notice u/s. 148 has been served on the assessee or not. Thereafter only the issue can be decided whether the assessment order is in order or not. Further, the assessment order was made u/s. 144 of the Act, without hearing the assessee.

10. We, therefore set aside the order of the AO as well as the Ld.CIT(A) and remitted this issue to the file of the AO for ascertaining the said facts of the issuance of notice u/s. 148 and the date on which it was issued and served on the assessee and thereafter decide the issue on merits. We also made it clear that if there is any dispute in the issuance of notice u/s. 148, the assessee is entitled for the relief claimed by him. Since the assessment order made u/s. 144 was set aside and the issue has been remitted to the file of the AO, the penalty appeal also remitted to the file of the AO for denovo consideration, based on the decision taken by the AO in the assessment proceedings.

11. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 22nd October, 2025.

Sd/-
(PRASHANT MAHARISHI)
Vice – President

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 22nd October, 2025.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore