

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'B': NEW DELHI**

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER

AND

SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No. 65 to 66/Del/2025
[Assessment Year: 2018-19]

Neeraj Sharma, L/h OM Parkash Sharma C-35, Hari Nagar, Delhi- 110064 PAN No.AATPS3704J	Vs.	ITO Ward – 50 (1) Delhi
Appellant		Respondent

ITA No. 545/Del/2025
[Assessment Year: 2018-19]

ITO Ward – 50 (1) Delhi	Vs.	Om Prakash C-35, Hari Nagar, West Delhi-110064 PAN No.AATPS3704J
Appellant		Respondent

Assessee by	Sh. K. Sampath, Advocate Sh. V. Rajkumar, Advocate
Revenue by	Sh. Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing	26.11.2025
Date of Pronouncement	31.12.2025

ORDER

PER C.N. PRASAD, JM,

These appeals are filed by the assessee and revenue against different orders of the Ld. Commissioner of Income Tax (Appeals)/ NFAC, Delhi for the A.Y. 2018-19.

2. Both the assessee and the revenue filed appeals in ITA No.65 and 545/Del/2025 respectively against the order of CIT(A)/NFAC, Delhi dated 06.11.2024 arising out of the assessment made u/s. 143(3) of the Act and the appeal in ITA No. 66/Del/2025 is filed by the assessee against the order of the CIT(A)/NFAC, Delhi vide order dated 08.11.2024 arising out the penalty order passed u/s.270A of the Act.

3. The Ld. Counsel for the assessee at the outset submitted that the addition made by the AO has been sustained by the Ld. CIT(A) without admitting the additional evidences furnished by the assessee for the reason that the Assessee could not respond to the AO in the course of assessment proceedings. The Ld. Counsel for the assessee submitted that the evidences furnished by the assessee in the course of appeal proceedings have been brushed aside by stating that the correctness of the submission cannot be ascertained in the absence of bank account statement giving the details of advances received by the assessee against the supply of machinery. The Ld. Counsel for the assessee submitted that the advances received by the assessee against supply of machinery were treated as unexplained income by AO and CIT(A) without admitting the evidences furnished before him

and, therefore, prayed in the interest of justice the matter may be restored to the file of the AO for examining these evidences and complete the assessment afresh. The Ld. Counsel for the assessee also made following synopsis of arguments :-

“SYNOPSIS OF FACTS AND ARGUMENTS

MAY IT PLEASE YOUR HONOURS:

These appeals by the Legal Heir of the Assessee Late Sh. Om Parkash Sharma and the Assessing Officer are directed against the ex parte appellate order dated 06.11.2024 passed by the National Faceless Appeal Centre (NFAC) u/s. 250 of the Income Tax Act, 1961 (the Act) whereby it provided partial relief to the Lote Assessee but confirmed the main additions made by the Assessing Authority in assessment after refusing to admit additional evidence sought to be filed by the Appellant u/R 46A of the Income Tax Rules, 1962.

FACTS:

2. The brief facts of the case are that the Late Assessee Sh. Orm Farkash Sharma was into the business of manufacture of heavy machinery on a customised basis, Since the machineries were custom made the Late Assessee had imperatively to obtain advance for the manufacture and sale of those machines. The AO construed those advances received by Late Sh. Sharma as unexplained credits and set the difference between the opening balance and closing balance of sundry creditors of Rs. 1,17,48,589/- to tax u/s. 115BBE of the Act.

3. The Late Assessee's L/h Sh. Neeraj Sharma had explained to the NFAC that the factory premises of the business were sealed during the Pollution Control Drive and that his father Late Sh. Om Parkash Sharma had also died on 10.05.2021 whereafter it become extremely difficult to access the records and collate the requisite details for assessment purposes. In such circumstances

the L/h of the late Assessee obtained an order from the Delhi High Court for temporary de-sealing on 29.05.2018 and consequently was in a position to access the records and thereafter attempted to submit details and evidence to the Appellate Authority (NFAC) for which he moved an application U/R 46A of the income Tax Rules.

4. The NFAC peremptorily rejected the prayer of the Late Assessee for the admission and consideration of the additional evidence with the observations contained in para 8 page 12 of the impugned Appellate order.

5. After so doing, the NFAC examined whatever material was available on the record and refused relief on most counts. Yet, however, NFAC held that the addition as made in assessment could not be subjected to the higher tax as conceived u/s. 11588E of the Act for the addition was not made specifically under any of the Sections such as Ss. 68, 69, 69A, 69B, 69C or 69D of the Act. The Department is in appeal against this relief which is ITA No. 545/Del/2025 forming part of this batch.

6. Soon after the confirmation of the assessment order by the NFAC the Late Assessee L/h was penalised u/s. 270A of the Act which levy was confirmed by the NFAC too vide order u/s. 250 of the Act dated 08.11.2024. That is Appeal No. 66/D/2025 by the Assessee..

PRAYER:

7. It is most respectfully prayed that since reasonable, adequate or proper opportunity was not provided to the L/h of the Late Assessee to file the requisite evidence by the L/h of the Assessee and which evidence could not initially be filed due to the death of the late Assessee himself and the sealing of the factory and business premises by the Delhi Government, the refusal of the NFAC to entertain such evidence and consider the same is arbitrary, whimsical, erroneous and untenable. In the circumstances it is most respectfully prayed that the order of the NFAC and also the assessment order framed ex parte be kindly revoked and the issue be

placed before the AO for a reappraisal of the facts of the case for the assessment of correct income. Accordingly, the Departmental appeal also may please be considered. Further, as a consequence of ITA No. 63/D/2025 being restored to the AO ITA No. 66/D/2025 which is a penalty appeal can also be reverted for a redo to the AO.

Placed for the most favourable consideration.”

4. On the other hand the Ld. DR stated that the matter may be restored to the file of the Ld. CIT(A) for re-adjudication of the issues after admitting the evidences.

5. Heard rival submissions and perused the orders of the authorities below. On perusal of the order of the Ld. CIT(A) we observe that in para 9.2.1 the assessee though furnished various details / evidences to prove the contentions of the assessee that advances received were against sale of machinery the Ld. CIT(A) appears to have ignored the evidences and came to the conclusion that since certain documents like bank statements were not furnished by the assessee, the contentions of the assessee were not rectifiable and rejected. We observe that the assessee is no more and the evidences furnished before the Ld. CIT(A) have to be thoroughly examined by the AO and assessment has to be made afresh. Therefore, in the interest of justice we restore the issues in appeal to the file of the AO and direct the AO to examine the contentions and evidences produced by the assessee and complete the assessment afresh in accordance

with law after providing adequate opportunity of being heard to the assessee.

6. Since we have restored the appeal of the assessee to the file of the AO for fresh examination of additional evidences and contentions of the assessee, the appeal arising out of the penalty order u/s.270A and the issue in appeal of the revenue are also restored to the file of the AO for fresh adjudication.

7. In the result, the appeals of the assessee and the revenue are allowed for statistical purpose.

Order pronounced in the open court on 31.12.2025.

SD/-
[M. BALAGANESH]
ACCOUNTANT MEMBER

Dated: 31.12.2025

M.B.A., A.C. *

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

SD/-
[C.N. PRASAD]
JUDICIAL MEMBER

Asst. Registrar,
ITAT, New Delhi