

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE MS. ASTHA CHANDRA, JUDICIAL MEMBER
AND
SHREE DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.3120/PUN/2025
निर्धारण वर्ष / Assessment Year : 2018-19

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| Income Tax Officer, Ward – 3(3), Pune | Vs. | Ramesh Magaramji Muleva, Flat No. 1, S.N. 81/31, Charbhujia Niwas, Kothrud, Pune-411029 PAN : AJOPC5882H |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

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|-------------------------|----------------------|
| Assessee by : | Shri Manish Somani |
| Department by : | Smt. Shraddha Nichal |
| Date of hearing : | 05-02-2026 |
| Date of Pronouncement : | 09-02-2026 |

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the Revenue is directed against the order dated 16.10.2025 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi ["CIT(A)/NFAC"] pertaining to Assessment Year ("AY") 2018-19.

2. Briefly stated the facts of the case are that the assessee is an individual. He has not filed his return of income for A.Y. 2018-19 under consideration. The case of the assessee was reopened by the Ld. Assessing Officer ("AO") u/s 147 of the Income Tax Act, 1961 (the "Act") by issue of notice u/s 148 by following the relevant applicable provisions and obtaining prior approval of the specified authority. Based on the information received from INSIGHT Portal, it was found that the assessee has sold immovable property for a consideration of Rs.1,14,97,582/- during the relevant AY, the capital gains derived by the assessee from such sale remained undeclared and also made investment towards purchase of immovable property amounting to Rs.1,86,00,000/- the source of which

remained unexplained due to non-filing of return. The assessee filed his return of income on 29.04.2022 in response to notice u/s 148 of the Act. Statutory notice(s) u/s 143(2) and 142(1) of the Act as well as show cause notice were issued and duly served upon the assessee from time to time requesting the assessee to submit details/explanation in respect of the above transactions. However, the assessee failed to comply with any of these notices issued by the Ld. AO barring one part reply filed on 27.01.2023 in response to notice u/s 142(1) dated 18.01.2023, the compliance of which was sought by 26.01.2023. As the assessee failed to furnish the requisite details/explanation/documentary evidence in respect of sale and purchase of immovable property, the Ld. AO proceeded to complete the assessment determining the total income of the assessee at Rs.3,05,93,762/- by making an addition of - (i) Rs.1,14,97,582/- under the head 'short term capital gain' and (ii) Rs.1,86,00,000/- as unexplained investment u/s 69 of the Act, vide his order dated 10.03.2023 passed u/s 147 r.w.s. 144B of the Act.

3. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A)/NFAC challenging the above additions made by the Ld. AO. Before the Ld. CIT(A)/NFAC, the assessee filed written submissions along with certain additional evidences in support of his claim which were not filed earlier before the Ld. AO. He therefore remanded the matter back to the file of the Ld. AO for fresh assessment in consideration of all claims made by the assessee in his submissions and the grounds of appeal raised before him, by observing as under:

“5. During the course of appeal proceedings, the appeal was posted for hearing on various dates. In response to the notices, the appellant made detailed written submissions along with documentary evidences. The appellant submitted that he was a partner in M/s Anand Developers (PAN: AAYFA8398R) which is engaged in real estate business activities and that all the sale, purchase of immovable properties in question were already reported in financial statements of the Firm and the firm filed return of income for the AY 2018-19 on 16-10-2018 duly offering all the sale, purchase of immovable properties. The appellant submitted the documentary evidences such as Sale deed, purchase deed, Financial statements of firm, bank statements of the firm, Loan account etc in support of his claim.

6. I have carefully considered the assessment order, the grounds of appeal and the appellant's statement of facts along with the documents filed. It is noticed from the records that the assessment challenged in appeal is an under section 147 read with section 144B of the Act where the appellant has not responded to the notices issued. However, the written submission along

with evidences is produced for his ground of appeal raised during the appellate proceedings in support of its ground.

6.1 In addition to the above, the appellant filed before this authority certain additional evidence which were not available before the assessing officer at the time of completion of assessment.

6.2 In the interest of upholding the principles of natural justice, and exercising the powers conferred upon the Commissioner of Income Tax (Appeals) under Section 251 of the Act, the case is hereby remanded to the Assessing Officer for a de novo assessment in accordance with the statutory provisions of the Income Tax Act. Consequently, the grounds raised by the appellant are annulled and set aside to the Assessing Officer for fresh consideration of all claims advanced by the appellant in the grounds of appeal and submissions previously filed. The Assessing Officer is directed to provide the appellant with a renewed opportunity to be heard, in accordance with the law. Therefore, all grounds raised by the appellant are deemed addressed.

7. As a result, the appellant's appeal is set aside. The case is set aside to the Assessing Officer for fresh consideration and de novo order with a direction to the appellant to duly comply with the set aside proceedings and submit all the documents and supporting evidence called for in the course of set aside assessment proceedings."

4. Dissatisfied, the Revenue is in appeal before the Tribunal raising the following grounds of appeal:

- “1. On the facts and in law, the Ld. CIT(A) erred in setting aside the assessment order and directing the Assessing Officer to conduct a de novo assessment, despite the fact that the assessment order was NOT passed u/s 144. The CIT(A) had no power under Section 251(1)(a) to set aside or remand the matter after 01.06.2001. The impugned order is therefore bad in law and liable to be quashed.*
- 2. The Ld. CIT(A) erred in not adjudicating the specific grounds raised by the appellant and instead mechanically setting aside the assessment. The order suffers from non-application of mind and violates provisions of Section 250(6) which mandates a speaking order.*
- 3. The Ld. CIT(A) admitted "additional evidence" but did not provide an opportunity to the Assessing Officer to examine the same before drawing conclusions, thereby violating Rule 46A(3). The order is contrary to law and deserves to be annulled.*
- 4. The Ld. CIT(A) assumed powers to restore the matter to the AO despite statutory prohibition. The order is therefore without jurisdiction and void ab initio.*
- 5. The appellant prays that the Hon'ble Tribunal may set aside the impugned CIT(A) order and direct the CIT(A) to adjudicate the appeal on merits, or alternatively, the Hon'ble Tribunal may itself decide the appeal on merits based on material already on record.*
- 6. The appellant craves leave to add, amend, or alter any of the above grounds at the time of hearing.”*

5. The Ld. DR submitted that the Ld. CIT(A) had no power to set aside the assessment order and direct the Ld. AO for fresh assessment as the order of the Ld. AO is not passed u/s 144 of the Act. She submitted that the Ld. CIT(A)/NFAC admitted the additional evidence without providing any opportunity to the Ld. AO to examine the same which is in violation of Rule 46A of the Income tax Rules. Further, the Ld. CIT(A)/NFAC's order also violates the provisions of section 250(6) of the Act as he is silent on merits of the case.

6. The Ld. AR, on the other hand, supported the order of the Ld. CIT(A)/NFAC and submitted that though the order of the Ld. AO is passed u/s 147 r.w.s. 144B of the Act, but in essence it is an ex-parte order passed u/s 144 of the Act since the assessee has not complied with the notice(s) issued by the Ld. AO and also not furnished the complete details/explanation to substantiate its case before him. He submitted that the assessee has a strong case on merits and therefore urged that the matter may be set aside by this Tribunal to the file of the Ld. AO for de-novo adjudication on merits after affording an opportunity of hearing to the assessee.

7. We have heard the Ld. Representative of the parties and perused the material available on record. The facts of the case are not in dispute. Admittedly, there was non-compliance on the part of the assessee to comply with various notices issued by the Ld. AO. The assessee failed to furnish the requisite details/explanation/documentary evidence in respect of sale and purchase of immovable property made during the relevant AY under consideration, which constrained the Ld. AO to complete the assessment u/s 147 r.w.s. 144B of the Act determining the total income of the assessee at Rs.3,05,93,762/- by making the impugned additions. We observe that the Ld. CIT(A)/NFAC has set aside the matter to the file of the Ld. AO for fresh assessment in light of the additional evidence and other submissions filed by the assessee during the appellate proceedings before him which were not furnished before the Ld. AO at the time of completion of assessment, without deciding the issues on merits. Before us, the Ld. AR submitted that the assessee has a strong case on merits and therefore urged that the matter may be set aside to the file of the Ld. AO for *de-novo* adjudication on merits after affording an opportunity of hearing to the

assessee, to which the Ld. DR had no objection. Considering the totality of facts and in the circumstances of the case, we deem it fit, in the interest of justice, to set aside the order of Ld. CIT(A)/NFAC and restore the matter back to the file of the Ld. AO for *de-novo* assessment on merits of the case, as per fact and law after allowing reasonable opportunity of being heard to the assessee. Needless to say, the assessee shall provide the requisite support in terms of submitting the relevant explanation/details/documentary evidence to substantiate his case, as may be required/called upon by the Ld. AO on the appointed date without seeking any adjournment under any pretext, failing which the Ld. AO shall be at liberty to pass appropriate order in accordance with law. We direct and order accordingly.

8. In the result, the appeal of Revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 09th February, 2026.

Sd/-
(Dr. Dipak P. Ripote)
ACCOUNTANT MEMBER

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 09th February, 2026.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

सहायक पंजीकार/ Assistant Registrar
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune