

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "DB" NEW DELHI

BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER  
AND  
SHRISANJAY AWASTHI, ACCOUNTANT MEMBER

Stay Application No.11/DDN/2026  
निर्धारणवर्ष/Assessment Year: 2023-24

POONAM ARORA, Gram Kharmasa, Kashipur, (U.S. Nagar), UTTARAKHAND. PAN No.AJMPA5746J	बनाम Vs.	ASSESSMENT UNIT, IT DEPARTMENT, AO, Circle 2(1)(1), Haldwani, UTTARAKHAND.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

आ.अ.सं./I.T.A No.16/DDN/2026  
निर्धारणवर्ष/Assessment Year:2023-24

POONAM ARORA, Gram Kharmasa, Kashipur, (U.S. Nagar), UTTARAKHAND. PAN No.AJMPA5746J	बनाम Vs.	ASSESSMENT UNIT, IT DEPARTMENT, AO, Circle 2(1)(1), Haldwani, UTTARAKHAND.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Pawan Kumar Nath, AR
Revenue by	Shri Amar Pal Singh, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	09.02.2026
उद्घोषणाकीतारीख/Pronouncement on	11.02.2026

आदेश /O R D E R

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The Stay Application in this case was listed for hearing and it was pointed out by the Ld. AR that the only prayer of the assessee was that the Ld. Addl./JCIT (Appeals) should have decided the case on merits rather than remanding the same back u/s 251(1)(a) of the Act, proviso thereon.

1.1 We also find that the quantum appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereafter referred to as “the Act”), dated 26.11.2025, passed by Ld. CIT(A)-NFAC.

2. The Ld. AR read out the provisions of section 251(1) of the Act and stated that the assessee had duly complied before the Ld. AO as well as the Ld. CIT(A). Thereafter, it was argued, that there is a limited opportunity available with the first appellate authority to remand any matter back to the Ld. AO and this was certainly not the case where the matter could have been remanded back, considering the extensive compliance made before the authorities below. The Ld. AR requested for disposing of the main appeal.

2.1 With the agreement of both the Revenue and the AR it was decided to take up adjudication of the main appeal.

2.2 The Ld. DR relied on the orders of the authorities below.

3. We have carefully considered the rival submissions and have gone through the records before us. For the sake of reference, the relevant provisions of the Act deserve to be extracted: -

*“251. (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers -*

*(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.*

*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.”*

3.1 It is seen that the powers given to the first appellate authority, with effect from 01.10.2024, specifically provide that the assessment order must be made u/s 144 of the Act. It is clear that in no other circumstances can this particular provision be invoked. Accordingly, we find that the Ld. CIT(A) has misdirected himself in

remanding the matter back to the Ld. AO u/s 251(1) of the Act. In light of the provision of law, we set aside the impugned order and direct that the Ld. CIT(A) would take up adjudication on merits, after giving an opportunity of being heard to the assessee.

4. In the result, the appeal of the assessee is allowed.
5. **Stay Application No.11/DDN/2026:** since the main appeal has been decided, hence, the Stay Application becomes infructuous.

Order pronounced in the open court on 11.02.2026

Sd/-  
(YOGESH KUMAR US)  
JUDICIAL MEMBER

Sd/-  
(SANJAY AWASTHI)  
ACCOUNTANT MEMBER

Dated: 11.02.2026

*\*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