

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA Nos. 2087 & 2088/Bang/2025
Assessment Year : 2006-07 & 2007-08

ITO Ward-1(1) Mysore	Vs.	Hagamilaldak Gouthamchand No.1501, Late Hagamilal Thyagaraja Road K.R. Mohalla Mysore 570 004 PAN NO : ACQPG1363E
APPELLANT		RESPONDENT

Appellant by	:	Sri V. Srinivasan, A.R.
Respondent by	:	Sri Shivanand H Kalakeri, D.R.

Date of Hearing	:	19.11.2025
Date of Pronouncement	:	13.02.2026

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

These appeals at the instance of the revenue are directed against the order of Id. CIT(A)/NFAC both dated 18.01.2024 vide DIN and Order No: ITBA/NFAC/S/250/2023-24/1059892239(1) for the AY 2006-07 and vide DIN and Order No: ITBA/NFAC/S/250/2023-24/1059892461 for the AY 2007-08 passed u/s. 250 of the income Tax Act, 1961 (in short “the act”). Since the issue in both the appeals is common, these are clubbed together, heard together and disposed of by this common order for the sake of convenience.

2. The revenue in ITA No.2087/Bang/2024 has raised the following Grounds of appeal: -

01. The order of the learned CIT(A) is opposed to law and facts of the case.
02. The CIT(A) erred in not considering the fact that OGE dated 12.05.2017 of the AO is for reducing the demand and direction of ITAT that to consider the evidence and decide the issue afresh after giving opportunity to the assessee has not been done by the AO while passing the said order.
03. The CIT(A) erred in not considering the fact that the order dated 12.05.2014 was passed by the AO just to reduce the demand and the same was not passed under any section of Income Tax Act, 1961 unlike the OGE dated 29.12.2018 passed u/s 143(3) rws 254 of the Income Tax Act.
04. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order to be restored.

3. The revenue in ITA No.2088/Bang/2024 has raised the following Grounds of appeal: -

- i. The order of the learned CIT(A) is opposed to law and facts of the case.
- ii. The CIT(A) erred in not considering the fact that OGE dated 12.05.2017 of the AO is for reducing the demand and direction of ITAT that to consider the evidence and decide the issue afresh after giving opportunity to the assessee has not been done by the AO while passing the said order.
- iii. The CIT(A) erred in not considering the fact that the order dated 12.05.2017 was passed by the AO just to reduce the demand and the same was not passed under any section of Income Tax Act, 1961, unlike the OGE dated 29.12.2018 passed u/s 143(3) rws 254 of the IT Act.
- iv. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order to be restored.

4. There is a delay of 218 days in filing both these appeals by the revenue. Before us, the ld. D.R. drew our attention to an application for condonation of delay dated 5.9.2024. The main reason cited by the revenue for the delay is due to the annual general transfer for the year 2024 and Lok Sabha Election 2024 and accordingly requested to allow the submission made for the appeal considering the above facts of the case. Having perused the ld. A.R. of the assessee as well as the ld. D.R., it is perceived that there is sufficient cause in filing both the appeals belatedly by the revenue and accordingly we are inclined to condone the delay and admit the appeals for adjudication.

5. Now the brief facts of the case are that the assessee was in real estate business apart from pawn broking for the year under appeal. The assessee was originally assessed u/s 143 r.w.s. 147 with certain additions. Aggrieved by such additions, the assessee filed appeal before the ld. CIT(A) and the ld. CIT(A) allowed partial relief.

Aggrieved, the assessee filed an appeal before this Tribunal. The Tribunal in a combined order dated 23.3.2017 remanded the matter back to the file of the AO with observations on certain additions. Under the directions of this Tribunal, the AO passed the Order Giving Effect (in short "OGE") dated 12.5.2017. Consequent to order dated 12.5.2017, the AO granted tax refund arose out of OGE and further instructed the TRO to lift all restraint placed on the immovable properties of the assessee. The ld. TRO in terms with the AO instructions in turn directed the appropriate authorities to vacate all attachment on the immovable properties of the assessee and thus the assessment procedure came to an end.

5.1 However, surprisingly, the AO after lapse of about nine months, once again issued notice u/s 142(1) dated 20.2.2018 calling certain particulars for the same assessment years which was already concluded on 12.5.2017. Thereafter, the AO till 26.12.2018 called many information and against which the assessee duly responded by filing required documents substantiating averments. However, the assessee participation after the order dated 12.5.2017 was "Without Prejudice" to rights available under law which was apparently made known to the AO in all communication. The assessment thereby concluded by the AO second time on 29.12.2018 by upholding the same additions which were remanded back by the ITAT.

6. Aggrieved by the order of AO dated 29.12.2018, the assessee preferred an appeal before the ld. CIT(A). The ld. CIT(A) allowed the appeal of the assessee by observing that two orders giving effect have been passed by the AO u/s 143/254 of the Act in pursuance to the directions given by the ITAT in the combined order dated 23.03.2017. Hence, the second order passed u/s 143(3)/254 of the Act is non-est & without jurisdiction.

7. Aggrieved by the order of ld. CIT(A), the revenue has preferred an appeal for both these assessment years separately in ITA Nos.2087 & 2088/Bang/2024.

8. Before us, the ld. D.R. vehemently submitted that the ld. CIT(A) erred in not considering the fact that OGE dated 12.5.2017 of the AO is for reducing the demand and direction of ITAT that to consider the evidence and decide the issue afresh after giving opportunity to the assessee has not been done by the AO while passing the said order. He further submitted that the ld. CIT(A) also erred in not considering the fact that the order dated 12.5.2017 was passed by the AO just to reduce the demand and the same was not passed under any section of the Act unlike the OGE dated 29.12.2018 passed u/s 143(3) r.w.s. 254 of the Act.

9. Before us, the ld. A.R. of the assessee submitted that the AO has passed two assessment orders viz., OGE to the order of the ITAT was first passed on 12.5.2017 & secondly the OGE was passed on 29.12.2018. It is a trite law that there cannot be TWO assessments in respect of total income of an assessee for the same assessment year. The two orders cannot co-exist simultaneously at the same time. Therefore, during the existence of the first order dated 12.5.2017, the second order dated 29.12.2018 is non-est in law and further without jurisdiction and therefore, the order passed on 29.12.2018 is liable to be quashed. Further, the ld. A.R. without prejudice to the above respectfully submitted that the ld. AO failed to complete the assessment within time limit as prescribed under the Act. The impugned order which was passed on 29.12.2018 was NOT well within the timeline as contemplated u/s 153(6)(i) of the Act and thus order dated 29.12.2018 which was passed beyond permissible date suffers from jurisdictional defect and thus liable to be quashed.

10. We have heard the rival submissions and perused the materials available on record. Undisputedly, this Tribunal vide its combined order in ITA No.902/Bang/2013 for AY 2006-07, ITA No.1627/Bang/2013 for AY 2005-06, ITA No.1099/Bang/2014 for AY 2007-08 dated 23.3.2017 has decided the issues where the additions of Rs.6,27,197/- on account of income from real estate

business, Rs.1,72,96,580/- on account of income u/s 2(24)(iv) and Rs.85,50,000/- on account of unaccounted deposit in bank have been set aside to the file of AO for allowing appropriate relief to the assessee after verification of the fact of the case and after allowing an opportunity to the assessee for furnishing the requisite details. However, we noticed that the ITO, Ward-2(2), Mysuru in consequence to the order of the Tribunal dated 23.3.2017 has passed an order giving effect to ITAT order on 12.5.2017 wherein it is clearly stated that this order is passed giving effect to the ITAT order dated 23.3.2017. Further, we noticed that the ITO Ward 2(1), Mysuru had again passed an order on 29.12.2018 u/s 143(3) r.w.s. 254 of the Act. The contention of the ld. D.R. is that the order giving effect dated 12.5.2017 was only to keep the demand in abeyance till a substantive order u/s 143(3) r.w.s. 254 is passed later. It is also submitted that order giving effect dated 12.5.2017 was only for the limited purpose of keeping demand in abeyance and the ITO Ward-2(2), Mysuru neither called the assessee nor took any submission on record before passing the order giving effect. We are of the considered opinion that the contention of the revenue that the order giving effect was only for the limited purpose of keeping demand in abeyance till a substantive order u/s 143(3) r.w.s. 254 of the Act is passed cannot be accepted since the order giving effect dated 12.5.2017 was passed by ITO Ward 2(2) Mysuru whereas the order u/s 143(3) r.w.s. 254 of the Act dated 29.12.2018 was passed by the ITO Ward 2(1) Mysuru. Further, as rightly contended by ld. CIT(A)/NFAC, there is no provision under the Act which gives power to the AO to pass two orders u/s 143(3)/254 (OGE), one for the limited purpose on the pretext of keeping the demand in abeyance or reducing the demand to nil and another one to examine the issue properly and pass the order on merit. We also agree with the ld. CIT(A)/NFAC that there is a clear cut distinction in the time limit provided for passing the order u/s 143(3)/254 of the Act. In normal course, where AO do not have to re-examine any issue

as per the direction of ITAT, OGE u/s 143(3)/254 of the Act has to be passed within 3 months in which the order u/s 254 was received in the office of the PCCIT or CCIT or PCIT or CIT. But where issue needs re-examination and verification as well as providing opportunity to the assessee, OGE u/s 143(3)/254 of the Act is to be passed within 9 months from the end of the financial year in which order u/s 254 of the Act was received in the office of the PCCIT or CCIT or PCIT or CIT as per provisions contained in section 153 of the Act. Therefore, there is no such provisions in the Act to pass two separate orders u/s 143(3)/254 of the Act for the same assessment years & that too of the same assessee.

10.1 We are of the considered opinion that once the AO has passed the first order giving effect on 12.5.2017 by determining the relief given by the Hon'ble ITAT and also calculated the balance tax refundable to the assessee, and therefore, the second order u/s 143(3)/254 of the Act dated 29.12.2018 giving effect to the order of ITAT is bad in law and non-est as it will tantamount to reviewing of the own order passed earlier which is not permissible. There is no such provision in the Act which enables the AO to pass two orders giving effects u/s 143(3)/254 of the Act & therefore the 2nd OGE is non-est & without jurisdiction.

10.2 The contention of the ld. DR that 1st OGE dated 12.05.2017 was not passed under any section of the Act also cannot be accepted as the ld. DR himself could not explain under which provisions of the Act the same was passed. Obviously, the same was passed u/s 143(3)/254 of the Act even though not mentioned. The AO had clearly mentioned that OGE to ITAT order is passed. Thus, now the AO cannot be given another opportunity to rectify his own mistake in not giving the opportunity to the assessee and verifying the fact of the case as directed by this Tribunal while passing order giving effect dated 12.5.2017 and accordingly we agree with the contention of ld. CIT(A) and dismiss the appeal of the revenue.

11. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 13th Feb, 2026

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 13th Feb, 2026.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.