

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'A' BENCH, LUCKNOW
BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER
ITA No.281/LKW/2025
A.Y. 2016-17**

Smt. Kumud Yadav, Plot No. 192A, Awadhपुरi Road, Lakhanpur, Kanpur Nagar	vs.	Assessing Officer, Assessment Unit, Income Tax Department, NFAC, Delhi
PAN: ABJPY4062E		
(Appellant)		(Respondent)

Assessee by:	Sh. Pradeep Seth, Adv
Revenue by:	Sh. Amit Kumar, Addl CIT DR
Date of hearing:	29.01.2026
Date of pronouncement:	27.02.2026

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the orders of the Id. CIT(A), NFAC under section 250 of the Income Tax Act, 1961 on 11.0.25, wherein the Id. CIT(A) has set aside the orders of the Assessing Officer passed for the A.Y. 016-17 under section 147 r.w.s. 144 of the Income Tax Act, 1961. The grounds of appeal are as under:-

"1. That the learned CIT(A) National Faceless Appeal Centre, Delhi has erred in law and on facts in not appreciating that the assessment order passed U/s 147 is without jurisdiction and invalid as the same violates the provisions of "E-ASSESSMENT OF INCOME ESCAPING ASSESSMENT SCHEME 2022" notified on 29.03.22 framed in pursuance of Sub sections 1 and 2 of Section 151A of the Act laying down the issue of notice U/s 148 in the Faceless manner through automated allocation whereas in the assessee's case it has not been issued in a faceless manner but by jurisdictional Assessing officer who was not assigned the case in an automated manner. (Reliance on judgement in the case of HEXAWARE TECHNOLOGIES LTD. VS. ASSISTANT COMMISSIONER OF INCOME TAX AND OTHERS reported in 464 ITR P. 430 (paras 32 to 39)).

2) That the learned C.I.T. (Appeals) National Faceless Appeal Centre, Delhi has further erred in law and on facts in not appreciating that the assessment order is invalid, without jurisdiction, and bad in law on another ground namely, that it is based on invalid order passed U/s 148A and invalid notice U/s 148 as the same has been passed before the expiry of the mandatory time limit provided in Clause (d) Sub Section 148A namely, that "The A.O. shall pass the order "within one month from the end of the month in which time or extended time allowed to furnish a reply as per Clause (b) expires". Whereas in the petitioner's case the time to furnish reply to notice U/s 148A(b) expired on 31.03.23 and the order U/s 148A(d) has been passed on 31.03.23 i.e. before expiry of the statutory period.

3) That the learned C.I.T. (Appeals) National Faceless Appeal Centre, Delhi has erred in law and on facts in not annulling/quashing the assessment order which was invalid and void ab-initio and in setting aside the assessment to the A.O. for fresh assessment.

4) That the appellate order is arbitrary, unjust, invalid, bad in law and against the principals of natural justice."

2. Subsequently, the assessee filed an additional ground of appeal and requested that the same may kindly be taken up for hearing before considering the regular grounds of appeal, the same read as under:-

"1) That the learned C.I.T. (Appeals) has erred in law and on facts in setting aside the assessment order passed u/s 147 read with section 144 by the ld. AO, without adjudicating the legal grounds raised by the assessee before the CIT(A)."

3. The facts of the case are that the case of the assessee was reopened by issuing notice under section 148 of the Act on 31.03.2023. The ld. AO records that the assessee did not make compliance during the assessment proceedings. Since, he was satisfied that the notices had been issued through the registered email ID of the assessee, he issued a final show cause notice on 12.01.2024 in which he proposed to make additions on account of purchase of immovable property of Rs. 85 Lacs plus stamp duty of Rs. 5,85,000/-, cash deposits of Rs. 1,64,87,720/- and also to estimate her turnover @ 10% of her total receipts of Rs.2,64,38,675/-. The assessee did not make any compliance to the notice. The ld. AO accepted that the deposits in the bank accounts represented the business turnover of the assessee and accordingly he proceeded to estimate the profit from the same @ 10% of gross

receipts and made an addition of Rs. 26,43,867/- in this regard. He also made an addition of Rs. 90,85,000/- for purchase of immovable property from Smt. Sushma Srivastava on 27.01.2016, the sources of which remained unexplained.

4. Aggrieved with the said order of the Id. AO, the assessee went in appeal before the Id. CIT(A), albeit the appeal was delayed. The assessee furnished an explanation for the delay and the same was condoned by the Id. CIT(A). The Id. CIT(A) looked through the statement of facts and the grounds of appeal and also considered the written submissions filed by the assessee. After considering these submissions, he noted that due to the alleged non service of notice upon the assessee, the assessee had not made any compliance before the Id. AO and the AO had been prevented to exercise his right to verify and examine the relevant details/evidences as per the scheme of the Income Tax Act, in relation to assessment proceedings. Accordingly, he set aside the issue to the file of the AO for a *de novo* assessment and gave directions to the assessee to participate in the assessment proceedings and file all relevant details before the AO.

5. The assessee is aggrieved at this order of the Id. CIT(A) and has accordingly come in appeal before us. Sh. Pradeep Seth, C.A. (hereinafter referred to as the Id. AR) appearing on behalf of the assessee making submissions on the additional ground of appeal pointed out that the assessee had raised legal grounds involving the jurisdictional issue and validity of assessment similar to grounds no. 1 and 2 of the grounds of appeal filed before the Hon'ble Tribunal. However, vide para 7.3 of his order, the Id. CIT(A), NFAC had set aside the assessment without adjudicating the above legal grounds which raised a jurisdictional issue that was purely legal in nature. The Id. AR submitted that without adjudicating upon the legality of the assessment, the Id. CIT(A) could not have restored the matter back to the AO for a *de novo* assessment. He placed reliance on the judgment of the ITAT Surat Bench in the case of Arun Kumar Gupta vs. ACIT, Circle-3(2) in ITA No. 9/SRT/2025 dated 21.08.2025 wherein the Hon'ble Tribunal had held, after following the decision of the ITAT Hyderabad Bench in the case of EyeGear Optics India Private Limited and the ITAT Pune Bench of the Tribunal in the case of

Shamrao Gopal Benake that the CIT(A) was obliged to take a call as regards the specific ground based on which the validity of jurisdiction that had been assailed by the assessee before him, before remanding the matter back for a *de novo* assessment. It was prayed that the ld. CIT(A) having failed to decide the legal ground, the Hon'ble Tribunal may either first decide the legal ground raised as grounds no. 1 and 2 of the appeal or remand the same back to the ld. CIT(A) for a decision.

6. Responding to the above, Sh. Amit Kumar, Sr. DR submitted that the ld. CIT(A) had remanded the matter back for *de novo* assessment, which meant that all issues could be considered by the AO including the fact of jurisdiction. Therefore, no interference was called for by Tribunal at this stage.

7. We have duly considered the facts and circumstances of the case. We note that the assessee had raised a specific ground before the ld. CIT(A) that the notice issued under section 148 by the AO was in violation of the provision of the, "e-Assessment of Income Escaping Scheme, 2022" that was notified on 29.03.2022. Furthermore, the assessee had alleged that the order passed under section 148(d) was invalid and bad in law because the same had been passed before the commencement of the time limit laid down in clause (d) of section 148A which laid down that the AO was obliged to pass the order within one month from the end of the month in which the time or extended time allowed to furnish a reply as per clause (b) expires. The assessee had also raised issue of non-issuance of notice under section 143(2) to the assessee. We see that the ld. CIT(A) while remanding the matter to the file of the AO for a *de novo* assessment has not adjudicated upon these legal issues. Accordingly, in the interest of justice, we deem it appropriate to remand this matter back to the file of the ld. CIT(A) to first adjudicate upon the legal issues raised by the assessee with regard to the proceedings initiated under section 148 and thereafter pass a fresh order in accordance with law. The additional ground in the assessee's appeal is accordingly allowed. In view of the fact that the matter stands remanded to the file of the ld. CIT(A), the remaining grounds become infructuous and are dismissed as such.

8. In the result, the appeal is partly allowed.

Order pronounced on 27.02.2026 in the Open Court.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED: 27/02/2026

Sh

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.