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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 27.11.2025

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ITA 241/2025**AKASAKI TECHNOLOGY (P) LTD**

.....Appellant

Through: Mr. S. Krishnan, Adv.

versus

PRINCIPAL COMMISSIONER OF INCOME TAXRespondent

Through: Mr. Vipul Agrawal, SSC, Ms. Sakashi Shairwal, JSC, Mr. Akshat Singh, JSC and Mr. Gaoraang Ranjan & Ms. Harshita, Adv.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE VINOD KUMAR****V. KAMESWAR RAO , J. (ORAL)**

1. We admit the appeal on the following questions of law:-

“a. Whether ITAT & NFAC erred in holding that the power to remand the subject assessment was available in the present case, when the assessment order itself could not have been passed under section 144?

b. Whether ITAT erred in confirming NFAC's direction remanding appeal before it, when jurisdictional issues stood raised and had not been adjudicated?”

2. We have heard the learned counsel for the parties. The challenge is to an order passed by the Income Tax Appellant Tribunal (“ITAT”) in ITA 6076/DEL/2024. The same relates to the Assessment Year (“AY”) 2012-13.

3. The assessment order was passed on 24.12.2019 under Section 144 read with Section 147 of the Income Tax Act, 1961 (“Act”). The appellant had filed an appeal before the Commissioner of Income Tax (Appeals)



[“CIT(A)”]/National Faceless Appeal Centre, Delhi. It is the said order, which was challenged before the ITAT, which has resulted in the impugned order, in the present appeal.

4. The facts as noted from the record are that the appellant/assessee, a private limited company filed, return of income declaring total income of Rs.48,51,840/-, on 28.09.2012. The case was reopened under Section 147 of the Act after recording the satisfaction and reasons for reopening and obtaining necessary approval from the competent authority. Notice under Section 148 of the Act was served on 31.03.2019 through the ITBA portal. In response thereto, the assessee company filed a letter dated 26.04.2019 demanding reasons for reopening of the case which reasons were given on 09.09.2019. A notice under Section 142(1) of the Act was issued to the assessee.

5. It is the case of the assessee that on receipt of said notice, two replies were filed by it. The Assessing Officer (“AO”) vide order dated 24.12.2019, made addition of Rs.8,38,50,800/-. The appellant challenged the order dated 24.12.2019 before the CIT(A). Vide order dated 25.10.2024, the CIT(A) set aside the order dated 24.12.2019 with a direction to the AO to frame the assessment order afresh after giving adequate opportunity to the appellant of being heard. Being aggrieved by the order passed by the CIT(A) dated 25.10.2024, the appellant had filed appeal before the ITAT.

6. The stand of the appellant before the ITAT was that the CIT(A) had erred in setting aside the assessment order passed under Section 144/147 of the Act notwithstanding the fact that the appellant/assessee had made a specific request that the appeal be adjudicated after the submission of the



report by the AO and after granting opportunity to appellant/assessee to file rejoinder.

7. It is also stated that the CIT(A) erred in setting aside the order of assessment and restoring the matter back to the file of the AO with a direction for fresh adjudication, thereby again granting an opportunity to the AO to remove the infirmities in the assessment order which was otherwise a nullity on the ground that the AO had failed to issue mandatory notice under Section 143(2) of the Act.

8. In nutshell, the case of the appellant was that the three conditions as stipulated under Section 144 of the Act have not been satisfied. In any case, the CIT(A) has in paragraph 5 of the order dated 25.10.2024 stated as under:-

“5. During the course of appellate proceedings, the appellant submitted that the assessment order is passed u/s 144 without issuing notice u/s 143(2) and in the show cause notice it was mentioned by the AO that the amount is proposed to be taxed u/s 68 of the Act as unexplained credits in the hands of the appellant whereas the AO has taxed the amount purportedly as unexplained expenditure u/s 69C. I find that the explanation submitted by the appellant was not submitted before the AO during assessment proceedings. Therefore the contention of the appellant needs to be examined by the AO, hence this is fit case for setting aside to the file of AO for fresh adjudication.”

9. The submission of Mr. S. Krishnan, learned counsel for the appellant is that the CIT(A) and also the ITAT have erred in not advertng to the issue raised by the appellant. He submits that the CIT(A) could have remanded the matter back to the AO only in the eventuality appeal is made against a valid



order of assessment under Section 144 of the Act. According to him, Section 144 of the Act contemplates three fold requirements before an order under Section 144 of the Act can be passed. According to Mr. Krishnan, none of the requirements contemplated under Section 144 of the Act would arise in the case of the appellant. Inasmuch as it is not the case of the respondent/Revenue that the appellant had failed to file the return or the appellant had failed to comply with all the terms of the notice issued under Sub-Section 1 of Section 142 of the Act or the appellant having made the return, failed to comply with the terms of notice issued under Sub-Section 2 of Section 143 of the Act.

10. The submission of Mr. Krishnan is that the appellant had filed the return as required; a notice under Sub-Section 1 of Section 142 of the Act was issued to the appellant to which replies were duly filed; having filed return but no notice under Sub-Section 2 of Section 143 of the Act was issued to the appellant, as such the remand made by the CIT(A) to the AO is clearly erroneous.

11. He states that though he has submissions to make on the merits of the assessment order, since the above issue was neither considered by the CIT(A) nor by the ITAT, appropriate for this Court would be to remand the matter back to the CIT(A) instead of AO as has been directed by the CIT(A), which order has been upheld by ITAT.

12. On the other hand, Mr. Vipul Agrawal, learned SSC for the respondent would submit that during the assessment proceedings, a show cause notice dated 23.12.2019 was issued to which the appellant had failed to file reply. This fact, according to him, had been noted by the AO in the



assessment order dated 24.12.2019. That apart, it is his submission that in the reassessment proceedings initiated under Section 148 of the Act, notice under Section 143(2) of the Act is not mandatory.

13. Having heard the learned counsel for the parties and perused the record, we note the ITAT in the impugned order has in paragraph no.7 stated as under:-

“7. From examination of record in the light of light of aforesaid rival contentions, it is crystal clear that the appellant/assessee failed to file reply. Ld. AO on submissions made by the assessee, during assessment proceedings,, passed order dated 24.12.2019 under Section 144 read with section 147 of the Act. Ld. CIT(A) in order dated 25.10.2024, as per proviso to section 251, subsection (1) clause (a) Of the Act, set aside the assessment order passed under Section 144 r.w.s, 147 of the Act and remand the matter back to the Ld. AO for making fresh assessment. The arguments of Learned Authorised Representative for the appellant/assessee that the specific request for adjudication of post-submission of remand report is de void of merit because the assessment order under Section 144 of the Act was set aside as per the proviso to section 251 sub-section (1) sub-clause (a) of the Act. The argument of fresh adjudication granting second inning is de void of merit because 1.4. AO has to pass a fresh order by considering all facts including non-issuance of notice under Section 143(2) of the Act and examination of other documentary evidences. Accordingly, impugned order is upheld. Ground of appeal nos. 1 to 3 are dismissed.”

14. A perusal of the order would reveal that the ITAT does not deal with the pleas urged by the appellant before it. Even the CIT(A) without dealing with the submissions, has primarily by observing that the appellant had



submitted that the assessment order was passed under Section 144 of the Act without issuing notice under Section 143(2) of the Act, has remanded the matter back to the AO. There is no finding of the CIT(A) on the said aspect inasmuch as it ought to have to come to the conclusion whether such a notice had in fact been issued, if not what is the effect and also, in such circumstances, the matter could have been remanded back to the AO, as it is the case of Mr. Krishnan that as no valid order under Section 144 of the Act was passed, the matter could not have been remanded back to the AO. Similarly, the ITAT has also without deciding the issue as raised by the appellant, upheld the order passed by the CIT(A).

15. Since an infirmity has arisen at the level of the CIT(A), who was exercising jurisdiction under Section 251 of the Act, the issue raised need to be decided by the CIT(A) and not by the AO. We accordingly, set aside the order passed by the ITAT dated 07.05.2025 and also the order of the CIT(A) dated 25.10.2024 and remand the matter back to the CIT(A) who shall decide the appeal afresh including on the plea advanced by Mr. Krishnan, as noted above.

16. We answer the substantial questions of law as framed by us in favour of the appellant/assessee and against the respondent/Revenue.

17. The appeal is, accordingly, disposed of.

V. KAMESWAR RAO, J

VINOD KUMAR, J

NOVEMBER 27, 2025/sr