

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'E': NEW DELHI**

BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

AND

SHRI AMITABH SHUKLA, ACCOUNTNAT MEMBER

ITA Nos.938 and 939/DEL/2025

[Assessment Year: 2012-13]

Neeraj, House No.2538, Housing Board, Colony, Sector-7A, Faridabad, Haryana-121006	Vs	Principal Commissioner of Income Tax, N H IV, Faridabad, Haryana-121001
PAN-AGJPN1533C		
Assessee		Revenue

Assessee by	Shri Narender Chhillar, Adv.
Revenue by	Ms. Rajinder Kaur, CIT-DR

Date of Hearing	26.02.2026
Date of Pronouncement	20.03.2026

ORDER

PER AMITABH SHUKLA, AM,

These two appeals filed by the assessee are against the orders both dated 26.12.2024 of National Faceless Appeal Centre/learned Commissioner of Income Tax(Appeals), New Delhi, [hereinafter referred to as 'ld. CIT(A)] arising out of assessment order dated 21.03.2023 passed under section 144 r.w.s. 263 of the Income Tax Act, 1961 pertaining to Assessment Year 2012-13. The word 'Act' herein this order would mean Income Tax Act, 1961. Since, both appeals pertain to the same assessee, they were heard together and are being adjudicated by this common order.

2. At the outset, we have noted that the Registry had identified delay of 625 days in filing of appeal in ITA No.939/Del/2025 for AY 2012-13. Explaining reasons for the delay, it has been submitted that the advocate of the assessee did not issue correct advice as a result of which the order could not be timely acted upon. The Id. Counsel pleaded that the delay be condoned. The Id. DR objected to the condonation of the delay and argued for levy of cost. We are conscious that no litigant benefits by delaying its matters. Accordingly, we proceed to condone the delay and adjudicate this appeal, subject to payment of Rs.5,000/- by the assessee within one month of the receipt of this order to the Prime Minister Relief Fund. A receipt of the payment shall be made available to the Id. AO within one week of its payment.

3. The assessee has raised following grounds of appeal in ITA No.938/Del/2025:-

1. That the Commissioner of Income Tax (A) [National Faceless Appeal Centre, (the NFAC)], has erred on the facts and in law in confirming the action of the Assessing Officer passing order under section 144 r.w.s. 263 with section 144B of the Income Tax Act, 1961 (the Act), assessing the income of the assessee under section 69A (though there were specific directions of the Pr. CIT was to consider the case as unexplained cash credit within the meaning of under section 68 of the Act) of the Act at Rs.32,76,780/- against the returned income of Rs.3,08,880/-, without appreciating the fact that:

1.1 The return of income was filed by the assessee under section 44AD of the Act, there is no requirement of maintenance of any Books of Accounts.

1.2. Section 44AD of the Act provides for presumptive rate of taxation.

1.3. The amendment in section 44AD of the Act bringing curbs on cash deposits was not there in the extant assessment year.

1.4. The captioned order being arbitrary, misconceived, erroneous and unlawful, must be quashed.

ITA No.939/Del/2025

4. Through the aforesaid appeal the appellant has challenged the order under section 263 passed by PCIT, Faridabad, under section 263 on 25.03.2022. The appellant has raised following grounds of appeal

1. That the Pr. Commissioner of Income Tax, Faridabad has erred on facts and in law in passing order under section 263 of the Income Tax Act, 1961 (the Act) holding the order passed by the Income Tax Officer, Ward - 2(1), Faridabad to be erroneous and prejudicial to the interest of Revenue and directing the Assessing Officer to make a fresh assessment denovo, without appreciating the fact that:

1.1 The return of income was filed by the assessee under section 44AD of the Act, there is no requirement of maintenance of any Books of Accounts.

1.2 Section 44AD of the Act provides for presumptive rate of taxation.

1.3 The amendment in section 44AD of the Act bringing curbs on cash deposits was not there in the extant assessment year.

1.4 Pr. CIT has erred in assuming jurisdiction, the captioned order being arbitrary, misconceived, erroneous and unlawful, must be quashed.

5. We have heard rival submissions in the light of materials available on records. As per brief factual matrix of the case the assessee is an individual and was engaged in the business of purchase and sale of clothes i.e. trading in clothes. The case was reopened under section 147 of the Act. In response to

notice under section 148 of the Act, the assessee filed Return of Income under section 44AD of the Act on 17/09/2019 declaring an income of Rs.3,08,880/- on its gross turnover of Rs.40,82,300/-. The returned income of Rs.3,08,880/- was accepted vide order dated 23/09/2019. Meanwhile, the PCIT, Faridabad, invoked his revisionary powers under section 263 and through order dated 23/03/2022 held that the impugned assessment order was erroneous and prejudicial to the interest of revenue and directed the Assessing Officer to pass a fresh assessment order and to recompute the assessee's income after making further enquiries. The ld. PCIT held that the Assessing Officer ought to have made more enquiries, collect more evidences and gathered third party reliable documentary evidence duly recorded independently to justify that the assessee was into this business, genuinely. No mails, vouchers, payments, purchase bills, transport chares details, parcels, delivery memo, sale register, purchase register, cash book etc. were produced/examined. The assessment order was therefore clearly erroneous as it was passed without proper examination, enquiry or verification of deposits. The ld. PCIT held at page 12, on para 18 of his order, *"...it is clear that during the course of proceedings u/s 263, the assessee has failed to explain the deposits of Rs.29,67,900/- Therefore, the Assessing Officer is directed to charge the tax on the same considering as unexplained cash credit within the meaning of u/s 68 of the Income Tax Act, 1961..."*

6. The Id. Counsel for the assessee vehemently argued that the assumption of jurisdiction under section 263 by the Id. PCIT was wrong as the return was filed under section 44AD. The Id. Counsel argued that as per current statutory prescription, there is no need to maintain any books of accounts under section 44AD and hence invocation of section 68 was *void ab initio*. The Id. Counsel further submitted that the captioned assessment order is not erroneous and prejudicial to the interest of revenue as the assessee has filed its return of income under section 44AD of the Act which provides for presumptive rate of taxation and there is no requirement of maintenance of any Books of Accounts. It was argued that Sub-section (5) of Section 44AD of the Act which was substituted by the Finance Act, 2016 w.e.f 01.04.2017 is not applicable to the subject reassessment order. Reliance was placed upon latest decision of Hon'ble Supreme Court of India, Decision dated 04/04/2025 in the case of Pr. Commissioner of Income Tax-1, Chandigarh Vs M/s. V-CON Integrated Solutions Pvt. Ltd. in IA No. 79463/2025.

7. Per contra, the Id DR relied upon the orders of the PCIT, Faridabad.

8. We have noted that the solitary issue that deserves to be resolved is correctness of assumption of jurisdiction under section 263 by PCIT in a case where Return of Income was filed under section 44AD. We have noted that this issue was conveyed to the lower authorities, which was ignored by them. We have noted that the issue of assessee filing its Return of Income under section

44AD has been incorporated by the ld. AO on page-7 of his order dated 21.03.2023 under section 144 r.w.s. 263. It is trite law that once an assessee has surrendered itself to a particular statute, it gets entitled to all the attending benefits. The assessee under section 44AD is required to calculate its income on percentage basis of its turnovers and is not required to maintain any books of accounts, etc. That being so the directions of the PCIT u/s 263 become questionable. The Revenue has not doubted that the assessee was filing its Return of Income under section 44AD of the Act. We have noted that this Tribunal on identical facts in the case of Shri Rattan Singh ITA No.1373/Del/2016 dated 22.12.2022 held as under:-

“8. Giving thoughtful consideration to the matter on record it can be observed that revenue cannot disputed the fact that while making assessment specific queries were raised by the ld AO questioning the deposit of amounts in the bank account and taking rescue of section 44AD the assessee had sought immunity of explanation and offered income to be tax @8%, u/s 44AD. The office note referred by ld AR explicitly determines the issue in favour of the assessee. However, ld Revisional Authority has gone into the questions of facts about the source of the deposits and giving his own reasons concluded that the deposits were unaccounted/ concealed income. The ld Revisional Authority has not only examined the deposits but also the manner of withdrawal. The copy of register showing the sale of milk and buffalos have been discredited to reach a finding that the ld AO failed to make enquiry.

9. The findings of ld Revisional Authority cannot be sustained as the enquiry in to the relevant issues is duly reflected in the assessment proceedings and only because the ld Pr. CIT being a higher authority and more wiser in experience considered that

enquiry in some other aspects would have resulted in different opinion, does not give jurisdiction to exercise revisional power u/s 263. That being so the grounds raised are allowed and the impugned order of revisional authority is set aside. The appeal is allowed.”

9. We have further noted that this Tribunal in its order dated 19.11.2024 in ITA No.500/Del/2022 in the case of Ashok Kumar, again on nearly identical facts has held as under:-

This appeal filed by the assessee is directed against the order of learned Pr. Commissioner of Income Tax – Faridabad ('Pr. CIT' in short) dated 17.03.2021 pertaining to Assessment Year 2011-12.

2. *The grounds of appeal filed by assessee, reads as under:*

“That on the facts and in the circumstances of the case and in law the Pr. Commissioner of Income Tax, Faridabad erred in passing order under section 263 of the Income Tax Act, 1961 ('the Act' for short) holding the order passed by the Income Tax Officer, Ward-5, Gurgaon to be erroneous and prejudicial to the interest of revenue and directing the Assessing Officer to make a fresh assessment de novo.

The order being without jurisdiction, arbitrary, misconceived, erroneous and unlawful must be quashed..”

3. *In this case, Pr. CIT noted that on perusal of the assessment records of the aforesaid assessee for the A.Y. 2011-12, following discrepancies are noticed :*

The case was selected u/s 147 for cash deposit of Rs.44,72,000/- and notice u/s 148 was issued on 14-03-2018. In reply to notice, assessee filed return u/s 44AD and stated that during previous year he was doing business of petty contractor of civil labour work in Rajasthan. On further perusal of the assessment record and scrutiny of bank statement for cash deposit, it is

revealed that the assessee deposited cash in multiples of lakh and hence, could not be treated as petty contractor as claimed. No detail of business, clients and business address or related bills, purchase/sales invoice were attached to authenticate the business. No documentary evidence is available on record which can prove the source of cash deposit. No enquiry was made in this connection in this case. Hence, the entire cash deposited was required to be treated as unexplained and taxed u/s 68 of the Act.

4. *The Pr. CIT noted that the assessee has not given any response. He concluded as under :*

“5. On perusal of assessment record of the assessee, it noticed that the case was selected u/s 147 for cash deposit of Rs.44,72,000/- and notice u/s 148 was issued on 14-03-2018. In reply to notice, assessee filed return u/s 44AD and stated that during previous year he was doing business of petty contractor of civil labour work in Rajasthan. On further perusal of the assessment record and scrutiny of bank statement for cash deposit, it was revealed that the assessee deposited cash in multiple of lakh and hence, could not be treated as petty contractor as claimed. No details of business, clients and business address or related bills, purchase/sales invoice were attached to authenticate the business. No documentary evidence is available on record which can prove the source of cash deposit. No enquiry was made by the assessing officer in this connection in this case. Hence, the entire cash deposited remained unexplained and required to be treated as unexplained and taxed u/s 68 of the Act.

6. Keeping in view the facts and circumstances of the case, I am of the considered view that the assessment order under consideration passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue in the light of Explanation 2 to section 263 of the I t Act, 1961 and it needs to be suitably revised. Therefore, the assessment order dated 02.11.2018 passed by the AO u/s 143(3)/147 of the I.T. Act for the AY 2011-12 is hereby set-aside u/s 263(1) of the I.T. Act, 1961 and restored to the AO for making

fresh assessment with direction to verify the source of cash deposit and take action as discussed in Para 5 above. The AO is directed to make a judicious and logical order as per law after providing due opportunity of being heard to the assessee.”

5. *Against the above order, the assessee is in appeal before us.*

6. *We have heard both the parties and perused the records. The learned Counsel for the assessee gave following submissions:*

“It is submitted that the Pr. CIT is wrong in that the return of income was filed u/s 44AD by the assessee which does not envisage the maintenance of any Books of Accounts. On the other hand, Section 68 of the Act can be invoked only if there is any entry in the Books of Accounts. Absent books of accounts u/s 68 has no application. The Pr. CIT observation that "No one appeared nor any submissions made" is not in accord with the true facts for the submission as per page 3 of the Paper Book was duly provided to his office. Sub-section (5) of Section 44 AD which was substituted by the Finance Act, 2016 w.e.f 01.04.2017 is not applicable to the subject reassessment order.

Prayer: It is pleaded that the Revision Order of the Pr. CIT passed u/s 263 of the Act be quashed for the assessee had answered his notice and the issue in question complained of by the Pr.CIT had been gone thoroughly by the AO, The Pr. CIT has not pointed out any error in that respect. If at all there is any error it is in the action of the Pr.CIT, who ignored the basic fact that in the absence of books of accounts in Sec.44AD case no addition u/s 68 of the Act could be made. Even otherwise the order of the Ld. AO impugned by the Pr.CIT is blemishless and deserves to be / affirmed. The appeal of the Assessee merits to be allowed.”

7. *Per contra, learned DR relied upon the orders of the Pr. CIT.*

8. *Upon hearing both the parties and perusing the records, we find considerable cogency in the submissions of learned*

Counsel of the assessee. Since, the return of income was filed by the assessee under section 44AD of the Act, there is no requirement of maintenance of any Books of Accounts. Furthermore, section 44AD of the Act provides for presumptive rate of taxation. The amendment in section 44AD of the Act bringing curbs on cash deposits was not there in the extant assessment year. In this view of the matter, we are of the opinion that Pr. CIT has erred in assuming jurisdiction. Hence, in the background of the aforesaid discussion, we set aside the order of Pr. CIT and quash the order under section 263 of the Act.

9. In the result, appeal filed by the assessee stands allowed.”

10. Thus, we have noted that this Tribunal has consistently held that the invocation of action under section 263 is not permissible in cases where the assessee files Return of Income u/s 44AD. In respectful compliance to the above decision and also for the purpose of consistency, we are of the considered opinion that the order under section 263 passed by the ld. PCIT, Faridabad, dated 25.03.2022 suffers from defect of lack of requisite jurisdiction. We, therefore, quash and set-aside the impugned order of the Ld. PCIT, Faridabad. The appeal of the assessee in ITA No.939/Del/2025 is allowed.

ITA No.938/Del/2025

11. Through the aforesaid appeal, the assessee has challenged order of CIT(A)/NFAC, dated 26.12.2024, which was passed in response to order under section 144 r.w.s. 263 dated 21.03.2023. The impugned assessment order was passed in response to order under section 263 dated 25.03.2022. ld. PCIT,

Faridabad. As we have quashed and set-aside the impugned order dated 25.03.2022 of the Ld. PCIT, Faridabad, the present appeal has become infructuous. The same is therefore dismissed as in-fructuous.

12. In the result, the appeal of the assessee in ITA No.938/Del/2025 is dismissed whereas ITA No.939/Del/2025 is allowed.

Order pronounced in the open court on 20th March, 2026.

Sd/-
[YOGESH KUMAR U.S.]
JUDICIAL MEMBER

Dated: 20.03.2026

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Sd/-
[AMITABH SHUKLA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi,