

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

ITA No. 2725/DEL/2023: Asstt. Year: 2012-13

Basant Jain, C-119, Shivaji Park, Punjabi Bagh, New Delhi 110026 (APPELLANT)	Vs	The DCIT, Central Circle 29, Delhi 110055 (RESPONDENT)
PAN No. ADBPJ 2416 P		

**Assessee by : Shri R.S. Singhvi, CA
Shri Satyajeet Goel, CA
Revenue by : Shri Atiq Ahmed, Sr. DR**

Date of Hearing: 14.11.2023	Date of Pronouncement: 16.11.2023
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ORDER

Per Dr. B. R. R. Kumar, AM:-

The present appeal has been filed by the assessee against the order of Ld. CIT(A)-30, Delhi dated 25.07.2023.

2. Heard the arguments of both the parties and perused the material available on record.
3. The reasons recorded by the Assessing Officer while issuing of notice u/s. 148 is as under:-

1..... ***The assessee is also proprietor in firm M/s Jainsons Jewellers situated at Kachay Quarter, Sonapat. The assessee didn't file his return of income for AY 2012-13, and also remains non-filer for AY 2013-14 and AY 2014-15. Therefore, no regular assessment was made.***

7(i) In this case no return of income was filed for the year under consideration, Also, no scrutiny assessment under the Act for the year under consideration was made. Accordingly, in this case, the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded above (refer paragraphs 1 to 6).

7(ii) It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. In view of the above, provisions of clause (b) of Explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

7(iii) This case is within six years from the end of the assessment year under consideration. Approval for issuance of notice j/s 148 for A.Y. 2012-13 is solicited in accordance with provisions of Sec. 151 of the Income Tax Act, 1961.

4. From the above contradictory findings of the AO, we find that the Assessing Officer is not very sure of the basic fact, whether the assessee filed return of income or not, which goes to prove that the Revenue Authorities have not applied their mind to the very factum whether the return of income has been filed or not. Since the reopening of the case has been resorted to without application of mind, the notice issued is liable to be quashed. The assessment order passed is treated as *void ab initio*.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 16/11/2023.

**Sd/-
(DR.B.R.R. KUMAR)
ACCOUNTANT MEMBER**

Delhi; Dated 16/11/2023

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Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Delhi