

**THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.3300/Del/2023  
(Assessment Year 2012-13)**

Sho Singh Tyagi B-305, Raj Nagar Residency, Raj Nagar Ext. Ghaziabad (UP) 201017	Vs.	ITO, Ward-2(2)(3) CGO Complex-II, Kamla Nehru Nagar, Hapur Chungi Ghaziabad- 201002
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AEKPT2974E		
Appellant	..	Respondent

Appellant by :	Sh. Sahil Sharma, Adv & Sh. Sanjay Parashar, Adv.
Respondent by :	Sh. Sanjay Kumar, Sr. DR

Date of Hearing	29.10.2024
Date of Pronouncement	25.11.2024

O R D E R

**PER MADHUMITA ROY, JM:**

The instant appeal filed by the assessee is directed against the order dated 11.10.2023 passed by the CIT(A) National Faceless Appeal Centre (NFAC), Delhi, arising out of the Assessment order dated 07.10.2019 passed by the ITO, Ward-2(2)(3) Ghaziabad,

Under Section 144/147 of the Income Tax Act (hereinafter referred to as 'the Act') for Assessment Year 2012-13.

2. The brief facts leading to the case are that an AIR information was received that the assessee had deposited cash in his Saving Bank account maintained with Punjab National Bank during the year under consideration. During the year under consideration, the assessee has not filed any return of income. After recording the reasons and upon obtaining a prior approval from the PCIT, Ghaziabad, notice under Section 148 of the Act dated 26.03.2019 was issued and served upon the assessee. Subsequently, on 06.08.2019 notice under Section 142(1) was issued and following the other procedures the assessment was finalized upon making addition of the said cash deposit made by the assessee, since remained unexplained, in the hands of the assessee which was further confirmed by the First Appellate Authority. Hence, the instant appeal before us.

3. At the time of the hearing of the instant appeal, the Ld. Counsel appearing for the assessee submitted before us that while recording reasons the Ld. CIT(A) recorded incorrect fact and initiated proceeding under Section 148 of the Act. It was particularly recorded by the Ld. AO that the assessee has not filed return of income which is also reflecting from the assessment order dated 07.10.2019 whereas the assessee duly filed its return of income on 26.10.2012 for the year under consideration declaring

total income at Rs.1,81,607/-. In fact, reason recorded for reopening shows that the trigger for reopening of assessment was the purported failure on the part of the assessee to file return for the year under consideration which is not correct rather the assessee filed return long back on 26.10.2012 and therefore, the AO's opinion that the aspect of cash deposit made by the assessee could not be verified because of non-filing of return of income is factually incorrect. In that view of the matter, the reason to believe recorded by the AO and the so called approval obtained from the superior is on the wrong finding of fact and thus, the same is liable to be quashed, as was the crux of the submission made by the Ld. A.R. In this regard, he has relied upon the judgment passed by the Hon'ble Delhi High Court in the case of Shri Tarlochan Lal Goel Vs. ACIT, CC-62(1) a copy whereof has also been submitted before us.

4. Considering the entire aspect of the matter, such submissions made by the assessee is found to be genuine as the assessee has already been filed its return of income for the year under consideration on 26.10.2012 a copy whereof is also annexed with the paper book filed before us. Thus, admittedly, the reason has been recorded on a wrong finding of fact and the reopening of assessment on that basis is, therefore, also found to be not sustainable in the eyes of law. The judgment relied upon by the Ld. A.R passed in Shri Tarlochan Lal Goel (supra) has duly been considered and found that identical facts and circumstances of the matter as the assessment proceeding was found on an erroneous finding of fact that the petitioner had not filed its return of income

which is contrary to records, the reassessment proceeding has been quashed. Relevant to mention that the fact as narrated by the Ld. A.R supported by the documents has not been able to be controverted by the Ld. D.R. Thus, respectfully relying upon the judgment passed by the jurisdictional High Court in the case of Shri Tarlochan Lal Goel (supra), the reassessment proceeding on the basis of an erroneous fact is found to be not maintainable and thus, quashed.

4. Assessee's appeal is, thus, allowed.

Order pronounced in the open court on 25.11.2024

Sd/-  
(Madhumita Roy)  
Judicial Member

Date 25.11.2024  
Rohit: PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI