

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA Nos. 3154 & 3155/Del/2023
(Assessment Years: 2012-13 & 2013-14)**

Gajender Kumar, S/o. Harbans Lal, 15, Near Peer Baba, kadipur, Gurugram-122 001 (Appellant) PAN:BOMPK9197K	Vs. ITO, Ward-1(5), Gurgaon (Respondent)
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Assessee by :	Dr. Kapil Goel, Adv
Revenue by:	Shri Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing	16/01/2024
Date of pronouncement	07/02/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The appeals in ITA Nos. 3154 & 3155/Del/2023 for AYs 2012-13 and 2013-14, arise out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] dated 08.09.2023 against the order of assessment passed u/s 147 r.w.s 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 22.04.2022 by the Assessing Officer, NWR-W-53(3) (hereinafter referred to as 'Id. AO'). Identical issues are involved in both these appeals, hence, they are taken up together and disposed off by this common order for the sake of convenience.
2. The first identical issue to be decided in this appeal is challenging the validity of assumption of jurisdiction u/s 147 of the Act.

3. We have heard the rival submissions and perused the material available on record. For AY 2012-13, no return of income has been filed by the assessee. The Id AO noted that on the basis of information available with the department, the assessee had made cash deposit in the Nainital Bank Ltd of Rs. 25,89,000/-. Since, it was a case where assessee not having filed any return of income, the Id AO directly based on the said information, recorded the reasons for reopening the assessment of the assessee, stating that income of the assessee had escaped assessment to the tune of Rs. 25,89,000/- for AY 2012-13. The requisite approval u/s 151 of the Act was obtained from the Id. Principal Commissioner of Income Tax (PCIT) on 29.03.2019 and thereafter notice u/s 148 of the Act was issued to the assessee on 29.03.2019. In this regard, the pertinent fact that is to be noted is that the Id AO in para 2 of this order categorically noted that a notice u/s 133(6) of the Act was issued by him to the bank authorities for obtaining bank statement of the assessee. The said bank statement was obtained from the bank where it was found that only a sum of Rs. 13,39,000/- was found deposited in the bank account maintained with Nainital Bank Ltd by the assessee. Obviously, this information u/s 133(6) of the Act in the form of bank statement was obtained only after issuance of notice u/s 148 of the Act in view of the fact that the Id AO in the reasons recorded had mentioned the figure of Rs. 25,89,000/- towards cash deposits in the very same Nainital Bank Account. Hence, it becomes categorically clear that on the day of recording of reasons for reopening the assessment by the Id AO on 26.03.2019, the Id AO did not even have the bank statement with him to confirm the basic fact of amount of cash deposit made by the assessee in the Nainital Bank Ltd. It is not in dispute that the assessee had actually deposited only Rs. 13,39,000/- in cash in the bank account

maintained with Nainital Bank Ltd, which fact is also confirmed in para 2 of the assessment order.

4. The Id DR before us vehemently argued that sufficiency of reasons need not be looked into by the Id AO while recording his satisfaction and reasons for reopening the assessment. Though this argument prima facie appear to be attractive, it is to be seen that there should be some basic preliminary material available with the Id AO which has a live link to form a belief that income of the assessee had escaped assessment in the sum of Rs. 25,89,000/- which is the figure of cash deposit mentioned in the reasons. It is absolutely not known from where the Id AO had got the figure of Rs. 25,89,000/- towards cash deposit made by the assessee. The Id AO before issuance of section 148 notice should have made preliminary enquiry with the bank by obtaining the bank statement u/s 133(6) of the Act and at least understand the actual amount of cash deposit made by the assessee. Had he carried out that preliminary enquiry before recording the reasons, he would not have committed an error in mentioning the wrong figure of cash deposits of Rs. 25,89,000/- as against the correct figure of Rs. 13,39,000/-. Hence, it could be safely concluded that the Id AO did not have any material with him much less tangible material to form a belief that income of the assessee had escaped assessment in respect of cash deposits made in Nainital Bank Account. Hence, reopening of assessment deserved to be quashed on this count itself. In this regard, the Id AR before us rightly placed reliance on the decision of the Hon'ble Bombay High Court in the case of Bic Cello (India) Pvt. Ltd Vs. ACIT reported in 160 taxmann.com 474 (Bom) dated 11.03.2024 which is squarely applicable to the case of the assessee herein. In the said case, it was held that Id AO issued reopening notice on the ground that as per AIR information the assessee had deposited

cash of Rs. 3.73 crores in its bank account and assessee company submitted that there was deposit of only Rs. 1.87 crores which was reflected as cash sales and was offered to tax. Since the Id AO without examining details of cash deposit had recorded reasons for reopening, impugned reopening notice was to be set aside. From the above ratio decidendi of Hon'ble Bombay High Court it could be seen that in the case before Hon'ble Bombay High Court that assessee had filed the return of income. The Id AR was trying to distinguish the said case by stating that it is factually distinguishable because in the present before us the assessee had not filed the return of income and it is a non filer case. In our considered opinion, even though no return of income has been filed by the assessee still the fact of cash deposits made in the bank account could merely reflect "reason to suspect" and cannot be by any stretch of imagination directly become "reason to believe" for the Id AO. The assessee having not filed his return of income regularly and having made cash deposit in the bank account which is beyond the maximum amount not chargeable to tax, may be subjected to fall within ambit of "reason to suspect". But such suspicion of the Id AO should have to be converted into 'reason to believe' pursuant to Id AO making preliminary enquiries by way of issuance of notice u/s 142(1) of the Act to the assessee calling for return of income or calling for explanation for cash deposit prior to issuance of notice u/s 148 of the Act. This procedure was admittedly not followed by the Id AO in the instant case. Hence, the fact of cash deposits made by the assessee, in our considered opinion, would only result in 'reason to suspect' and not 'reason to believe'. It is trite law that no assessment could be reopened merely on the basis of 'reason to suspect'. Hence, in view of the aforesaid observations and respectfully following the judgment of Hon'ble Bombay High Court, we have no hesitation in quashing the reassessment for AY

2012-13. Since, the reassessment is quashed on this technical ground, the other legal ground and regular grounds raised on merits need not be adjudicated and they are left open.

5. In the result, the appeal of the assessee in ITA No. 3154/Del/2023 for AY 2012-13 is allowed.

6. The facts prevailing in ITA No. 3155/Del/2023 for AY 2013-14 are identical with AY 2012-13 adjudicated supra and hence the decision rendered by us hereinabove for AY 2012-13 shall apply mutatis mutandis for AY 2013-14 also , except with variance in figures.

7. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 07/02/2025.

-Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 07/02/2025
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

1.	Date of dictation of Tribunal Order.....	28.01.2025
2.	Date on which the typed draft Tribunal Order is placed before the Dictation Member..	28.01.2025
3.	Date on which the typed draft Tribunal Order is placed before the other Member...	
4.	Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.	
5.	Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement...	
6.	Date on which the signed order comes back to the Sr. P.S./P.S....	
7.	Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website...	
8.	Date on which the file goes to the Bench Clerk alongwith Tribunal Order....	
9.	Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks	
10.	Date on (Judicial) which the file goes to the Supervisor	
11.	The date on which the file goes to the Assistant Registrar for endorsement of the order..	
12.	Date of Despatch of the Order.	