

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, AGRA

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं./ ITA No.503/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2012-13)

Gorav Footwear 6, Nath Complex, Dhakran Crossing, Agra – 282 003	बनाम/ Vs.	DCIT Circle 1(1)(1) Agra
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAHFG-7549-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Deependra Mohan (CA)- Ld.AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Shailendra Shrivastava – Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	18-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	18-02-2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 25-09-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 147 of the Act on 24-12-2019. Upon perusal of assessment order, it could be seen that Ld. AO reopened the case of the assessee upon formation of an opinion of escapement of income on account of undisclosed / unexplained cash credits in the bank account of the assessee. However, ultimately, Ld. AO has landed up in making disallowance u/s 40A (3) for Rs.90.55 Lacs. In other words, no addition

has been made for the issue which form the very basis of reopening the case of the assessee. Though the assessee preferred first appeal, Ld. CIT(A) confirmed the action of Ld. AO and rejected the legal grounds as well as grounds on merits. Aggrieved, the assessee is in further appeal before us.

2. In the above factual background, Ld. AR has cited the decision of Hon'ble Bombay High Court in the case of **CIT Vs. Jet Airways (I) Ltd. (331 ITR 236)** as well as the decision of Hon'ble Delhi High Court in the case of **Ranbaxy Laboratories Ltd. Vs. CIT (12 Taxmann.com 74)** to plead that the law does not empower Ld. AO to make any addition if original ground of reopening fails. In this decision, it was held that though the Explanation 3 to Sec. 147 inserted by the Finance Act, 2009 w.e.f. 01.04.1989 permits the AO to assess or reassess income which has escaped assessment even if the recorded reasons have not been recorded with regard to such items, it is essential that the items in respect of which the reasons had been recorded are assessed. If the AO accepts that the items for which reasons are recorded have not escaped assessment, it means he had no "*reasons to believe that income has escaped assessment*" and the issue of the notice becomes invalid. If so, he has no jurisdiction to assess any other income. This fact could not be rebutted by revenue. No contrary decision has been shown to us. The final undisputed position that emerges is that no addition has been on issues which form the basis of reopening and therefore, reopening fails. This being the case, the reassessment proceedings are liable to be quashed. We order so. Consequently, the other issues would not survive in the appeal.

3. The appeal stand allowed in terms of our above order.

Order pronounced on 18th February, 2025.

Sd/-
(SATBEER SINGH GODARA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

Dated: 18-02-2025

Mks

आदेश की प्रतिलिपि ँ ग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA