IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH, BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No. 2020/Bang/2025
Assessment Year: 2017-18

Doriswamy Gopi, No.34, Roshni Homes, Flat No.103, 2nd Floor, 3rd Cross, New Income Tax Layout, Nagarabhavi, Bengaluru – 560 072. **PAN – AKIPG 2605 H**	Vs.	The Income Tax Officer, Ward – 3(1)(1), Bangalore. .
APPELLANT		RESPONDENT

Assessee by	:	Shri Nagaraja K.H, CA
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Department

Date of hearing	:	16.12.2025
Date of Pronouncement	:	09.01.2026

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi vide order dated 18/07/2025 for the assessment year 2017-18.

2. The assessee in ground No. 2 has challenged the validity of the assessment framed under section 147 of the Act on the ground that re-opening for the income escaping assessment was done by the AO on wrong assumption of facts.

3. The learned AR before us submitted that the assessee has filed its original return of income under section 139 of the Act dated 18 November 2017 disclosing the gross total income of ₹ 8,10,187.00 only. The learned AR in support of his contention has filed the copy of the acknowledgement for having filed the return of income. Besides the learned AR filed the paper book having pages 1 to 338 and has drawn our attention on the detailed return of income filed dated 18 November 2017 placed on pages 117 to 159 of the paper book.

3.1 However, the ld. AR submitted that the AO in the reasons recorded for reopening the assessment under section 147 of the Act has observed that the assessee has not filed the return of income for the year under consideration. To this effect, the learned AR drew attention on page 239 of the paper book where the reasons recorded for reopening of the assessment were placed. Accordingly, it was the contention of the ld. AR that the reopening of the assessment under section 147 of the Act is based on wrong assumption of facts and therefore the consequent assessment framed under section 147 of the Act is not maintainable. To this effect the ld. AR relied on the order of Mumbai Tribunal in the case of Shri Ashwin S Mehta Vs. DCIT in ITA No. 421/Mum/2016.

4. On the other hand, the ld. DR contended that the AO in the assessment framed under section 147 of the Act has clearly recorded that the assessee has filed return of income dated 18 November 2017 which evidences that the AO was conscious of the fact that the assessee has filed the original return of income. Therefore, the observation of the AO in the reasons recorded that the assessee has not filed the return of

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income is nothing but typographical error and therefore no adverse inference can be drawn on account of such typographical mistake.

4.1 The ld. DR also submitted that the mistake in the reasons recorded can be cured under the provisions of section 292B of the Act and therefore it cannot be said that the assessment framed under section 147 of the Act is not maintainable.

5. We have heard the rival contentions of both the parties and perused the materials available on record. We find important to refer the reasons recorded by the AO for reopening the assessment under section 147 of the Act which is reproduced as under:

"Reasons for Reopening u/s.147 of the Act for Assessment Year 2017-18
1. Brief details of the assessee
The assessee is an individual and has not filed return of income for AY 201718.
2. Brief details of information collected/received by the AO-
Information is received from ACIT-C-1 Hosur (TN) that the assessee has paid cash advance for purchase of jewellery of Rs. 9,50,000/- in the form of specified bank notes during demonetization period.
3. Analysis of information collected/received
On verification of the data available, it is seen that the assessee has not filed return of income for the A.Y. 2017-18. and the assessee has advanced cash in specified Bank Notes during demonetization period to Shri Kotha Venkatrathnam Rajesh, Hosur (TN) (PAN;-AEIPR6515H) on 08.11.2016 for purchase of jewellery. The assessee has not filed return of income for AY 2017-18
4. Basis of forming reason to believe:-
In view of the detailed analysis made in para 2&3 abvoe, I have reason to believe that income of more than 1 lakh has escaped assessment for the A Y 2017-18 within the meaning of Sec.147 of the I T Act,1961.
This case is within four years from the end of the relevant assessment year, necessary sanction is being sought from the Add]. commissioner of Income tax, Range-2(2), Bengaluru in accordance with the provisions of

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sub section (1) of section 151 of the I T Act for the issuance of notice u/s. 148 of the I T Act."

5.1 On perusal of the reasons recorded, discussed above, we note that the AO has observed at 2 places that the assessee has not filed the return of income which in our considered view cannot be a typographical error. In our considered view the proceedings were initiated by the AO under section 147 of the Act on the assumption that the assessee has not filed the return of income which is wrong assumption of facts. A question arises whether the reopening made by the revenue on wrong assumption of facts is sustainable in the eyes of law. This question has been answered by the Mumbai Tribunal in the case of Shri Ashwin S Mehta cited above where the reliance was placed on the judgement of Hon'ble Gujarat High Court in the case of Sagar enterprises versus DCIT reported in 257 ITR 335. The relevant extract of the judgement is reproduced as under:

"16. We have heard the rival submissions and perused the record of the case. We find that the first reason for reopening of the assessment is that the assessee has not filed his return of income for the year under consideration. However, on perusal of Paper Book placed at page-3, we find that the assessee has filed the return of income on 31.3.2011, i.e. prior to recording of reasons by the Assessing Officer. In this background, what has been sought to be pointed out is that the reasons recorded for formation of belief of escapement of income are based on an incorrect fact. The incorrect fact being the return not having been filed by the assessee. It has also been pointed out that even if it is accepted that incorrect noting about the absence of return filed was not the only basis for formation of belief, the Learned) Authorised Representative relied upon the judgment of the Hon'ble Gujarat High Court in the case of Sagar Enterprises (supra) to contend that in such a situation also, the recording of reasons is untenable. The Hon'ble Gujarat High Court noted that once there was a factually incorrect basis about the formation of belief about escapemen t of income, such reasons could not be taken to be valid even if the alternate reasons relied upon may be correct. As per the Hon'ble High Court, in such a situation it could not be said with certainty as to which factor weighed with the Assessing Officer to form a belief about escapement of income. Thus, in our view, as in the instant case, the recording of reasons is based on an incorrect assumption of fact, the same invalidates the formation of belief envisaged under Section 147/148 of the Act. As a consequence thereof, the assumption of

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jurisdiction under Section 147/148 of the Act is untenable and is liable to be set-aside. We hold so.
17. Insofar as the other Grounds raised by the assessee on the merits of the various additions made are concerned, the same are not being adjudicated as they have been rendered academic in view of our decision to quash the reassessment on the basis of the aforesaid discussion."

5.2 The facts of the case on hand are identical to the facts of the case discussed above, accordingly, we are of the view that the proceedings were initiated by the revenue on wrong assumption of facts and consequently the assessment framed under section 147 of the Act on such wrong assumption of facts is not maintainable.

5.3 Regarding the contention of the ld. DR with respect to the provisions of section 292B of the Act, we note that the provisions of section 292B of the Act are intended to cure technical or procedural defects in notices, returns, or proceedings, provided the same are otherwise in conformity with the intent and purpose of the Act. However, section 292B cannot be invoked to cure a jurisdictional defect, particularly where the assumption of jurisdiction itself is invalid due to absence of a legally sustainable "reason to believe". A reopening initiated on the basis of wrong and non-existent facts is not a mere procedural irregularity but a substantive illegality, which strikes at the validity of the entire reassessment proceedings. Further, once the very foundation of the reopening is found to be vitiated by an incorrect assumption of facts, subsequent awareness or acknowledgment by the Assessing Officer during the reassessment proceedings that the return of income had been filed cannot retrospectively validate the jurisdiction assumed at the time of recording reasons. Jurisdiction must be tested only on the basis of reasons recorded, and not on the basis of material gathered or observations made thereafter. Accordingly, such a

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fundamental defect in the assumption of jurisdiction cannot be cured by recourse to section 292B of the Act.

5.4 Regarding the other legal grounds of appeal and the issue raised by the assessee on merit, we are of the view that the same do not require any separate adjudication as we have decided the legal issue in favour of the assessee. As such other issues raised by the assessee become infructuous and accordingly, we dismiss the same.

6. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in court on 9th day of January, 2026

Sd/- Sd/-

(KESHAV DUBEY) **(WASEEM AHMED)**
Judicial Member Accountant Member

Bangalore
Dated, 9th January, 2026

/ vms /

Copy to:
1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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