

आयकर अपीलिय अधिकरण
दिल्ली पीठ "एफ", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER
आअसं.3874/दिल्ली/2025(नि.व. 2008-09)
ITA No.3874/DEL/2025 (A.Y.2008-09)

Dinesh Babu Saxena,
S/o Late Shri Fakir Chand Saxena,
A-49, Omaxe, NRI City, Omega-II, Greater Noida,
Uttar Pradesh 201310

PAN: AUJPS-0900-J

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward-1(2), CGO Complex-I,
Hapur Chungi, Ghaziabad, Uttar Pradesh 201002

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : S/Shri Sahil Sharma & Sanjay Parashar
Advocates

प्रतिवादीद्वारा/ Respondent by : Ms. Harpreet Kaur Hansra, Sr. DR

सुनवाई की तिथि/ Date of hearing : 17/11/2025

घोषणा की तिथि/ Date of pronouncement: : 26/11/2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 10.12.2024, for Assessment Year 2008-09.

2. The appeal is time barred by 108 days. The assessee has filed a petition for condonation of delay supported by an affidavit and Medical records. After perusal of same, we are satisfied that delay in filing of appeal is not intentional, but is for

the reasons stated in the condonation petition which appears to be *bonafide*. Hence, delay in filing of appeal is condoned and appeal is admitted for hearing on merits.

3. Shri Sahil Sharma, appearing on behalf of the assessee submits that the proceedings u/s.147 r.w.s. 148 of the Income Tax Act, 1961(hereinafter referred to as 'the Act') were initiated on a wrong assumption of facts. The assessee had filed his return of income for AY 2008-09 on 26.12.2008, disclosing income of Rs.3,88,845/-. Notice u/s.148 of the Act was issued to the assessee on 22.03.2015, the said notice was never served on the assessee. Subsequently, the assessee asked for the reasons for reopening of the assessment. The reasons provided to the assessee are at pages 1 & 2 of the paper book. Referring to the reasons, the Id. Counsel submitted that the Assessing Officer (AO) has recorded reasons for reopening on wrong assumption of fact that no return of income for AY 2008-09 was filed by the assessee. Whereas, the assessee had filed his return of income for AY 2008-09 on 26.12.2008. A copy of acknowledgment for filing of return of income is at page 3 of the paper book. Since, the assessment has been reopened on wrong assumption of facts, the reasons to believe for reopening are liable to be quashed. The subsequent proceedings based on wrong reasons are also liable to be quashed.

4. Per contra, Ms. Harpreet Kaur Hansra representing the department vehemently defending reopening of assessment and the assessment order submitted that, the assessment in the case of assessee was reopened on the basis of AIR Information received by the Department that the assessee has purchased immovable property on 01.02.2008 for sum of Rs.63,00,000/-. While entering into the said transaction, the assessee had not disclosed his PAN. On the basis of said

AIR Information, the AO recorded the reasons for reopening and issued notice u/s.148 of the Act. The said notice was received back un-served from the postal authorities as the assessee changed his address without any information to the department. The AO deputed the Inspector to contact the assessee on his mobile number. The Inspector called the assessee on his mobile number and asked the assessee to provide his current postal address so that the notice can be served, but the assessee disconnected the phone without providing his current postal address. The Assessing Officer was thus constrained to complete the assessment u/s.144 r.w.s. 147 of the Act as the assessee deliberately avoided service of notice.

5. Both sides heard, orders of the authorities below examined. The short issue for consideration in the present appeal is whether the assessment was validly reopened in the case of assessee? Before proceeding further it would be relevant to refer to the reasons recorded for reopening the assessment. The same is reproduced herein under:-

“Reasons for the belief that income has escaped Assessment:-

09.03.2015 On the basis of AIR Information received, it is found that Shri Dinesh Babu Saxena, SO Shri Fakir Chand Saxena, the assessee purchased immovable property on 01/02:2008 for a sum of Rs.63,00,000/-. As per record of this office the return of income had not been filed by the assessee for A. Y. 2008-09.

On the basis of the information in my possession, I have reasons to believe that the investment in the purchase of property is out of undisclosed sources and the same is chargeable to tax as escaped assessment within the meaning of section 147 of the Income Tax Act, 1961.”

6. A bare perusal of the reason would show that the AO has assumed that no return of income was filed by the assessee for AY 2008-09. Whereas, in the

assessment order dated 18.03.2016, in opening line of the assessment order, the Assessing Officer has recorded that the assessee had filed return of income on 26.12.2008 disclosing income of Rs.3,88,845/-. The reasons recorded for re-opening runs contrary to the facts recorded in assessment order. The assessee has placed on record copy of acknowledgment for filing return of income for AY 2008-09 at page 3 of the paper book. The reasons recorded for reopening the assessment are soul of proceedings u/s.147/148 of the Act. They cannot be altered, amended or rectified later on. In the present case, the Assessing Officer's reasons to believe are based on wrong assumption of facts. This makes the reasons invalid, hence, unsustainable. The proceedings arising from invalid reasons for reopening are also vitiated. Thus, in light of above facts, the assessment order passed u/s.144 r.w.s. 147 of the Act is quashed, as the same arises from invalid reasons.

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

Order pronounced in the open court on Wednesday the 26th day of November, 2025.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 26/11/2025

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

ORDER,

//True Copy//

(Asstt. Registrar) ITAT, DELHI