

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**Before Shri Mahavir Singh, Vice President
And
Shri Sanjay Awasthi, Accountant Member**

ITA No.3857/Del/2025 : Asstt. Year : 2013-14

ACIT, Rom No. 404, CR Building, IP Estate, New Delhi	Vs	Shiv Kumar Gupta, 21/71, West Punjabi Bagh, New Delhi - 110 026 (PAN: AAKPG3301L)
(APPELLANT)		(RESPONDENT)
PAN No. AKDPM4000H		

AND

**C.O. NO. 152/Del/2025
(IN ITA NO. 3857/DEL/2025)
Asstt. Year : 2013-14**

Shiv Kumar Gupta, C/o Rakesh Khiwani & Co., E-8, Kirti Nagar, New Delhi - 110 15 (PAN: AAKPG3301L)	Vs	ACIT, CIRCLE 1(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AKDPM4000H		

Assessee by : Sh. Rakesh Kumar Khiwani, CA

Revenue by : Ms. Harpreet Kaur Hansra, Sr. DR.

Date of Hearing: 26.05.2026

Date of Pronouncement: 26.05.2026

ORDER

Per Mahavir Singh, VP :

The Revenue has filed the instant appeal and Assessee has filed the Cross Objection and both are arising out of the order of the Ld. Commissioner of Income Tax(Appeals)/National

Faceless Appeal Centre (NFAC), Delhi (in short CIT(A)) dated 16.04.2024 passed in Appeal No. NFAC/2012-13/10132370, pertaining to assessment year 2013-14. The assessment was framed by the Assessing Officer/National Faceless Assessment Centre, Delhi on 29.3.2022. Since the revenue's appeal as well as assessee's cross objection are inter-connected, hence, the same were heard together and disposed of by this common order for the sake of convenience, by dealing first with Assessee's Cross objection.

2. The first issue raised by the assessee in his cross objection (filed as consigned grounds) and the ground is as regards to formation of reason to believe having no direct or live link to the so-called material supplied to the assessee. For this, assessee has raised following 02 modified / cosigned grounds:-

1. That the Reasons to Believe for reopening, on the basis of vague, non-specific and factually incorrect, including and unsupported allegation of "Short Selling" and containing non information on undisclosed income, formed on the conclusions drawn by Investigation Wing and borrowed satisfaction, without application of mind, having non live link to the "so called material" supplied to the assessee, is bad in law and hence, the reopening needs to be quashed and consequently the reassessment order also.
2. That the 'so called material' being the basis of the formation of Reasons to Believe, as supplied to the assessee, not containing assessee's name, relating to FY 2015-16, i.e. after the assessee's exit in March, 2013, establishes that allegation in the reasons to believe is unsupported with any fresh tangible material and thus to initiate the proceedings of reopening u/s. 147 is bad in law and it is prayed that the assessment order be quashed.

3. Brief facts of the case are that the assessee is an individual and filed his return of income for the assessment year 2013-14 on 20.3.2014 declaring income at Rs. 14,75,870/- and also claimed long term capital gain as exempt u/s. 10(38) of the Act at Rs. 96,55,848/-. The AO issued notice u/s. 148 of the Act, on the basis of information received from Investigation Wing, dated 31.3.2021. In response to this notice u/s. 148 of the Act, the return of income was filed on 21.4.2021. The assessee requested for copy of reasons to believe recorded and AO supplied the reasons vide letter dated 27.8.2021 and the relevant reasons reads as under:-

"Recording of reasons for reopening in the case of Shiv Kumar Gupta, PAN: AAKPG3301L for the assessment year 2013-14.

1. Sh. Shiv Kumar Gupta, e-filed its return of income for the assessment year under consideration on 20.03.2014.

1. An information was received in the case on Insight Portal of the Department. The relevant extract of the information so provided are as under:

"During the course of investigation carried out by the office of undersigned, 19 penny scrips were identified where manipulation in trade by way of complex web of prearranged or artificial web of transactions was carried out to book bogus LTCG/STCL entries to the interested persons [beneficiaries]. Information pertaining to the beneficiaries of such transactions in identified scrips is passed on to your official mail id and concerned Range Heads. You are requested to peruse the information and take appropriate remedial action, which is pertaining to FY 2012-13"

1. The information contained various beneficiaries including the assessee i.e. Shiv Kumar Gupta. The assessee has sold share of one of the Rs. 1,01,46,248/- during the concerned FY 2012-13 (AY 2013-14) from trading in such penny scrips.

1. I have carefully examined the above referred information as received. The assessee have engaged into the short sell transactions, i.e. sold more shares on the market than were actually purchased by him. The assessee acquired the

shares from off-market transactions which needs to be checked into.

*1. Keeping in view the above facts, I have reasons to believe that on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment for above assessment year 2013-14, the income chargeable to tax minimum to the extent of above mentioned transactions by the assessee company amounting to **Rs. 1,01,46,248/-** has escaped assessment within the meaning of Section 147/ 148 of the Act.*

1. In this case, a return of income was filed for the year under consideration and scrutiny assessment is not done. Subsequent to investigation carried out by the Inv. Wing and by the undersigned in the matter, the information as aforesaid has been received. Accordingly, in view of the fresh information received in the case, the provisions of clause (b) of Explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has been under-stated. I have, therefore, reasons to believe that in this case income of Rs. 1,01,46,248 /- has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

1. Moreover, as the case pertains to a period beyond four years from the end of relevant assessment years at the time of issue of notice, necessary sanction may kindly be accorded by the Pr. CIT-1, Delhi in view of the amended provisions u/s 151 w.e.f. 01.06.2015. The time limit to issue notice u/s 148 of the Income-tax Act, 1961 for the AY 2013-14 was extended upto 31.03.2021 vide amendment no. 38 of 2020 dated 29.09.2020."

4. The assessee has raised the objections for supply of material and challenged the reasons before the Assessing officer. The AO disposed of the objections raised for reopening vide letter dated 10.1.2022. Subsequently, also notice u/s. 142(1) of the Act dated 13.1.2022 asking some specific questionnaire as well as rejecting the assessee's objections to reopening was answered, which is provided in detail at page no. 8 of the assessment order in para no. 5 and 6. Once the AO has rejected the objection of the assessee in reopening of

the assessee, assessee carried the matter before the Ld. CIT(A)/NFAC.

5. Ld. CIT(A)/NFAC also confirmed the reopening by observing as under:-

"...Further in view of the facts and circumstances of the case, and the prevailing position of law applicable on such facts, I find that, the AO has formed reason to believe that, income chargeable to tax had escaped assessment in the hands of the appellant company, on the basis of specific, credible and tangible information, having live nexus with the appellant, and not on the basis of borrowed satisfaction. The AO followed procedure and issued notice u/s. 148A to an order 148A(d) of the Act, before proceeding to issue a notice u/s. 148 of the Act. Further, addition has been brought out in the reasons recorded. Therefore, the initiation of proceedings by the AO under section 147 for bringing to tax income which had escaped assessment in hands of the appellant is as per the procedure prescribed in law, hence valid. Further, in view of the fact that the assessee attended the assessment proceedings regularly and never objected regarding issue and service of notice u/s. 143(2) of the Act and took part in the assessment proceedings. Hence, the reopening of assessment cannot be held to be invalid. Thus, no illegality is found w.r.t. the reopening proceedings in this case. Consequently, the grounds of appeal no. 1 to 4 are found to be untenable and thus not allowed."

6. Aggrieved now assessee is in cross objection before us challenging the affirmation of reopening by the CIT(A).

7. Before us, Ld. Counsel for the assessee pointed out that the AO furnished copy of reasons to believe alongwith approval of the PCIT vide letter dated 27.8.2021 and also provided some material available in support of the reasons to believe on 23.3.2022 and assessee subsequently filed objection to the material forming part of the assessment order alongwith analysis report provided by the AO to the assessee. The assessee submitted complete documents, information as required in the notice issued by the AO i.e. copy of contract notes for purchase and sale of shares alongwith trade executed

through recognized stock exchange. Ld. Counsel for the assessee argued that simplicitor material was that there is one report and the said Report is on the portal of the department was that, during the course of investigation carried out by the office of undersigned, 19 penny scrips were identified where manipulation in trade by way of complex web of prearranged or artificial web of transactions was carried out to book bogus LTCG/STCL entries to the interested persons [beneficiaries]. Information pertaining to the beneficiaries of such transactions in identified scrips is passed on the official mail id and concerned Range Heads. It was requested to peruse the information and take appropriate remedial action, which is pertaining to FY 2012-13. Apart from this, Ld. Counsel argued that there is no other material or evidence which stands that there is escapement of income or any reason to believe that there is income which has not been disclosed. Ld. Counsel for the assessee stated that the assessee has disclosed entire trade transactions of sale and purchase in the original return of income, which is again subject matter of reassessment, but without pointing out how the income has escaped in this case. Ld. Counsel for the assessee further stated that the above piece of information received in the case of the assessee on the portal of the department is just a general statement that there is manipulation of trade by way of trading in penny scrips and carrying out to book bogus long term capital gain/short term capital gain. But there is no material or evidence which indicate that there is escapement of income or any material which makes AO to form a reasonable belief that assessee has not disclosed its true income.

8. When these facts were pointed out to Ld. Sr. DR, she could not controvert the above fact situation, but she argued that the AO has rightly disposed of the objection raised by the assessee that this company has a penny stock issue and AO has rightly invoked the provisions of section 148 and reopened the assessment. Ld. Sr. DR further pointed out that even the Ld. CIT(A) has rightly rejected the objection of the assessee as the AO has followed due process of law for issuance of notice u/s. 148 of

the Act. In terms of this, Ld. Sr. DR requested the Bench to confirm the reopening.

9. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that reasons recorded nowhere indicate that the trading in shares carried out by the assessee are not disclosed in the original return of income filed originally. Admittedly, assessee has disclosed profit from sale of these shares and claimed the same as exempt u/s. 10(38) of the Act. Admittedly, the shares were purchased and sold through the recognized stock exchange. Now the question arises whether there is live link or nexus between the reasons recorded and the material which was provided by the Department to the assessee for reopening or the formation of belief is reasonable or not. Under these circumstances, the Hon'ble Supreme Court in the case of ITO vs. Lakhmani Mewal Das (1976) 103 ITR 438 (SC) considered the fact that original assessment was completed after allowing deduction in interest paid to certain loan creditors. Subsequently, notice u/s. 148 of the Act was issued for reopening of the assessment and for that reasons recorded were: (i) that one M, who was one of the loan creditors, has since confessed that he was doing only name-lending; and (ii) that N, D, B and others, who were also amongst the list loan creditors, were known name-lenders. The Hon'ble Supreme Court in such facts held that there is no live link or close nexus between the reasons and the formation of believe that the income of the assessee had escaped assessment. Taking the reverse view, the Hon'ble Supreme Court in the case of ITO vs. Selected Dalurband Coal Co. Pvt. Ltd. (1996) 217 ITR 597 considered the fact that where the Report made by the Government Department after conducting a joint inspection, gave a reasonably specific estimate of the excessive coal-mining said to have been done by the assessee over and above the figures disclosed by it in its return of income, such report could constitute the basis for the formation of the requisite belief under section 147(a) so as to sustain the reassessment notices under section 148 irrespective of the fact that whether the facts stated in such

report were true or not as its prima facie belief. But in the present case, the facts are very clear from the reasons recorded that the assessee has disclosed the entire trade transactions of shares as well as disclosed the profit arising out of the same, but claimed exemption income u/s. 10(38) of the Act. But in the reasons recorded there is no live link to the escapement of income vis-à-vis material used against the assessee that there is escapement of income. Hence, this issue is very close to the facts as discussed in the case of ITO vs. Lakhmani Mewal Das (Supra). The reasons for formation of belief must have a rational connection with it or relevant bearing on the formation of belief. The rational connection postulates that there must be direct nexus or live link between the material coming to the notice of the AO and the formation of this belief and there has been escapement of income of the assessee from assessment in the particular assessment year. It is not in every material, however, vague and indefinite or distant, more or farfetched which would warrant the formation of the belief relating to escapement of income of the assessee from assessment.

10. In the present case before us, the reasons recorded by the AO nowhere connect with the escapement of income or quantify the same or give any reasonable or rational nexus, reasons cannot be sustained. Accordingly, we are of the view that the issued notice u/s. 148 of the Act is invalid and bad in law, thus the same is quashed and consequently the reassessment is also quashed and accordingly, ground raised by the assessee in the cross objection are allowed and resultantly, the cross objection filed by the assessee stand allowed.

11. Since we have already quashed the notice u/s 148 of the Act and its consequent reassessment, as aforesaid in the assessee's cross objection by allowing it, the grounds raised in the Revenue's appeal have

become infructuous and thus rejected. Accordingly, the appeal filed by the Revenue stand dismissed.

12. In the result, the assessee's cross objection stand allowed and revenue's appeal is dismissed, in the aforesaid manner.

Order Pronounced in the Open Court on 26/05/2026.

Sd/-

(SANJAY AWASTHI)
ACCOUNTANT MEMBER

Sd/-

(MAHAVIR SINGH)
VICE PRESIDENT

SRBhatnagar

Date: 01-06-2026

Copy forwarded to: -

1. Appellant
2. Respondent
3. DIT
4. CIT (A)
5. DR, ITAT

Assistant Registrar, ITAT, Delhi Benches