

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos. 22 & 23/RPR/2017  
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

Paramjeet Narang,  
Legal heir late Shri Brij Mohan Narang,  
29/114, Nariyal Kothi,  
Dayalband (C.G.)  
PAN : ABYPN6542M

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-1(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.183/RPR/2017  
निर्धारण वर्ष / Assessment Years : 2012-13

Paramjeet Narang,  
Legal heir late Shri Brij Mohan Narang,  
29/114, Nariyal Kothi,  
Dayalband (C.G.)  
PAN : ABYPN6542M

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-1(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Richa Khatri, CA  
Revenue by : Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 26.07.2022

घोषणा की तारीख / Date of Pronouncement : 04.08.2022

### **आदेश / ORDER**

#### **PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee are directed against the respective orders passed by the CIT(Appeals), Bilaspur, which in turn arises from the respective orders passed by the A.O under Sec 143(3) r.w.s.147 of the Income-tax Act, 1961 (in short 'the Act') for assessment years 2009-10, 2010-11 & 2012-13. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order.

2. We shall take up the appeal in ITA No.22/RPR/2017 for the assessment year 2009-10 as the lead matter. Before us the assessee has assailed the impugned order on the following grounds of appeal:

1. That the Learned CIT(Appeals) erred both on facts and in law in upholding the initiation of proceedings u/s.147 of the Act and completion of the impugned assessment u/s.143(3)/147 of the Act without appreciating that the AO failed to communicate reasons for re-opening the case.
2. That the Learned CIT(Appeals) failed to appreciate that there being no material available on record for formation of 'reason to believe' that income of the appellant chargeable to tax had escaped assessment the action of the AO in initiating proceedings u/s.147 of the Act is unsustainable on facts and in law.

3. That the Learned CIT(Appeals) erred both on facts and in law in upholding the initiation of proceedings u/s.147 of the Act and completion of the impugned assessment without appreciating the fact that year-wise investment having been fully disclosed in the balance sheet filed with the return and the case having not been taken up for scrutiny by service of notice u/s.143(2) of the Act within the stipulated time limit, recourse to section 147 could not have been taken by the AO particularly when the said section could not be used as a substitute for sections 143(2)/143(3) of the Act.
4. That the Learned CIT(Appeals)'s action in not quashing/annulling the impugned assessment order is mutually contradictory to his own categorical findings that: "either the re-opening is vitiated by the AO himself or he has vitiated the reference to the DVO".
5. That the Learned CIT(Appeals) failed to appreciate the fact that there being no provision in the Act authorizing the survey team to obtain estimated report of the registered valuer, placing reliance on such report was contrary to law particularly when reference to DVO was held by the same Learned CIT(Appeals) as contrary to law.
6. With due respects and without prejudice to Grounds No. 1 to 5 (supra), since the Learned CIT(Appeals) had categorically held that reference to the DVO without rejecting the books of account was contrary to law, his placing reliance on the estimated report of the registered valuer without first detecting any suppression in investment recorded in the books of account and ultimately sustaining addition of Rs.487209 (458860+28169) again based on pure estimations of the Learned CIT(Appeals), are contrary to facts and law.
7. That the Learned CIT(Appeals) erred both on facts and in law in sustaining estimated addition of Rs.487209 without bringing any corroborative evidence on record to substantiate such estimation and without giving justification for ignoring the investment recorded in the books of account.
8. The appellant craves leave to add and/or alter, amend or withdraw any ground/s before or at the time of hearing of this appeal.

3. Survey proceedings u/s.133A of the Act were conducted on the assessee on 03.03.2011. Subsequently, the case of the assessee was reopened u/s.147 of the Act. Notice u/s.148 dated 25.09.2012 was issued

to the assessee. In compliance, the assessee vide his letter dated 30.10.2012 requested that original return of income filed by him on 18.03.2011 may be treated as a return u/s.148 of the Act. Also, the assessee vide his aforesaid letter dated 30.10.2012 requested the A.O for supply of copy of "reasons to believe" a/w. copy of the approval that was obtained for reopening his case u/s.147 of the Act.

4. As is discernible from the records, the A.O though accepted the aforesaid request of the assessee for treating of his original return of income as a return filed u/s.148 of the Act and had issued notice u/s.143(2)/142(1) dated 30.12.2012, however, despite specific request by the assessee for copy of the "reasons to believe" on the basis of which his case was reopened u/s.147 of the Act, failed to furnish the same. Assessment, was thereafter, framed by the A.O vide his order passed u/s.143(3) dated 29.03.2014 determining the income of the assessee at Rs.22,95,060/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. At the very outset of the hearing of the appeal, it was submitted by the Ld. AR that the impugned assessment had been framed by the A.O without providing to the assessee a copy of the “reasons to believe” on the basis of which his case was reopened u/s.147 of the Act. It was submitted by the Ld. AR that though the assessee had duly complied with the notice u/s.148 of the Act and filed his return of income, but the AO despite specific request had not made available to him a copy of the “reasons to believe” on the basis of which his case was reopened u/s. 147 of the Act. It was submitted by the Ld. AR that as the failure on the part of the A.O to furnish the copy of “reasons to believe” to the assessee had divested him of his statutory right of objecting to the very basis of reopening of his case u/s.147 of the Act, therefore, the impugned assessment so framed by him was liable to be quashed on the said count itself.

8. The Ld. DR on being confronted with the aforesaid claim of the assessee fairly admitted that the A.O had failed to make available a copy of the “reasons to believe” to him.

9. Controversy involved in the present appeal lies in a narrow compass, i.e., sustainability of the assessment framed by the A.O without making available a copy of the “reasons to believe” to the assessee who after duly complying with the notice u/s 148 of the Act is stated to have specifically requested for the same. Before us, it is the claim of the Ld. AR that the

assessee had vide a letter dated 30.10.2012, inter alia, requested the A.O to make available a copy of the “reasons to believe” on the basis of which his case was reopened u/s.147 of the Act. In order to fortify his aforesaid claim the Ld. AR had taken us through the aforesaid letter dated 30.10.2012 (supra), on the basis of which the assessee had requested for a copy of “reasons to believe”, Page 32 of APB, which reads as under:

“To,  
The Income Tax Officer  
Ward-1(1),  
Bilaspur (C.G.)

Date :30.10.2012

Assessee : Shri Brijmohan Narang  
C. G. Plaza,  
Bilaspur.

Reference : Your notice under section 148 of the Income Tax Act, 1961  
For assessment year 2009-10

Subject : COMPLIANCE

Dear Sir,

1. The assessee has already filed the Return of income as per particulars given below

Date of filing :18.03.2021  
Acknowledgement No. : 0131010772  
Filed with : ITO, Ward-2(2), Bilaspur

2. Photocopy of the acknowledgement for filing the same is enclosed herewith.
3. Kindly treat the aforesaid return of income as filed in compliance to the notice under reference.
4. Your goodself is requested to kindly issue us certified copy of the reasons recorded and approval obtained, if any, for issuance of Notice under reference to enable us to raise our objections.

Thanking you,

Sd/-  
Yours faithfully  
V.K Khatri  
(Counsel to the assessee)"

As per the assessment records, it transpires that the A.O had vide an order sheet entry made a reference of the aforesaid letter dated 30.10.2012 (supra) that was filed by the assessee's Counsel viz., Shri V.K.Khatri, CA, which reads as under:

"30.10.2012: A letter received in Dak counter from Shri V.K Khatri, CA and Counsel for the a; in her written reply the counsel of the assessee stated that the return of income filed on 18.03.2011 may be treated as return filed in compliance to notice u/s.148"

10. As the assessee had claimed that the A.O had despite specific request failed to make available a copy of the "reasons to believe" on the basis of which his case was reopened u/s.147 of the Act, therefore, in order to verify the veracity of his said claim we had called for the assessment records and perused the same. On a perusal of the records, we find that the assessee in the course of the assessment proceedings had specifically requested the A.O for a copy of the "reasons to believe" that formed the very basis for reopening of his case u/s.147 of the Act. However, as stated by the Ld. AR, and rightly so, it transpires that the A.O had failed to make available the copy of the aforesaid "reasons to believe" to the assessee prior to the culmination of the assessment proceedings.

Nothing is either discernible from the assessment records nor brought to our notice by the Ld. DR which would prove to the contrary and therein, establish that the copy of the “reasons to believe” were duly made available to the assessee prior to the framing of the assessment by the A.O vide his order passed u/s. 143(3) r.w.s.147 dated 29.03.2014.

11. After having given a thoughtful consideration to the issue in hand, we are of the considered view that the failure on the part of the A.O to make available to the assessee a copy of the “reasons to believe” which formed the basis for reopening of his case goes to the very root of the validity of jurisdiction that was assumed by him for framing the impugned assessment. We, say so, for the reason that as the assessee despite specific request for a copy of the “reasons to believe” was not provided with the same by the A.O, thus, he remained divested of his statutory right of objecting to the very basis on which his case was reopened under section 147 of the Act. As stated by the Ld. AR, and rightly so, as held by the Hon’ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO & Ors. (2003) 259 ITR 19 (SC), the assessee after obtaining a copy of the “reasons to believe” is vested with a statutory right to file his objections before the A.O, which the latter is required to dispose off on the basis of a speaking order. As in the case before us there has been a complete violation of the applicable principle of law by the A.O, who had despite

specific request by the assessee failed to communicate the “reasons to believe” that had formed the very basis for reopening of his assessment u/s.147 of the Act, therefore, the very assumption of jurisdiction by him and framing of the impugned assessment cannot be sustained and is liable to be struck down on the said count itself. Our aforesaid view is supported by the judgment of the Hon’ble High Court of Bombay in the case of Agarwal Metals and Alloys Vs. ACIT & Ors. (2012) 346 ITR 64 (Bom.). In its aforesaid order, the Hon’ble High Court had after taking cognizance of the fact that the A.O in the case before them had failed to communicate the “reasons to believe” on the basis of which the case of the assessee was reopened, quashed the assessment by treating the same as having been passed in a brazen violation of the governing principles of law. The relevant observations of the Hon’ble High Court are culled out as under:

“4. On these admitted facts, it is evident that there has been a complete violation of the applicable principles of law by the Assessing Officer. The Assessing Officer was required to communicate the reasons for reopening the assessment which he has failed to do. The Assessing Officer despite the judgment of the Supreme Court in GKN Driveshafts (India) Ltd., [2003] 259 ITR 19 (SC) has failed to provide an opportunity to the assessee to submit his objections to the reopening of the assessment. In the affidavit-in-reply, it has been submitted that the assessee was well aware of the reasons for the reopening of the assessment as the reasons were on the record for the assessment year 2007–08. This is clearly a specious explanation. According to counsel appearing on behalf of the Revenue, during the course of the assessment year 2007–08, it has been found that the petitioner has been engaged in under invoicing and it is on that basis that the assessment for the assessment year 2004–05 is sought to be reopened. Even if the submission of the learned counsel were to be correct, reasons have to be communicated to the petitioner. There has admittedly been no communication of reasons to the petitioner. In these circumstances, we are inclined to quash and set aside the impugned order of assessment which has been passed in a brazen violation of the

governing principles of law. However, in order to obviate the bar of limitation, we intend to incorporate a protective stay in order to enable the Assessing Officer to proceed further in accordance with law.”

Also, a similar view had been taken by the Hon’ble High Court of Delhi in the case of Pr. CIT Vs. Jagat Talkies Distributors (2017) 85 taxmann.com 189 (Del.). In its aforesaid order, the Hon’ble High Court relying on the judgment of the Hon’ble High Court of Bombay in the case of CIT Vs. Trend Electronics, ITA No.1867 of 2013, had held, that on account of the failure of the A.O to make available to the assessee a copy of the reasons for reopening of the assessment u/s.147 of the Act, the re-assessment proceedings would stand vitiated in law. Accordingly, as in the case before us, the A.O despite specific request of the assessee had failed to provide to him the copy of the reasons to believe on the basis of which his case was reopened u/s.147 of the Act, therefore, as per the aforesaid settled position of law the assessment framed by the him being devoid and bereft of valid assumption of jurisdiction cannot be sustained and is herein quashed.

12. As we have quashed the assessment for want of valid assumption of jurisdiction by the A.O u/s.147 of the Act, therefore, we refrain from advertent to and therein adjudicating the grounds on the basis of which the assessee has assailed the addition made in his case on merits which, thus, are left open.

13. In the result, appeal of the assessee in ITA No.22/RPR/2017 for the assessment year 2009-10 is allowed in terms of our aforesaid observations.

**ITA No.23/RPR/2017 & ITA No.183/RPR/2017**  
**A.Y.2010-11 & 2012-13**

14. As the facts and issues involved in the captioned appeals remains the same as were there before us in ITA No.22/RPR/2017 for the assessment year 2009-10, therefore, the order therein passed shall apply mutatis-mutandis for disposing off the appeals of the assessee in ITA No.23/RPR/2017 & 183/RPR/2017. In these cases also, the assessment framed by the A.O being devoid and bereft of valid assumption of jurisdiction are quashed.

15. In the result, appeals of the assessee in ITA No.23/RPR/2017 & ITA No.183/RPR2017 for the assessment years 2010-11 & 2012-13 are allowed in terms of our aforesaid observations.

16. In the combined result, all the appeals of the assessee are allowed in terms of our aforesaid observations.

Order pronounced in open court on 04<sup>th</sup> day of August, 2022.

Sd/-

**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-

**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 04<sup>th</sup> August, 2022

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :-**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Bilaspur (C.G)
4. The CIT, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	01.08.2022	Sr.PS/PS
2	Draft placed before author	02.08.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		