

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 114/RPR/2019

निर्धारण वर्ष / Assessment Year: 2008-09

Shreyansh Bothra
H. No.75, Hospital Ward,
Pachperi Naka,
Durg (C.G.)-491 001
PAN : BTDPB2233D

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-2(1),
Bhilai (C.G).

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 21.09.2022

घोषणा की तारीख / Date of Pronouncement : 16.12.2022

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-II, Raipur dated 07.02.2019, which in turn arises from the order passed by the A.O U/ss. 143(3)/147 of the Income-tax Act, 1961 (in short 'the Act') dated 25.03.2016 for the assessment year 2008-09. The assessee has assailed the impugned order on the following grounds of appeal:

“1) That learned CIT(A) erred in not adjudicating the legal ground regarding issuance of notice u/s. 148 by the non-jurisdictional Assessing Officer and non-issuance of notice u/s. 143(2) after filing return of income in response to notice u/s. 148, therefore, consequent reassessment order passed by the AO is illegal, ab-initio-void and not sustainable.

2) That learned CIT(A) erred in confirming action of the Assessing Officer in continuing with reassessment proceeding with old notice issued u/s. 148 and in making addition on the issue not forming part of the reason recorded u/s. 148(2) after holding that the income which he has initially formed a reason to believe had escaped assessment has as a matter of the fact not escaped assessment.

3) That learned CIT(A) erred in confirming addition of Rs. 13,86,385/- made by the Assessing Officer for alleged undisclosed income from dealing in land situated at Borsi measuring 0.368 hectare (39611 Sq.ft.) bearing Khasra No. 369/3 and 370/3, Patwari Halka No. 19, RNM Durg-1, Tah. & Dist. Durg (C.G.) by ignoring submissions and evidences furnished by the appellant during the course of appellate proceeding and without considering the facts and circumstances of the case properly and judicially.

4) The appellant reserves the right to add, amend, or alter any ground or grounds of appeal at the time of hearing.”

2. On the basis of information received by the A.O that the assessee during the year under consideration had made an investment of Rs.45.60 lacs towards purchase of land, the A.O took recourse to proceedings u/s.147 of the Act. Notice u/s.148 of the Act dated 23.03.2015 was issued by the ITO, Ward-1(1), Raipur after obtaining the approval of the Jt. CIT, Range-1, Raipur. The case record of the assessee was thereafter transferred by the ITO, Ward-1(1), Raipur to ITO, Ward-2(1), Bhilai. As the assessee had failed to file his return of income in compliance to the aforesaid notice u/s.148 of the Act dated 23.03.2015, therefore, the ITO, Ward-2(1), Bhilai issued notice u/s.142(1) dated 08.07.2015 calling upon him to file his return of income in compliance to the aforesaid notice. However, as the assessee still failed to file his return of income, therefore, the A.O once again vide his notice u/s.142(1) dated 19.06.2015 called upon him to file his return of income in compliance to the notice that was issued u/s.148 of the Act. In absence of any compliance on the part of the assessee who failed to come forth with any return of income u/s.148 of the Act, the A.O issued a show cause notice (SCN) u/s.144 dated 08.12.2015, therein, calling upon him to explain as to why best judgment assessment may not be framed in

his case. After receiving the aforesaid show cause notice issued u/s.144 of the Act the assessee filed his return of income u/s.148 of the Act on 26.02.2016, declaring an income of Rs.94,850/-.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee on 01.10.2007, had entered into an agreement with one Shri Anand Bafna to purchase an immovable property, i.e., land bearing Mouza- Borsi, Khasra No.369/3, 370/3, area 0.368 hectare (39611 Sq. ft.) PHN -19 RNM, Durg-1, Tehsil and Dist. Durg (C.G.) @105/- per sq.ft. for a total consideration of Rs.41,59,155/-, which on the same date i.e. on 01.10.2007 was sold by him vide an agreement to sell to one Smt. Bhanumati Sao, W/o. Shri M.L Sao @ 140/- per sq.ft. i.e. for a total consideration of Rs.55,45,540/-. It was observed by the A.O, that the land was thereafter transferred by Shri Anand Kumar Bafna (supra) to Smt. Bhanumati Sao (supra) vide a registered deed dated 25.01.2008. In sum and substance, it was observed by the A.O that the assessee pursuant to the aforesaid respective agreements to purchase/sale had got the land in question directly transferred in favour of the purchaser from the concerned seller. Considering the aforesaid facts, the A.O observed that the assessee on the basis of the aforesaid purchase/sale agreements dated 01.10.2007 had made a profit of Rs.13,86,385/- [Rs.55,45,540/- (-) Rs.41,59,155/-] i.e. the

differential amount of the respective purchase and sale agreements. Accordingly, the A.O vide his order passed u/s.143(3)/147 of the Act dated 25.03.2016 assessed the income of the assessee at Rs.14,81,235/-.

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

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

6. At the very outset of the hearing of the appeal, the Ld. Authorized Representative (for short 'AR') for the assessee had assailed the validity of the jurisdiction that was assumed by the A.O i.e. ITO, Ward-2(1), Bhilai for framing of the impugned assessment u/ss. 143(3)/147 dated 25.03.2016. Elaborating on his aforesaid contention, it was the claim of the Ld. AR that as A.O having jurisdiction over the case of the assessee, i.e., ITO, Ward-2(1), Bhilai had framed the impugned assessment without issuing any notice u/s.148 of the Act, therefore, the assessment order so passed by him u/ss.143(3)/147 dated 25.03.2016 could not be sustained and was liable to be struck down on the said count itself. It was averred by the Ld. AR that as the assessment framed u/ss.143(3)/147 dated 25.03.2016 had been framed by the ITO, Ward-2(1), Bhilai, i.e., the

jurisdictional officer not on the basis of any notice u/s.148 of the Act issued by him but on the basis of that issued by the ITO, Ward-1(1), Raipur on 23.03.2015, therefore, the impugned assessment could not be sustained for want of valid assumption of jurisdiction on his part. In order to fortify his aforesaid claim that jurisdiction over the case of the assessee was vested with ITO, Ward-2(1), Bhilai, it was submitted by the Ld. AR that the assessee is both residing and carrying on his business as that of a general commission agent at Durg and was in no way connected with Raipur. The Ld. AR in order to buttress his aforesaid claim had drawn support from the fact that the address mentioned on the notice u/s.148 dated 23.03.2015 was the residential address of the assessee at Durg i.e. "*H No.75, Hospital Ward No.22, Parchri Para, Durg-491 001, Chhattisgarh*" Page 8 of APB. Also, it was stated by the Ld. AR that the aforesaid residential address of the assessee was found mentioned in the assessment order passed u/ss.143(3)/147 dated 25.03.2016. On the basis of his aforesaid contentions, it was the claim of the Ld. AR that as A.O having jurisdiction over the assessee's case, i.e., ITO, Ward-2(1), Bhilai had framed the impugned assessment u/ss.143(3)/147 dated 25.03.2016 *de-hors* issuance of any notice u/s.148 of the Act, therefore, the assessment so framed stood vitiated and was liable to be struck down. Alternatively, it was submitted by the Ld. AR that as

the A.O had failed to issue any notice u/s.143(2) of the Act, therefore, the assessment order so passed by him could also not be sustained for the said reason. It was further submitted by the Ld. AR that though the proceedings u/s.147 of the Act were taken recourse to in the case of the assessee for the reason that the investment made by him towards purchase of land of Rs.45.60 lac had escaped assessment, but in the absence of any addition having been made by the A.O in his order passed u/ss.143(3)/147 of the Act dated 25.03.2016, the impugned assessment was even otherwise devoid and bereft of any force of law and was liable to be struck down. In support of his aforesaid contention the Ld. AR had relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom.). It was also submitted by the Ld. AR that as the assessee had sold the land in question at a loss of Rs.5 lac, therefore, in absence of any profit no addition could have been made in his hands.

7. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by the Ld. DR that the A.O had rightly assumed jurisdiction and brought to tax the income of the assessee that had escaped assessment vide his order passed u/ss. 143(3)/147 dated 25.03.2016. It was the claim of the Ld. DR that the contentions advanced by the Ld. AR lacked any

substance and both the lower authorities had rightly made/sustained the addition qua the profit that was earned by him on sale of the immovable property in question.

8. I have heard the ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

9. I have deliberated at length on the contentions advanced by the ld. authorized representatives of both the parties which hinges around two aspects viz. (i) the validity of jurisdiction that was assumed by the A.O for framing of assessment u/ss.143(3)/147 dated 25.03.2016; and (ii) the sustainability of the addition in the backdrop of the merits of the case. As the Ld. AR has assailed the validity of jurisdiction that was assumed by the A.O for framing of the assessment by the ITO, Ward-2(1), Bhilai vide order u/ss.143(3)/147 of the Act dated 25.03.2016, therefore, I shall first deal with the same.

10. Admittedly, it is a matter of fact borne from record that the assessee who is engaged in the business of a general commission agent is a resident of Durg, viz. "H No.75, Hospital Ward No.22,

Parchri Para, Durg-491 001, Chhattisgarh” (as mentioned in the body of notice u/s.148 dated 23.03.2015). The fact that the assessee is a resident of district Durg is also fortified on a perusal of the respective purchase/sale agreements dated 01.10.2007 on the basis of which his case was reopened u/s.147 of the Act, Page 10-15 of APB. In order to dispel any doubt as regards the address that was provided by the assessee in the income tax database I had in the course of proceedings called for the PAN database of the assessee, which revealed that the assessee was admittedly a resident of Durg, viz. “*H No.75, Hospital Ward No.22, Parchri Para, Durg-491 001, India*”. For the sake of clarity the extract of the PAN database of the assessee is culled out as under:

	As per profile	As per PAN
Name	SHREYANSH BOTHRA	SHREYANSH BOTHRA
Date of Birth	13-Apr-1988	13-Apr-1988
Gender	Male	Male
Aadhaar Number	--	--
Primary Mobile Number	9279378414	
Primary Email ID	Yogesh.parakh@gmail.com	-
Address for Communication	0, Hospital Ward, Pachari Para, Bhilai	H No.75, Hospital Ward No.22, Parchri Para, Durg-491 001, India

On the basis of the aforesaid facts, it transpires that as stated by the Ld. AR, and, rightly so, the jurisdiction over the case of the assessee who was both residing and carrying out his business at Dist. Durg was vested with the ITO, Ward-2(1), Bhilai. In fact, the aforesaid factual position is supported by the very fact that the assessment u/ss.143(3)/147 dated 25.03.2016 had been framed by the ITO, Ward-2(1), Bhilai. Neither anything has been placed on record nor brought to my notice by the Ld. DR in order to refute the aforesaid factual position. Considering the aforesaid facts, I am of the view that jurisdiction over the case of the assessee was vested with the ITO, Ward-2(1), Bhilai.

11. Controversy involved in the present appeal in the backdrop of the aforesaid factual matrix boils down to the solitary aspect, i.e., as to whether or not the assessment framed by the ITO, Ward-2(1), Bhilai vide order passed u/ss.143(3)/147 dated 25.03.2016 on the basis of notice issued u/s.148 dated 23.03.2015 by the ITO, Ward-1(1), Raipur i.e. a non jurisdictional A.O is sustainable in the eyes of law?

12. As observed by me hereinabove, the assessment proceedings in the case of the assessee were initiated by the ITO, Ward-1(1), Raipur vide notice u/s.148 dated 23.03.2015. Subsequently, the ITO, Ward-

1(1), Raipur had transferred the case record of the assessee on 12.05.2015 to ITO, Ward-2(1), Bhilai. The ITO, Ward-2(1), Bhilai had, thereafter, on the basis of notice u/s.148 dated 23.03.2015 (supra) proceeded with and framed the assessment vide his order u/ss.143(3)/147 dated 25.03.2016. Ostensibly, the ITO, Ward-2(1), Bhilai, i.e., jurisdictional officer had not issued any notice u/s.148 of the Act but had acted upon that as was issued by the ITO, Ward-1(1), Raipur i.e. a non-jurisdictional officer on 23.03.2015. At this stage, I may herein observe that it is not the case of the department that the jurisdiction over the case of the assessee was transferred from ITO, Ward-1(1), Raipur to ITO, Ward-2(1), Bhilai vide an order passed by the appropriate authority u/s.127 of the Act. Also, no material had been placed before me by the Ld. DR which would reveal that as the ITO, Ward-1(1), Raipur at the time of issuance of notice u/s.148 dated 23.03.2015 was duly vested with the jurisdiction over the case of the assessee, which, thereafter, had validly been transferred to the ITO, Ward-2(1), Bhilai, therefore, as per Section 129 of the Act the assessment framed by the latter on the basis of notice u/s.148 dated 23.03.2015 issued by the ITO, Ward-1(1), Raipur could not be faulted with.

13. On the basis of the aforesaid facts, I am of the considered view that as stated by Mr. R.B Doshi, the Ld. AR, and, rightly so, the framing of the impugned assessment u/ss.143(3)/147 dated 25.03.2016 by the ITO, Ward-2(1), Bhilai on the basis of notice issued u/s. 148 dated 23.03.2015 by the ITO, Ward-1(1), Raipur i.e. an officer who at the relevant point of time was not vested with jurisdiction over the case of the assessee, was devoid and bereft of any force of law. I find that involving identical facts a similar issue had came up before the Hon'ble High Court of Bombay in the case of Ashok Devichand Jain Vs. UOI in W.P. No.3489 of 2019, dated 08.03.2022. In the case before the Hon'ble High Court as the notice u/s.148, dated 30.03.2019 was issued by the ITO, Ward 12(3)(1), Mumbai, i.e., a non-jurisdictional Officer, therefore, on a writ petition filed by the assessee assailing the validity of the jurisdiction that was assumed by the A.O for reopening of its case on the basis of the aforesaid impugned notice, the Hon'ble High Court had quashed the notice issued u/s.148 of the Act, 30.03.2019 for the reason that the same was issued by an A.O who at the relevant point of time had no jurisdiction over the assessee-petitioner. Also, I find that a similar view had been taken by the Hon'ble High Court of Bombay in the case of Pavan Morarka Vs. ACIT-2, (2022) 136 taxmann.com 2 (Bombay). It was observed by the Hon'ble High Court that as the A.O

at Delhi who had issued notice u/s.148 of the Act had no jurisdiction over the case of the assessee who was being assessed at Mumbai, therefore, the subsequent reopening notice that was issued by the A.O at Mumbai after the case of the assessee was transferred to his jurisdiction could not be held to be in continuation of the proceedings which were initiated by the A.O at Delhi. To sum up, it was observed by the Hon'ble High Court that if an A.O who had issued notice u/s.148 was not vested with jurisdiction over the case of the assessee, then, the subsequent notice issued by the jurisdictional A.O could neither be construed as a notice issued in continuation of the earlier proceedings, nor any valid assessment u/ss. 143(3)/147 of the Act could be framed on the basis of such notice issued by the non-jurisdictional A.O. Also, a similar view had been taken by the Hon'ble High Court of Allahabad in the case of Pr. Commissioner of Income Tax-II Vs. Mohd. Rizwan, Prop. M/s. M.R Garments Moulviganj, Lucknow, ITA No. 100 of 2015 dated 30.03.2017. In the case before the Hon'ble High Court, notice u/s.148 was issued by the ITO-(IV)(1), Lucknow who at the relevant point of time had no jurisdiction over the case of the assessee, as the same was already transferred to ITO-V(2), Lucknow. Thereafter, as the ITO-V(2), Lucknow proceeded with and framed the assessment without issuing any notice u/s.148 of the Act, therefore, the Hon'ble High Court

treating the notice u/s 148 issued by the ITO-(IV)(1), Lucknow as invalid upheld the quashing of the assessment by the Tribunal for want of valid assumption of jurisdiction by the jurisdictional A.O., i.e, ITO-(IV)(1), Lucknow. Apart from that, a similar view had earlier been taken by the Hon'ble High Court of Allahabad in the case of MI Builders (P) Ltd. (2014) 349 ITR 271 (Allahabad). It was observed by the Hon'ble High Court that as the jurisdiction of the A.O was transferred before issuance of notice u/s.148 of the Act by him, therefore, the notice so issued would be without jurisdiction. Further, I find that similar view in a case involving identical facts had been taken up by the ITAT, SMC Bench, Raipur in the case of M/s. Adarsh Rice Mill Vs. ITO, Ward-1(1), ITA No.84/RPR/2022, dated 29.11.2022.

14. Considering the aforesaid position of law, I find substance in the claim of the Ld. AR that the assessment framed in the case of the present assessee by the ITO-2(1), Bhilai vide his order passed u/ss.143(3)/147, dated 25.03.2016 on the basis of notice u/s.148 of the Act, dated 23.03.2015 issued by the ITO-1(1), Raipur ,i.e., a non jurisdictional A.O, being devoid and bereft of any of force of law cannot be sustained and is liable to be vacated on the said count

itself. Thus, the **Ground of appeal No.1 (to the extent relevant)** is allowed in terms of the aforesaid observations.

15. As I have quashed the assessment framed by the A.O u/ss.143(3)/147 dated 25.03.2016 for want of valid assumption of jurisdiction, therefore, I refrain from adverting to and therein adjudicating the other contentions that have been raised by the Ld. AR as regards the validity of the jurisdiction assumed by the A.O, as well as those raised by him as regards the merits of the addition, which, thus, are left open. Thus, the **Grounds of appeal No.(s) 2 to 3** raised by the assessee are disposed off in terms of the aforesaid observations.

16. **Ground of appeal No.4** being general in nature is dismissed as not pressed.

17. In the result, appeal of the assessee is allowed in terms of the aforesaid observations.

Order pronounced in open court on 16th day of December, 2022.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 16th December, 2022

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-II, Raipur (C.G.)
4. The Pr. CIT-II, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “एक-सदस्य” बेंच,
रायपुर / DR, ITAT, “SMC” Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur