

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.31/RPR/2022

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Chowaram Dhiwar
Sector 01, New Rajendra Nagar,
Raipur (C.G.)-492 006
PAN : AKPPD8741C

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Shri Gitesh Kumar, Sr. DR

सुनवाई की तारीख / Date of Hearing : 21.12.2022

घोषणा की तारीख / Date of Pronouncement : 28.12.2022

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 22.11.2021, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 31.03.2015 for the assessment year 2010-11. The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and circumstances of the case, the various observations made by the AO against the assessee and ultimate addition in the impugned assessment, unsubstantiated on the strength of evidence brought against the assessee, being opposed to fact and law on various grounds, such assessment and consequential levy kindly be struck down from its root. Without prejudice to above, the ld. AO erred on facts and in law in framing assessment u/s.147 of the IT Act, 1961.

2. On the facts and circumstances of the case, the ld. AO has erred in framing the assessment order u/s147 without passing speaking order about any disagreement, if any, with the explanation/contentions given by the assessee for the reason recorded.

3. On the facts and circumstances of the case, the ld. AO has erred in estimating the sales at Rs.11,00,00,000 as against the sales shown as per audited accounts at Rs.9,97,97,240, without mentioning any basis for that.

4. On the facts and circumstances of the case, the ld. AO has erred in making addition of Rs.8,99,546 by applying the GP rate @ 6% (as against GP shown as per audited accounts at Rs.57,00,454) on such estimated sales and doing this, again, the, AO has not mentioned any basis.

5. On the facts and circumstances of the case, the ld. AO has erred in making addition of Rs.4,00,000 on account of expenses of personal nature u/s.37(1) of the IT Act, 1961.

6. On the facts and circumstances of the case, the ld. AO has erred in making addition of Rs.9,90,902 on account of disallowance on interest u/s.36(1)(iii) and u/s.37(1) of the IT Act, 1961.

7. The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.”

Also the assessee has raised additional grounds of appeal which reads as under:

“Additional Gr.No.1:

“1. On the facts and circumstances of the case and in law, reasons recorded & notice issued u/s.148 by DCIT-1(1), Raipur on 18-6-13 is invalid, non-est, as she was not having pecuniary jurisdiction as on 18-6-13, since, CBDT Instruction No.1/11 dt.31- 1-11 was applicable from 1-4-11, is binding on IT authorities u/s119; in absence of a valid notice issued u/s148 by ITO-1(2), Raipur (jurisdictional AO) who framed the assessment u/s. 147 rws.143(3) dt.31-3-15; initiation of reassessment u/s148 would be invalid, non-est and thereby, consequential assessment made u/s 147 rws.143(3) dt.31- 3-15 would also be invalid, non-est and is liable to be quashed;

Additional Gr.No.2:

"2. On the facts and circumstances of the case and in law, assessment made u/s.147 rws.143(3) dt.31-3-15 is invalid, non-est on the count that ld. AO has not issued notice u/s143(2) which is sine qua non for making assessment u/s147 rws.143(3); in absence of mandatory notice u/s143(2), assessment made u/s.147 rws.143(3) would be invalid, non-est and is liable to be quashed."

Additional Gr.No.3

"3. On the facts and circumstances of the case and in law, ld AO has not made addition on the very basis of the reasons recorded, on which, the reopening has been made; ld AO has made addition on independent issue which is not forming part

of the reasons recorded; reopening is without jurisdiction & is liable to be quashed.”

2. As the present appeal is time barred by 29 days, therefore, the Ld. Authorized Representative (for short ‘AR’) for the assessee has taken me through an application a/w. affidavit filed by the assessee explaining the reasons leading to the same. It was submitted by the Ld. AR that the delay involved in filing of the appeal had occasioned due to the inadvertent failure on the part of the assessee to deliver the duly signed Form 36 to his counsel, despite having deposited the appeal fees of Rs.10,000/- in the government treasury within the stipulated time period, i.e, on 02.02.2022. On the other hand the ld. Departmental Representative (for short “D.R”) had objected to the seeking of condonation of delay by the assessee. I have given a thoughtful consideration to the reasons leading to the delay in filing of the present appeal, and is of the considered view that as the delay involved in filing of the same had occasioned due to an inadvertent omission on the part of the assessee, which, he had fairly admitted, therefore, the same in all fairness merits to be condoned.

3. As the assessee by raising the aforesaid additional grounds of appeal has assailed the validity of the jurisdiction that was assumed by the ITO-1(2), Raipur for framing the assessment u/s.143(3), dated 31.03.2015, which being a purely legal issue would not require looking

any further beyond the facts available on record, therefore, I have no hesitation in admitting the same. The aforesaid view that where an additional ground of appeal involving purely a question of law requiring no further verification of facts is raised before the Tribunal, though for the first time, then, the same merits admission is supported by the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC).

4. Succinctly stated, the assessee who is engaged in the business of trading in foreign liquor had filed his return of income for A.Y 2010-11 on 30.09.2010, declaring an income of Rs. 9,47,500/-. Observing, that as against the purchases of Rs.4,22,48,477/- disclosed by the assessee in his profit & loss a/c those as per the TCS certificate were Rs. 4,71,85,928/-, the Dy. CIT-1(1) initiated proceedings u/s 147 of the Act, Page 2 of APB. Notice u/s 148 of the Act, dated 18.06.2013 was issued by the Dy. CIT-1(1), Raipur, Page 1 of APB. In compliance, the assessee vide his letter dated 05.07.2013 requested that his original return of income filed on 30.09.2010 be treated as that filed in compliance to notice u/s 148 of the Act, Page 3 of APB. Copy of the reasons to believe thereafter were at the assessee's request made available to him by the A.O. Notice(s) u/s 142(1), dated 28.11.2013 and 10.12.2013 were issued by the Dy. CIT-1(1), Raipur., which, as is

discernible from the assessment order were not fully complied with by the assessee.

5. Assessment u/ss. 143(3) (*sic.* 143(3)/147), dated 31.03.2015 was thereafter framed by the ITO- Ward 1(2), Raipur vide his order passed u/ss. 143(3)(*sic.*) , dated 31.03.2015, determining the income of the assessee at Rs. 32,37,950 after making certain additions /disallowances, viz. (i). addition of suppressed gross profit on estimated sales: Rs. 8,99,546/-; (ii). disallowance out of bank interest/commission charges: Rs. 4,00,000/-; and (iii). disallowance of the assessee's claim for deduction of interest expenditure u/ss. 36(1)(iii) and 37(1) of the Act: Rs. 9,90,902/-.

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

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

8. At the very outset of the hearing of the appeal, the Ld. Authorized Representative (for short 'AR') for the assessee assailed the validity of the jurisdiction that was assumed by the A.O, i.e., ITO, Ward-1(2), Raipur for framing of the impugned assessment u/s.143(3)(*sic.*), dated 31.03.2015. It was the claim of the Ld. AR that as the A.O having

jurisdiction over the case of the assessee, i.e., ITO, Ward-1(2), Raipur 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)(sic) dated 31.03.2015 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)(sic), dated 31.03.2015 was framed by the ITO, Ward-1(2), Raipur, 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 Dy. CIT-1(1), Raipur on 19.06.2013, therefore, the impugned assessment could not be sustained for want of valid assumption of jurisdiction on his part. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that pursuant to the CBDT Instruction No.1/2011, dated 31.01.2011 that was applicable w.e.f. 01.04.2011, the existing monetary limits for assigning cases to ITOs and DCs/ACs stood revised. It was averred by the Ld. AR that as per the CBDT Notification No.1/2011 (supra) w.e.f. 01.04.2011, the case of a non-corporate assessee located in a mofussil area having declared an income upto Rs.15 lac in his return of income was to be assigned to the ITOs. It was submitted by the Ld. AR that the pecuniary jurisdiction over the case of the assessee was vested with the ITO-1(3), Raipur, which pursuant to restructuring/reallocation of territorial jurisdiction over the case of

the assessee who was based in Village Kanki, P.O.-Kharora was transferred from the ITO-1(3), Raipur to ITO-1(2), Raipur. On the basis of the aforesaid facts, it was submitted by the Ld. AR that though the jurisdiction over the case of the assessee was initially vested with the ITO-1(3), Raipur, which thereafter vide Notification No.1/2014-15 dated 15.11.2014 was transferred to ITO-1(2), Raipur but notice u/s.148, dated 18.06.2013 was wrongly issued by the DCIT-1(1), Raipur. It was submitted by the Ld. AR that though the assessment u/ss.143(3)(sic) dated 31.03.2015 was, thereafter, framed by the ITO-1(2), Raipur i.e. jurisdictional officer, but he had proceeded with and framed the impugned assessment on the basis of notice u/s.148 dated 19.06.2013 that was issued by the DCIT-1(1), Raipur, i.e., a non jurisdictional officer. In sum and substance, it was the claim of the Ld. AR that as the ITO-1(2), Raipur had framed the impugned assessment u/ss.143(3)(sic) dated 31.03.2015 on the basis of notice u/s.148 dated 19.06.2013, which was issued by the DCIT-1(1), Raipur i.e. an officer who at the relevant point of time had no jurisdiction over the case of the assessee, therefore, *de-hors* issuance of a valid notice u/s.148 of the Act, the impugned assessment so framed u/ss.143(3)/147 dated 31.03.2015 could not be sustained and was liable to be struck down on the said count itself.

9. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was averred by the Ld. DR that as the assessment u/ss.143(3)(sic) dated 31.03.2015 had been framed by the ITO-1(2), Raipur on the basis of notice u/s.148 dated 19.06.2013, therefore, no infirmity did emerge therefrom.

10. 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 them to drive home their respective contentions.

11. Ostensibly, the proceedings u/s.147 of the Act were initiated by the DCIT-1(1), Raipur, Page 2 of APB. Notice u/s.148 18.06.2013 was issued by the DCIT-1(1), Raipur. Assessment u/s.143(3)(sic. 143(3)/147) was, thereafter, framed by the ITO-1(2), Raipur. Admittedly, it is a matter of fact borne from record that the CBDT vide Instruction No. 1/2011, dated 31.01.2011 had, inter alia, revised the existing monetary limits for assigning cases to ITOs and DCs/ACs. For the sake of clarity, I deem it fit to cull out the CBDT Instruction No.1/2011 dated 31.01.2011, which reads as under:

"INSTRUCTION NO. 1/2011 [F. NO. 187/12/2010-IT(A-I)], DATED 31-1-2011

References have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship.

An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:

	Income Declared (Mofussil areas)				Income Declared (Metro cities)			
	ITOs		ACs/DCs		ITOs		DCs/ACs	
Corporate returns	Upto lacs	Rs.20	Above lacs	Rs.30	Upto lacs	Rs.30	Above Lacs	Rs.30
Non-corporate returns	Upto lacs	Rs.15	Above lacs	Rs.15	Upto lacs	Rs.20	Above lacs	Rs.20

Metro charges for the purpose of above instructions shall be Ahmedabad, Bangalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune.

The above instructions are issued in supersession of the earlier instructions and shall be **applicable with effect from 1-4-2011.**"

(emphasis supplied by me)

As stated by the Ld. AR, and, rightly so, the CBDT vide its aforesaid Instruction No.1/2011, dated 31.01.2011 had, inter alia, revised the earlier existing monetary limit for assigning the cases to ITOs/ACs/DCs w.e.f. 01.04.2011. On the basis of the aforesaid CBDT Instruction No.1/2011 (supra) w.e.f 01.04.2011, the case of a non-corporate assessee located in a mofussil area having declared an income upto Rs.15 lacs in his return of income is to be assigned to the ITO's. As the assessee had in compliance to notice u/s.148 of the Act,

dated 18.06.2013 requested vide his letter dated 05.07.2013 that his original return of income disclosing an income of Rs.9,47,500/- that was filed on 30.09.2010 be treated as a return filed in compliance to the aforesaid notice, therefore, the aforesaid CBDT Instruction No.1/2011, dated 31.01.2011 that was applicable w.e.f. 01.04.2011 duly applied to his case. Also, as per the areas earmarked in the aforesaid Instruction No.1/2011, dated 31.01.2011 as the assessee is not located in any of those cities/stations which have been held to be metro cities, therefore, his case would be as that of a non-corporate assessee who is located in a mofussil area. As is discernible from the records, the aforesaid request of the assessee vide his letter dated 05.07.2013 that his original return of income disclosing an income of Rs.9,47,500/- be treated as a return u/s.148 of the Act was accepted by the A.O, who, thereafter, had framed assessment vide his order passed u/s.143(3)(sic), dated 31.03.2015, therein taking the income of the assessee as originally returned as the base figure while arriving at the assessed income.

12. On the basis of the aforesaid facts, I am of the considered view, that as stated by the Ld. AR, and, rightly so, as per the CBDT Instruction No.1/2011, dated 31.01.2011 the jurisdiction over the case of the assessee who is located in a mofussil area i.e. Raipur and had

in compliance to the notice u/s.148, dated 18.06.2013 filed a non-corporate return on 05.07.2013 for the year under consideration, i.e., A.Y.2010-11 declaring an income of Rs.9,47,500/- was vested with the ITO, Ward 1(3), Raipur [which w.e.f. 15.11.2014 was transferred to ITO-1(2), Raipur]. Although notice u/s. 148, dated 18.06.2013 was issued within the stipulated time period, however, the same was issued by the DCIT-1(1), Raipur, i.e., an A.O who pursuant to the CBDT Instruction No.1 of 2011, dated 31.01.2011 was not vested with jurisdiction over the case of the assessee for the year under consideration. On the other hand as the ITO, Ward-1(3), Raipur [succeeded by ITO, Ward-1(2), Raipur w.e.f. 15.11.2014] who as per the aforesaid CBDT Instruction (supra) was at the relevant point of time vested with the exclusive pecuniary jurisdiction over the case of the assessee for the year under consideration had not issued any notice u/s. 148 of the Act, and had proceeded with on the basis of the notice u/s.148 dated 18.06.2013 issued by the DCIT-1(1), Raipur i.e. a non-jurisdictional Officer, therefore, no valid jurisdiction could have been assumed by him for framing the impugned assessment vide order passed u/s.143(3)(sic), dated 31.03.2015.

13. On the basis of my aforesaid deliberations, I am in agreement with the Ld. AR that the ITO-1(2), Raipur could not have validly

assumed jurisdiction and framed the assessment vide his order passed u/s.143(3)(sic), dated 31.03.2015 on the basis of the notice issued u/s. 148 dated 18.06.2013 by the DCIT-1(1), Raipur i.e. a non jurisdictional A.O. The aforesaid view of mine is fortified by the judgment of 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 said case the Hon'ble High Court by referring to the CBDT Instruction No.1 of 2011, dated 31.01.2011, had observed, that as the pecuniary jurisdiction over the case of the assessee before them who had returned an income of Rs.64.34 lacs was vested with the DCs/ACs, therefore, the notice issued u/s.148 of the Act by the ITO who during the year under consideration had no pecuniary jurisdiction over the assessee's case was bad in the eyes of law. Considering the aforesaid lapse in the assumption of jurisdiction the Hon'ble High Court had quashed the notice that was issued by the ITO u/s.148 of the Act. 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. 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 by him would be without jurisdiction. Also, 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. Further, a similar view had been taken by the Hon'ble High Court of Gujarat in the case of Pankajbhai Jaysukhlal Shah Vs. ACIT, Circle-2 (2019) 110 taxmann.com 51 (Guj.). In the said case, though the A.O who had jurisdiction over the case of the assessee had recorded the 'reasons to believe' but notice u/s.148 of the Act was issued by another officer, therefore, the notice so issued u/s.148 of the Act was quashed by the Hon'ble High Court. At this stage, I may herein observe, that the aforesaid order of the Hon'ble High Court had thereafter been upheld by the Hon'ble Supreme Court in the case of ACIT, Circle-1 Vs. Pankajbhai Jaysukhlal Shah[2020] 120 taxmann.com 318 (SC). Also, I find that a similar view had been taken by a "SMC" Bench of this Tribunal in its recent order passed in the case of Shreyansh Bothra Vs. ITO-2(1), Bhilai, ITA No.114/RPR/2019, dated 16.12.2022, wherein, it was observed as under:

“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 come 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.”

14. On the basis of my aforesaid deliberations, I am of the considered view that as the assessment framed in the case of the present assessee by the ITO-1(2), Raipur vide order u/s.143(3)(sic) dated 31.03.2015 on the basis of notice u/s.148 dated 18.06.2013 issued by the DCIT-1(1), Raipur i.e. a non-jurisdictional A.O, is devoid and bereft of any force of law, therefore, the same cannot be sustained and is liable to be struck down on the said count itself. Accordingly, the impugned assessment framed by the ITO-1(2), Raipur u/s.143(3)(sic), dated 31.03.2015 is quashed for want of valid assumption of jurisdiction on his part.

15. As I have quashed the assessment framed by the A.O u/s.143(3) (sic, u/ss.143(3)/147), dated 25.03.2016 for want of valid assumption of jurisdiction, therefore, I refrain from advertng 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, which, thus, are left open.

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

Order pronounced under Rule 34(4) of the Appellate Tribunal Rules, 1963 by placing the details on the notice board.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 28th 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)-1, Raipur (C.G.)
4. The Pr. CIT-1, 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.