

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.78/RPR/2020
निर्धारण वर्ष / Assessment Year : 2013-14**

Shri Mir Zardari Qureshi,
167, Near Chunabhatti,
Takia Para, Ward-6, Durg (C.G.)
PAN : AADPQ6523D

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax-2(1),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R Rao, Advocate
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 21.03.2023
घोषणा की तारीख / Date of Pronouncement : 27.03.2023

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 06.06.2020, which in turn arises from the order passed by the A.O under Sec.144/147 of the Income-tax Act, 1961 (in short 'the Act') dated 07.12.2018 for the assessment year 2013-14. The assessee has assailed the impugned order on the following grounds of appeal before me:

- "1. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred in dismissing the first ground of appeal assailing assessment made under section 144/147 of the Income-tax Act, 1961 without service of jurisdictional notice u/s.148 of the Income-tax Act, 1961.
2. In facts and circumstances of the case and in law, the learned Commissioner of Income-tax(Appeals) has erred confirming addition of Rs.10,24,050/- being 75% of total deposit of Rs.13,65,400/- in bank account.
3. The impugned order is bad in law and on facts.
4. The Appellant reserves the right to add, amend, alter, omit or withdraw all or any of the grounds of appeal."

Also, the assessee has raised an additional ground of appeal which reads as under:

"In the facts and circumstances of the case and in law, the assessment order is bad in law, illegal and without jurisdiction for the assessment order was passed by the Ld. ACIT-2(1), Bhilai while

jurisdiction over the case was lying with Income Tax Officer-1(3), Bhilai.”

2. As the assessee by raising the additional ground of appeal has assailed the validity of the jurisdiction assumed by the A.O for framing of the assessment vide his order passed u/ss.144/147 of the Act dated 07.12.2018, which involves purely a question of law based on the material available on record and would not require looking into facts any further beyond those available on record, therefore, after hearing the Id. Authorized Representatives of both the parties, I have no hesitation in admitting the same. My 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)**.

3. Succinctly stated, the A.O on the basis of information that the assessee had made cash deposits of 10,74,990/- in his savings bank account but had not filed his return of income for the year under consideration, thus, reopened his case u/s.147 of the Act. Notice u/s.148 of the Act dated 09.03.2018 was issued by the ITO, Ward-1(3), Bhilai. As the assessee in the course of the assessment despite sufficient opportunities by the A.O had

failed to participate in the proceedings, therefore, the A.O vide ex-parte order passed u/s.144/147 of the Act dated 07.12.2018 had after treating the entire amount of cash deposits of Rs.10,74,990/-(supra) as the unexplained income of the assessee, determined his total income at Rs.10,74,990/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). Although, it was the claim of the assessee that the amount of cash deposits in his bank account were sourced out of his small scale business of purchase and sale of goats but the same did not find favour with the first appellate authority. Accordingly, the CIT(Appeals) dismissed the appeal.

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

6. As the assessee has assailed the validity of the jurisdiction that was assumed by the A.O for framing of assessment u/ss.144/147 of the Act, dated 07.12.2018, therefore, I shall first deal with the same.

7. The Ld. Authorized Representative (for short 'AR') for the assessee at the very outset of hearing of the appeal has taken me to the facts of the case. It was submitted by the Ld. AR that the ITO, Ward-1(3), Bhilai had after recording "reasons to believe" dated Nil, initiated proceedings in the

case of the assessee u/s.147 of the Act. Notice u/s.148 dated 09.03.2018 was, thereafter, issued by the ITO, Ward-1(3), Bhilai. It was submitted by the Ld. AR that as the jurisdiction over the assessee's case pursuant to the Notification No.01/2014-15 dated 15.11.2014 of the Joint Commissioner of Income Tax, Range-2, Bhilai was vested with the ITO, Ward-2(2), Bhilai, therefore, the ITO, Ward-1(3), Bhilai had vide his letter dated 10.04.2018 transferred the case of the assessee a/w. relevant case records to the ITO, Ward-2(2), Bhilai. The Ld. AR in order to fortify his aforesaid claim had drawn my attention to a letter dated 10.04.2018 that was enclosed a/w. a letter filed by the Joint Commissioner of Income Tax, DR ITAT dated 05.11.2022. Further, the Ld. AR took me through a letter dated 13.10.2022 issued by the ITO, Ward-1(1), Bhilai to the JCIT, DR ITAT wherein the jurisdiction history of the assessee was mentioned. On the basis of the aforesaid facts, it was the claim of the Ld. AR that as admitted by the ITO, Ward-1(3), Bhilai while transferring the assessee's case a/w. case records to ITO, Ward-2(2), Bhilai vide his letter dated 10.04.2018, the jurisdiction over the case of the assessee as per the Notification No.01/2014-15 dated 15.11.2014 of the Joint Commissioner of Income Tax, Range-2, Bhilai was vested with the ITO, Ward-2(2), Bhilai, therefore, ITO, Ward-1(3) Bhilai clearly lacked jurisdiction for initiating proceedings by recording the "reasons to believe", dated nil and issuing notice u/s.148 of the Act dated 09.03.2018.

In sum and substance, it was the claim of the Ld. AR that now when the jurisdiction over the case of the assessee pursuant to the Notification No.01/2014-15 dated 15.11.2014 of the Joint Commissioner of Income Tax, Range-2, Bhilai remained with the ITO, Ward-2(2), Bhilai, therefore, initiation of the proceedings u/s.147 of the Act by the ITO, Ward-1(3), Bhilai was devoid and bereft of any force of law. On the basis of his aforesaid contentions, it was the claim of the Ld. AR that in absence of any valid initiation of proceedings u/s.147 of the Act, the assessment framed by the A.O vide his order u/ss. 144/147 dated 07.12.2018 could not be sustained and was liable to be struck down on the said count itself.

8. Also, the Ld. AR had placed his contentions as regards the merits of the case in order to impress upon me that no addition on the said count could have been made in the hands of the assessee.

9. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

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. Admittedly it is a matter of fact borne from record that the proceedings u/s.147 of the Act had been initiated on the basis of the "reasons to believe", dated nil recorded by the ITO, Ward-1(3), Bhilai, Page 5 of APB. Also the notice u/s.148 of the Act dated 09.03.2018 was issued by the ITO, Ward-1(3), Bhilai, Page 3 of APB. Thereafter, the ITO, Ward-1(3), Bhilai had vide his letter dated 10.04.2018 (supra), inter alia, transferred the case of the assessee a/w. relevant case records to the ITO, Ward-2(2), Bhilai, Page 2 of APB. On a perusal of the jurisdiction history of the assessee as can be gathered from the letter dated 13.10.2022 issued by the ITO, Ward-1(1), Bhilai to the Joint Commissioner of Income Tax, DR, ITAT, I find that on 25.09.2018 the ITO, Ward-2(2), Bhilai had pursuant to the order passed u/s.127(1) by the Pr. CIT-2, Raipur dated 12.09.2018, transferred the case of the assessee to the ACIT, Circle-2(1), Bhilai. The ACIT-2(1), Bhilai had, thereafter, framed the assessment in the case of the assessee vide his order passed u/ss.144/147 dated 07.12.2018. For the sake of clarity, the jurisdiction history in the case of the assessee as is discernible from the letter dated 13.10.2022 of the ITO, Ward-1(1), Bhilai is culled out, as under:

JURISDICTION HISTORY

FROM/AO	TO/AO	DATE	ORDERS/NOTIFICATIONS
ITO-1(3), Bhilai	ITO-2(2), Bhilai	10/04/2018	Copy of letter of ITO-1(3), Bhilai dated 10/04/2018 along with copy of Notification 1/2014-15 dated 15/11/2014.
ITO-2(2), Bhilai	ACIT-2(1), Bhilai	25/09/2018	Copy of letter of ITO-2(2), Bhilai

			dated 25/09/2018 along with order u/s.127(1) of Pr. CIT-2, Raipur dated 12.09.2018.
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12. Controversy involved in the present appeal boils down to the issue as to whether or not the ITO, Ward-1(3), Bhilai had validly initiated proceedings in the case of the assessee and issued notice u/s.148 of the Act dated 09.03.2018? Also, as an analogy that can be drawn therefrom is as to whether the assessment framed by the ACIT-2(1), Bhilai vide his order passed u/ss.144/147 dated 07.12.2018 can be sustained on the basis of notice issued by the ITO, Ward-1(3), Bhilai u/s. 148 of the Act dated 09.03.2018?

13. On a perusal of the records, I find that the ITO, Ward-1(3), Bhilai vide his letter dated 10.04.2018, had, inter alia, transferred the case of the assessee a/w. relevant case records for the year under consideration i.e. A.Y.2013-14 to ITO, Ward-2(2), Bhilai, for the reason that as per the Notification No.01/2014-15 dated 15.11.2014 of the Joint Commissioner of Income Tax, Range-2, Bhilai, the jurisdiction over the case of the assessee was vested with the latter i.e. ITO, Ward-2(2), Bhilai. For the sake of clarity, the aforesaid letter dated 10.04.2018 is culled out as under: (relevant extract)



Government of India
Ministry of Finance: Department of Revenue

Office of the Income Tax Officer-1(3),
Aayakar Bhawan, New Civic Center, Bhilai, Distt.Durg (Chhattisgarh)
e-mail address.bhilai.ito1.3@incometax.gov.in, Mob-75871-90131

F.No. ITO-1(3)/BHI/ 148 case transfer /2017-18/

Dated-10/04/2018

To,

The Income Tax Officer-2(2),
Bhilai

Sir/Madam

Sub:- Transfer of scrutiny cases as per the Notification No.01 of 2014-15 dated
15/11/2014(u/s 1,2, and 5 of section 120 of the Act) –Regarding-

Kind reference may be invited to above.

The below mentioned cases are being transferred along with relevant case record(s) as
the jurisdiction over the case vested with you as per the said ferreted notification for further
necessary action as your end.

S. No.	Name of the assessee	PAN	A.Y.	Notice	Remarks
1 to 23	Xxxx	Xxxx	Xxxxx	Xxxx	xxxx
24.	MD. Zardari Quereshi	AADPQ6523D	2013-14	148	
25-61	Xxxx	Xxxx	Xxxxx	Xxxx	xxxx

Yours faithfully
Sd/-

(N. K Khalkho)
Income Tax Officer-1(3), Bhilai

Copy to the Joint Commissioner of Income Tax, Range-1, Bhilai for favour of
information.

Sd/-
Income Tax Officer-1(3), Bhilai"

On a perusal of the aforesaid letter dated 10.04.2018, it transpires that the very basis for transferring of the case of the assessee for the year under consideration i.e. A.Y.2013-14 by the ITO, Ward-1(3), Bhilai to the ITO, Ward-2(2), Bhilai was the fact that in light of Notification No.01/2014-15 dated 15.11.2014 of the Joint Commissioner of Income Tax, Range-2, Bhilai, the jurisdiction over the case of the assessee was with latter i.e. ITO, Ward-2(2), Bhilai. On the basis of the aforesaid admitted fact, I am unable to fathom that now when the ITO, Ward-1(3), Bhilai had admitted vide his letter dated 10.04.2018 that pursuant to Notification No.01/2014-15 dated 15.11.2014 of the Joint Commissioner of Income Tax, Range-1, Bhilai, the jurisdiction over the case of the assessee remained with the ITO, Ward-2(2), Bhilai, then on what basis he had issued notice u/s.148 of the Act dated 09.03.2018. It is neither the case of the department nor a fact discernible from the records that at any point of time the jurisdiction over the case of the assessee was either transferred to; or had remained vested with the ITO, Ward-1(3), Bhilai.

14. Considering the aforesaid factual position, I am of the view that now when the ITO, Ward-1(3), Bhilai did not have any jurisdiction over the case of the assessee as on 09.03.2018, i.e. the date of issuance of the notice u/s.148 of the Act, therefore, the inescapable view that can be drawn

therefrom is that he had wrongly assumed jurisdiction and initiated proceedings u/s.147 of the Act in the case of the assessee under consideration.

15. As regards the contention of the department that now when the assessee as per the mandate of sub-section (3) of Section 124 had not called in question the jurisdiction of the A.O within the stipulated time period of one month from the date of receipt of notice u/s.148, dated 09.03.2018 from the ITO, Ward-1(3), Bhilai, therefore, he could not have assailed the same for the very first time in the course of the present proceedings, in my considered view does not merit acceptance. As stated by the Ld. AR and, rightly so, as the notice u/s.148, dated 09.03.2018 issued by the Income-Tax Officer, Ward-1(3), Bhilai was not a notice issued by an authority falling within the meaning of "Assessing Officer" i.e. either of the authorities contemplated in Section 2(7A) of the Act, viz. such authority who was vested with the relevant jurisdiction by virtue of any directions or orders issued under sub-section (1) or sub-section (2) of Section 120 of the Act or any other provision of the Act; or any such authority who was directed under clause (b) of sub-section (4) of Section 120 to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under the Act; therefore, no obligation was cast upon the assessee to call in question his jurisdiction on receipt of notice u/s.148, dated 09.03.2018 from him. My

aforesaid conviction that where an assessee is in receipt of notice from an officer who was not vested with the jurisdiction over the case of the assessee either u/s. 124(1) or u/s.127 or by notification or circular or instruction of CBDT, then, no obligation would be cast upon the assessee to call in question his jurisdiction as per the mandate of sub-section (3) of Section 124 of the Act is supported by the orders of the co-ordinate benches of the Tribunal, i.e, ITAT, Gauhati in the case of Balaji Enterprise Vs. ACIT (2021) 187 ITD 111 (Gau.) and the ITAT, Kolkata Bench in the case of OSL Developers (P) Ltd. Vs. ITO, (2021) 211 TTJ (Kol) 621. We further find that a similar view had also been taken by the Hon'ble High Court of Gujarat in the case of CIT Vs. Ramesh D Patel (2014) 362 ITR 492 (Guj.). It was observed by the Hon'ble High Court that the provisions of sub-section (3) of Section 124 pertains to the dispute of the assessee with respect to the territorial jurisdiction of the A.O and have no relevance in so far the inherent jurisdiction is concerned.

16. Also, the Hon'ble High Court of Calcutta in its order passed in the case of West Bengal State Electricity Board Vs. Deputy Commissioner of Income Tax & Anr (2005) 278 ITR 218 (Cal.) had observed that it is an admitted proposition that no jurisdiction can be conferred by default or by agreement and a decision without jurisdiction is nullity. It was further observed by drawing support from the judgment of the Hon'ble Supreme Court in the

case of Kiran Singh Vs. Chaman Paswan, AIR 1954 SC 340 (Para 6) that a defect of jurisdiction, whether it be pecuniary or territorial is incurable. Apart from that the Hon'ble High Court of Bombay in the case of Bansilal B. Rasoni & Sons Vs. Assistant Commissioner of Income Tax & Anr (2019) 260 Taxman 281 (Bom.) had observed that the time limit for raising objection to the jurisdiction of the A.O prescribed under sub-section (3) of Section 124 has a relation to the A.O's territorial jurisdiction and the same would not apply to a case where the assessee contends that the action of the A.O is without authority of law and therefore, wholly without jurisdiction. For the sake of clarity, the relevant observation of the Hon'ble High Court is culled out, as under:

"7. We are also in agreement with the contention of the Counsel for the petitioner that the petitioner's objection to the jurisdiction of the Assessing Officer on the ground that if no search was initiated, notice under Section 153A of the Act could not have been issued, cannot be curtailed on the ground that such objection was raised beyond the period referred to in sub-section (3) of Section 124 of the Act. Section 124 of the Act pertains to jurisdiction of Assessing Officers. Sub-section (1) of Section 124 lays down territorial jurisdiction of the Assessing Officer. Sub-section (2) of Section 124 provides that where the question arises under said section, as to whether an Assessing Officer has jurisdiction to assess any person, such question shall be determined by the authority prescribed under the said sub-section. Sub-section (3) of section 124 provides time limits for a person to call in question jurisdiction of an Assessing Officer. Clause (c) of sub-section (3) of section 124 provides that no person shall be entitled to call in question jurisdiction of an Assessing Officer where an action has been taken under Section 132 or section 132A, after the expiry of one months from the date on which he was served with a notice under sub-section (1) of Section 153A or sub-section (2) of Section 153C of the Act or after the completion of the assessment, whichever is earlier. In clear terms, the time limit for raising objection to the jurisdiction of the Assessing Officer

prescribed under sub-section (3) of section 124 has a relation to the Assessing Officer's territorial jurisdiction. The time limit prescribed would not apply to a case where the assessee contends that the action of the Assessing Officer is without authority of law and, therefore, wholly without jurisdiction.”

On the basis of our aforesaid deliberations, I am of the considered view that now when the assessee has assailed the framing of the assessment u/ss.144/147 dated 07.12.2018 on the ground that the initiation of proceedings u/s.147 of the Act by the ITO, Ward-1(3), Bhilai is without authority of law and, therefore, wholly without jurisdiction, the aforesaid objection of the Ld. DR that the failure on the part of the assessee to call in question the jurisdiction of the A.O within the time limit prescribed under sub-section (3) of Section 124 cannot be accepted.

17. I, thus, on the basis of my aforesaid deliberations, am of the considered view that assessment framed on the basis of “reasons to believe” dated Nil a/w. notice u/s.148 of the Act dated 09.03.2018 issued by the ITO, Ward-1(3), Bhilai, i.e. a non-jurisdictional Officer, cannot be sustained and is liable to be quashed.

18. Before parting, I may herein observe that though sub-section (4) of Section 127 of the Act contemplates that the transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by

the Assessing Officer or Assessing Officers from whom the case is transferred, but the same would by no mean comes to the rescue of the revenue in the present case. I, say so, for the reason that as the ITO, Ward-1(3), Bhilai at the time of initiating proceedings and issuance of notice u/s.148 dated 09.03.2018 was not vested with any jurisdiction over the case of the assessee, therefore, the aforesaid notice so issued by him de-hors valid assumption of jurisdiction has no existence in the eyes of law and was non-est. To sum up, the aforesaid non-est notice u/s.148 dated 09.03.2018 issued by the ITO, Ward-1(3), Bhilai can by no stretch of imagination be validated pursuant to the transfer of the case of the assessee by him on 10.04.2018 to ITO, Ward-2(2), Bhilai.

19. As I have quashed the assessment for want of valid assumption of jurisdiction by the A.O u/ss.144/147 of the Act, therefore, I refrain from adverting to and therein adjudicating the other contentions advanced by the Ld. AR as regards the merits of the case, which, thus, are left open.

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

Order pronounced in open court on 27th day of March, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 27th March, 2023.

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.