

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. 222/RPR/2023

निर्धारण वर्ष / Assessment Year : 2014-15

Gajraj Giri
S/o. Raghuraj Giri, Sai Mandir Road,
Jaharbhata, Bilaspur (C.G.)-495 001
PAN : AFGPG0112E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 2(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 04.09.2023

घोषणा की तारीख / Date of Pronouncement : 06.09.2023

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 30.05.2023, which arises from the order passed by the AO under Sec. 147 of the Income-tax Act, 1961 (in short 'the Act') dated 23.12.2019 for the assessment year 2014-15. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. That the order of the Id. CIT(Appeal) is bad in law and on facts.
2. That the order passed by A.O. is void ab initio as the A.O. failed to provide reasons as demanded by appellant on compliance to notice u/s.147.
3. That the notices issued u/s. 148 & 143(2) and subsequently assessment order passed by ITO 2(1) is without jurisdiction as the jurisdiction over the assessee was already transferred to the A.O. ward 1(1) as per notification no. 1 of 2014 dt. 15/11/2014. Relied in DCIT vs Sunita F Lease Ltd. (2011) 11 taxmann.com 241 (Chhattisgarh).
4. That the Ld. CIT(Appeal) erred in confirming the addition of Rs. 2934000/- as deemed income u/s 56(2)(vii)(b)(ii) ignoring the fact land is agricultural land.
5. That the Ld. CIT(Appeal) erred in confirming the addition of Rs. 2934000/- ignoring the fact that the Land is held as stock in trade and the provisions of 56(2) are not applicable to stock in trade.
6. The appellant reserves the right to add, alter and omit all or any of the grounds of appeal with the permission of the Hon'ble appellate authority.”

2. Based on information that the assessee had purchased an immovable property out of his undisclosed sources, the A.O. issued notice u/s.148 of the Act dated 22.03.2019. In compliance, the assessee filed his return of income on 16.04.2019, declaring an income of Rs.4,48,840/-.
3. After filing the return of income, the assessee, vide his letter dated 16.04.2019, requested the A.O to make available a certified copy of the reasons based on which proceedings were initiated u/s.147 of the Act, along with a copy of approval that he had obtained from the appropriate authority for issuing notice u/s 148 of the Act. However, the A.O., without making available the details above, proceeded with and vide his order u/s.147 of the Act dated 23.12.2019 assessed the assessee's income at Rs.33,83,240/-.
4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success.
5. The assessee, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal.
6. Shri R.B Doshi, Ld. Authorized Representative (for short 'AR') for the assessee at the very outset assailed the validity of jurisdiction assumed by the A.O for framing assessment vide his order passed u/s.147 of the Act dated 23.12.2019. Carrying his contention further, it was submitted by the Ld. AR

that though the assessee, after filing the return of income on 16.04.2019, had on the same date, inter alia, applied for a copy of “reasons to believe,” based on which proceedings u/s.147 of the Act were initiated in his case, but the same despite specific request was not made available to him. The Ld. A.R. drew my attention to the letter filed by the assessee with the A.O. dated 16.04.2019, wherein he had requested for a certified copy of “reasons to believe” a/w. copy of the approval of the appropriate authority authorizing the issuance of notice u/s.148 of the Act. The Ld. A.R further submitted that as the A.O had failed to comply with the innate statutory obligation that was cast upon him to make available a copy of the “reasons to believe,” the assessment, thus, could not be sustained and was liable to be struck down on the said count itself. To fortify his contention above, the Ld A.R relied on the Tribunal's order in the case of Paramjeet Narang, L/h. late Shri Brij Mohan Narang Vs. ITO, Ward-1(1), Bilaspur, ITA Nos. 22, 23 & 183/RPR/2017 dated 04.08.2022.

7. Per contra, the Ld. Departmental Representative (for short, ‘DR’) relied on the orders of the lower authorities.

8. 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. It is the claim of the Ld. AR that the assessee had vide his letter dated 16.04.2019, inter alia, requested the A.O to make available a copy of the "reasons to believe" based on which his case was reopened u/s.147 of the Act. To fortify his claim above, the Ld. AR had taken us through the letter dated 16.04.2019 (supra), based on which the assessee had requested a copy of "reasons to believe", which reads as under:

To,
The Income Tax Officer
Ward - 2(1)
Bilaspur (C.G.)

Assessee : Gajraj Giri
Sai Mandir Road
Jarhabhata
Bilaspur (C.G.) 495001

Reference : Your notice under section 148 dated 22/03/2019 of the Income tax Act, 1961 for assessment year 2014-15.

Subject : COMPLIANCE

Dear Sir,

- *1. The assessee has filed the Return of Income as per particulars given below:
Date of Filing : 16/04/2019
e-filing Acknowledgement No. : 464279920160419
- *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 good self 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.

Yours Faithfully,

Gajraj Giri



*Prob
Q1. put up with file (148)
16/04/19
R B Joshi*

"CERTIFIED TRUE-COPY"

9. As is discernible from the record, it transpires that the CIT(Appeals) had considered the assessee's objection that now when the A.O despite a specific

request, had failed to make available a copy of “reasons to believe”, therefore, the assessment framed by him could not be sustained and was liable to be struck down on the said count itself. Although the CIT(Appeals) concurred with the assessee that an A.O as per the mandate of law, remains under a statutory obligation to make available a copy of “reasons to believe” and also dispose off the objections which the assessee would thereafter raise before him, but observed that there was neither any mention in the assessment order about any such request having been made by the assessee for making available a copy of reasons recorded; nor was it discernible that he had raised any objection as regards reopening of his case. Apart from that, it was observed by the CIT(Appeals) that the assessee had not followed up the matter of non-receipt of copy of reasons recorded for reopening of his case. The CIT(Appeals) was of the view that now, when the A.O had not supplied the copy of “reasons to believe,” then the assessee ought to have stepped further for taking legal remedy against the reopening of his case, which, however, was not done by him. Also, it was observed by the CIT(Appeals) that the assessee, on receipt of notice u/s.143(2) of the Act, could have objected as regards non receipt of notice of “reasons to believe.” On the contrary, he further observed that the assessee, despite objecting to the non-availability of a copy of “reasons to believe,” had participated in the assessment proceedings and allowed the A.O to complete the same. Considering the facts

above, it was observed by the A.O. that the assessee had not only failed to file concrete proof/evidence which would reveal that he had requested the A.O. to supply a copy of the reasons recorded a/w. approval of the appropriate authority but also allowed him to proceed with and complete the assessment proceedings. Referring to certain judicial pronouncements, the CIT(Appeals) was of the view that as the assessee had duly participated in the assessment proceedings and complied with the notices issued by the A.O, it could safely be inferred that he had surrendered to the jurisdiction on the A.O for initiating proceedings u/s.148 of the Act. Based on the deliberations above, the CIT(Appeals) rejected the claim of the assessee wherein he had assailed the validity of jurisdiction assumed by the A.O u/s. 147 of the Act. For the sake of clarity, the observations of the CIT(Appeals) are culled out as follows:

“5.1 (i)(c). I have carefully considered the submissions of the appellant and also the strong point of first ground agitating that the assessment itself is bad in law. Giving due weight for the arguments and written submissions, it is to be stated here that the appellant did not follow up the matter of non-receipt of copy of reasons recorded for reopening assessment. When the AO did not supply the copy of the reasons recorded for reopening the assessment, the appellant ought to have taken a step further for taking a legal remedy against the reopening the assessment. This was not done obviously. Moreover, when the AO issued notices under section 143(2), the appellant could have objected to proceeding further in the assessment proceedings for non-receipt of copy of reasons. The appellant had been seen to have complied with the notice issued under section 143(2). Furthermore, there is seen to be compliance from the appellant in response to a show cause notice issued by the AO. All these compliances from the point of view " clearly indicate that he had said to go on with the AO to complete the reassessment proceedings". In fact, the AO had recorded these following findings in the assessment order: The AO had stated that :".notice U/s. 143(2) of the Income Tax Act 1961 was issued on 29/07/2019 vide notice no. ITBA/AST/S/143(2) 3/2019-20/1017073949 (1) and notice U/s 142(1) of the Income Tax Act 1961 was

issued on 06/08/2019 vide notice no. ITBA/AST/F/142(1)/2019-20/1017245067(1) requiring the assessee to make the requisite compliance on or before 16/08/2019. In compliance to this notice assessee has submitted partial reply along with supporting documents which is placed on record. Thereafter, a show-cause notice was issued on 01/11/2019 vide letter no. ITBA/AST/F/147(SCN)/2019-20/1019683519(1) by fixing the date for compliance on 15/11/2019 along with notice U/s 142(1) of the Income Tax Act, 1961 was issued vide notice no. ITBA/AST/F/142 (1) / 2019 -2 0 / 1019 683632(1) by fixing the compliance on or before 15/11/2019. In response to this notice the assessee has submitted, reply which is placed on record and reproduced as under. " All these facts do prove the appellant's intention seems clear and he had a mind to go on with the AO to complete the reassessment proceedings, On the other hand, the appellant had not filed any concrete proof and evidence in support of his statement that he had requested the AO for supply of copy of recorded reasons and also copy of approval of the competent authority permitted the AO to issue the notice under section 148 of the Act.

(A). In the case reported in [2007] 160 Taxman 173 (Allahabad)/[2007] 210 CTR 491 (Allaha...], in the case of Smt. Reena Jain Vs. Commissioner of Income-tax, Circle-1, Meerut, in I.T. APPEAL NOS. 8 TO 11, 13, 15 AND 31 OF 1999, dated: OCTOBER 12, 2006, the Hon'ble High Court of Allahabad had held that : "Section 148, read with section 147, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for - Assessing Officer rejected assessee's explanation regarding genuineness of alleged gifts received by assessee through cheques from donor - Assessing Officer initiated reassessment proceedings and supplied gist of reasons recorded for issuance of notice under section 148 in form of show-cause notice - Assessee's case was that assessee was supplied with gist of reasons instead of full reasons in absence of which they could not submit their full reply and said approach had vitiated entire proceedings - Whether since assessee had full knowledge of entire matter and, in fact, they had met same by submitting their reply/explanation, it could not be said that non-supply of full reasons in place of gist of reasons had prejudiced them, and, therefore, proceedings initiated under section 148 were valid - Held, yes"".

(B). In another case reported in [2021] 130 taxmann.com 347 (Madras)[18-06-2021], in the case of C. Anitha. v. Income-tax Officer, Non - Corporate Ward 1(1), Chennai, in W.P. NO. 30862 OF 2018 , IN W.M.P. NOS. 36013, 36017, 36019 & 36021 OF 2018 & 6662 OF 2019, DATED: JUNE 18, 2021 , the issue before the Hon'ble High Court of Madras was :: "INCOME TAX : Where assessee filed no return for year under consideration while AO found that assessee had purchased immovable property and she had earned interest from mutual funds as also receipt of premia from Insurance company, reassessment was justified".

The Hon'ble High Court of Madras has held that :: "Section 4, read with section 147, of the Income-tax Act, 1961 - Income - Chargeable as (Others) - Assessment year 2011-12 - Assessee had not filed return on ground that

total income earned by her in relevant assessment year was below maximum amount which was not chargeable to tax - Assessing Officer sought to reopen assessment on grounds that purchase of immovable property, interest received from mutual fund and premium received from life insurance was chargeable to tax which escaped assessment - Whether since a case was established that competent authority had reasons to believe that tax had escaped assessment, reassessment was justified - Held, yes ".

If any prima facie case is established and the competent authority has reason to belief regarding Tax escaped assessment, then the authority must be permitted to proceed with the assessment or reassessment.

(C). Yet, in another case reported in [2022] 143 taxmann.com 120 (Orissa)/[2023] 290 Taxman 84 (Or...], in the case of Auroglobal Comtrade (P.) Ltd. v. Chairman, Central Board of Direct Taxes, in W.P.(C) NO. 15102 OF 2022, DATED: SEPTEMBER 6, 2022 , the issue before the Hon'ble High Court of Orissa was :: "INCOME TAX : Where assessee challenged reopening notice on ground that there was absence of reasons with material particulars for proposed reassessment, since assessee filed revised return in compliance of terms of reopening notice, it would be construed that assessee participated in reassessment proceedings and surrendered to jurisdiction of AO and was conscious about material based on which reassessment proceedings were initiated".

The Hon'ble High Court of Orissa had held : "Section 148A, read with section 148, of the Income-tax Act, 1961 - Income escaping assessment - Conducting inquiry, providing opportunity before issue of notice (General) - Assessment year 2018-19 - Assessing Officer issued show cause notice dated 15-3-2022 under section 148A(b) on ground that assessee had inflated its expenses by showing bogus purchases which resulted in suppressed income - Assessee did not respond to said notice nor requested for 'extension of time -Consequently, Assessing Officer held that he had reasons to believe that income had escaped assessment and passed order dated 26-3-2022 under section 148A(d) for reopening assessment - Assessee challenged said reopening notice on ground that its application dated 18-5-2022 which was submitted before Assessing Officer in response to notice issued dated 15-3-2022 was not considered and there was absence of reasons with material particulars for reassessment - Whether since assessee filed revised return in compliance of terms of reopening notice, it would be construed that assessee participated in reassessment proceedings and surrendered to jurisdiction of Assessing Officer and was conscious about material based on which proceedings were initiated - Held, yes [Paras 5.17 and 5.18]".

Having filed the return for the assessment year under consideration and after receiving the notices from the department and , then complying to the notices and more particularly to the show cause issued by the AO, the assessee is said to have participated in the proceeding and surrendered to the jurisdiction of the Assessing Officer who was competent to initiate proceeding under section 148. Therefore, it is unbecoming on the part of the assessee to turn

around to contend to the contrary. It's with this background of the case, the primary ground of appeal raised against issuance of notice under section 147 merits no consideration and accordingly stands rejected.”

10. I have thoughtfully considered the observations of the CIT(Appeals) and cannot persuade myself to subscribe to the same. I say so because not only are the observations of the CIT(Appeals) found to be factually incorrect, but they are also not in conformity with the settled position of law. So far, his observation that the assessee had not filed any concrete proof/evidence to prove his claim that he had requested the A.O. to supply a copy of reasons to believe a/w. approval of the appropriate authority for issuing notice u/s.148 of the Act, I find that the same is far from the truth. As had been brought to my notice by Shri R.B Doshi, Ld. AR, the assessee, vide his letter filed with the A.O dated 16.04.2019, had inter alia requested him to supply a certified copy of the “reasons to believe” and approval of the competent authority based on which notice u/s.148 of the Act was issued (copy of the letter has been placed on record). Considering the facts above, I am unable to concur with the CIT(Appeals) that the assessee had not filed any request with the A.O. for making available a copy of “reasons to believe” based on which proceedings u/s.147 of the Act were initiated in this case. I find that the assessee, during the assessment proceedings, had specifically requested the A.O. for a copy of the “reasons to believe” that formed the very basis for the 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 before the culmination of the assessment proceedings. Nothing is discernible from the assessment records nor brought to our notice by the Ld. DR, which would prove to the contrary and establish that the copy of the “reasons to believe” was duly made available to the assessee before the framing of the assessment by the A.O. vide his order passed u/s.147 dated 23.12.2019.

11. I have given thoughtful consideration to the issue in hand and am of the considered view that the failure of the A.O to make available to the assessee a copy of the “reasons to believe” that formed the basis for reopening his case goes to the very root of the validity of jurisdiction that he assumed for framing the impugned assessment. I say so for the reason that as the assessee, despite a specific request for a copy of the “reasons to believe” was not provided the same by the A.O, thus, had 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 of based on a speaking

order. As in the case before me, there has been a complete violation of the applicable principle of law by the A.O, who had, despite a 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. My view above 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 order mentioned above, 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” based on 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 follows:

“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 order mentioned above, the Hon’ble High Court relied on the judgment of the **Hon’ble High Court of Bombay** in the case of **CIT Vs. Trend Electronics, ITA No.1867 of 2013**, and 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 me, the A.O despite the specific request of the assessee, had failed to provide him a copy of the reasons to believe based on which his case was reopened u/s.147 of the Act; therefore, as per the aforesaid settled position of law, the assessment framed by him being devoid and bereft of valid assumption of jurisdiction cannot be sustained and is herein quashed.

12. As the assessment in the present case is quashed for want of valid assumption of jurisdiction by the A.O u/s.147 of the Act, I refrain from adverting

to and therein adjudicating the grounds based on which the assessee has assailed the addition made in his case on merits which, thus, are left open.

13. In the result, the assessee's appeal is allowed in terms of my observations above.

Order pronounced in open court on 06th day of September, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 06th September, 2023.

**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, 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.