

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. 118/RPR/2023

निर्धारण वर्ष / Assessment Year : 2013-14

Smt. Soni Jha  
11, 557, Om Shanti Nagar,  
Pt. Dindayal Upadhyay Nagar,  
Naya Talab, Gadhiyari,  
Raipur-492 001 (C.G.)

PAN : ARCPJ5940M

.....अपीलार्थी / Appellant

**बनाम / V/s.**

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Veekass S. Sharma, CA  
Revenue by : Shri Choudhary N. C Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing : 13.07.2023

घोषणा की तारीख / Date of Pronouncement : 11.10.2023

**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 09.03.2023, which in turn arises from the order passed by the A.O under Sec. 147 r.w.s.144 of the Income-tax Act, 1961 (in short 'the Act') dated 27.09.2021 for the assessment year 2013-14. The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and in the circumstances of the case, the assessment order passed u/s 147 r.w.s. 144 is bad-in-law and illegal inasmuch as the mandatory notice u/s 143(2) of the Income Tax Act, 1961 was issued after the expiry of statutory time limit as laid down vide proviso to Section 143(2) as it stood amended vide Finance Act, 2021 w.e.f. 01.04.2021, consequently, the entire proceedings are bad-in-law and liable to be quashed. It is prayed that the assessment order passed by the Learned A.O and confirmed by the Learned CIT (Appeal) may kindly be declared as illegal, bad-in-law and void ab initio as the notice u/s.143(2) of the Income Tax Act, 1961 issued by the Learned A.O on 15.09.2021 was barred by limitation as the statutory time limit for issuance of notice u/s.143(2) expired on 30.06.2021 by virtue of Amendment brought: by the Finance Act, 2021 w.e.f. 01.04.2021.

2. On the facts and in the circumstances of the case, the Learned CIT(Appeal) has erred in confirming the addition of Rs.43,86,112/- made by the Learned A.O by invoking Section 69 of the Income Tax Act, 1961 inasmuch as the assessee had duly explained the source of investment, hence, the addition so made is bad-in-law and liable to be deleted. It is prayed that the addition of Rs.43,86,112/- made by the Learned A.O and confirmed by the CIT (Appeal) may kindly be deleted.

3. Without prejudice to the above, alternatively, it is submitted that on the facts and in the circumstances of the case, the Learned CIT (Appeal) is not justified in passing the order and confirming the addition in an ex-parte order without providing

sufficient opportunity of being heard to the assessee and thereby violating the principles of natural justice. Hence, the impugned order passed by the Learned CIT (Appeal) is liable to be declared as illegal and bad-in-law. It is prayed that the order passed by the Learned CIT (Appeal) may kindly be declared as illegal and bad-in-law on account of violation of principles of natural justice.

4. The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of Appeal.”

2. Based on the information that the assessee who had purchased an immovable property valued at Rs.43,86,112/- had not filed her return of income for the year under consideration, the A.O. initiated proceedings u/s.147 of the Act. Notice u/s. 148 of the Act dated 18.03.2020 was issued to the assessee. In response, the assessee filed a return of income on 06.06.2020.

3. As the assessee, despite having been afforded sufficient opportunities, had failed to come forth with any explanation qua the queries that were raised in the course of the assessment proceedings, the A.O was constrained to treat the entire amount of purchase consideration of Rs.43,86,112/- as an unexplained investment u/s.69 of the Act. Accordingly, the A.O. vide his order passed u/s.147 r.w.s. 144 dated 27.09.2021 determined the income of the assessee at Rs.45,68,272/-.

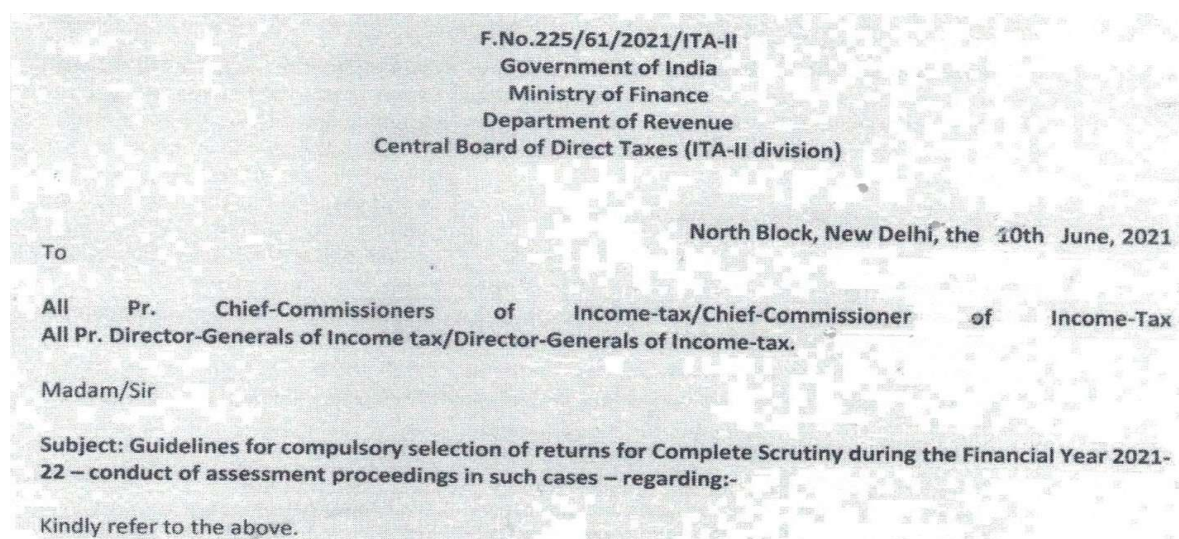
4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). As the assessee, despite having been afforded sufficient opportunities, failed to participate in the appellate proceedings, the CIT(Appeals) on the said count dismissed the appeal.

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

6. Shri Veekass S. Sharma, Ld. Authorized Representative (for short 'AR') for the assessee at the very outset assailed the validity of the jurisdiction assumed by the A.O. for framing the impugned assessment u/s.147 r.w.s. 144 of the Act. Elaborating on his contentions above, it was submitted by the Ld. AR that the A.O. in the present case had framed the impugned assessment u/s.147 r.w.s. 144 of the Act dated 27.09.2021 without issuing notice u/s.143(2) of the Act within the statutory period of three months as required per the mandate of law. Carrying his contention further, it was averred by the Ld. AR that legislature had in all its wisdom vide Finance Act, 2021 (No.13 of 2021) scaled down the period for issuance of notice under sub-section (2) of Section 143 of the Act from the earlier period of "six months" to "three months." The Ld. AR to bolster his aforesaid claim took me through the Finance Act, 2021, Pages 58-59 of APB, and "Notes on clause no. 34" (relevant extract) explaining the above amendment, Pages 56 to 57 of APB. Also, my attention was drawn by the Ld. AR to the instruction/guidelines dated 10.06.2021 issued by the CBDT for compulsory selection of returns for complete scrutiny during F.Y.2021-22 and framing of assessment in such cases, Page 65-67 of APB. Referring to the aforesaid instruction/guidelines, it was submitted by the Ld. AR that the same envisages that inter alia, in a case where a return is furnished in response to the notice u/s.148 of the Act, then the exercise for selection of a case for complete

scrutiny and service of notice u/s.143(2) of the Act will have to be completed on 30.06.2021.

6.1 Also, the Ld. AR submitted that as per the amendment made available on the statute by the Finance Act 2021, the time limit of service of notice u/s.143(2) of the Act had been reduced to “three months” from the end of the month of the Financial Year, in which, return is filed. The Ld. AR, to fortify his aforesaid contention, had drawn my attention to the relevant extracts of the abovementioned instruction/guideline dated 10.06.2021, which, for the sake of clarity, is culled out as under:



**2. The parameters for compulsory selection of returns for Complete Scrutiny during Financial Year 2021-22 and conduct of assessment proceedings in such cases are prescribed as under:**

S. No.	The Parameter	Assessment proceedings to be conducted by
1.	Cases pertaining to survey u/s.133A of the Income Tax Act, 1961(Act)	

	XXXXXXXX	XXXXXXXX
2.	Cases pertaining to search and seizure	
	XXXXXXXX	XXXXXXXX
3.	Cases in which notices u/s. 142(1) of the Act, calling for return, have been issued	
	XXXXXXXX	XXXXXXXX
4.	<b>Cases in which notice u/s. 148 of the Act have been issued</b>	
	(i) Cases where no return has been furnished in response to notice u/s. 148 of the Act.	In such cases, Jurisdictional Assessing shall issue notice u/s 142(1) of the Act, calling for information regarding the issues on the basis of which notice u/s 148 was issued, subsequent to which, assessment proceedings in such cases will be conducted by NaFAC.
	<b>(ii) Cases where return is furnished in response to notice u/s 148 of the Act.</b>	<b>After the issue of notice u/s 143(2) of the Act by the Jurisdictional Assessing Officer for compulsory selection, assessment proceedings in such cases will be conducted by NaFAC.</b>
5.	Cases related to registration/approval under various sections of the Act, such as 12A, 35(1)(ii)/(ia)/(iii), 10(23C), etc.	
	XXXXXXXX	XXXXXXXX

3. Without prejudice to the above, the cases which are selected for compulsory scrutiny by the International Taxation and Central Circle charges following the above prescribed guidelines, shall, as earlier, continue to be handled by these charges.

**4. The exercise of selection of cases for compulsory scrutiny on the basis of the above parameters and service of notice u/s 143(2) of the Act will have to be completed by 30.06.2021. As per the amendments brought vide Finance Act,2021, the time limit for service of notice u/s 143(2) of the Act has been reduced to three months from the month of end of the Financial Year in which the return is filed.**

5. These instructions may be brought to the notice of all concerned for necessary compliance.

Sd/-  
(Prajna Paramita)  
Director to the Government of India"

6.2 The Ld. AR further submitted that as instructions issued by the CBDT are binding on the department, therefore, the assessment framed in the present case on the basis of notice u/s.143(2) of the Act dated 15.09.2021 was rendered as invalid. The Ld. AR, in support of his aforesaid contention, had relied on the following judicial pronouncements:

- (i) Commissioner of Customs Etc. Vs. Indian Oil Corporation Ltd. & Anr., (2004) 267 ITR 272 (SC)
- (ii) Commissioner of Income Tax Vs. Crystal Phosphates Ltd. (2023) 332 CTR ( P & H) 215
- (iii) Assistant Commissioner of Income Tax Vs. Serajuddin & Co. (2023) 7 NYPCTR 483 (Orissa)
- (iv) K.M Mammen Vs. Pr. Commissioner of Income Tax & Ors. (2022) 327 CTR 170 ( Mad.)
- (v) K.M Mammen Vs. Director General of Income Tax (Investigation) & Ors. (2020) 314 CTR 467 (Mad.)
- (vi) Deputy Commissioner of Income Tax Vs. Sunita Finlease Ltd. (2011) 330 ITR 491 (Chhattisgarh)

6.3 Apart from that, the Ld. AR submitted that now, as per the CBDT instruction/guideline dated 10.06.2021, a notice u/s.143(2) of the Act was statutorily

required to be issued within three months from the end of the financial year in which the assessee furnished her return of income; therefore, the assessment framed in the present case, in absence of compliance of the said statutory requirement was liable to be quashed on the said count itself. The Ld. AR, in support of his aforesaid contention, relied on the following judicial pronouncements:

- (i) Union of India & Ors Vs. Ashish Agrawal, Civil Appeal No.3005/2022
- (ii) Amec Foster Wheeler Iberia SLU Vs. DCIT (2023) 7 NYPCTR 159 (Mad.)
- (iii) PCIT Vs. Consortium Nussali Comfort Net (2022) 6 NYPCTR 355 (Delhi)
- (iv) Nittur Vasanth Kumar Mahesh Vs. ACIT (2019) 311 CTR 332 (Kar)

Based on his aforesaid contention, it was submitted by the Ld. AR that as the assessment in the case of the present assessee had been framed *dehors* issuance of valid notice u/s.143(2) of the Act, therefore, the same was liable to be quashed.

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

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, and considered the judicial pronouncements pressed into service by the Ld. AR to drive home his contentions.

9. Having thoughtfully considered the facts in the present case, I find that the Ld. AR has assailed the validity of the jurisdiction assumed by the A.O. for framing the impugned assessment on the ground that no valid notice u/s. 143(2) of the Act was issued by the A.O. within the statutory time limit during the year under consideration. On a perusal of the orders of the lower authorities, I find that the assessee had neither participated in the proceedings before the A.O; nor had put up an appearance before the CIT(Appeals) despite having been afforded sufficient opportunity. At the same time, the CIT(Appeals) had, without adverting to the specific grounds of appeal based on which the impugned assessment order u/s.147 r.w.s. 144 dated 27.09.2021 was assailed before him, dismissed the appeal on the solitary ground that the assessee had failed to put up an appearance before him.

10. As observed by me hereinabove, the CIT(Appeals) had disposed off the appeal for non-prosecution and failed to apply his mind to the issue arising from the impugned order and was assailed by the assessee before him. I am unable to persuade myself to subscribe to the manner in which the appeal of the assessee has been disposed off by the CIT(Appeals). In my view, once an appeal is preferred before the CIT(Appeals), it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the same on account of non-prosecution of the same by the assessee. In fact, a perusal of Sec.251(1)(a) and (b), as well as the "Explanation" to Sec.251(2) of the Act, reveals that the CIT(A) remains under a statutory obligation to apply his mind to all the issues which arise from the impugned order before him. As per mandate of law, the CIT(Appeals) is not vested

with any power to summarily dismiss the appeal for non-prosecution. The aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom)**. In the aforementioned case the Hon'ble High Court had observed as under:

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of s. 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under s. 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the s. 251(1)(a) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."

11. I, thus, not being persuaded to subscribe to the dismissal of the appeal by the CIT(Appeals) for non-prosecution, therefore, set aside his order with a direction to

him to dispose off the same on merits. Needless to say, the CIT(Appeals) shall, in the course of the set-aside proceedings, afford a reasonable opportunity of being heard to the assessee. Ostensibly, the assessee had not assailed the validity of the jurisdiction assumed by the AO for framing the impugned assessment before the lower authorities and had challenged the same based on his aforesaid contentions for the first time before me. However, considering the fact that the challenge of the assessee to the validity of the jurisdiction assumed by the A.O for framing the impugned assessment involves purely a question of law which is based on the facts available on record and would not require looking any further beyond the facts available on record, therefore, the CIT(Appeals) is directed to adjudicate the same in the course of the set-aside proceedings. Thus, the grounds of appeal raised by the assessee are allowed for statistical purposes in terms of my observations above. As I have restored the matter to the file of CIT(Appeals) for fresh adjudication, I refrain from advertng to the merits of the case.

12. In the result, the assessee's appeal is allowed for statistical purposes in terms of my observations above.

Order pronounced in open court on 11<sup>th</sup> day of October, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 11<sup>th</sup> October, 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.