**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. 249/RPR/2023**

**निर्धारण वर्ष / Assessment Year : 2013-14**

Nalini Parwani
C/o. G.K Automobiles P. Ltd.
Opp. Kabir Nagar, Gate No.2.
Ring Road-2, Sondongri,
Raipur (C.G.)-492 001
PAN : AEQPP5635N

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,
Ward-3(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rajesh Kumar Chawda, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 12.10.2023
घोषणा की तारीख / Date of Pronouncement : 17.10.2023

## 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 24.05.2023, which in turn arises from the order passed by the A.O under Sec. 147 r.w.s.144B of the Income-tax Act, 1961 (in short 'the Act') dated 24.03.2022 for the assessment year 2013-14. The assessee has assailed the impugned order on the following revised grounds of appeal:

> "1. That the Ld. lower authorities sought to reopen assessment in case of assessee beyond period of four years on ground that income chargeable to tax had escaped assessment, however, there was no failure on part of assessee to disclose fully and truly all material facts as all relevant facts had not only been disclosed, but had also been considered by Assessing Officer while considering claim of deduction under section 57 of the IT Act, 1961 in order of assessment issued by the Ld. AO u/s 143(3) of the Act, dated 27/02/2016, and therefore reopening of assessment being a mere change of opinion was not justified.
>
> 2. The Ld lower authorities erred in law and in fact by not disposing the objection raised by appellant regarding non availability of any tangible material with the Ld AO to reopen the case which was already verified by Ld AO in its original assessment proceedings concluded u/s 143(3) of the IT Act, 1961 and accordingly the same was merely change of opinion which is not permissible under the act. The assessment order may kindly to be set aside.
>
> 3. That the Ld. Lower authorities erred in law and in fact by making the disallowance of deduction claimed u/s 57 of the Income Tax Act, 1961 of INR 7,10,668/- on the grounds of not relevant for making income from other sources when the relevancy of claimed deduction with earning income from

> investing in Business/Profession were truly and correctly disclosed. The addition may kindly be deleted.
>
> 4. That the assessee craves leave to add, alter or amend the ground before or at the time of hearing."

2. Succinctly stated, the assessee had belatedly filed her return of income for A.Y. 2013-14 on 08.03.2014, declaring an income of Rs.6,73,660/-. Original assessment in the case of the assessee was, thereafter, framed u/s.143(3) of the Act dated 27.02.2016, determining her total income at Rs.6,73,660/-, i.e., as originally returned. Thereafter, the case of the assessee was reopened u/s.147 of the Act. Notice u/s. 148 of the Act dated 31.03.2021 was issued to the assessee. In compliance, the assessee filed her return of income on 18.02.2022.

3. Ostensibly, the case of the assessee was reopened u/s.147 of the Act for the following "reasons to believe":

> "This case was selected for scrutiny and assessment was completed u/s 143(3) at Rs. 6,73,660/- on 27.02.2016 by accepting the returned income. The case was selected for scrutiny to examine the reason for Large Deduction Claimed u/s 57 of the IT Act.
>
> Further, it is observed that as per personal Balance Sheet as on 31.03.2013, it is quite clear that the assessee has taken unsecured loan of Rs. 98,07,196/- , from various family members and utilized this loan amount for making investment in partnership firm M/s G. K. Sales Corporation. She earned interest on capital to the tune of Rs. 12,10,182/- which is taxable under head income from Business and Profession u/s 28 of Income Tax Act, 1961. Herein it is pertinent to mention that to claim deduction u/s 57 of the IT Act, it is important to satisfy the following conditions:
>
> (i) the expenditure must have been laid out or expended wholly and exclusively for the purpose of making or earning "income from other sources " ;

(ii) the purpose of making or earning such income must be the sole purpose for which the expenditure must have been incurred, that is to say the expenditure should not have been incurred for such purpose as, also for another purpose, or for a mixed purpose;

(iii) the distinction between purpose and motive must always be borne in mind in this connection, for, what is relevant is the manifest and immediate purpose and not the motive or personal considerations weighing in the mind of the assessee in incurring the expenditure.

Considering the above facts, it is ample clear that the assessee has wrongly claimed deduction u/s 57 of the I.T. Act to the tune of Rs. 7,10,668/- which cannot be said to be borne exclusively for earning interest Income u/s 56 of the IT Act. Hence, the same is required to be disallowed and added to the total income of the assessee."

4. During the course of the assessment proceedings, it was observed by the A.O. that the assessee had claimed a deduction u/s.57 of the Act of Rs.7,10,668/-. On a perusal of the records, it was observed by the A.O. that the assessee had raised unsecured loans aggregating to Rs.98.07 lacs (approx.) from various family members and utilized the said amount for making investments in a partnership firm, viz. M/s. G.K Sales Corporation. The A.O. observed that the assessee had, during the year under consideration, earned interest of Rs. 12.10 lac (approx.) on her capital deployed with the aforesaid firm, which was taxable under the head income from business and profession u/s.28 of the Act. Observing that the assessee had claimed a deduction of interest of Rs.7.10 lacs (approx.) that was paid on the aforesaid interest-bearing unsecured loans of Rs.98.07 lacs (supra), the A.O called upon her to justify the same. As the reply filed by the assessee on 28.02.2022 and 11.03.2022 in her attempt to justify her claim of deduction

u/s.57 of the Act did not find favor with the A.O, therefore, he vide his order u/s.147 r.w.s. 144B dated 24.03.2022 disallowed the same and assessed the income of the assessee at Rs.13,84,328/-.

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

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

7. 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 Ld. A.R to drive home his contentions.

8. At the threshold of hearing of the appeal, Shri Rajesh Kumar Chawda, Ld. Authorized Representative (for short, “AR”) assailed the validity of the jurisdiction that was assumed by the A.O. for reopening the concluded assessment of the assessee. Elaborating further on his contention, the Ld. AR had come forth with two-fold contentions, viz. (i). that the A.O had wrongly assumed jurisdiction for the reopening of the concluded assessment on a mere “change of opinion” based on the same set of facts as were there before his predecessor while framing the original assessment; and (ii) reopening of

the concluded assessment of the assessee after the lapse of a period of four years from the end of the relevant assessment year, i.e., A.Y.2013-14 in absence of any failure on her part to disclose fully and truly all material facts necessary for framing of her assessment was hit by the "1st proviso" to Section 147 of the Act. Carrying his contention further, it was averred by the Ld. AR that the issue as regards the allowability of the claim of deduction of interest expenditure of Rs.7.10 lacs (supra) u/s. 57 of the Act was looked into and deliberated upon by the A.O. while framing the original assessment. The Ld. AR, in order to fortify his contention, took me through the original assessment order passed u/s. 143(3) of the Act dated 27.02.2016, which revealed that the A.O., while framing the original assessment, had specifically queried, deliberated upon, and accepted the assessee's claim for deduction of interest paid on the unsecured loans which she had raised. Backed by the aforesaid facts, the Ld. A.R submitted that as the A.O had reopened the concluded assessment of the assessee on the basis of a mere "change of opinion" as against that of his predecessor, the same, thus, could not be sustained and was liable to be struck down on the said count itself. The Ld. A.R, in support of his aforesaid contention, relied upon the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India (2010) 320 ITR 561 (SC).

8.1. Adverting to the second limb of his contention, it was averred by the Ld. AR that as the original assessment in the case of the assessee for A.Y.2013-14 was framed u/s.143(3) of the Act dated 27.02.2016, therefore, reopening of her case after the lapse of a period of four years from the end of the relevant assessment year vide notice u/s.148 of the Act, dated 18.02.2022 in absence of any failure on her part to disclose fully and truly all material facts necessary for framing of her assessment was not permitted as per the "1st proviso" to Section 147 of the Act.

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

10. Having thoughtfully considered the aforesaid contentions of the Ld. Authorized Representatives of both the parties in the backdrop of the issue involved in the present case, I find substance in the same. Admittedly, it is a fact borne from the record that the original assessment in the assessee's case was framed u/s. 143(3) of the Act dated 27.02.2016. Ostensibly, the A.O., while framing the original assessment, had categorically queried, deliberated upon, and accepted the assessee's claim for deduction of the interest paid on the unsecured loans raised by her. Backed by the aforesaid facts, I find favor with the Ld. AR's claim that reopening the concluded assessment of the assessee based on a mere "change of opinion" is not as per the mandate of

law. I am afraid that a substitution of a view of a successor A.O. cannot form a justifiable basis for reopening the concluded assessment of an assessee. In fact, I find that the Hon'ble Supreme Court, in its landmark judgment in the case of **CIT Vs. Kelvinator of India (2010) 320 ITR 561 (SC)** had observed that merely on the basis of a “change of opinion,” the case of an assessee cannot be reopened and had held as under:-

> "On going through the changes, quoted above, made to s. 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, reopening could be done under above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the AO to make a back assessment, but in s. 147 of the Act (w.e.f. 1st April, 1989), they are given a go by and only one condition has remained, viz., that where the AO has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post 1st April, 1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, s. 147 would give arbitrary powers to the AO to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The AO has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the AO. Hence, after 1st April, 1989, AO has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to s. 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in s. 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the AO. We quote hereinbelow the relevant portion of Circular No. 549, dt. 31st Oct., 1989 [(1990) 82 CTR (St) 1], which reads as follows :

> "7.2 Amendment made by the Amending Act, 1989, to re-introduce the expression “reason to believe” in s. 147.--A number of representations were received against the omission of the words „reason to believe from s. 147 and their substitution by the “opinion” of the AO. It was pointed out that the meaning of the expression, “reason to believe” had been explained in a number of Court rulings in the past and was well settled and its omission from s. 147 would give arbitrary powers to the AO to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended s. 147 to reintroduce the expression “has reason to believe” in place of the words “for reasons to be recorded by him in writing, is of the opinion”. Other provisions of the new s. 147, however, remain the same.”

Further, following the judgment of the “Full bench” of the Hon’ble High Court of Delhi in the case of Kelvinator of India (supra), which the Hon’ble Apex Court had upheld, the **Hon'ble High Court of Bombay** in the case of **Asteroids Trading & Investment P. Ltd. Vs. DCIT (2009) 308 ITR 190 (Bom)**, had held, that an A.O is precluded from assuming jurisdiction to initiate reassessment proceedings on the basis of a “Change of opinion”, and observed as under:

> "8. Perusal of the record shows that the petitioner had made full disclosure necessary for claiming deduction under s. 80M. The AO after applying his mind to the relevant records had made a specific order allowing the deduction. A perusal of the record shows that now respondent No. 1 proposes to reopen the assessment because according to him deduction under s. 80M was wrongly allowed, and, therefore, he was of the opinion that the income has escaped assessment. Though, in the notice respondent No. 1 has used the phrase "reason to believe", admittedly between the date of the order of assessment sought to be reopened and the date of forming of opinion by respondent No. 1, nothing new has happened and there is no change of law, no new material has come on record, no information has been received. It is merely a fresh application of mind by the same officer to the same set of facts. Thus, it is a case of mere change of opinion, which, in our opinion, does not provide jurisdiction to

> respondent No. 1 to initiate proceedings under s. 148 of the Act. It can now be taken as a settled law, because of a series of judgments of various High Courts and the Supreme Court, which have been referred to in the judgment of the Full Bench of the Delhi High Court in the case of Kelvinator of India Ltd. (supra) referred to above, that under s. 147 assessment cannot be reopened on a mere change of opinion."

I further find that the **Hon'ble High Court of Bombay,** in the case of **Asian Paints Ltd. Vs. DCIT (2008) 308 ITR 195 (Bom),** had observed that as the A.O received no new information/material, therefore, the fresh application of mind by the A.O to the same set of facts and material which were available on record at the time of framing of the assessment but had inadvertently remained omitted to be considered would tantamount to review of the order, which is not permissible as per law, and held as under:

> "10. It is further to be seen that the legislature has not conferred power on the AO to review its own order. Therefore, the power under s. 147 cannot be used to review the order. In the present case, though the AO has used the phrase "reason to believe", admittedly between the date of the order of assessment sought to be reopened and the date of formation of opinion by the AO, nothing new has happened, therefore, no new material has come on record, no new information has been received; it is merely a fresh application of mind by the same AO to the same set of facts and the reason that has been given is that the some material which was available on record while assessment order was made was inadvertently excluded from consideration. This will, in our opinion, amount to opening of the assessment merely because there is change of opinion. The Full Bench of the Delhi High Court in its judgment in the case of Kelvinator (supra) referred to above, has taken a clear view that reopening of assessment under s. 147 merely because there is a change of opinion cannot be allowed. In our opinion, therefore, in the present case also, it was not permissible for respondent No. 1 to issue notice under s. 148".

Further, the **Hon'ble High Court of Bombay** in the case of **ICICI Prudential Life Insurance Co. Ltd. Vs. ACIT (2010) 325 ITR 471 (Bom)**, had relied on the judgment of the Hon'ble Supreme Court in the case of Kelvinator of India (supra), and held as under:

> 23. Though the power to reopen an assessment within a period of four years of the expiry of the relevant assessment year is wide, it is still structured by the existence of a reason to believe that income chargeable to tax has escaped assessment. The Supreme Court, in a recent judgment in Kelvinator of India Ltd. (supra) while drawing upon the legislative history of s. 147 held that the expression „reason to believe needs to be given a schematic interpretation in order to ensure against an arbitrary exercise of power by the AO. The judgment of the Supreme Court emphasizes that the power to reopen an assessment is not akin to the power to review the order of assessment, and a mere change of opinion would not justify recourse to the power under s. 147. Unless the AO has tangible material to reopen an assessment, the power cannot be held to be validly exercised."

Also, in the case of **Aventis Pharma Ltd. Vs. Asst. CIT (2010) 323 ITR 570 (Bom)**, the **Hon'ble High Court of Bombay** reiterated its aforesaid view that reassessment proceedings cannot be permitted on the basis of a "Change of opinion" and had held as under:-

> "There is merit in the submission which has been urged on behalf of the assessee that there was no tangible material before the AO on the basis of which the assessment could have been reopened and what is sought to be done is to propose a reassessment on the basis of a mere change of opinion. This, in view of the settled position of law is impermissible. No tangible material is shown on the basis of which the assessment is sought to be reopened. In the absence of tangible material, what the AO has done while reopening the assessment is only to change the opinion which was formed earlier on the allowability of the deduction. The power to reopen an assessment is conditional

> on the formation of a reason to believe that income chargeable to tax has escaped assessment. The power is not akin to a review. The existence of tangible material is necessary to ensure against an arbitrary exercise of power. There is no tangible material in the present case."

11. At this stage, I may herein observe that as per the mandate of law, even where a concluded assessment is sought to be reopened by the A.O within a period of 4 years from the end of the relevant assessment year, it is must that the A.O has fresh material or information with him, that had led to the formation of belief on his part that the income of the assessee chargeable to tax has escaped assessment. Our aforesaid view is fortified by the judgments of the **Hon'ble High Court of Bombay** in the case of **NYK Lime (India) Ltd. Vs. DCIT (No.2) [2012] 346 ITR 361 (Bom)** and **Purity Tech Textile Pvt. Ltd. Vs. ACIT & Anr. [2010] 325 ITR 459 (Bom)**.

12. Adverting to the claim of the Ld. A.R that reopening of the concluded assessment after the lapse of a period of four years from the end of the relevant assessment year, i.e., A.Y.2013-14, is not permissible in the absence of failure on the part of the assessee to disclose fully and truly all material facts necessary for her assessment as per the mandate of the "1st proviso" to Section 147 of the Act, I am principally in agreement with the same. I concur with the claim of the Ld. AR that the reopening of the concluded assessment of the assessee is hit by the "1st proviso" to Sec. 147 of the Act. Admittedly,

the original assessment was framed in the case of the assessee for the year under consideration, i.e., A.Y 2013-14 vide order passed under Sec. 143(3) of the Act, dated 27.02.2016. The concluded assessment of the assessee was thereafter reopened vide notice issued under Sec. 148 of the Act, dated 31.03.2020. It is the claim of the ld. A.R. that the A.O. had exceeded his jurisdiction, and despite there being no failure of the assessee to fully and truly disclose all the material facts necessary for her assessment, had in violation of the mandate of the "1st proviso" of Sec. 147 of the Act wrongly reopened her concluded assessment after the lapse of a period of four years from the end of the relevant assessment year.

13. Admittedly, as stated by the Ld. A.R and, rightly so, in a case where an assessment had earlier been made under Section 143(3) of the Act, and action thereafter is sought to be taken for the reopening of the case u/s.147 of the Act after the expiry of four years from the end of the relevant assessment year, then, it would be necessary that the twin conditions contemplated in the statutory provision are satisfied, i.e. (i). the AO must have reason to believe that income chargeable to tax has escaped assessment; AND (ii). he must also have a reason to believe that such escapement had occurred by reason of failure on the part of the assessee of either of the two conditions, viz. (a). to make a return of income under Section 139 or in response to notice issued

under sub-section (1) of Section 142 or Section 148; or (b). to disclose fully and truly all material facts necessary for his assessment for that purpose.

14. Coming back to the two conditions carved out in the “1st proviso” to Sec. 147 of the Act, as it is neither the case of the department nor a fact discernible from the record that the income of the assessee chargeable to tax had escaped assessment for the reason that there was any failure on her part to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148, therefore, the first condition contemplated in the “1st proviso” to Sec. 147 is not satisfied by the assessee.

15. I shall now advert to the second condition contemplated in the “1st proviso” to Sec. 147 of the Act, i.e., as to whether or not there has been any failure on the part of the assessee to disclose fully and truly all material facts as were necessary for her assessment for the year under consideration, i.e., A.Y. 2013-14. On a perusal of the record, it transpires that the assessee had disclosed fully and truly all the material facts necessary for framing her assessment. I may herein observe that the **Hon’ble Supreme Court,** in the case of **New Delhi Television Ltd. vs. Deputy Commissioner of Income Tax (2020) 116 Taxmann.com 151 (SC),** had, inter alia, held that though the assessee is obligated to disclose the “primary facts” but it is neither required to disclose the “secondary facts” nor required to give any assistance to the

A.O by disclosure of the other facts and it is for the A.O to decide what inferences are to be drawn from the facts before him. It was observed by the Hon'ble Apex Court that the extended period of limitation for initiating proceedings under the "1st proviso" of Section 147 of the Act would only get triggered where the assessee had failed to disclose fully and truly all material facts necessary for its assessment. Now, in the case before me, I am unable to comprehend what facts the assessee had failed to disclose which would have otherwise justified bringing her case within the realm of the extended time period contemplated in the "1st proviso" of section 147 of the Act. As the assessee had disclosed fully and truly all the material facts as were necessary for her assessment for the year under consideration, i.e., AY 2013-14, she could by no means be held to be in default for the purpose of bringing her case within the sweep of the "1st proviso" of Section 147 of the Act.

16. Analyzing the scope of the "1st proviso" to Sec. 147 of the Act, which contemplates that where assessment in the assessee's case had been framed u/s 143(3) of the Act, then no action under Sec. 147 shall be taken in his case after the expiry of four years from the end of the relevant assessment year unless any income chargeable to tax had escaped assessment for such assessment year for failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, the **Hon'ble Supreme**

**Court** had dismissed the Special Leave Petition (SLP) filed by the revenue in **ACIT Vs. Marico Limited, 117 taxmann.com 244 (SC),** and impliedly approved the decision of the **Hon'ble High Court of Bombay** in the case of **Marico Limited Vs. ACIT, WP NO.1917 of 2019 dated 21.08.2009.** The **Hon'ble High Court of Bombay** in **Marico Limited Vs. CIT (supra)** [as approved by the Hon'ble Apex Court] had observed as follows:

> **5.** Upon hearing learned counsel for the parties and upon perusal of the documents and record, what we gather is that the notice of reopening of assessment has been issued beyond the period of four years from the assessment year. The reasons recorded by the Assessing Officer are elaborate and refer to various issues on which he wishes to carry out the reassessment. However, the central theme which passes though all these issues is that the Assessing Officer had gathered the information and material from the record of the assessment. For example in Paragraph No. 3 of the reasons which contains several sub-paragraphs which are different elements of the grounds for reassessment begins with the expression "On perusal of the record for the assessment year 2011-12, the following issues were found". Thus, with reference to various issues arise on the basis of the perusal of the record of the assessment year in question. Clearly, therefore, there is no material alien to the record which the Assessing Officer has referred to for issuing the impugned notice. Further, almost for every ground which is part of various sub-paragraphs of Paragraph No. 3, he has referred to either scrutiny or verification of the case records. In clear terms, therefore, the Assessing Officer was acting on the information available from the record of the assessment.
>
> **6.** As is well known, in an instance where the Assessing Officer exercises power of reassessment beyond the period of four years from the end of relevant assessment year, an essential requirement is that the escapement of income chargeable to tax is due to the failure on the part of the assessee to disclose truly and fully all material facts. This is part of section 147 of the Act itself and is on number of occasions by various judgments of High Court and Supreme Court held to be mandatory pre-requirement. In view of such settled law, it is not necessary to refer to any judgment. Revenue is unable to bring to our notice any aspect or element which did not form part of the record and on the basis of which from the reasons recorded, it can be culled out that the Assessing Officer had formed a belief that income chargeable to tax had escaped assessment. In clear terms therefore, there was no failure on the part of the assessee to disclose truly and fully all material facts.

> **7.** Counsel for the revenue however submitted that one of the issues raised by the Assessing Officer is that the activity carried on by the assessee does not amount to manufacturing activity. In the present petition, it is not necessary for us to comment on this aspect of the matter. What is important however is such belief also the Assessing Officer has formed on the basis of material already on record. Looked from any angle, the Assessing Officer cannot justify issuing the notice of reopening of assessment beyond the period of four years from the end of relevant assessment year.
>
> **8.** Under the circumstances, impugned notice is quashed. Petition allowed and disposed of accordingly.

Considering the aforesaid settled position of law, I am of the considered view that as in the aforesaid case before the Hon'ble Apex Court in Marico Limited (supra), the concluded assessment in the case of the present assessee before me for the year under consideration, i.e., A.Y 2013-14 had been reopened vide notice u/s 148, dated 31.03.2020, i.e., beyond 4 years from the end of the relevant assessment year, not for the reason that there was any failure on the part of the assessee to fully and truly disclose all the material facts necessary for her assessment for the year under consideration, but for the purpose of reappreciating the facts that were available on the assessment record while framing the original assessment u/s 143(3), dated 27.02.2016, therefore, the same cannot be sustained and is also liable to be struck down on the said count itself.

17. Considering the aforesaid facts, I believe that reopening the concluded assessment in the case of the assessee fails on both the aforesaid counts as observed by me herein above. Accordingly, the order passed by the A.O u/s.

147 r.w.s. 144B of the Act dated 24.03.2022 is quashed for want of valid assumption of jurisdiction on his part.

18. As I have quashed the assessment order for want of valid assumption of jurisdiction by the A.O., I refrain from adverting to and therein dealing with the other contentions raised by the assessee on merits of the case, which, thus, are left open.

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

Order pronounced in open court on 17th day of October, 2023.

Sd/-

(**रवीश सूद /RAVISH SOOD**)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 17th 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.