

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. 290/RPR/2023

निर्धारण वर्ष / Assessment Year : 2011-12

Jumman Lal Yadav
Deep Chowk, Kusumkasa,
Balod, Durg (C.G.)-491 228

PAN : ACMPY0168R

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 17.10.2023

घोषणा की तारीख / Date of Pronouncement : 19.10.2023

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 04.07.2023, which in turn arises from the order passed by the A.O under Sec. 144 r.w.s.147 of the Income-tax Act, 1961 (in short 'the Act') dated 08.12.2018 for the assessment year 2011-12. The assessee has assailed the impugned order on the following grounds of appeal:

“1. "On the facts and circumstances of the case and in law, assessment made u/s 147 by ACIT-1(1), Bhilai is invalid & without having valid jurisdiction by him, as he was not having pecuniary jurisdiction over the assessee for making assessment u/s147 for AY 11-12 on 8-12-18, as 'return of income' not filed as 'taxable income' was below the taxable limit of Rs.1,60,000, CBDT Instruction No.1/2011, dt.31-1-11 & InstructionNo.6/2011, dt.8-4-11, is binding on IT authorities u/s119and in contravention thereto, assessment made u/s147 by the ACIT-1(1), Bhilai, who had not possessed valid jurisdiction over the assessee for making assessment for AY11-12, is liable to be quashed."

2. "On the facts and circumstances of the case and in law, reassessment made u/s 147 dt.8-12-18 by the ACIT-1(1), Bhilai is invalid as reasons has been recorded on 5-3-18 & notice issued u/s148 on 25-3-18 by the ITO-1(3), Raipur; the assessment framed u/s147 by the ACIT-1(1), Bhilai, in the absence of a valid notice issued u/s148 by him, would be invalid and it is liable to be quashed."

3 "On the facts and circumstances of the case and in law, the reasons recorded is invalid, it is not sufficient to believe for escapement of income, based on information of cash deposits into bank account; on fallacious assumption that the bank deposits constitute undisclosed income; more so when sources of cash deposits need not necessarily be income of the assessee; reassessment proceedings cannot be initiated only to examine the facts of the case unless there is a reason to believe

rather than suspect; the impugned reassessment proceedings u/s.147/148 is liable to be quashed."

4. "On the facts and circumstances of the case and in law, the ld AO has erred in making addition of Rs.13,49,538 on the count of cash deposits into saving bank account, while it is explained and deposited from cash available in the cash book of the assessee; the alleged addition is liable to be deleted."

5. "The appellant craves leave, to add, urge, alter, modify or withdraw any ground/s before or at the time of hearing."

2. Based on the information that the assessee had during the year made cash deposits of Rs.12,91,000/- in his savings bank account with Punjab & Sind Bank and also earned interest income of Rs.58,538/- on the same but had not filed his return of income, the A.O reopened his case u/s.147 of the Act. Notice u/s.148 of the Act dated 25.03.2018 was issued by the ITO, Ward-1(3), Raipur, which, however, was not complied with by the assessee.

3. As the assessee had failed to comply with the aforesaid notice issued u/s 148 of the Act, dated 25.03.2018, and did not file his return of income, the ACIT-1(1), Bhilai to whom the case was transferred vide his order u/s.144 r.w.s.147 dated 08.12.2018, made an addition of Rs.13,49,538/- [Rs.12,91,000/- (+) Rs. 58,538/-].

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. The CIT(Appeals), while upholding the addition made by the A.O had observed as follows:

"5.1 The fact relating to the present appeal, in brief are that the AO came to know that during the year under consideration the assessee had deposited Rs. 12,91,000/-in his bank account in cash. The assessee also had not filed his return of income for the impugned assessment year. Notice u/s 148 was issued, to assume jurisdiction

to reassess the case. The assumption of jurisdiction for reassessment is not subject matter of current appeal. It is matter of record that subsequent notice dt. 01.10.2018 issued u/s 142(1) remain unserved. Final notice u/s 142(1) was served through affixture. In absence of any response from the assessee the impugned order was framed u/s 144, wherein the afore mentioned cash deposit in the account along with the interest earned on the bank account was added as unexplained investment of the assessee.

5.2 The fact that clearly emerges that the AO did not have any material other than the bank account statement of the assessee to frame order of assessment. During the present proceeding the assessee has not submitted any document in support of the grounds of appeal. At this juncture it is also profitable to refer to form 35 filed by the assessee. At item sr. no. 12 the assessee clearly states that he does not propose to rely upon any documentary evidence which was not produce before the AO in present appeal. Therefore, it is without doubt that argument of the assessee contend in the grounds of appeal are to be considered without any support of documentary evidences.

5.3 Ground no. 1 This ground is verbose. The assessee herein has challenged the impugned order on the basis of denial of proper opportunity of being heard during the course of assessment proceedings. The assessee has not contented that if there was change of address. Consequently, it is not the case of the assessee that a change of address was intimated to the department ignoring which notices were being sent to the old address. In these circumstances service of notice by affixture is being treated as valid and sufficient opportunity given to the assessee during the assessment proceedings. In deciding so I am also keeping in consideration the non responses approach of the assessee in present proceedings.

5.4 The second leg of argument contained in ground no. 1 relates to the source of cash deposited by the assessee in his bank account. The assessee contents that he was liquor contractor in earlier years. The savings in cash from those earlier years was deposited in his bank account in the impugned assessment year. In order to prove that the assessee had sufficient cash in hand in earlier year which was deposited in current assessment year no documentary evidence has been produced. As also discussed in para 5.2 above, the assessee also does not intend to support his argument with any evidence. Therefore, the argument contained in this ground is considered to be bald and consequently being dismissed. On the basis of discussion in para 5.3 and this paragraph Ground no. 1 is being dismissed.

6. The appeal is dismissed.”

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

6. Before proceeding any further, I may herein observe that though an application dated 16.10.2023 requesting for adjournment in the present case has been filed by Shri Sunil Kumar Agrawal, Chartered Accountant, but in the absence of any power of attorney having been issued in his favor by the assessee, no cognizance of the same can be drawn.

7. As the assessee appellant, despite having been intimated about the hearing of the appeal, had neither put up an appearance nor moved any valid application for adjournment; therefore, I am constrained to proceed with the matter as per Rule 24 of the Income Tax Appellate Tribunal Rules, 1963 and dispose off the appeal after hearing the Ld. Departmental Representative (for short 'DR') and perusing the orders of the lower authorities.

8. As is discernible from the records, the assessee has assailed the validity of the jurisdiction assumed by the A.O, i.e., ACIT-1(1), Bhilai, for framing assessment in his case. Ostensibly, it is the claim of the assessee that as ACIT-1(1), Bhilai was not vested with pecuniary jurisdiction over his case as per CBDT Instruction No.1/2011 dated 31.01.2011 r.w. Instruction No.6/2011 dated 08.04.2011, therefore, the assessment was liable to be quashed on the said count itself.

9. I have thoughtfully considered the aforesaid claim of the assessee and am unable to persuade myself to concur with the same. On a perusal of the CBDT Circular No. 1/2011 dated 31.01.2011, I find that the same reads as under:

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

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

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

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

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

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

As the very basis for vesting pecuniary jurisdiction with the ACs/DCs in itself is based upon the “*income declared*,” i.e., the income disclosed by an assessee in his return of income, the same, thus, would not assist the case of the present assessee before me. I, say so, for the reason that as the assessee in the present case had not filed any return of income for the year under consideration; therefore, the aforementioned

CBDT Instruction No.1/2011 r.w. Instruction No. 6/2011 (supra) cannot be triggered in his case. Thus, the **Ground of appeal No.1** raised by the assessee is dismissed in terms of the aforesaid observations.

10. *Albeit*, the challenge of the assessee to the validity of the jurisdiction assumed by the A.O u/s.147 of the Act for the reason that no valid notice was issued u/s.148 of the Act, I am unable to concur with the same. As is discernible from the assessment order, the A.O. had categorically stated that notice u/s.148 of the Act dated 25.03.2018 was issued to the assessee. As no material is discernible from the record that could support the aforesaid claim of the assessee that notice u/s.148 of the Act dated 25.03.2018 suffered from any infirmity, which would suffice to render the assumption of jurisdiction for framing of the impugned assessment u/s. 144 r.w.s. 147 of the Act dated 08.12.2018 as invalid and void ab initio; thus, the same is rejected. Thus, the **Ground of appeal No.2** raised by the assessee is dismissed in terms of the aforesaid observations.

11. Also, the assessee has assailed the validity of the “reasons to believe,” on the basis of which proceedings u/s.147 of the Act had been initiated in his case. Although it is the claim of the assessee that the A.O., on a fallacious basis, had assumed jurisdiction and wrongly initiated proceedings u/s 147 on the basis of his observation that bank deposits constituted the undisclosed income of the assessee, I am unable to concur with the same. I, say so, for the reason that as it is a matter of fact borne from the record that the assessee had made cash deposits of Rs.12,91,000/- in his savings bank account in Punjab & Sind Bank and also received interest income of

Rs.58,538/- on the said deposits during the year, but had not filed his return of income, therefore, the said facts were sufficient for the A.O to form a bona fide believe that the income of the assessee chargeable to tax had escaped assessment within the meaning of Section 147 of the Act. Accordingly, finding no merit in the aforesaid claim of the assessee, I dismiss the same. Thus, the **Ground of appeal No.3** raised by the assessee is dismissed in terms of the aforesaid observations.

12. On merits, it is the claim of the assessee that there was no justification for the A.O. to have made an addition of Rs.13,49,538/- u/s.69 of the Act. As the assessee had neither filed any explanation as regards the cash deposits of Rs.12,91,000/- made in his bank account during the year under consideration; or as regards the interest income of Rs.58,538/- earned on the same, therefore, I find no reason to intervene with the well-reasoned view taken by the lower authorities who had rightly held the same as his unexplained investment u/s. 69 of the Act. Thus, the **Ground of appeal No.4** raised by the assessee is dismissed in terms of the aforesaid observations.

13. **Ground of appeal No.5**, being general, is dismissed as not pressed.

14. In the result, the appeal of the assessee being devoid and bereft of any merit is dismissed in terms of the aforesaid observations.

Order pronounced in open court on 19th day of October, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 19th 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.