

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. 232/RPR/2023

निर्धारण वर्ष / Assessment Year : 2012-13

Prakash Chand Jain
Pro. Jain Borewell Ganj Road,
Nawapara-Rajim,
Dist. Raipur (C.G.)-493 881
PAN : AFFPJ6898B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(1), Raipur (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 : 28.11.2023

घोषणा की तारीख / Date of Pronouncement : 30.11.2023

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 12.05.2023, 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 27.11.2018 for the assessment year 2012-13. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. That order of CIT(A) is bad in law, illegal and void-ab-initio.
2. That CIT(A) has erred in confirming jurisdictional defect done while conducting reassessment proceeding as to reason u/s 148(2) was recorded and notice u/s 148 was issued by non-jurisdictional ITO-1(3), Raipur and on transfer of the case to remove said jurisdictional defect JAO ITO-1(1), Raipur had passed reassessment order without issuing notice u/s 148.
3. That CIT(A) erred in holding that reasons recorded by non jurisdictional AO i.e. ITO-1(3), Raipur is proper for initiation of reassessment proceedings u/s 147 by ignoring the fact that there was no application of mind by the AO and without bringing any material on record for formation of belief of escapement. Initiation of reassessment based on the reasons recorded is illegal and not in accordance with law.
4. On the facts and in the circumstances of the case CIT(A) has erred in upholding the reassessment order passed by Assessing Officer for which in reality, procedure of granting approval to the proposal of AO to issue notice u/s 148 as prescribed u/s 151(1) was not followed properly and judicially.
5. Without prejudice to ground nos. 1 to 5, on the facts and in the circumstances of the case CIT(A) has erred in confirming addition of Rs. 13,91,000/- out of total addition of Rs. 15,77,593/- made by the Assessing Officer u/s 68 for alleged unexplained cash credit without properly appreciating the materials furnished before him and without considering the facts and circumstances of the case properly and judicially. Hence, the assessee prays that the addition of Rs. 13,91,000/- be deleted.
6. Without prejudice to ground nos. 1 to 5, on the facts and in the circumstances of the case CIT(A) has erred in confirming addition of Rs.

13,91,000/- made u/s.68 for alleged unexplained cash credits in bank account only on the basis of entries in bank statement by ignoring the fact that bank account statement/bank passbook cannot be treated as books of account of the assessee, hence, no addition in respect of the cash deposits could be validly made u/s. 68 of the Act.

7. The appellant reserves the right to add, amend, or alter/withdraw any ground/grounds of appeal at the time of hearing.”

2. Information was received by the A.O that the assessee had made cash deposit of Rs.13.91 lacs (approx.) in his bank account during the year which was not commensurate with the income of Rs.3,04,670/- that was disclosed by him in his return of income filed on 16.03.2013. Based on the aforesaid facts, the A.O forming a bonafide believe that income of the assessee chargeable to tax had escaped assessment issued notice u/s.148 of the Act dated 28.03.2018. In compliance, the assessee filed his return of income u/s. 148 of the Act on 28.03.2018 declaring an income of Rs.3,12,120/-.

3. During the course of the assessment proceedings, the assessee in order to impress upon the A.O that the cash deposit of Rs.13.91 lacs (supra) were made out of his duly disclosed sources filed before him a cash flow statement for the year under consideration and that of the immediately preceding years, Page 45-46 of APB. Referring to the cash flow statement, the A.O observed that the assessee had disclosed a opening cash balance of Rs.16,66,127/- on 01.04.2010. The claim of the assessee of having substantial amount of cash in hand of Rs.16,66,127/- on 01.04.2010 did not find favour with the A.O for the reason that despite being in possession of the impugned amount, the assessee had over the year on various dates made cash withdrawals of Rs.6.61 lacs (approx.). Observing, that the

assessee had during the year under consideration had gross receipts of Rs.3,64,572/- from his borewell business against which he had disclosed an income of Rs.78,500/-, the A.O held a conviction that considering the scale of operation of the assessee's business the substantial amount of cash deposits of Rs.13.91 lacs (supra) could not be held to have been sourced from the same.

4. As regards the cash flow statement filed by the assessee before the A.O, it was observed by the A.O that the same was prepared on the basis of an afterthought with a purpose to explain the cash deposits in the bank account. Backed by the aforesaid observation, the A.O finding no merit in the claim of the assessee that he had opening cash in hand of Rs.15.77 lacs (approx.) available with him on 31.03.2011, made an addition of the entire amount of the same as an unexplained cash credit u/s.68 of the Act.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). On merits, the CIT(Appeals) observed that there was no justification for the A.O to have made addition of the opening cash balance of Rs.15.77 lacs (supra), and, thus, restricted the same to the extent of cash deposited made in his bank account during the year i.e.Rs.13.91 lacs (approx.). At the same time, the CIT(Appeals) did neither concur with the contentions advanced by the assessee as regards the validity of the jurisdiction assumed by the A.O for initiating proceedings u/s.147 of the Act; nor found favour with his explanation as regards the source of the cash deposits that were made in his bank account during the year.

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. AR to drive home his contentions.

8. Apropos the contention of the Ld. Authorized Representative (for short 'AR') that as assessment in the case of the assessee had been framed by the ITO, Ward-1(1), Raipur on the basis of reasons recorded/ notice issued u/s. 148 of the Act by non-jurisdictional A.O i.e. ITO, Ward-1(3), Raipur, therefore, assessment order so passed by him was liable to be struck down for want of valid assumption of jurisdiction. On a specific query by the Bench as to whether or not, the assessee has called in question the jurisdiction that was assumed by the ITO, Ward-1(3), Raipur within the stipulated period of 1 month from the date, on which, the notice u/s. 148 of the Act dated 28.03.2018 was served upon the assessee, the Ld. AR answered in negative.

9. I have thoughtfully considered the aforesaid issue and am of the view that as per the mandate of sub-section (3) of Section 124 of the Act, as the assessee had failed to comply with the mandate of sub-section (3) of 124 of the Act and had not called in question the validity of the jurisdiction assumed by the ITO, Ward-1(3), Raipur within a period of 1 month from the date of receipt of notice u/s. 148 of the

Act, dated 28.03.2018, therefore, he was divested of his right to call in question the validity of the jurisdiction in the course of the proceedings before me. My aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **Deputy Commissioner of Income Tax (Exemption) and Another v. Kalinga Institute of Industrial Technology, Special Leave to Appeal (C) No(s). 29304/2019, decided on May 1, 2023**, wherein, the Hon'ble Apex Court had held as under:

“1. The impugned order set asides the assessment for AY 2014-2015 on the ground that the jurisdictional officer had not adjudicated upon the returns. The jurisdiction had been changed after the returns were filed. However, the records also reveals that the assessee had participated pursuant to the notice issued under Section 142 (1) and had not questioned the jurisdiction of the assessing officer. Section 124(3)(a) of the Income Tax Act precludes the assessee from questioning the jurisdiction of the assessing officer, if he does not do so within 30 days of receipt of notice under Section 142 (1).

2. In the present case, the facts did not warrant the order made by the High Court. At the same time, this Court notices that the High Court had granted liberty to the concerned authority to issue appropriate notice.

3. It is clarified, therefore, that the assessing officer is free to complete the assessment (in case the assessment order has not been issued) within the next 60 days. In such event, the question of limitation shall not be raised by the assessee.”

Considering the aforesaid judgment of the Hon'ble Apex Court, I, find no merit in the aforesaid claim of the Ld. AR, and, reject the same. Thus, the **Ground of appeal Nos. 1 and 2** raised by the assessee are dismissed in terms of the aforesaid observations.

10. I shall now deal with the contention of the Ld. AR that the A.O, i.e., ITO, Ward-1(3), Raipur had initiated proceedings u/s. 147 of the Act on the basis of “reasons to believe” which has no nexus with the material available on record and without application of mind, therefore, the very basis of assumption of jurisdiction for initiating the impugned proceedings was ill-founded and was liable to be quashed.

11. I have given a thoughtful consideration to the aforesaid claim of the Ld. AR, and am unable to persuade myself to concur with the same. On a perusal of the copy of “reasons to believe”, based on which, the proceedings u/s. 147 of the Act were initiated in the case of the assessee, Page 13-14 of APB, I find that the same reads as under:

“As per the information available on record (i-taxnet & ITS) of this office, the assessee has deposited cash of Rs.13,91,000/- during the F.Y. 2011-12 relevant to the assessment year under consideration. The assessee filed the return of income for A.Y.2012-13 on 16.03.2013, declaring total income at Rs.3,04,670/-. The return of income filed by the assessee does not commensurate with the cash deposit made by him during the relevant financial year. Thus, I have reasons to believe that income to the extent of Rs.13,91,000/- has escaped assessment within the meaning of provisions of Section 147 of the Income Tax Act, 1961 and therefore, I am satisfied that this is fit case to initiate proceedings u/s. 147 of the Act.”

12. On a perusal of the aforesaid “reasons to believe”, I find that the A.O had acted on the basis of information gathered by him from i-taxnet and ITS of his office which revealed that the assessee had made cash deposit of Rs.13.91 lacs during the year under consideration. As the income returned by the assessee at Rs.3,04,600/- for the year under consideration, i.e., A.Y.2012-13 was not

commensurate with the aforementioned amount of cash deposits, therefore, the A.O holding a bonafide belief that income of the assessee chargeable to tax had escaped assessment initiated proceedings u/s. 147 of the Act.

13. On a careful perusal of the aforesaid "reasons to believe" on the basis of which the A.O had taken recourse to the proceedings u/s. 147 of the Act, I find that there was material available with the A.O to arrive at a bonafide belief that income of the assessee chargeable to tax had escaped assessment within the meaning of Section 147 of the Act. I, say so, for the reason that as the returned income of the assessee of Rs.3,04,670/- (supra) was not commensurate with the cash deposits of Rs.13.91 lacs (supra), therefore, the same could justifiably lead to formation of a bonafide belief that income of the assessee chargeable to tax had escaped assessment. I am unable to concur with the claim of the Ld. AR that there was no material available on record with the A.O to arrive at a bonafide belief, which in turn, formed the very foundation for initiating proceedings u/s. 147 of the Act. Also, the claim of the Ld. AR that there was no application of mind by the A.O, does not find favour with me. As the A.O had categorically observed that the income returned by the assessee for the year under consideration was not commensurate with the substantial amount of cash deposits of Rs.13.91 lacs (supra), thus, the same clearly reveals due application of mind on his part to arrive at a bonafide belief that income of the assessee chargeable to tax had escaped assessment. At this stage, it would be relevant to point out that an A.O at the stage of reopening of a case is only required to have some material before him for formation of a

bonafide belief that the income of the assessee chargeable to the tax had escaped assessment. My aforesaid view is fortified by the judgment of the **Hon'ble Apex Court** in the case of **Raymond Woollen Mills Ltd. Vs. Income Tax Officer & Ors (1999) 236 ITR34 (SC)**. The Hon'ble Apex Court had observed that the sufficiency or correctness of the material being acted upon by the A.O could not be considered at the stage of initiating proceedings u/s.147 of the Act. On the basis of the aforesaid settled position of law as had been laid down by the Hon'ble Apex Court, the **Ground of appeal No.3** raised by the assessee is dismissed in terms of the aforesaid observations.

14. I shall now deal with the claim of the Ld. AR that both the lower authorities had erred in sustaining the assumption of jurisdiction by the A.O u/s. 147 of the Act despite the fact that the granting of approval to the proposal of the A.O to issue notice u/s. 148 of the Act as prescribed u/s. 151(1) of the Act was not valid as per the mandate of law.

15. Elaborating on his aforesaid contention, the Ld. AR submitted that though the case of the assessee for the year under consideration i.e. A.Y.2012-13 was reopened after a period of four years from the end of the relevant A.Y, but the reference of the said material fact was neither discernible from the copy of the "reasons to believe" not from the sanction granted by the JCIT u/s. 151(1) of the Act, which, thus, had rendered the assumption of jurisdiction for initiating proceedings u/s. 147 of the Act as invalid. The Ld. AR in support of his aforesaid

contention had relied on the judgment of the **Hon'ble High Court of Chhattisgarh** in the case of **Maruti Clean Coal and Power Ltd. Vs. ACIT (2018) 400 ITR 397 (C.G.)**. However, after arguing at length on the basis of his aforesaid contention, the Ld. AR in all fairness submitted that he was informed that the aforesaid order had been overruled by the Division Bench of the Hon'ble High Court and, thus, no more hold the ground. The Ld. AR considering the aforesaid position of law did not carry his aforesaid contention any further. Accordingly, the **Ground of appeal No.4** is dismissed in terms of the aforesaid observations.

16. Apropos the merits of the case, the sole contention of the Ld. AR was that as the assessee had opening cash in hand of Rs.16.66 lacs (supra) on 01.04.2010, therefore, there was no justification for the A.O to have held any part of the cash deposit of Rs.13.91 lacs (supra) which were sourced out of the aforesaid amount as unexplained cash credit u/s.68 of the Act. The Ld. AR had drawn our attention to the cash flow statement of the assessee for the year under consideration, Page 45-46 of APB. Also, the Ld. AR had taken us through the balance sheet of the assessee as on 31.03.2011 for A.Y.2011-12 which revealed cash in hand with the assessee was Rs.15.77 lacs (supra). On a specific query by the Bench as to whether the balance sheet dated 31.03.2011 was filed a/w. return of income, the Ld. AR answered in negative. Apart from that, the Ld. AR submitted that as the assessee had accumulated personal savings and made cash withdrawals from his account during the year under consideration, therefore, there was no justification

for the A.O for treating the entire amount of cash deposit of Rs.13.91 lacs (supra) as unexplained cash credit u/s. 68 of the Act.

17. I have given a thoughtful consideration to the issue in hand, i.e., sustainability of the addition of Rs.13.91 lacs (supra) on merits. Before proceeding any further, I may herein observe that the very basis for scaling down of the addition to Rs.15.77 lacs (approx.) made by the A.O u/s. 68 of the Act to Rs.13.91 lacs (approx.) by the CIT(Appeals) is based on misconceived facts. I, say so, for the reason that the CIT(Appeals) had wrongly observed that the A.O had made addition of the opening cash balance instead of making addition of the cash deposits during the year under consideration. On a perusal of the records, the opening cash balance with the assessee was Rs.16.66 lacs (approx.) and not Rs.15.77 lacs (supra). In fact, the A.O had made addition of Rs.15.77 lacs (supra) on the ground that the cash in hand to the said extent was claimed by the assessee to be lying with him on 31.03.2011, but the source of the same could not be explained.

18. Be that as it may, I also do not find any merit in the observation of the CIT(Appeals) qua the sustainability of the addition of Rs.13.91 lacs (supra) as had been upheld by him. At the threshold, I may herein observe that the cash flow statement filed by the assessee in absence of any corroborative material does not inspire any confidence. Accordingly, I concur with the CIT(Appeals) that the claim of the assessee that the cash deposit of Rs.13.91 lacs (supra) was sourced out of

the cash in hand that was available with him on 01.04.2010 could not have been summarily accepted on the very face of it. At the same time, I am of the view that there is substance in the claim of the Ld. AR that the assessee who is regularly being assessed to tax would have some accumulated savings available with him which would have sourced the cash deposit of Rs.13.91 lacs (supra). In all fairness, considering the scale of business operations of the assessee and his age, I am of the view that cash of Rs.3 lacs can safely be held to be available with him to source the aforesaid cash deposits in his bank account. Accordingly, I scale down the addition made/upheld by the lower authorities to Rs.10,91,000/- [Rs.13,91,000/- (-) Rs.3,00,000/-]. Thus, the order of the CIT(Appeals) is modified to the said extent in terms of the aforesaid observations.

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

Order pronounced in open court on 30th day of November, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 30th November, 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.