

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 Nos. 280 & 281/RPR/2023

निर्धारण वर्ष / Assessment Year : 2011-12 & 2012-13

Pradeep Kumar Singh
C-1/2, Maruti Business Park,
G.E. Road, Raipur (C.G.)
PAN : COUPS0118F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-4(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhishek Mahawar, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 25.10.2023

घोषणा की तारीख / Date of Pronouncement : 19.12.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 10.08.2022, which in turn arises from the orders passed by the A.O under Sec.143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act') dated 31.12.2016 for the assessment year(s) 2011-12 and 2012-13. As the issues involved in the present appeals are inextricably interlinked, or in fact interwoven, the same thus are being taken up and disposed of by way of a consolidated order.

2. I shall first take up the appeal filed by the assessee in ITA No.280/RPR /2023 for the assessment year 2011-12, and the order therein passed shall *mutatis-mutandis* apply to the other appeal. The assessee society has assailed the impugned order on the following grounds of appeal:

“1. The CIT(Appeal)-NFAC has erred in both facts and in law in partially confirming the order passed by the Assessing Officer u/s. 147 of the Act.

2. That CIT Appeals-NFAC has erred in both fact and in law in confirming the addition made by the Assessing Officer of cash deposits of Rs.9,48,452/- as unexplained investment within the meaning of provisions of Section 69 of the IT, Act, 1961.

3. That the assessee craves to add, amend or delete any of the above grounds of appeal during the course of hearing.”

3. At the very outset, Shri Abhishek Mahawar, Ld. Authorized Representative (for short 'AR') for the assessee submitted that both the captioned appeals involve a delay of 313 days. The Ld. AR, elaborating on the reasons leading to the delay in filing the appeals, had taken me through an application and a supporting "affidavit" filed by the assessee wherein he had sought condonation of the same. The Ld. AR submitted that as the assessee had misplaced the case records; therefore, he had vide his letters dated 30.08.2022, 10.08.2023, and 16.08.2023 requested the AO for a copy of the same. The Ld. AR had drawn my attention to the copies of the aforementioned letters filed with the AO, Pages 1 to 5 of APB. The Ld. AR submitted that though the assessee had in his letters specifically brought it to the notice of the jurisdictional AO, i.e., ITO-Ward 4(1), Raipur that the copy of certain documents, notices, written submissions, order sheet, etc. were indispensably required for filing of the appeals before the Tribunal but, despite persistent requests, the same were made available to him only on 31.08.2023. The Ld. AR submitted that the assessee in the absence of the complete records, in the meantime, based on the part records as could be constructed/gathered by him, had filed the present appeals. The Ld. AR submitted that as the delay in filing of both the present appeals had occasioned for bonafide reasons; therefore, the same, in all fairness, be condoned.

4. Per contra, the Ld. Departmental Representative (for short "DR") objected to the seeking of condonation of delay in filing of the present appeals by the assessee appellant. However, the Ld. DR could not controvert the claim of the assessee's counsel that the delay had primarily occasioned because of the failure on the part of

the jurisdictional AO, i.e., the ITO, Ward-4(1), Raipur who, despite persistent requests/reminders by the assessee had failed to facilitate timely reconstruction of the record by making available the copies of the requisite documents/record to the assessee.

5. We have thoughtfully considered the facts leading to the delay in filing of both the present appeals. Admittedly, as stated by the Ld. AR and, rightly so, the assessee vide his letters dated 30.08.2022, 10.08.2023, and 16.08.2023 had brought it to the notice of the jurisdictional AO, i.e., ITO-Ward 4(1) that as he had misplaced his case records, therefore, a copy of the requisite documents which were required for further assailing the order of the CIT(Appeals), dated 10.08.2022 be made available to him. As noticed hereinabove, the AO had substantially delayed in providing the copies of the requisite documents/information to the assessee, which, thus, had primarily contributed to the delay in filing the present appeal. Although an appellant is expected to remain vigilant as regards filing an appeal within the period prescribed under the law, but we cannot remain oblivious of the fact that in the present case before us, the lackadaisical approach of the AO who had chosen not to timely act upon the repeated requests/reminders of the assessee for copies of the requisite documents that he required for preferring the appeals had primarily contributed to the delay involved in the filing of the same. We, thus, in all fairness, are of the considered view that though there is substance in the explanation of the assessee as regards the reasons leading to the delay in filing the present appeals, but at the same time, not losing sight of the fact that the inordinate delay of 313 days involved

in the filing of both the said appeals to some extent is also attributable to certain shortcomings on the part of the assessee who ought to have remained extra vigilant as regards filing of the same; thus, we vide our order dated 16.10.2023 had condoned the delay involved in filing of the said appeals subject to imposition of cost of Rs.1000/- each (Rupees one thousand only) which the assessee was directed to deposit with the Prime Minister National Relief Fund within 30 (thirty days).

6. On the next date of hearing of the appeal, i.e., on 25.10.2023, the Ld. AR had placed on record copies of the challans amounting to Rs.1000/- each (rupees one thousand), i.e., receipt Nos. PMNRF/Web/202310181000006 & PMNRF/Web/202310181000007 (copies placed on record). As the assessee had complied with the directions of the Tribunal, therefore, the delay involved in filing both appeals is condoned.

7. I shall now deal with the grievance of the assessee appellant based on which he has assailed the order passed by the CIT(Appeals) in his case for AY 201-12 in ITA No.280/RPR /2023.

8. On the basis of AIR information that the assessee had during the year made cash deposits of Rs.35,50,840/- in his savings bank account, the AO u/s.147 of the Act reopened the case of the assessee. For the sake of clarity, the cash deposits made by the assessee during the year under consideration are culled out as under:

CASH DEPOSITED IN BANKS FOR F.Y. 2010-11

DATE	PARTICULARS	PAYMENT/ DEPOSITS	BANK NAME
12/10/2010	AMOUNT DEPOSITED IN BANK	22000	INDUSLND BANK
14/10/2010	AMOUNT DEPOSITED IN BANK	20000	INDUSLND BANK
19/10/2010	AMOUNT DEPOSITED IN BANK	10000	INDUSLND BANK
21/10/2010	AMOUNT DEPOSITED IN BANK	20000	INDUSLND BANK
22/10/2010	AMOUNT DEPOSITED IN BANK	25000	INDUSLND BANK
23/10/2010	AMOUNT DEPOSITED IN BANK	6000	INDUSLND BANK
25/10/2010	AMOUNT DEPOSITED IN BANK	20000	INDUSLND BANK
26/10/2010	AMOUNT DEPOSITED IN BANK	50000	INDUSLND BANK
28/10/2010	AMOUNT DEPOSITED IN BANK	40000	INDUSLND BANK
29/10/2010	AMOUNT DEPOSITED IN BANK	52500	INDUSLND BANK
30/10/2010	AMOUNT DEPOSITED IN BANK	12000	INDUSLND BANK
02/11/2010	AMOUNT DEPOSITED IN BANK	31000	INDUSLND BANK
04/11/2010	AMOUNT DEPOSITED IN BANK	29700	INDUSLND BANK
08/11/2010	AMOUNT DEPOSITED IN BANK	20000	INDUSLND BANK
12/11/2010	AMOUNT DEPOSITED IN BANK	20940	INDUSLND BANK
13/11/2010	AMOUNT DEPOSITED IN BANK	35000	INDUSLND BANK
16/11/2010	AMOUNT DEPOSITED IN BANK	10000	INDUSLND BANK
18/11/2010	AMOUNT DEPOSITED IN BANK	18500	INDUSLND BANK
24/11/2010	AMOUNT DEPOSITED IN BANK	52200	INDUSLND BANK
27/11/2010	AMOUNT DEPOSITED IN BANK	69500	INDUSLND BANK
30/11/2010	AMOUNT DEPOSITED IN BANK	33800	INDUSLND BANK
04/12/2010	AMOUNT DEPOSITED IN BANK	16000	INDUSLND BANK
06/12/2010	AMOUNT DEPOSITED IN BANK	20000	INDUSLND BANK
07/12/2010	AMOUNT DEPOSITED IN BANK	65000	INDUSLND BANK
11/12/2010	AMOUNT DEPOSITED IN BANK	35000	INDUSLND BANK
16/12/2010	AMOUNT DEPOSITED IN BANK	18700	INDUSLND BANK

18/12/2010	AMOUNT DEPOSITED IN BANK	900000	INDUSLND BANK
20/12/2010	AMOUNT DEPOSITED IN BANK	500000	INDUSLND BANK
23/12/2010	AMOUNT DEPOSITED IN BANK	58000	INDUSLND BANK
24/12/2010	AMOUNT DEPOSITED IN BANK	35000	INDUSLND BANK
27/12/2010	AMOUNT DEPOSITED IN BANK	23000	INDUSLND BANK
31/12/2010	AMOUNT DEPOSITED IN BANK	34800	INDUSLND BANK
01/01/2011	AMOUNT DEPOSITED IN BANK	37000	INDUSLND BANK
04/01/2011	AMOUNT DEPOSITED IN BANK	20000	INDUSLND BANK
06/01/2011	AMOUNT DEPOSITED IN BANK	30000	INDUSLND BANK
08/01/2011	AMOUNT DEPOSITED IN BANK	10000	INDUSLND BANK
15/01/2011	AMOUNT DEPOSITED IN BANK	11000	INDUSLND BANK
19/01/2011	AMOUNT DEPOSITED IN BANK	45000	INDUSLND BANK
25/01/2011	AMOUNT DEPOSITED IN BANK	15500	INDUSLND BANK
27/01/2011	AMOUNT DEPOSITED IN BANK	14500	INDUSLND BANK
04/02/2011	AMOUNT DEPOSITED IN BANK	20000	INDUSLND BANK
07/02/2011	AMOUNT DEPOSITED IN BANK	23800	INDUSLND BANK
08/02/2011	AMOUNT DEPOSITED IN BANK	9700	INDUSLND BANK
09/02/2011	AMOUNT DEPOSITED IN BANK	26500	INDUSLND BANK
11/02/2011	AMOUNT DEPOSITED IN BANK	31700	INDUSLND BANK
14/02/2011	AMOUNT DEPOSITED IN BANK	60000	INDUSLND BANK
15/02/2011	AMOUNT DEPOSITED IN BANK	31500	INDUSLND BANK
17/02/2011	AMOUNT DEPOSITED IN BANK	10000	INDUSLND BANK
18/02/2011	AMOUNT DEPOSITED IN BANK	29200	INDUSLND BANK
23/02/2011	AMOUNT DEPOSITED IN BANK	51100	INDUSLND BANK
28/02/2011	AMOUNT DEPOSITED IN BANK	7000	INDUSLND BANK
01/03/2011	AMOUNT DEPOSITED IN BANK	67500	INDUSLND BANK
08/03/2011	AMOUNT DEPOSITED IN BANK	26000	INDUSLND BANK
10/03/2011	AMOUNT DEPOSITED IN BANK	10000	INDUSLND BANK
14/03/2011	AMOUNT DEPOSITED IN BANK	10000	INDUSLND BANK
15/03/2011	AMOUNT DEPOSITED IN BANK	35800	INDUSLND BANK
16/03/2011	AMOUNT DEPOSITED IN BANK	30000	INDUSLND BANK
18/03/2011	AMOUNT DEPOSITED IN BANK	15000	INDUSLND BANK
19/03/2011	AMOUNT DEPOSITED IN BANK	30000	INDUSLND BANK
21/03/2011	AMOUNT DEPOSITED IN BANK	21000	INDUSLND BANK
23/03/2011	AMOUNT DEPOSITED IN BANK	7000	INDUSLND BANK
25/03/2011	AMOUNT DEPOSITED IN BANK	17000	INDUSLND BANK
26/03/2011	AMOUNT DEPOSITED IN BANK	16000	INDUSLND BANK
30/03/2011	AMOUNT DEPOSITED IN BANK	20000	INDUSLND BANK
10/04/2010	AMOUNT DEPOSITED IN BANK	20000	SBI A/C 30712005848
13/04/2010	AMOUNT DEPOSITED IN BANK	10000	SBI A/C 30712005848
20/04/2010	AMOUNT DEPOSITED IN BANK	8000	SBI A/C 30712005848
08/05/2010	AMOUNT DEPOSITED IN BANK	22000	SBI A/C 30712005848
28/06/2010	AMOUNT DEPOSITED IN BANK	20000	SBI A/C 30712005848
16/07/2010	AMOUNT DEPOSITED IN BANK	20000	SBI A/C 30712005848
30/07/2010	AMOUNT DEPOSITED IN BANK	10000	SBI A/C 30712005848
06/08/2010	AMOUNT DEPOSITED IN BANK	25000	SBI A/C 30712005848
04/10/2010	AMOUNT DEPOSITED IN BANK	10000	SBI A/C 30712005848

01/12/2010	AMOUNT DEPOSITED IN BANK	6000	SBI A/C 30712005848
09/06/2010	AMOUNT DEPOSITED IN BANK	29300	SBI A/C 63050028564
18/06/2010	AMOUNT DEPOSITED IN BANK	60000	SBI A/C 63050028564
13/07/2010	AMOUNT DEPOSITED IN BANK	70000	SBI A/C 63050028564
15/07/2010	AMOUNT DEPOSITED IN BANK	50000	SBI A/C 63050028564
29/07/2010	AMOUNT DEPOSITED IN BANK	25000	SBI A/C 63050028564
09/08/2010	AMOUNT DEPOSITED IN BANK	35100	SBI A/C 63050028564
13/08/2010	AMOUNT DEPOSITED IN BANK	28000	SBI A/C 63050028564
23/08/2010	AMOUNT DEPOSITED IN BANK	10000	SBI A/C 63050028564
	TOTAL	3550840	

Notice u/s. 148 of the Act, dated 30.04.2015, was issued by the AO. In response, the assessee filed his return of income for A.Y.2011-12 on 10.12.2016, declaring an income of Rs.1,58,850/-. As the multi-facet explanation of the assessee as regards the nature and source of the cash deposits did not find favor with the AO, he held the entire amount as unexplained cash credits u/s 68 of the Act, and vide his order passed u/ss.143(3)/147 of the Act dated 31.12.2016 assessed the income of the assessee at Rs.37,09,690/-.

9. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals), who sustained an addition of Rs.9,48,452/- (out of Rs.35,50,840/-), treating the same as unexplained investment u/s. 69 of the Act. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as follows:

“5. Ground No. 1: In ground No. 1, the appellant has challenged that the AO erred in making addition of Rs.35,50,840/- out of cash deposit in saving bank account.

5.1. A perusal of the assessment order reveals that the AO has not accepted the cash flow statement produced by the appellant and had rejected the opening cash balance of Rs.14,64,355/- as on 01.04.2010. The AO also observed that the RTGS to Balvinder Singh was not substantiated by evidence to prove the purpose of the payment nor could the appellant explain

the other payments made. The AO also observed that the appellant could not prove the source of the cash deposits and therefore, the AO added the cash deposits of Rs.35,50,840/- u/s 68.

5.2. The appellant has stated that during the course of assessment proceedings, the appellant has submitted the following documents before the learned AO for verification- ITR and Computation of total income for AY 2011-12; Balance Sheet and Profit & Loss Account for FY 2009-10; Balance Sheet and Profit & Loss Account for FY 2010-11; Cash flow statement for the FY. 2010-11; and Copy of bank statement for FY 2010-11. The appellant has submitted that the details of bank account maintained by appellant are as under:

S. No.	Name of Bank	Account No.	Type of Account
1.	State Bank of India	30712005848	Savings A/c.
2.	State Bank of India	63050028548	Savings A/c.
3.	Indusind Bank	0212-S61799-001	Savings A/c.

The above documents have been filed during appellate proceedings also. The appellant has stated that the appellant had cash balance of Rs. 14,64,355/- as on 01.04.2010. The appellant has submitted that the amount has been deposited in bank out of opening cash balance, out of income during the year and amount withdrawn from bank during the year from time to time. The appellant has argued that the source of amount deposited by the appellant in the bank account from time to time during the year, is thereby explained.

In the instant year, appellant has not filed the return and the appellant has submitted that the reason for non-filing of the return is income of the appellant did not exceed the taxable amount.

The appellant has stated that he is maintaining regular and proper books of account and all the transactions with the bank are appearing in the books of account and the books of accounts were produced before the learned AO for verification. The appellant has argued that the entire cash deposited with the bank cannot be income of the appellant.

The appellant has argued that the AO has not recognized the peak credit principal and not applied even presumptive taxation @8%. He has recognized credit entries with the bank but not debit entries. There are multiple debit and credit entries in the form of cash deposit and cash withdrawals.

5.3. In this case, the appellant deposited total amount of cash of Rs.35,50,840/- in the bank during the instant year. The appellant has submitted that he had opening cash balance of Rs.14,64,355/- as on 01.04.2010, which was rejected by the AO. The appellant had not filed any return of income for F.Y. 2009-10 (A.Y.2010-11), therefore, this contention of the appellant with regard to opening Cash, balance is not accepted. The appellant has argued that the AO has not recognized the peak credit principal. The appellant has argued that the AO has recognized credit entries with the bank but not debit entries. The appellant has stated that there are multiple debit and credit entries in the form of cash deposit and cash withdrawals. I find force in this argument of the appellant.

Keeping in view natural justice by giving effect of peak on cash deposits by the appellant, it can be presumed that the day when appellant had maximum credit balance in his saving bank account, withdrawal were made out of that maximum balance and deposit has been done in saving account out of the withdrawal amount. After careful examination of said bank statement/cash deposit of the appellant, it is found that the appellant had maximum balance on any single day during the year under consideration of Rs.9,70,112/- i.e. on 18.12.2010 in Indusland Bank. During the year consideration appellant had opening balance as on 01.04.2013 of Rs.21,660/- in SBI. After reducing Rs.21,660/- appellant's maximum balance of cash deposit on single day dated 18.12.2010 comes to Rs.9,48,452/- being the peak credit balance. This investment made of Rs.9,48,452/- is treated as unexplained investment within the meaning of provisions of section 69 of the IT Act, 1961. Accordingly, an addition of Rs.9,48,452/- is upheld and the balance addition is deleted. Appeal on Ground No. 1 is partly allowed.”

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

11. At the very outset of the hearing, it was submitted by the Ld. AR that the A.O. had framed the impugned assessment without providing the assessee a copy of the “reasons to believe” based on which his case was reopened u/s.147 of the Act. The Ld. AR submitted that though the assessee had duly complied with the notice u/s.148 of the Act and had filed his return of income, the AO, despite a specific request, had not made available to him a copy of the “reasons to believe” based on which his case was reopened u/s. 147 of the Act. The Ld. AR, to fortify his aforesaid contention, had

drawn my attention to a letter dated 12.12.2016, wherein the assessee, in the backdrop of the fact that he had in compliance to Notice u/s 148 filed his return of income on 10.12.2016, requested for a copy of the “reasons to believe.” The Ld. AR submitted that as the failure on the part of the A.O to furnish the copy of “reasons to believe” to the assessee had divested him of his statutory right of objecting to the very basis of reopening of his case u/s.147 of the Act, therefore, the impugned assessment so framed by him was liable to be quashed on the said count itself. The Ld. AR further assailed the merits of the addition of Rs. 35.50 lac (approx.) made by the AO u/s 68 of the Act. The Ld. AR submitted that as the cash deposits in the assessee’s bank account were sourced out of his duly explained sources/accumulated savings, addition, as regards no part of the said amount could have been made/sustained by the lower authorities.

12. As the Ld. AR has assailed the validity of the jurisdiction assumed by the AO for the reason that the latter, 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, to verify the correctness of the said claim the Ld. Departmental Representative (for short “D.R”) was directed to produce the assessment record on the next date of hearing of the appeal.

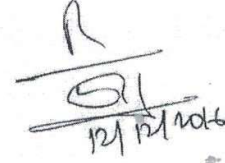
13. The Ld. Departmental Representative (for short, ‘DR’), on the next date of the hearing, produced the assessment records. On perusal of the assessment records, I find that the copy of the assessee’s letter dated 12.12.2016 (supra), wherein he had requested the AO for a copy of the “reasons to believe” along with enclosures,

viz. return of income, computation of income, and power of attorney is placed at Pages 43-45 of the assessment record. Also, the “order sheet” noting dated 12.12.2016 refers to the aforesaid letter filed by the assessee with the AO. However, neither is there any reference in the “order sheet” nor anything discernible from the record that would reveal that acting upon the aforesaid request of the assessee, the AO had, after that, made available to him a copy of the “reasons to believe” which had based the reopening of his case u/s 147 of the Act. Nothing is discernible from the assessment records or 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. 143(3) r.w.s.147 dated 31.12.2016. Rather, the Ld. DR has placed on record a letter dated 18.10.2023 addressed to his office by the ITO-Ward 4(1), Raipur, wherein the latter, inter alia, on being queried about having not supplied the copy of the “reasons to believe” to the assessee, had stated that he had now provided the same to the assessee vide his letter dated 18.09.2023; DIN & Letter No. : ITBA/COM/F/17/2023-24/1056184924(1). The aforesaid claim of the AO evidence that the copy of the “reasons to believe” was never made available to the assessee despite his specific request before the culmination of the assessment. To dispel all doubts the Ld. AR was directed to place on record an “affidavit” of the assessee evidencing his claim that the copy of the “reasons to believe” was not supplied to him by the AO. In compliance, the assessee had filed an “affidavit” dated 25.10.2023, wherein it is deposed by him that despite his specific request for a copy

of the “reasons to believe” and a copy of the sanction under Sec. 151, the same was neither provided to him nor to his authorized representative.

14. Based on the facts mentioned above and the averments of the Ld. AR the controversy narrows down to a short issue, 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 had specifically requested for the same. Before us, it is the claim of the Ld. AR that the assessee, vide his letter dated 12.12.2016, had requested the A.O. to provide a copy of the “reasons to believe” based on which his case was reopened u/s. 147 of the Act. The Ld. AR, to fortify his claim above, had taken me through the aforesaid letter dated 12.12.2016 (supra), based on which the assessee had requested for a copy of “reasons to believe”, Page 13 of APB, which reads as under:

Dated:

From:
Pradeep Kumar Singh
C-1/2, Maruti Business Park,
Raipur (C.G.)
PAN: COUPS0118FHandwritten signature and date: R/SI 12/12/2016To,
The Income-tax Officer - 4(1)
Raipur (C.G.)

Sir,

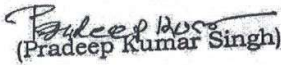
Ref.: Notice u/s 148 of the Income-tax Act, 1961 for A.Y. 2012-13

With reference to above I have to submit I filed my return of total income for AY 2012-13 on 02.12.2016 against the above notice received. Copy of Ack. of return filed along with computation of total income for AY 2012-13 is enclosed herewith for ready reference.

It is further requested that reasons recorded for issuing above notice may kindly be supplied.

Thanking you

Yours Faithfully


(Pradeep Kumar Singh)

15. After having given thoughtful consideration to the issue in hand, I am of the considered view that the failure on the part of the A.O to make available to the assessee a copy of the "reasons to believe" which formed the basis for reopening of his case goes to the very root of the validity of jurisdiction that he had 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 with the same by the A.O thus, he 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 us, 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 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 was 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 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**, had held that on account of the failure of the A.O to make available to the assessee a copy of the reasons for reopening the assessment u/s.147 of the Act, the re-assessment proceedings would stand vitiated in law. Accordingly, as in the case before us, 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.

16. As I have quashed the assessment 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.

17. In the result, the assessee's appeal in ITA No.280/RPR/2023 for A.Y.2011-12 is allowed in terms of the aforesaid observation.

ITA No.281/RPR/2023
A.Y.2012-2013

18. As the facts and issues involved in the captioned appeal filed by the assessee remain the same as were there before me in the aforementioned ITA No.280/RPR /2023 for the assessment year 2011-12, therefore, my order therein passed while disposing of the said appeal shall apply mutatis-mutandis for disposing of the captioned appeal, i.e., ITA No. 281/RPR/2023. In this case, also, the assessment framed by the A.O. being devoid and bereft of valid assumption of jurisdiction is quashed.

19. In the result, the assessee's appeal in ITA No.281/RPR/2023 for A.Y.2012-13 is allowed in terms of the aforesaid observation.

20. Resultantly, both the appeals of the assessee are allowed in terms of the aforesaid observations.

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

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 19th December, 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.