

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

(ITA No. 314/RPR/2024)
(Assessment Year: 2010-11)

Ambika Prasad Shukla, (Through Legal Heir:- Rishi Kumar Shukla), Pawan Kuti, Nidhi Hostel Marg, Anantpur Ward-9, Huzur, Rewa, 486001	V s	Assistant Commissioner of Income Tax, Circle-1(1), Raipur
PAN: APPELLANT		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri S. R. Rao, Adv.
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख/ Date of Hearing	:	29.08.2024
घोषणा की तारीख/ Date of Pronouncement	:	30.08.2024

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals), [in short "Ld. CIT(A)"], NFAC, Delhi u/s 250 of the Income Tax Act, 1961 (in short "The Act") for the Assessment Year 2010-11 dated 09.05.2024, which in turn arises from the Assessment order u/s 143(3) r.w.s. 147 of the Act, passed by Addl. Commissioner of Income Tax, Circle-1(1), Raipur, (in short "Ld. AR") dated 09.11.2017.

2. The grounds of appeal raised by the assessee are as under:
1. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals), NFAC has erred in deciding the appeal ex-parte without proper service of the notice as per provisions of the Act and without following the principles of natural justice.
 2. In the facts and circumstances of the case and in law, learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming action of learned Assessing Officer initiating re-assessment proceedings u/s. 147 of the Income tax Act, 1961 without fulfilling stipulated conditions.
 3. In the facts and circumstances of the case and in law, learned Commissioner of Income Tax (Appeals), NFAC has erred in upholding order of learned Assessing Officer making addition of Rs. 39,50,000/- as unexplained cash credit u/s .68 of the Income-tax Act, 1961.
 4. In the facts and circumstances of the case and in law, learned Commissioner of Income Tax (Appeals), NFAC has erred in upholding order of learned Assessing Officer making disallowance of Rs. 30,67,487/- claimed as expense under "Vehicle Hire Charges" account.
 5. The impugned order is bad in law and on facts.
 6. The appellant reserves the right to add, alter, omit all or any of the grounds of appeal with the permission of the Hon'ble appellate authority.

3. The brief facts of the case are that the assessee has filed his original e-return on 28.04.2011, declaring total income of Rs. 15,66,710/-. Subsequently, an action u/s 147 was initiated against the assessee and total income of the assessee was assessed at Rs. 86,219,70/- as against the return income of Rs. 16,04,480/- as per return filed in response to notice u/s 148. Additions made by the Ld. AO u/s 68 for Rs. 39,50,000/- and disallowance of vehicle higher charges to the tune of Rs. 1,30,67,467/-

4. Aggrieved by the aforesaid additions made by the Ld. AO, assessee preferred an appeal before the Ld. CIT(A), wherein the appeal filed by the assessee was dismissed after discussing the legal ground and merits of the case by the Ld. CIT(A).

5. To challenge the aforesaid order of Ld. CIT(A), the matter is carried before us for seeking adjudication which is under consideration in the present case.

6. At the threshold, Authorized Representative, Shri S. R. Rao, Adv. (in short "Ld. AR") has requested to take-up ground no 2 of the present appeal first as the said ground is a legal ground, wherein, it was the contention that Ld.

CIT(A) has erred in confirming the action of Ld. AO by initiating re-assessment proceedings u/s 147 of the Act without fulfilling stipulated conditions prescribed therein. Ld. AR drew our attention to identical ground no. 1 assailed before the Ld. CIT(A), wherein the assessee has contended as under:

1. *“In the facts and circumstances of the case and in law, initiation of assessment proceedings u/s 147 of the IT Act, 1961 is without jurisdiction in law and grossly erroneous.”*

7. While deciding the aforesaid ground, Ld. CIT(A) has observed as under:

5.3 In ground no. 1, the appellant has claimed that the initiation reassessment proceedings by the AO Was without jurisdiction and bad in law. However, the appellant has not justified this claim with any details to prove his claims. Therefore ground no. 1 is dismissed.

8. It was the submission by Ld. AR that as per reasons recorded while initiated the reopening proceedings, there was no reference by the Ld. AO about the conditions stipulated under the proviso to section 147 which read as under:

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment

for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

9. Accordingly, it was the submission in the present case which pertains to AY 2010-11, for which 4 years are completed on 31.03.2014, whereas, the reopening was initiated on 28.03.2017 by issuance of notice u/s 148. Therefore, the case of assessee was clearly falls under the category wherein the income escaping assessment is initiated after 4 years, also the assessment u/s 143(3) has been completed, therefore, the reason should include details pertaining to income chargeable to tax which as escaped for the relevant assessment year on account of failure on part of the assessee to make a return u/s 139 or in response to notice issued under sub section (1) to section 142 or section 148 or to disclose fully and truly of material facts necessary during the assessment, for relevant assessment year. It was the argument by Id. AR that in the present case, no such facts are recorded in reasons to believe by the by Ld. AR. A copy of reasons recorded is furnished before us which for the sake of clarity is extracted as under:

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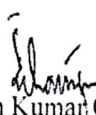
**Reasons recorded u/s 148(2) for issue of notice u/s 148 for A.Y.
2010-11 in the case of Shri Ambika Prasad Shukla, Moudhapara,
Raipur, Raipur [PAN: AJKPS0785M]**

In the case the return of income was e-filed by the assessee on 28.04.2011 declaring total income of Rs. 1566710/-. The return was processed u/s 143(1) on 28.09.2011 and scrutiny assessment was completed in this case on 28.02.2013 at total assessed income at Rs. 17,76,710/-.

Verification reveals that addition of Rs. 6415070/- was made in the capital account of the assessee during the relevant financial year 2009-10. This aspect was not scrutinized during the course of assessment hence the source of credit remained unexplained in the case of the assessee for the relevant assessment year 2010-11.

Further, verification of record shows that an amount of Rs. 23,67,016/- has been debited in its profit and loss account under the head vehicle hire charges. In this connection, the assessee has also failed to deduct tax on such payment under the provisions of section 194I of the I. T. Act, thereby violating the provisions of section 40(a)(ia) of the Act 1961.

In view of the above facts, I have reasons to believe that income of Rs.87,82,086/- chargeable to tax has escaped assessment for assessment year 2010-11. In order to rope into the escaped income and to assess such income, recourse to the provisions of section 148 to 153 is to be taken subject to approval from Pr. CIT-1, Raipur.


(Tapan Kumar Chatterjee)
Assistant Commissioner of Income Tax-1(1)
Raipur

10. Based on aforesaid submission, it was the prayer of Ld. AR that since Ld. AO has not mentioned anything about the failure on the part of assessee to disclose fully and truly of material facts essential for assessment in the accomplished assessment under sub section (3) to section 143, therefore, such reasons recorded are not tenable in the eyes of law. On this issue Ld. AR has placed his reliance on the judgment by Hon'ble Jurisdictional High Court in the

case of **Hari Om Ingots and Power (P) Ltd. Vs. Principal Commissioner of Income Tax & Ors. Reported in (2022) 444 ITR 306(Chhattisgarh)**, wherein Hon'ble Jurisdictional High Court while alluding to the similar issue has held as under:

6. *Perusal of aforementioned provisions under s. 56 of the IT Act would reflect that s. 56 mentions about the income from other sources. Sec. 56(vii) talks about the income received by an individual or a Hindu undivided family in any previous year. petitioner is a company and in view of specific provision under s. 56(2)(vii) of the IT Act, relied by the AO for issuance of notice will not be applicable to the petitioner who is a company. For issuance of notice under s. 148 of the IT Act, there should be tangible material and mandatory compliance of s. 147 of IT Act. Proceedings of reassessment has been initiated against company after lapse of 4 years of submission of return, which is not in dispute. **Under first proviso to s. 147 of the IT Act, for starting the reassessment proceedings after lapse of 4 years, AO has to record his conclusion that there was failure on the part of assessee in not disclosing fully and truly all material facts necessary for assessment of that particular assessment year, which is not appearing from the reading of the Annexure i.e. reasons for issuance of notice.***

7. *Considering the aforementioned facts and circumstances of the case, reason assigned for issuance of notice and provisions mentioned therein, in the opinion of this Court, there was no reason/ground available with AO to issue notice under s. 148 of the IT Act. Issuance of notice under s. 148 of the IT Act to petitioner is not in accordance with the first proviso to s. 147 of the IT Act, therefore, it is not sustainable, which is liable to be quashed, and it is hereby quashed.*

11. Backed by aforesaid submissions and judicial pronouncement, it was the prayer by Ld. AR that since no mandatory compliance of the conditions mentioned in section 147 and 148 of the Act which followed by the Ld. AO in the present case by not substantiating the failure on the part of the assessee to disclose fully and truly of material facts necessary for the concluded assessment u/s 143(3), therefore, the notice issued u/s 148 was bad in law, and proceedings initiated are liable to be quashed.

12. In rebuttal, Senior Departmental Representative, Dr. Priyanka Patel (in short "Ld. Sr. DR") on behalf of the revenue has vehemently supported the order of Ld. AO and Ld. CIT(A).

13. We have considered the rival submissions, perused the material available on record and case law referred and relied upon by the Ld. AR. Admittedly, in the present case on perusal of the reasons recorded by the Ld. AO (supra), there was no whisper in the reasons recorded for reopening u/s 148 about the failure on part of the assessee to disclose material facts fully and truly necessary for the assessment while the assessment was completed u/s 143(3) for that relevant assessment year. It is also the fact that, the case of assessee which could have been reopened before 31.03.2014 i.e., before completion of 4 years, but the same was reopened post 4 years i.e., 28.03.2017, therefore, such

mandatory conditions was to be followed and brought on record by the Ld. AO which as per facts of case borne from record are not emanating in the present matter, we, therefore, respectfully following the law laid down by Hon'ble Jurisdictional High Court in the case of **Hariom Ingots and Power (P) Ltd. (supra)**, are convinced to hold that the notice issued u/s 148 has without assumption of valid jurisdiction by the Ld. AO on account of non-compliance of the pre-mandated conditions prescribed under the proviso to section 147 of the Act. In view of such facts and circumstances, we are of the considered opinion that the reopening initiated by the Ld. AO was in violation to prescribed provisions of first proviso to section 147 of the Income Tax Act, therefore the same is not sustainable and the assessment framed u/s 143(3) r.w.s. 147 dated 09.11.2017, is liable to be quashed for the want of valid assumption of jurisdiction by the Ld. AO.

14. In view of aforesaid judicial pronouncements and our observations, **ground no. 2** of the assessee is allowed and the assessment framed by the Ld. AO, which is assailed before the Ld CIT(A) in the impugned order is directed to be quashed.

15. Since, we have adjudicated the legal ground of the assessee and quashed the assessment in terms of our observations following the jurisprudence granted by Hon'ble Jurisdictional High Court, we therefore, are not advertng to the remaining ground of the present appeal on merits, thus, the same are left as open.

16. Resultantly, the appeal of the assessee filed in the present case is **allowed**, in terms of our aforesaid observations.

Order pronounced in the open court on 30/08/2024.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 30/08/2024

Vaibhav Shrivastav

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- Ambika Prasad Shukla
2. प्रत्यर्थी / The Respondent- ACIT, Circle-(1), Raipur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur