

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.03/RPR/2025

निर्धारण वर्ष / Assessment Year : 2015-16

Rekh Chand Nahta
House No.97,
Gurudwara Road,
Jagdalpur, Bastar-494 001 (C.G.)
PAN: APLPN0667E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-Jagdalpur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Veekaas S Sharma, CA
Revenue by : Smt. Tarannum Verma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 23.01.2025

घोषणा की तारीख / Date of Pronouncement : 24.01.2025

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 12.12.2024, which in turn arises from the order passed by the A.O under Sec. 147 r.w.s.144 r.w.s. 144B of the Income-tax Act, 1961 (in short 'the Act') dated 26.03.2023 for the assessment year 2015-16. The assessee has assailed the impugned order on the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the Assessment order passed u/s.147 r.w.s. 144 r.w.s. 144B of the Income Tax Act, 1961 is illegal, void-ab-initio and bad-in-law inasmuch as the mandatory Notice u/s 143(2) was not issued after the assessee filed ROI in response to notice u/s.148 on 03.02.2023 electronically, the Learned A.O presumed that the assessee has not filed ROI and has passed the impugned assessment order dated 26.03.2023 u/s 147 r.w.s 144 r.w.s. 144B of the Income Tax Act, 1961. The Learned A.O could have assumed the jurisdiction over the case of the assessee only by virtue of notice u/s.143(2), thus, in absence of valid jurisdiction the assessment order passed is liable to be declared as illegal, void-ab-initio and bad-in-law. It is prayed that the assessment order may kindly be held to be illegal and quashed.

2. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal.

2. Succinctly stated, the A.O based on information disseminated through Insight portal, which revealed viz. (i) cash deposits in bank accounts : Rs.12,13,000/-; (ii) purchase of immovable property : Rs.40,00,000/-; and (iii) interest received u/s. 194A of the Act :

Rs.20,636/-, thus, issued notice u/s.148A(b) of the Act, dated 16.03.2022 calling upon the assessee as to why a notice u/s. 148 of the Act may not be issued in his case. As the assessee had failed to come forth with any plausible explanation, therefore, the A.O passed an order u/s.148A(d) of the Act, dated 26.03.2022. Subsequently, notice u/s.148 of the Act, dated 28.03.2022 was served upon the assessee.

3. During the course of assessment proceedings, the A.O observed that the assessee had claimed to have received cash gifts of Rs.25,40,000/- from her relatives, as under:

Sl. No.	Name & PAN	Relation	Amount
1.	L/Ghewar Chand Nahta (ABIPN6096L)	Father	8,90,000/-
2.	L/Khamma Bai Nahta (ABIPN6141Q)	Mother	6,50,000/-
3.	Gautam Nahta (APLPN0668M)	Brother	4,00,000/-
4.	Jitendra Nahta (ALPN0788G)	Brother	6,00,000/-

However, as the assessee had failed to substantiate the authenticity of the aforesaid gifts transactions, therefore, the A.O holding a firm conviction that the creditworthiness of the respective donors was not established, held the entire amount as the assessee's unexplained money u/s.69A of the Act. Apart from that, the A.O made an addition of the interest income

of Rs.20,636/- that was not disclosed by the assessee in her return of income. Accordingly, the A.O vide his order passed u/s.147 r.w.s. 144 r.w.s. 144B of the Act, dated 26.03.2023, after making the aforesaid additions determined the income of the assessee at Rs.25,60,240/-.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“5.2 After an exhaustive review of the grounds of appeal, statement of facts and written submissions, the following observations are made:

5.3 Appellant stated that extensive evidence to substantiate the sources of income, cash deposits, and investments were submitted before the A.O and these include:

Bank Statements: Detailed statements from Central Bank of India, State Bank of India, and ICICI Bank reflecting transactions.

Donor Affidavits: Signed affidavits from donors confirming the gifts and their sources. Source of Deposits: Evidence of cash gifts, sale proceeds, accumulated savings, and bank withdrawals substantiating cash deposits.

Property Investment Details: Purchase deed and supporting documents explaining the source of funds for acquiring immovable property.

5.3.1 It was argued that the AO made significant additions under Section 69A without properly examining or addressing the evidence submitted by the assessee.

5.4 It is contended that the assessee made multiple requests for adjournments (both on 23.03.2023 and 24.03.2023) to gather and submit additional documents and these requests were neither explicitly rejected nor considered. It was claimed that despite the assessee's request for a virtual hearing, the opportunity for such a hearing was not granted, which

deprived the assessee of the chance to clarify or elaborate on their submissions directly before the AO.

5.5 It was further contended that on 24.03.2023, the assessee attempted to upload their response and relevant documents but was unable to do so because of a technical glitch in the e-filing portal and this issue was substantiated with screenshots of the portal provided by the assessee. It was stated that the AO, however, finalized the assessment without addressing or allowing for this procedural hindrance.

5.6 It was maintained that after the assessee filed the return of income in response to the notice under Section 148, the AO was required to issue a notice under Section 143(2) to assume jurisdiction for scrutiny, but no such notice was issued by the AO.

5.7 During the appeal proceedings the assessee provided a detailed cash flow statement explaining the sources and uses of funds. This included:

- Turnover from the business under presumptive taxation. Withdrawals from bank accounts during the relevant financial year.

Accumulated savings over decades.

5.7.1 It was argued that the AO neither reconciled these figures with the cash deposits in question nor scrutinized the turnover declared under Section 44AD of the Income Tax Act. It was stated that although the assessee provided details of donors' PAN, addresses, and bank transactions, the AO did not verify these details or question the donors directly to assess their creditworthiness.

6.0 Upon a careful examination of the submissions made by the appellant, I am of the considered view that the issues raised in the grounds of appeal require extensive inquiry and verification, including the additional/supporting evidence filed during the appeal proceedings and therefore in the interest of substantial justice and to ensure fair play, it is most appropriate to provide the appellant with an additional opportunity to present his case before the AO. This would enable the AO to thoroughly verify the assessee's submissions and additional/supporting evidence filed during the appeal proceedings and conduct the necessary inquiries to gather all relevant material for an accurate determination of the appellant's income. The Courts in many rulings have clearly held that the importance of providing proper notice and

reasonable opportunity for response, even in situations where the assessee failed to comply with initial notices, in order to ensure principles of natural justice are followed.

6.1 Proviso to Section 251(1)(a) of the Income Tax Act w.e.f 01/10/2024 provides that in the case of appeal against an order of assessment made under section 144, the Commissioner (Appeals) is empowered to set aside the order of assessment and refer the matter back to the Assessing officer for making a fresh assessment.

6.2 In view of the power conferred under proviso to Section 251(1)(a) of the Act, I hereby set aside the assessment made u/s 144 and refer the case back to the Assessing Officer for making a fresh assessment, after giving reasonable opportunity of being heard to the assessee. The assessee is directed to file necessary documents for substantiating its case and not seek unnecessary adjournment, so as to facilitate disposal of the case, in accordance with the statutory provisions and the timelines prescribed under Section 153(3) of the Act.

7.0 Accordingly, based on the above discussion, the appeal is disposed of.”

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

6. 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 the Ld. AR to drive home his contentions.

7. Shri Veekaas S Sharma, Ld. Authorized Representative (for short “AR”) for the assessee, at the threshold, submitted that the A.O had framed the assessment vide his order passed u/s.147 r.w.s. 144 r.w.s. 144B of the Act, dated 26.03.2023 without valid assumption of jurisdiction.

Elaborating on his contention, the Ld. AR submitted that though the assessee has in compliance to notice u/s. 148 of the Act, dated 28.03.2022 had filed his return of income on 03.02.2023, but the A.O without taking cognizance of the same had grossly erred in law and facts of the case in assuming jurisdiction and framing the assessment vide his order passed u/s. 147 r.w.s. 144 r.w.s. 144B of the Act, dated 26.03.2023. Carrying his contention further, the Ld. AR submitted that now when the assessee in compliance to the notice u/s. 148 of the Act, dated 28.03.2022 had filed his return of income, therefore, it was incumbent on the part of the A.O to have issued a notice u/s. 143(2) of the Act, which, however, was never done by him. The Ld. AR to fortify his aforesaid contention had taken me through the return of income that was filed by the assessee u/s. 148 of the Act, dated 28.03.2022, Page 36 of APB. Also, the Ld. AR had taken me through “ITR-4S” which revealed that he had filed the return of income in compliance to notice u/s. 148 of the Act. The Ld. AR submitted that now when the assessee had filed his return of income in compliance to notice u/s. 148 of the Act, therefore, failure on the part of the A.O to issue notice u/s. 143(2) of the Act rendered the assessment so framed by him as invalid and nothing short of nullity.

8. On being queried as to whether or not, the aforesaid issue was taken up by the assessee before the CIT(Appeals), the Ld. AR answered in the affirmative. The Ld. AR submitted that though specifically the assessee vide

his "Ground of appeal No.2" had assailed the impugned assessment framed by the A.O vide his order passed u/s.147 r.w.s. 144 r.w.s. 144B of the Act, dated 26.03.2023 claiming the same as being illegal, bad in law and void-ab-initio in absence of notice having been issued u/s. 143(2) of the Act, but the first appellate authority had though referred to the said claim of the assessee, but had not adjudicated the same. The Ld. AR to buttress his aforesaid claim had taken me through Page 41, Para 5.6 of the CIT(Appeal)'s order.

9. Per contra, Smt. Tarannum Verma, Ld. Sr. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

10. I have given thoughtful consideration to the orders of the lower authorities as regards the aforesaid issue i.e. validity of the jurisdiction assumed by the A.O for framing assessment vide his order passed u/s. 147 r.w.s. 144 r.w.s. 144B of the Act, dated 26.03.2023. As stated by the Ld. AR, and rightly so, I find that the assessee had assailed the validity of the jurisdiction that was assumed by the A.O for framing of the assessment in absence of a notice u/s. 143(2) of the Act despite the fact that the return of income in compliance to notice u/s.148 of the Act, dated 28.03.2022 was filed by the assessee on 03.02.2023. The aforesaid factual position can safely be gathered on a perusal of the "Ground of appeal No.2" raised by the assessee before the CIT(Appeals), which reads as under:

“2. On the facts and in the circumstances of the case, the assessment order passed u/s.144 r.w.s. 147 read with Section 1448 is illegal, bad-in-law and void-ab- initio inasmuch as the mandatory notice as required u/s.143(2) of the Act, 1961 was not issued to the assessee even though the assessee had filed the return of income electronically in response to the notice u/s 148 on 03.02.23, hence, the assessment order is bad-in-law, illegal and void-ab-initio. Prayer: It is prayed that the assessment order passed without issuance of mandatory notice u/s. 143(2) may kindly be declared as illegal, bad-in-law and consequential enhancement of Rs.25,40,000/- made by the Assessment Unit may kindly be deleted.”

11. Although the assessee had assailed the validity of the jurisdiction that was assumed by the A.O for framing the assessment without issuing any notice u/s. 143(2) of the Act i.e. an issue which is squarely covered by the judgments of the **Hon’ble Apex Court** in the cases of **ACIT & Anr. Vs. Hotel Blue Moon, (2010) 321 ITR 362 (SC)** and in the case of **CIT Vs. Laxman Das Khandelwar (2019) 417 ITR 325 (SC)**, but I find that the CIT(Appeals) had merely referred to the said contention of the assessee and not adjudicated the same, Page No.41, Para 5.6 of the CIT(Appeals)’s order. I find that there is no whisper in the body of the CIT(Appeals) qua the adjudication on the aforesaid specific ground of appeal based on which the validity of the jurisdiction assumed by the A.O for framing the impugned assessment was assailed before him. I am unable to comprehend as to why the CIT(Appeals) had failed to adjudicate the aforesaid material aspect, based on which, the validity of the assessment was challenged before him.

The aforesaid evasive approach on the part of the CIT(Appeals) needs to be deprecated.

12. Be that as it may, I am of the view that as the CIT(Appeals) had failed to dispose off the appeal after considering the specific contention that was raised by the assessee qua the validity of the jurisdiction that was assumed by the A.O for framing the impugned assessment vide his order passed u/s.147 r.w.s. 144 r.w.s. 144B of the Act, dated 26.03.2023 i.e. framing of the assessment without taking cognizance of the return of income that was filed by the assessee and dispensing with the issuance of notice u/s. 143(2) of the Act, therefore, the matter is restored to his file with a specific direction to adjudicate the appeal on the said specific issue. Needless to say, the CIT(Appeals) shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate his claim based on fresh documentary evidence, if any.

13. As the Ld. AR has confined his contentions to the validity of the jurisdiction that was assumed by the A.O for framing the assessment in absence of any notice u/s. 143(2) of the Act, therefore, I refrain from adverting to the other contentions based on which the validity of the assessment has been assailed before me which, thus, are left open.

14. In the result, appeal filed by the assessee is allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced in open court on 24th day of January, 2025.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 24th January, 2025.

***SB, Sr. PS.

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.