

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

आयकर अपील सं. / ITA No: 552/RPR/2024

(निर्धारण वर्ष Assessment Year: 2018-19)

Smt. Pinky Jhawar, 3, Annapurna Complex, Near Agrasen Chowk, Raipur-492001, C.G.	v s	Income Tax Officer, Ward-1(2), Raipur, C.G.
PAN: AFWPJ3270N		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Sakshi Gopal Aggrawal, CA
राजस्व की ओर से /Revenue by	:	Shri S. L. Anuragi, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	30.01.2025
घोषणा की तारीख/Date of Pronouncement	:	31.01.2025

आदेश / ORDER

Per Arun Khodpia, AM:

This appeal is filed by the assessee, directed against the order of Commissioner of Income Tax (Appeal), NFAC, Delhi, [in short "Ld. CIT(A)"] under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 15.10.2024, for the Assessment Year 2018-19, which in turn arises from the order of Faceless Assessment Unit, Income Tax Department (in short "Ld. AO") u/s 147 r.w.s. 144 of the Act, dated 07.03.2023.

2. The grounds of appeal raised by the assessee reads as under:

1. *That on the fact and circumstances of case of Appellant the order passed u/s 147 r.w.s. 144 r.w.s. 144.B of IT Act is bad i law as the procedure laid down u/s 151A of IT Act was no followed as the mandatory notice u/s 148 dtd. 30/03/2022 was being issued by the jurisdictional AO i.e. ITO, Ward- I (2), Raipur instead of automated allocation in accordance with risk management strategy formulated by board in a faceless manner to the exte11t provided in section 1448. And CIT(A), NFAC is erred in not quashing the order of learned AO on this legal ground raised by Appellant before him.*
2. *That on the fact and circumstances of case of Appellant the order passed u/s 147 r.w.s. 144 r.w.s. 1448 of IT Act is bad in law as the Id. AO failed to follow the procedure laid down u/s 148A i.e., conduct enquiry, provide opportunity before issue of notice u/s 148,*
 - (a) *That the learned AO ha failed to obtain prior approval of specified authority before commencing the enquiry u/s 148A(a).*
 - (b) *That the learned AO failed to provide proper opportunity of being heard as investigated u/s 148A(b).*
3. *That on the fact and circumstances of the case, the honourable CIT(A) has been erred for confirming the order of learned assessing officer by dismissing the legal ground raised by the Appellant.*
4. *That, assessee reserves the right to add, amend, alter or withdraw any ground/grounds of appeal at the time of hearing.*

3. Concisely stated, assessee / appellant is a non-filer. Ld. AO had information regarding financial transaction / activities of the appellant, despite which the assessee had failed to file her Return of Income (ROI) further in absence of return of income, Ld. AO has the reason to believe that the income of assessee had escaped assessment, thus, following the provisions for reopening the case of the assessee was taken up for assessment u/s 147 of the Act. Notice u/s 148 was issued on 30.03.2022 with necessary approval from competent authority. In response to the notice u/s 148 also assessee failed to file her Return of Income. Further notice u/s 142(1) of the Act and show cause notice were issued to the assessee from time to time, but all the said notices remain un-complied. Due to the unresponsiveness and non-cooperative behaviour of the assessee, the assessment was completed on best judgment basis u/s 144 r.w.s. 147 of the Act on 07.03.2023, assessing the total income at Rs.5,68,60,645/-.

4. Aggrieved with the aforesaid order of Ld. AO, assessee preferred an appeal before the Ld. CIT(A), who after deliberating on the issues raised in the appeal have partly allowed the appeal of the assessee and set aside the matter back to the file of Ld. AO for making assessment afresh. The observations of

Ld. CIT(A) *qua* various grounds of appeal raised by the assessee therein, are extracted hereunder for the completeness of facts:

7. Decision

7.1 In ground no. 4, the appellant has challenged that she was not given proper opportunity of being heard. It is seen that the AO has given ample opportunities to the appellant. Hence, the contention of the appellant is rejected. Hence, this ground of appeal is dismissed.

7.2 In ground no. 5, the appellant has challenged that the order was passed without appraising the information available. In ground no. 6 it is challenged that the order is bad in law. It is seen that the AO has followed the due procedure for issue of notice u/s 148 and had given ample opportunities to the appellant and passed the order ex-parte on the basis of material available on record as there was no compliance from the appellant. The order of the AO is as per law. Hence, Grounds No. 5 and 6 are dismissed.

7.3 In Ground No. 1,2 and 3, the appellant has challenged additions of Rs.25,15,000/- in respect of unexplained money u/s 69A, Rs.5,34,50,000/- towards unexplained expenditure u/s 69C and Rs.8,95,645/- towards GP from the business. I have considered the order of the AO and the contention of the appellant. It is an admitted fact that the appellant did not file any return u/s 139(1). The appellant also did not file any Return of Income in response to notice u/s 148. It is also seen that the appellant didn't file any submission or documents before the AO during the course of the assessment proceedings although the AO had given ample opportunities. Hence, the AO passed ex-parte order u/s 147 rws 144 of the Act and made the said additions on the basis of material available on record. During the course of the appellate proceedings, the appellant has furnished her submission and submitted

various documents. The appellant in her submission has submitted the following documents as additional evidence under rule 46A.

- Copy of Balance-Sheet as on 31/03/2018.*
- Copy of Profit & Loss for the year ended on 31/03/2018*
- Copy of sales ledger.*
- Copy of purchase ledger*
- Copy of day to day Cash Book.*
- Copy of HDFC Current account ledger*
- Copy of Kotak Mahindra Current account ledger*
- Copy of Trial balance for A.Y.2018-19.*

7.4 *The appellant has given the following reasons for non-compliance before the AO:*

"That the Assessee was totally unaware with the fact of issue of e- notices and proceedings being initiated by IT Department since only e-notices being issued and physical notices were never being sent to assessee. Assessee became aware of proceedings of IT department only on receipt of order u/s 147. Due to this reason assessee did not responded to notices of IT department. Thus order was passed without proper opportunity of being heard. "

7.5 *These documents were not available with the AO during the course of the assessment proceedings and hence the AO passed ex-parte order u/s 147 rws 144 of the Act. The details submitted by the appellant go to the root of the matter and hence the same needs to be examined to work out correct assessed income of the appellant. Hence, these documents submitted by the appellant are admitted as additional evidences. As these details and documents submitted by the appellant*

filed during the course of appellate proceedings were not available with the AO during the course of assessment proceedings, the same need to be examined by the AO. Hence, the assessment of the appellant for the year under consideration is set aside and referred back to the AO for making fresh assessment u/s 251(1) of the Act. The AO will give reasonable opportunity of being heard to the appellant and will make fresh assessment as per law after verifying the documents submitted by the appellant and after making such inquiries as deemed fit. The appellant is directed to comply to the notices of the AO.

8. In the result, the appeal of the appellant is set aside and referred back to the AO for making fresh assessment.

5. Dissatisfied with the aforesaid order of Ld. CIT(A), assessee preferred an appeal before us.

6. Referring to the grounds of appeal no. 2, at the threshold, Ld. AR, Shri Sakshi Gopal Aggrawal, CA have raised the contention that Ld. AO failed to provide reasonable opportunity of being heard to the assessee as mandated under the provision of section 148A(b). To substantiate this contention Ld. AR drew our attention to page no. 65 of the APB comprising therein, copy of notice under clause (b) of section 148A of the Income Tax Act dated 20.03.2022, wherein the assessee was requesting to submit her response with supporting documents on or before 26.03.2022 i.e. within next 6 days. Showing the aforesaid notice, Ld. AR argued that the assessee was permitted to respond

only within 6 days of the aforesaid notice, whereas in accordance with the provisions of Act assessee should have been provide the reasonable time to respond, being not less than 7 days, the assessee was therefore, remain bereft of adequate and reasonable opportunity of being heard, therefore, entire proceedings initiated u/s 148A are to be treated as illegal and *void ab initio*, consequently the order passed u/s 144 r.w.s. 147 on the foundation of such illegal proceedings is also illegal, bad in law and liable to be quashed. In support of such contentions, Ld. AR placed his reliance on the decision wherein identical issue is decided by the coordinate bench of ITAT, Raipur in the case of **New Rajdhani Honda Vs. CIT in ITA No. 473/RPR/2024 dated 12.12.2024**. The observations of ITAT in the said decisions following the ratio of law emerging from the order of Hon'ble Jurisdictional High Court in the case of **M M Wonder Park Pvt. Ltd. Vs. Union of India & Othrs. WP(T) No. 172/2022 dated 17.06.2022**, are extracted as under:

7. *We have heard the learned 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.*
8. *Shri Veekaas S Sharma, learned authorized representative (for short, Ld. AR) for the assessee, at the threshold, submitted that as the AO had failed to adhere to the provisions of section 148A(b) of the Act, therefore, the assessment order*

*passed by him u/s 147 r.w.s. 144B of the Act, dated 03.03.2023 was liable to be struck off. Elaborating on his contention, the Ld. AR submitted that though section 148A(b) of the Act contemplates that the AO shall provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notices is issued, or such time, as may be extended by him on the basis of application in this behalf, as to why a notice u/s 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a). The Ld. AR submitted that the AO in the present case had issued "Show cause notice" (SCN) u/s 148A(b) of the Act, dated 20.03.2022, Page No. 1 & 2 of APB, wherein the assessee firm was called upon to put forth an explanation on or before 26.03.2022 as to why the notice u/s 148 of the Act be not issued to him. The Ld. AR, submitted that contrary to the mandate of section 148A(b) of the Act, which contemplates allowing of a time period of not less than seven days, the A.O. in the case of present assessee had effectively allowed to him a time period of only 5 days to explain that as to why the notice be not issued under clause (b) of section 148A of the Act. The Ld. AR, submitted that as the time period allowed to the assessee firm for putting forth an explanation to the notice issued by the AO u/s 148A(b) of the Act was not in conformity with the mandate of law, therefore, due to invalid assumption of jurisdiction the assessment framed by him vide order passed u/s 147 r.w.s. 144B of the Act, dated 03.03.2023 cannot be sustained and is liable to be struck down on the said count. The Ld. AR to support his contention had relied upon the decision of **Hon'ble Jurisdictional High Court of Chhattisgarh in the case of MM Wonder Park Private Limited***

vs. Union of India & Others, passed in Writ Petition (T) No.172/2022, dated 17.06.2022 (copy placed on record). Alternatively, the Ld. AR assailed the validity of the assessment order on the basis of his other multi-facet contentions, viz., (i). that no notice u/s 143(2) of the Act was issued by the AO; (ii) that the notice u/s 148 of the Act, dated 30.03.2022 which ought to have been issued by the "Faceless Assessing Officer" (FAO) was in fact issued by "Jurisdictional Assessing Officer" (JAO), and thus, was violative of and contrary to the Notification No.18/2022 dated 29.03.2022; and (iii) that the conditions precedent for invoking section 69A of the Act were not satisfied in the preset case. Apart from that, the assessee had placed his contentions as regards the merits of the case.

9. *Per contra, the Ld. Departmental Representative ("D.R", for short) relied on the orders of the lower authorities.*

10. *We have heard the learned authorized representatives of both the parties in the backdrop of the orders of the lower authorities. As the Ld. AR has assailed the validity of the assessment order passed by the AO u/s 147 r.w.s. 144B of the Act, dated 03.03.2023, inter alia, for the reason that the time limit allowed by the AO u/s 148A(b) of the Act was not as per the mandate of law, therefore, we shall first deal with the same.*

11. *As stated by the Ld. AR, and rightly so, section 148A(b) of the Act contemplates that the AO shall, before issuing any notice under section 148, provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less*

than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a). Admittedly, as per the mandate of Section 148A(b) of the Act, it is obligatory on the part of the A.O. to allow to the assessee a time period of not less than 7 days from the date on which such notice is issued to explain as to why based on the information shared with him a notice u/s 148 of the Act be not issued to him. However, we find, that in the present case, the A.O vide notice u/s 148A(b) of the Act, dated 20.03.2022 by calling upon the assessee firm to show cause on or before 26.03.2022 that as to why notice u/s 148 of the Act be not issued to him had effectively allowed to him a time period of only 5 days to file his explanation.

12. *As stated by the Ld. AR, and rightly so, the notice u/s 148A(b) of the Act, dated 20.03.2022 is not found to be in conformity with the mandate of law. We **find**, that **Hon'ble Jurisdictional High Court of Chhattisgarh in the case of MM Wonder Park Private Limited vs. Union of India & Others, passed in Writ Petition (T) No.172/2022, dated 17.06.2022**, had observed, that the A.O. had issued a show cause notice u/s 148A(b) of the Act giving just 7 days' time to the assessee/petitioner to file its reply. The Hon'ble High Court, observed that the time period of 7 days provided to the assessee vide notice u/s 148A(b) of the Act was unreasonably short, and thus, violative of principles of natural justice. Accordingly, the Hon'ble High Court in the aforementioned case had quashed both the order passed by the A.O. u/s 148A(b) of the Act, dated 04.04.2022 and the notice u/s 148 of the Act, dated 05.04.2022, and set aside*

the matter to the file of the A.O. with a direction to decide the matter afresh in accordance with law after affording an opportunity of being heard to the assessee/petitioner. For the sake of clarity, the observations of Hon'ble High Court are culled out as under:

- "5. I have heard Learned Counsel appearing for the parties and perused the above referred to documents/Annexures and other material available with due care.*
- 6. From perusal of the documents/Annexures, it appears that the order dated 4.4.2022 (Annexure P2) passed under Section 148A(d) of the Act has been passed with regard to a transaction which occurred in the financial year 2014-15 after serving a notice dated 25.3.2022 (Annexure P1) and giving a mere 7 days' time to the Petitioner/assessee to furnish a reply to the said notice. The time granted to the Petitioner/assessee to submit reply to the said notice appears to be unreasonable short and the Petitioner/assessee cannot be blamed for not being able to file the reply within such a short period. Thus, it appears that there is a violation of principle of natural justice. Therefore, the prayer made on behalf of the Petitioner/assessee appears to be reasonable. Thus, the order dated 4.4.2022 (Annexure P2) passed under Section 148A(d) of the Act and the notice dated 5.4.2022 (Annexure P3) issued under Section 148 of the Act are quashed and the Respondents are directed to afford proper opportunity of hearing to the Petitioner/assessee and thereafter decide the matter afresh in accordance with law.*
- 7. Accordingly, the instant writ petition is allowed"*

(emphasis supplied by us)

- 13. As the facts and issue involved in the present appeal before us, i.e., allowing of unreasonably short period of time by the AO vide notice u/s 148A(b) of the Act remains the same as was there before the Hon'ble High Court, therefore, we respectfully follow the same. We, thus, in terms of our aforesaid observations quash the order passed by the A.O. u/s 148A(d) of the Act, dated*

29.03.2022 and also notice u/s 148 of the Act, dated 29.03.2022, and restore the matter back to the file of the A.O. with a direction to afford a proper opportunity of being heard to the assessee firm as per the mandate of section 148A(b) of the Act, and thereafter, decide the matter afresh in accordance with law.

14. The additional ground of appeal No. 2 is allowed for statistical purposes in terms of our aforesaid observations.

7. Based on aforesaid submissions, it was the prayer by Ld. AR that the issue is squarely covered by the aforesaid decision, therefore, the case of assessee may be decided, accordingly.

8. Per contra, Shri S. L. Anuragi, CIT-DR, have vehemently supported the order of Ld. CIT(A).

9. We have considered the rival submissions, perused the material available on record and case laws relied upon by the assessee. Admittedly, the issue raised by the Ld. AR is squarely covered by the order of this Tribunal in the case of **New Rajdhani Honda (supra)**, wherein date of issue of notice u/s 148A(b) are akin to the present case, i.e the notice was issued on 20.03.2022 and the assessee was called upon to put forth the response on or before 26.03.2022, accordingly, the matter of assessee in the instant case stands on

the same footing, therefore, our decision would also remain identical. Resultantly, ground no. 2(b) of the present appeal is partly allowed for statistical purposes, and the matter is restored to the file of Ld. AO with direction to afford proper opportunity of being heard to the assessee as per mandate of section 148A(b) of the Act and decide the matter afresh in accordance with law. Herein, we may also observe that as the matter is remitted back to the file of Ld. AO by the Ld. CIT(A) too, therefore, we approve the decision of Ld. CIT(A) in setting aside the matter to the file of Ld. AO, however, modify the same in terms of our observations to be adhered to during the set aside proceedings.

10. As we have set aside the matter to the file of Ld. AO with the directions to re-decide the case after affording a reasonable opportunity of hearing to the assessee, therefore, we refrain from deliberating upon and to deal with the other grounds of appeal based on which the validity of jurisdiction assumed by the Ld. AO for framing the assessment as well as the merits of the addition has been assailed by the Ld. AR before us, which thus, are left open.

11. Consequently, Ground No. 2(b) of the present appeal is allowed for statistical purposes and Ground No. 1, 2(a) and 3 are left open.

12. Ground No. 4 of the present appeal is academic and general in nature, the same is dismissed as not pressed.

13. In result, the appeal of the assessee in **ITA No. 552/RPR/2024** is **allowed** for statistical purposes.

Order pronounced in the open court on 31/01/2025.

Sd/-
(RAVISH SOOD)
न्यायिक सदस्य / JUDICIAL MEMBER
रायपुर/Raipur; दिनांक Dated 31/01/2025
Vaibhav Shrivastav

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant- Smt. Pinky Jhawar
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(2), Raipur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

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