

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH "SMC", RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

**आयकर अपील सं./ITA No.113/RPR/2024**

**निर्धारण वर्ष / Assessment Year : 2016-17**

Rahul Tyagi  
Golden Homes 13,  
New VIP Club,  
Shankar Nagar, Raipur-492 001 (C.G.)  
PAN: AITPT6198H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer  
Ward-3(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA  
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 11.03.2025  
घोषणा की तारीख / Date of Pronouncement : 19.03.2025

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM**

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals)/NFAC, Delhi dated 31.01.2024 for the assessment year 2016-17 as per the following grounds of appeal on record:

“1. On the facts and circumstances of the case and in law, notice u/s.143(2) issued by ITO,4(5) who was not having authority of law to issue such notice u/s.143(2) as per sec.2(7A), sec.124(1) rws.120(2)&(3); no notice u/s.143(2) issued by ITO-3(1) who passed order u/s.143(3); in absence of a valid notice issued u/s.143(2) by ITO-3(1) who was the Assessing Officer' as per sec.2(7A), sec.124(1) rws.120(2) & (3), assessment made u/s.143(3) by ITO-3(1) would be invalid as without assuming valid jurisdiction for making assessment u/s.143(3), is liable to be quashed.

2. On the facts and circumstances of the case and in law, there is violation of sec.143(2) as notice u/s.143(2) can only be issued by the 'Assessing Officer' as mentioned in the sec.143(2) itself as "the Assessing Officer shall serve on the assessee a notice"; in absence of a valid notice issued by the 'Assessing Officer' u/s.143(2) as mandated by law u/s.143(2) sec.124(3)(a) does not come into play, assessment made u/s. 143(3) by ITO-3(1) would be invalid as without having valid jurisdiction for making assessment u/s.143(3), is liable to be quashed.

3. On the facts and circumstances of the case and in law, assessment made u/s.143(3) by ITO-3(1) is invalid; it is in violation of sec.127(1) & sec.127(3); notice u/s.143(2) issued by ITO-4(5); there is no mention of any order u/s.127 by the PCIT for transferring the 'case' from ITO-4(5) to ITO-3(1); in absence of order u/s.127 by PCIT, assessment made u/s.143(3) by ITO-3(1) would be invalid as without having valid jurisdiction for making assessment u/s.143(3), is liable to be quashed.

4. On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.23,94,038 on the count of cash deposits into bank, treating it as unexplained cash credits u/s.68; assessee was not under obligation to maintain books of account & has not maintained books of

account which is a pre-condition for making addition u/s.68; in absence of books of account maintained for AY16-17, addition of Rs.23,94,038 made u/s68 is unjustified and is liable to be deleted.

5. On the facts & circumstances of the case and in law, Id CI3 (A) has erred in sustaining application of sec. 115BBE (i.e., higher rate of tax) when nature & source of cash deposits into bank has been explained before the Id AO; higher rate of tax levied u/s.115BBE is not justified & is liable to be deleted.

6. On the facts and circumstances of the case and in law, Id CIT(A) has erred in confirming the addition of Rs.10,00,500 made u/s.56(2)(vii)(b) without referring the matter to DVO for valuation of the land/plot as per third proviso to sec 56(2)(vii)(b) r.w.s.50C(2), when 'actual purchase consideration' is less than the 'stamp duty value', matter may (shall) be referred to DVO for valuation; without following the procedure laid down in third proviso to sec56(2)(vii)(b) rws. 50C(2), is unsustainable in law and is liable to be set aside to file of AO for referring the matter to DVO for valuation, relied on Sunil Kumar Agarwal (2014) (Cal HC).”

2. In this case, the assessee has filed both legal ground as well as grounds on merits. The Ld. Counsel for the assessee submitted that he would assail the legal ground first and if the said legal ground is answered affirmative, then the grounds on merits becomes academic. The Ld. Counsel for the assessee submitted that first notice u/s. 143(2) of the Act for A.Y.2016-17 for initiating limited scrutiny had been issued by the ITO, Ward-4(5), Raipur, dated 18.09.2017. Thereafter, another notice u/s. 142(1) of the Act for the same A.Y. dated 09.06.2018 was issued by the ITO, Ward-3(1), Raipur. That further, the Ld. Counsel has annexed the return of income and acknowledgement given by the department for the assessment year under consideration where the designation of the A.O

(Ward-Circle) is appearing as Ward-3(1), Raipur. In this background, the Ld. Counsel submitted that **firstly**, if the original jurisdiction of the assessee is with ITO, Ward-4(5), Raipur who had initiated the proceedings for limited scrutiny and later on, transferred to the ITO, Ward-3(1), then as per the mandatory requirement of the Act, order of transfer u/s. 127 of the Act is required. However, no such order has been placed by the department and nothing is there on record that such order of transfer u/s. 127 of the Act was acquired; **secondly**, if it is accepted that the actual jurisdiction of the officer regarding the assessee was the ITO, Ward-3(1), Raipur which is likely so since the e-filed return is admittedly taken by the designation of the A.O as per the address of the assessee to be ITO, Ward-3(1) appearing in the acknowledgment of the ITR filed on 22.02.2017 in the said assessment year, Page 8-9 of APB. Now if that be so, then the initiation of the proceedings of limited scrutiny i.e. with regard to the first notice u/s.143(2) of the Act issued by the ITO, Ward-4(5), Raipur suffers from valid jurisdiction, resultantly then subsequent assessment framed by the ITO, Ward-3(1), Raipur becomes invalid and non-est in the eyes of law.

3. Per contra, the Ld. Sr. Departmental Representative (for short 'DR') vehemently submitted that as per Section 124(3)(a) of the Act, if the assessee had any objection regarding the jurisdiction of the Assessing Officer, then the same could have been raised within one month from the

date on which he was served with the notice u/s. 142(1) and 143(2) of the Act. However, in the present case, the assessee had failed to do so. The Ld. Sr. DR relied on the judgment of the Hon'ble Supreme Court in the case of **DCIT (Exemption) & Ors. Vs. Kalinga Institute of Industrial Technology (2023) 151 taxmann.com 434 (SC)**, wherein the Hon'ble Apex Court has ruled that where the assessee had participated pursuant to the notice issued under Section 142(1) and had not questioned the jurisdiction of the assessing officer, then 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).

4. I have carefully considered the submissions of both the parties, considered the material available on record and facts and circumstances involved in the present case. In so far the legal issue is concerned, it is apparent from record as annexed in the paper book that the first notice u/s.143(2) of the Act, dated 18.09.2017 has been issued by the ITO, Ward-4(5), Raipur. Thereafter, second notice u/s.142(1) of the Act, dated 09.06.2018 was issued by the ITO, Ward-3(1), Raipur. However, there is no iota of evidence whether there is any order of the Pr. CIT u/s. 127 of the Act for transferring of the jurisdiction from one Assessing Officer to another in the present case of the assessee. It is also noted from the e-filed return and the acknowledgement of the department that the

designation of the jurisdictional Assessing Officer is mentioned as ITO, Ward-3(1), Raipur. If that is so, then also, the first notice i.e. notice issued u/s. 143(2) of the Act, dated 18.09.2017 by the ITO, Ward-4(5), Raipur is without jurisdiction, invalid and bad in law.

5. In so far the reliance placed by the Ld. Sr. DR on the judgment of the Hon'ble Apex Court in the case of **DCIT (Exemption) & Ors. Vs. Kalinga Institute of Industrial Technology (supra)**, wherein, the conduct of the assessee was determined while accepting or non-accepting the jurisdiction by way of participation in the proceedings, the word "participating" in this present context should not be construed in any manner given the text of the said decision to prevent the right of the assessee for challenging any legal issue including the issue of jurisdiction before any appellate forum as had been held by the Hon'ble Supreme Court in the case of **National Thermal Power Company Ltd. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)**. Rightfully so mentioned in the said judgment, the Hon'ble Apex Court held that when certain legal issues have been arisen and the assessee has failed to raise such legal issues before the sub-ordinate authorities, then he should not be prevented from raising the same before any other appellate authority. Therefore, taking guidance from the aforesaid judicial pronouncement of the Hon'ble Apex Court, the contention regarding the issue of jurisdiction is held to be valid as had been raised by the assessee first time before the Tribunal. The

decision of the Hon'ble Supreme Court in the case of **DCIT (Exemption) & Ors. Vs. Kalinga Institute of Industrial Technology (supra)** as has been relied on by the Ld. Sr. DR is clearly focused on the parameter of compliance. However, in the present case as demonstrated in the record, it is not that of compliance and rather, it is ambiguity in issuance of notice and denying an opportunity to the assessee as to whether he should respond to the ITO, Ward-4(5), Raipur or ITO, Ward-3(1), Raipur. There are plethora of judicial pronouncements wherein it had been held that the tax payer should be provided opportunity to prepare for his defence in timely and appropriate manner and if there is any ambiguity/confusion arising in the said hearing notice which prevents the assessee to defend himself, then such hearing notices and subsequent proceedings have to be struck down holding them to be arbitrary, bad in law. If this kind of ambiguity in issuance of notice by the appropriate authority is allowed then it would highly effect smooth running of business activities or for that matter generating income to the assessee tax payer. If the assessee tax payer is not able to earn income, then there is no question of paying any taxes. Therefore, the assessee should be allowed to prepare his defence as regards the proper jurisdiction before whom he shall make necessary compliances.

6. Derived from the Latin word “*notitia*”, which means being known, notice is the starting of any hearing. Unless a person knows the issues of the case in which he is involved, he cannot defend himself. For a notice to be adequate it must contain- (a) Time, place and nature of hearing; **(b) Legal authority under which hearing has to be held**; and (c) The specific charges, grounds and proposed actions the accused has to meet. This is the very edifice of the principle of natural justice. There is mandatory requirement of reasonable opportunity of being heard. This pre-requires issuance of a proper notice. The authority has to issue Show Cause to the party/assessee to explain and produce evidence before an adverse inference may be drawn against him. The notice should be specific and unambiguous so that proper compliance can be made by the assessee. The importance of a show cause notice has been reiterated by Supreme Court in the case of **Umanath Pandey v. State of UP (2009) 12 SCC 40-43** wherein the Hon’ble Apex Court has held that “Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated”. In the case of **Biecco Lawrie Ltd v. State of West Bengal (2009) 10 SCC 32**, the Supreme Court observed that “One of the essential ingredients of fair

hearing is that a person should be served with a proper notice, i.e. a person has a right to notice. Notice should be clear and precise so as to meet and make an effective defence. Denial of notice and any ambiguity there denied the right of the assessee for fair and judicious proceedings. The adequacy of notice is a relative term and must be decided with reference to each case.”

7. Rebutting the facts of the present case, it is noted as per the documents on record that the first notice u/s. 143(2) of the Act, dated 18.09.2017 was issued by the ITO, Ward-4(5), Raipur and thereafter, another notice u/s. 142(1) of the Act, dated 09.06.2018 was issued by the ITO, Ward-3(1), Raipur who had framed the assessment without any order of transfer as required u/s.127 of the Act by the Ld. Pr. CIT. Similarly, if it is to be accepted that the actual jurisdiction is with the ITO, Ward-3(1), Raipur then first notice u/s. 143(2) of the Act, dated 18.09.2017 which had been issued for initiating the scrutiny proceedings by the ITO, Ward-4(5), Raipur is definitely without a valid jurisdiction over the assessee. When the issuance of notice and framing of assessment order suffers from lack of jurisdiction as enshrined in the statute then all subsequent proceedings becomes non-est in the eyes of law.

8. I find that the **Hon'ble Supreme Court** in its recent order passed in the case of **Union of India Vs. Rajeev Bansal (2024) 469 ITR 46 (SC)**

had, inter alia, observed that the order passed without jurisdiction is nullity. It was further observed that if a statute expressly confers a power or imposes a duty on a particular authority, then such power or duty must be exercised or performed by that authority itself. Elaborating further, the Hon'ble Apex Court had observed that any exercise of power by statutory authorities inconsistent with the statutory prescription is invalid. Apart from that, it was observed that as there cannot be any waiver of a statutory requirement or provision that goes to the root of the jurisdiction of assessment, therefore, any consequential order passed or action taken will be invalid and without jurisdiction. For the sake of clarity, the observations of the Hon'ble Apex Court are culled out as under:

“xxxx      xxxx      xxxx      xxxx      xxxx

30. If a statute expressly confers a power or imposes a duty on a particular authority, then such power or duty must be exercised or performed by that authority itself. (Dr. Premachandran Keezhoth Vs. Chancellor, Kannur University). Further, when a statute vests certain power in an authority to be exercised in a particular manner, then that authority has to exercise its power following the prescribed manner (CIT Vs. Anjum M.H. Ghaswala; State of Uttar Pradesh Vs. Singhara Singh). Any exercise of power by statutory authorities inconsistent with the statutory prescription is invalid.....

xxxx      xxxx      xxxx      xxxx      xxxx

32. A statutory authority may lack jurisdiction if it does not fulfil the preliminary conditions laid down under the statute, which are necessary to the exercise of its jurisdiction. (Chhotobhai Jethabhai Patel and Co. V. Industrial Court, Maharashtra

Nagpur Bench). There cannot be any waiver of a statutory requirement or provision that goes to the root of the jurisdiction of assessment. (Superintendent of Taxes Vs. Onkarmal Nathmal Trust). An order passed without jurisdiction is a nullity. Any consequential order passed or action taken will also be invalid and without jurisdiction. (Dwarka Prasad Agrawal V. B.D. Agrawal). Thus, the power of assessing officers to reassess is limited and based on the fulfilment of certain preconditions. (CIT Vs. Kelvinator of India Ltd.)”

9. With these observations, the assessment framed by the ITO-3(1) Raipur vide his order passed u/s.143(3) of the Act, dated 26.10.2018 in absence of an order of transfer u/s.127 of the Act having been passed by the Ld. Pr.CIT and without any issuance of notice by him u/s. 143(2) of the Act to the assessee, is held to be without jurisdiction, invalid and bad in law and thus, the same is quashed.

10. Needless to say, once the assessment has been quashed for want of valid assumption of jurisdiction then all the other proceedings subsequent thereto becomes non-est in the eyes of law. As the legal issue has been answered in favour of the assessee then the grounds on merits becomes academic.

11. As per the aforesaid terms the grounds of appeal raised by the assessee stands allowed.

12. In the result, appeal of the assessee is allowed.

Order pronounced in open court on 19<sup>th</sup> day of March, 2025.

Sd/-

**(PARTHA SARATHI CHAUDHURY)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

रायपुर / Raipur; दिनांक / Dated : 19<sup>th</sup> March, 2025.

SB, Sr. PS

**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. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,  
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur