

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.400/RPR/2024**

**CO No.15/RPR/2024**

**निर्धारण वर्ष / Assessment Year : 2012-13**

The Income Tax Officer-1(2),  
Raipur (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Mukesh Kedia,  
House No.64, Gulmohar Park,  
Laxman Nagar, Raipur (C.G.)  
PAN : APZPK0464Q

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 12.03.2025

घोषणा की तारीख / Date of Pronouncement : 19.03.2025

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

This appeal preferred by the Revenue emanates from the order of the Ld. CIT(Appeals)/NFAC, Delhi dated 05.07.2024 for the assessment year 2012-13 as per the following grounds of appeal on record:

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.6,98,345/- out of the total addition of Rs.7,75,938/- made by the A.O on account of bogus purchase after treating the same as unexplained expenditure u/s.69C of the Income Tax Act?

2. The order of the Ld. CIT(A) is not accordance with the laws and facts of the case.

3. Any other ground which may be adduced at the time of hearing.”

2. The assessee by filing the cross-objection for the year under consideration has raised following grounds:

“Gr.No.1: "On the facts and circumstances of the case and in law, notice issued u/s148 dt.30-3-19 by ITO-1(3), Raipur is invalid, since he was not having valid jurisdiction u/s.124(1), 120(1) & 120(2) & sec.2(7A) for making assessment; in absence of a valid notice issued u/s.148 by the 'jurisdictional AO' i.e., ITO-2(1), Raipur, assessment made u/s.147 rws. 143(3) dt.18-12-19 would be invalid and thus, it is liable to be quashed."

Gr. No.2: "On the facts and circumstances of the case and in law, notice issued u/s.148 dt.30-3-19 by ITO-1(3); assessment made u/s.147 rws.143(3) dt.18-12-19 by ITO-2(1); there is violation of sec.127(1) & 127(3); there is no mention of order u/s.127 by PCIT for transferring the case from ITO-1(3) to ITO-2(1) for assuming valid jurisdiction by ITO-2(1); in absence of order made u/s.127 by PCIT for transferring the case to ITO-2(1), assessment made u/s.147 rws.143(3) by ITO-2(1) would

be invalid as without having valid jurisdiction for making assessment u/s.147, is liable to be quashed."

3. The Ld. Sr. DR submitted that the case of the assessee was re-opened for the reason that the Commercial Tax Department of the State Government has passed on information that the assessee viz. Shri Mukesh Kedia, Prop M/s.Narayani Trading, Raipur had taken accommodation entries in the form of bogus purchase bills from the M/s Seema Steels, Bhilai to the tune of Rs.5,41,704/-. The Ld. Sr. DR further submitted that the Assessing Officer observed that the assessee had also taken bogus purchase bills of Rs.2,34,234/- from M/s. Chetna Traders, Bhilai during the year under consideration in addition to Rs.5,41,704/-. As the assessee failed to substantiate the genuineness of the purchase as was being claimed from M/s. Seema Steels & Chetna Traders, Bhilai, the Assessing Officer made an addition of Rs.7,75,938/- with tax effect of Rs.2,21,640/- u/s.69C of the Income Tax Act, 1961 (for short 'the Act') treating the same as unexplained expenditure.

4. The Ld. Sr. DR also submitted that on appeal before the first appellate authority, the Ld.CIT(Appeals)/NFAC had relied on the judgments of the Hon'ble High Court of Gujrat in the case of CIT Vs. Simit P. Sheth, 356 ITR 451 (Guj) and that of the Hon'ble High Court of Bombay in the case of Pr. CIT Vs. JK Surface Coatings (P) Ltd. order dated 28.10.2021 wherein it was held that only profit element embedded in

alleged bogus purchases has to be brought within ambit of taxation and sustained addition of Rs.77,593/- and deleted the rest of the addition made by the Assessing Officer. Also, the Ld. Sr. DR relied on the judgment of the Hon'ble High Court of Bombay in the case of Pr. CIT-5, Mumbai Vs. Kanak Impex (India) Ltd., Income Tax Appeal No.791 of 2021 and Pr. Commissioner of Income Tax-17 Vs. M/s. Mohhomad Haji Adam & Company, ITA No1004 of 2016, dated 11.02.2019 wherein same proposition is reiterated.

5. Now coming to the cross-objection filed by the assessee, the Ld. Counsel submitted that the assessee by way of cross objection has assailed the validity of the re-assessment proceedings u/s.147/148 of the Act. The Ld. Counsel for the assessee submitted that notice u/s.148 of the Act for A.Y.2012-13 had been issued by the ITO, Ward-1(3), Raipur, dated 30.03.2019 who was not having valid jurisdiction over the assessee at the relevant point of time. That further, the Ld. Counsel submitted that the original return of income was filed u/s. 139 of the Act by the assessee on 23.03.2013 declaring income of Rs.2,52,730/- wherein the Assessing Officer is automatically appearing as ITO, Ward-1(3), Raipur who had issued notice u/s. 148 of the Act, dated 30.03.2019. The Ld. Counsel submitted that the assessee in response to notice u/s.148 of the Act filed return of income u/s.148 of the Act on 30.05.2019 declaring the same income as was originally returned wherein the Assessing Officer is

automatically appearing as ITO, Ward-1(3), Raipur. It is stated by the Ld. Counsel that notices u/ss. 142(1) and 143(2) of the Act, dated 02.12.2019 & 03.12.2019 respectively, were issued by the ITO, Ward-2(1), Raipur who had finally framed the assessment u/s. 147 r.w.s. 143(3) of the Act, dated 18.12.2019.

6. Also, the Ld. Counsel submitted that notice u/s.148 of the Act was issued by the ITO, Ward-1(3), Raipur on 30.03.2019 who was not having valid jurisdiction over the assessee to issue such notice at the relevant point of time. It is stated by the Ld. Counsel that no notice u/s. 148 of the Act was issued by the ITO, Ward-2(1), Raipur who was, in fact, having valid jurisdiction over the assessee and had framed the assessment u/s. 147 r.w.s. 143(3) of the Act, dated 18.12.2019. The Ld. Counsel submitted that as in the present case, notice u/s.148 of the Act was issued by the ITO, Ward-1(3), Raipur, dated 30.03.2019, who was not having valid jurisdiction over the assessee at the relevant point of time and at that time, the ITO, Ward-2(1), Raipur was having valid jurisdiction over the assessee who has not issued any notice u/s.148 of the Act and framed the assessment u/s. 147 r.w.s.143(3) of the Act dated 18.12.2019, which is without any order of transfer u/s.127 of the Act from the competent authority for assuming valid jurisdiction over the assessee, therefore, the assessment framed u/s. 147 r.w.s.143(3) of the Act dated 18.12.2019 by

the ITO, Ward-2(1), Raipur is without assuming valid jurisdiction over the assessee for framing assessment would be invalid and bad-in-law.

7. 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 that ITO, Ward-1(3), Raipur had issued notice u/s. 148 of the Act, dated 30.03.2019. Thereafter, notices u/ss.142(1) and 143(2) of the Act were issued by the ITO, Ward-2(1), Raipur who had finally framed the assessment u/s. 147 r.w.s. 143(3) of the Act, dated 18.12.2019. I am of the view that as in the present case, notice u/s.148 of the Act was issued by the ITO, Ward-1(3), Raipur, dated 30.03.2019, who was not having valid jurisdiction over the assessee at the relevant point of time and the ITO, Ward-2(1), Raipur was having valid jurisdiction over the assessee who has not issued any notice u/s.148 of the Act and framed the assessment u/s. 147 r.w.s.143(3) of the Act dated 18.12.2019 which is in absence of any notice u/s.148 of the Act issued by the ITO, Ward-2(1), Raipur and also in absence of any order of transfer u/s.127 of the Act from the competent authority for assuming valid jurisdiction over the assessee, therefore, the assessment framed u/s.147 r.w.s.143(3) of the Act dated 18.12.2019 by the ITO, Ward-2(1), Raipur is without assuming valid jurisdiction over the assessee for framing assessment would be invalid and bad-in-law.

8. 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.”

9. Reverting to the facts of the present case, it is noted as per the documents on record that though notice u/s.148 of the Act, dated 30.03.2019 was issued by the one A.O i.e. ITO, Ward-1(3), Raipur who was not having valid jurisdiction over the assessee to issue such notice at the relevant point of time and thereafter, the assessment was framed by another A.O i.e. ITO, Ward-2(1), Raipur 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-2(1), Raipur who had framed the assessment u/s.147 r.w.s 143(3) of the Act, dated 18.12.2019 but without issuing notice u/s.148 of the Act. Again the notice u/s.148 of the Act, dated 30.03.2019 which had been issued by the ITO, Ward-1(3), Raipur who had no valid jurisdiction over the assessee at the relevant point of time, therefore, such notice issued u/s. 148 of the Act by the ITO, Ward-1(3), Raipur would be invalid, bad in law and therefore, all subsequent proceedings are to be held as void ab initio and non-est in the eyes of law.

10. 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 follows:

“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.)”

11. With these observations, as notice u/s.148 of the Act, dated 30.03.2019 which had been issued by the ITO, Ward-1(3), Raipur who had no valid jurisdiction over the assessee at the relevant point of time, therefore, it is held invalid, bad in law and all subsequent proceedings thereafter are accordingly held as void ab initio, non-est in law. The re-assessment framed by the ITO-2(1) Raipur vide his order passed u/s.147 r.w.s.143(3) of the Act, dated 18.12.2019 in absence of an order of transfer u/s.127 of the Act having been passed by the Ld. Pr.CIT and without issuance of notice u/s. 148 of the Act, is held to be without any jurisdiction and thus, held as bad in law and the same is quashed.

12. Needless to say, once the re-assessment has been quashed for want of valid jurisdiction, then all the other proceedings subsequent thereto arising including the order of the Ld. CIT(Appeals)/NFAC becomes non-est in the eyes of law.

13. As per the aforesaid terms cross objection filed by the assessee stands allowed and the revenue's appeal becomes infructuous, hence dismissed.

14. In the result, cross objection filed by the assessee is allowed and the revenue's appeal is dismissed.

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 Pr. CIT-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