

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.13/RPR/2025

निर्धारण वर्ष / Assessment Year : 2013-14

Ashok Kumar Gupta
Dindo H No.37
Bajar Para, Saiwahi
District: Surguja-437 220 (C.G)
PAN: BBOPG3824N

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R. Rao, Advocate
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 08.04.2025

घोषणा की तारीख / Date of Pronouncement : 09.04.2025

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 13.08.2024 for the assessment year 2013-14 as per the grounds of appeal on record.

2. At the time of hearing the Ld. Counsel for the assessee submitted that the present appeal is time barred by 70 days and on a perusal of the records, it is noticed that the Tribunal vide its order sheet entry dated 20.03.2025 had condoned the delay after considering the condonation application a/w. affidavit filed by the assessee.

3. In this case, the assessee has filed both legal grounds 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 shall become academic only.

4. The legal issue that has been raised by the Ld. Counsel for the assessee is that notice u/s.148 of the Act for the reassessment proceedings had been received by the assessee physically on 06.04.2018. In this regard, it has been further submitted by the Ld. Counsel that since notice has been received by the assessee which is beyond three years from the end of the relevant assessment year 2013-14, which in fact, is ended

on 31.03.2018, therefore, as per the mandate of Section 151(ii) of the Act, an approval from the competent authority has not been taken by the A.O which vitiates the reassessment order itself which is therefore bad in law and all the subsequent proceedings resultantly becomes non-est in the eyes of law. The Ld. Counsel in support of his aforesaid contention relied on the following judicial pronouncements:

(i) Kanubhai M Patel (HUF) Vs. Hiren Bhatt (2011) 334 ITR 25 (Guj.)

(ii) ACIT-15(3)(2), Mumbai Vs. Surya Ferrous Alloys Pvt. Ltd., ITA No.1406/Mum/2024, CO No.77/Mum/2024, dated 24.12.2024

(iii) Income Tax Officer, Ward-14(4), New Delhi Vs. Kuber Fertilizers Pvt. Ltd. ITA Nos.6628 & 6629/Del/2014

5. In this regard, the Bench had requested the Ld. Sr. DR to obtain a report from the concerned A.O and she had placed on record the said report of the A.O. In that report, it is mentioned by the A.O that notice u/s.148 of the Act was digitally sent to the assessee on 13.03.2018 after taking prior approval of the Jt. CIT which was prior to the three years period from the end of the relevant assessment year and thus there was no violation of the provisions of the Act. However, in the said report the A.O is silent about the physical service of notice to the assessee, dated 06.04.2018 which was undoubtedly beyond the three years from the end of the relevant assessment year 2013-14 i.e. on 31.03.2018 and the report is silent also whether there is any approval from the Pr. CIT obtained or not. The Ld. Sr. DR could not refute the contention of the Ld. Counsel

beyond this report of the A.O nor could adduce evidence regarding approval from competent authority as per Section 151(ii) of the Act. Therefore the facts remains that notice was physically received by the assessee on 06.04.2018 and the relevant assessment year ended on 31.03.2018 which is beyond three years and the mandate of Section 151(ii) of the Act is therefore not fulfilled in case of the assessee.

6. I have heard the parties herein and perused the documents available on record. I am of the considered view that the serving of notice digitally and the department in its own wisdom serving of another notice to the assessee physically means there was the process at that time of serving notice physically a/w. digital format. However, the claim of the assessee is that he had received such notice physically on 06.04.2018 which is beyond the period of three years from the end of the relevant assessment year ended on 31.03.2018. In this regard, the report of the A.O is silent regarding such physical service of notice on 06.04.2018, for which, whether permission of the competent authority has been taken or not, this aspect is absolutely absent in the said report. That further, the Ld. Sr. DR could not dispute the service of notice to the assessee on 06.04.2018 which is definitely beyond three years from the end of the relevant assessment year which ended on 31.03.2018. The law mandates as per Section 151(ii) of the Act that in case, where it is beyond the period

of three years from the end of the relevant assessment year, the competent authority is the Pr. CIT and his approval is required but in this case, no such approval has been obtained by the department and therefore, no evidence has been placed before this Bench regarding such approval from the Pr. CIT for initiation of reassessment proceedings. The revenue authorities are bound by the Act both in respect of substantive and procedural laws. That on examination of the facts as afore-stated, it is clear that the A.O has failed to comply with the procedural laws as enshrined u/s. 151(ii) of the Act. This makes the reassessment order arbitrary, bad in law and invalid. Accordingly, the reassessment order passed by the A.O is quashed holding it void ab initio.

7. That once the reassessment order is quashed, then all other subsequent proceedings becomes non-est in the eyes of law.

8. As per the aforesaid terms even without going into the merits of the matter on this legal premise itself the appeal of the assessee is allowed. Since this legal ground is answered in favour of the assessee, therefore, all other grounds on merits including any other legal grounds if any, becomes academic only.

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

Order pronounced in open court on 9th day of April, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 9th April, 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