

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.451/RPR/2024
CO. No.18/RPR/2024
निर्धारण वर्ष / Assessment Year : 2011-12

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

.....अपीलार्थी / Appellant

बनाम / V/s.

Suresh Kumar Jethwani
Prop. Reena Electronics,
Oppo. Manju Mamta, M.G.Road,
Raipur (C.G.)-492 001
PAN: AEBPJ7686N

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 13.03.2025

घोषणा की तारीख / Date of Pronouncement : 21.04.2025

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 20.08.2024 for the assessment year 2011-12 as per the following grounds of appeal on record:

“1. "Whether on the facts and in the circumstance of the case Id. CIT(A) was justified in deleting the addition of Rs. 2,51,24,882/- made by the A.O u/s.69A of the Act?"

2. "Whether on the facts and in the circumstance of the case Id. CIT(A) was justified by giving a finding which is contrary to the evidence on record, as the Id. CIT(A) has given the decision by accepting the submission of the assessee, a finding which is factually incorrect, thereby rendering the decision, which is perverse?"

3. "Whether on the facts and in the circumstance of the case Id. CIT(A) having concurrent powers of the A.O u/s.250(4) of the act, was justified in deleting the addition of Rs. 2,51,24,882/- made by the AO in the absence of enquiry on the additional submission for the assessee made during appellate proceedings?"

4. The order of the CIT(A) is erroneous both in law and on facts.

5. 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:

“1. Without prejudice to the addition deleted on merits, Ld. CIT(A) erred in dismissing following grounds taken before him:-

i) Assumption of jurisdiction by AO, initiation of reassessment proceedings and consequent reassessment order passed by the AO is illegal, invalid, void ab initio. There was no formation of

belief of escapement by the A.O. There was no escapement within the meaning of sec. 147.

ii) The A.O erred in violating principles of natural justice during the reassessment proceedings and in denying due and proper opportunity of hearing to the appellant. Violation of principles of natural justice has rendered the reassessment order illegal and unsustainable.

iii) The A.O was not justified in conducting reassessment proceedings and passing reassessment order without providing copy of reasons recorded and the information on the basis of which assessment was reopened. The reassessment order is illegal amend unsustainable.

iv) The assessment order passed by the A.O is illegal, invalid and ab initio void inasmuch as notice u/s.148 and notice u/s. 143(2) was issued by non-jurisdictional A.O. The assessment order has been passed in violation of mandatory provisions of law and is liable be quashed as illegal and not sustainable.

2. The cross objector reserves the right to add, amend, modify or alter any of the ground/s of cross objection.”

3. The Ld. Sr. Departmental Representative (for short “DR”) assailing the grounds of appeal submitted that certain additional evidences had been relied upon by the Ld. CIT(Appeals)/NFAC while providing relief to the assessee which were not as per Rule 46A(3) of the Income Tax Rules, 1962. The Ld. Sr. DR further submitted that the relief was granted by the Ld. CIT(Appeals)/NFAC to the assessee on the ground that as per facts in this case that the assessee being proprietor of M/s. Reena Electronics has paid an amount of Rs.2,51,24,882/- to M/s. Malhotra Electronics Pvt. Ltd. It is submitted by the Ld. Sr. DR that as per the ledger accounts, there were discrepancies in the two accounts of M/s. Reena Electronics and

M/s. Malhotra Electronics Pvt. Ltd. which had been pointed out by the Ld. CIT(Appeals)/NFAC at Para 6.5.5 of his order. The Ld. Sr. DR submitted that the Ld. CIT(Appeals)/NFAC ought to have called for remand report before admitting the additional evidences and without making any independent inquiry on the submissions/additional evidence of the assessee, he had accepted the same and granted relief to the assessee. The Ld. Sr. DR submitted that as the order of the Ld. CIT(Appeals)/NFAC is a cryptic, arbitrary and bad in law, therefore, the order of the A.O be restored.

4. As regards the issue of additional evidence which were filed by the assessee at the level of Ld. CIT(Appeals)/NFAC, we observe that at Page 10 of the Ld. CIT(Appeals)'s order, it has been mentioned that material brought on record as per notice issued u/s.133(6) of the Act during the assessment and thereafter, submissions had been brought on record by the assessee before the Ld. CIT(Appeals)/NFAC which had already been therefore submitted during the assessment itself as per notice u/s.133(6) of the Act. The Ld. Sr. DR fairly conceded that since it was the part of the assessment proceedings, therefore, it cannot be termed as additional evidence. That on examination of the submissions of the Ld. Sr. DR, we are in agreement with her submissions and accordingly, the contention raised initially by the Ld. Sr. DR is rejected and dismissed being devoid of merits.

5. The Ld. CIT(Appeals)/NFAC has given relief to the assessee as per Para 6.5.5 of its order which is extracted as follows:

“6.5.5 The above discrepancies shows that the copy of account provided by the party itself to the Department at two different points of time is different significantly and there is a remarkable difference between the two accounts.

The above discrepancies make it clearly evident that the information supplied was manipulated intentionally by the provider. It appears that the party Malhotra Electronics Private Limited manipulated the information provided by them to the Department as per its own convenience and to avoid any inconvenience at its end. It also appears that probably the party must have manipulated its books to cover up their own faults. It clearly comes out that on the basis of such glaring discrepancies, no addition could have been made without making further enquiry, which has not been done.

6.5.6 In view of the above discrepancies it is clear that copy of account provided by Malhotra Electronics Private Limited is not reliable and no addition should have been made on the basis of unreliable documents. Thus addition made of Rs.2,51,24,882/- for the AY 2011-12 is deleted and Ground 5 of the appellant is allowed.”

6. Per contra, the Ld. Counsel for the assessee submitted that the assessee has filed cross objection wherein legal grounds were raised. It was submitted by him that though full relief was provided by the Ld. CIT(Appeals)/NFAC to the assessee and there is no tax implications as per the order of the Ld. CIT(Appeals)/NFAC so the cross objection is supportive of Ld. CIT(Appeals)/NFAC order on merits nonetheless in the cross objection the assessee has raised a legal ground that there was a change in jurisdiction of the A.O without the approval of competent authority in terms with Section 127 of the Act.

7. Coming to the cross objection filed by the assessee, it is submitted by the Ld. Counsel that in this case for initiating reassessment proceedings notice u/s.148 of the Act, dated 31.03.2017 was issued by the ITO-1(4), Raipur but however the final reassessment order was passed by the ITO-3(4), Raipur u/s.147 r.w.s. 144 of the Act, dated 08.12.2017 and that there was no order of transfer u/s.127 of the Act by the competent authority as regards the transfer of the case from ITO-1(4), Raipur to ITO-3(4), Raipur. The Ld. Counsel submitted that without any order of transfer u/s.127 of the Act from the competent authority for assuming valid jurisdiction over the assessee, the reassessment framed u/s. 147 r.w.s.144 of the Act dated 08.12.2017 by the ITO, Ward-3(4), Raipur is without valid jurisdiction and therefore, invalid and bad-in-law.

8. The Ld. Counsel submitted that in so far the report which was called for from the A.O regarding discrepancies of jurisdiction, the Assessing Officer i.e. ITO-1(1), Raipur vide his letter dated 08.01.2025 stated as follows: (relevant extract)

“5. In view of above, it is submitted that the order u/s.127 in the above matter is not readily available on assessment record, however, the jurisdiction over the case lies with ITO-3(4), Raipur at that point of time. Therefore, it is request to make plea before the Hon’ble ITAT to not to take adverse view against the department merely due to non-availability of the order u/s.127 in the assessment folder and decide this case on merits.”

The Ld. Counsel submitted that if there was no order of transfer u/s. 127 of the Act, then the incumbent Assessing Officer does not acquire any valid jurisdiction over the assessee for framing assessment. The Ld. Counsel in support of his aforesaid contention relied on the following judicial pronouncements:

- (i) Kusum Goyal Vs. ITO and Ors, (2010) 329 ITR 283 (Cal.)
- (ii) Singhal Marketing Private Limited Vs. ACIT, Central Circle-1, Raipur, ITA No.469/RPR/2024, dated 28.02.2025

9. In this regard, the Ld. Sr. 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 only raised within one month from the date on which he was served with the notice u/ss.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 in the proceedings pursuant to the notice issued under Section 142(1) and had not questioned the jurisdiction of the assessing officer within 30 days from date on which he was served the notice, then Section 124(3)(a) of the Income Tax Act precludes the assessee from questioning the jurisdiction of the assessing officer any further.

10. In our considered view, the main fact so far as the cross objection of the assessee is concerned is that as per the letter of the ITO-1(1), Raipur, dated 08.01.2025, it is stated that the order u/s.127 of the Act is not readily available in the assessment records, which therefore, creates a possibility that if proper search is conducted, such order can be procured from the department. The entire spectrum as per the grounds taken in the cross objection of the assessee is depending upon the order u/s.127 of the Act and its availability, if any. Therefore, in the interest of justice, we set-aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter back to its file for denovo adjudication as per law after verifying the order u/s.127 of the Act while complying with the principles of natural justice. Therefore, the cross objection of the assessee is allowed for statistical purposes.

11. Regarding the appeal of the revenue, the grounds pertaining to the additional evidence has already been adjudicated however on merits there is no discussion regarding any factual enquiry conducted by the Ld. CIT(Appeals)/NFAC and his order is bereft of findings and not in terms with Section 250(4) & (6) of the Act and also there is no evidence of any verification done by the Ld. CIT(Appeals)/NFAC and therefore, on merits also the appeal requires denovo adjudication at the level of the Ld. CIT(Appeals)/NFAC. Further, since the cross objection is already remanded to Ld. CIT(Appeals)/NFAC therefore for the sake of completeness

required for adjudication both the appeal of the department and cross objection by the assessee are remanded back to the file of Ld. CIT(Appeals)/NFAC. Accordingly, the appeal of the revenue is partly allowed for statistical purposes.

12. To sum up, the appeal of the revenue is partly allowed for statistical purposes and cross objection filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21st April, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
PARTHA SARATHI CHAUDHURY
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 21st 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(Appeals), Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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