

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.124/RPR/2025

निर्धारण वर्ष / Assessment Year : 2011-12

Smt. Bhan Bai
H. NO.257, Risali Basti,
Newai Mill Para, Bhilai-490 006 (C.G.)
PAN: AYRPB7895B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-1(1), Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Yogesh Sethia, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.05.2025

घोषणा की तारीख / Date of Pronouncement : 20.05.2025

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

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 19.01.2025 for the assessment year 2011-12 as per the following grounds of appeal:

“1. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) has erred in confirming the penalty of 24,964.600/- imposed u/s.271(1)(c) of the Income Tax Act, 1961 without going adequate opportunity and without considering the fact that the assessment order has been quashed by the Hon'ble Income Tax Appellate Tribunal.

2. The order of Ld. CIT (Appeals) is bad in law and on facts.

3. The appellant reserves the right to add, alter, amend, omit all or any of the grounds of appeal with permission of the Hon'ble appellate authority.”

2. At the very outset, the Ld. Counsel for the assessee submitted that as the substantive addition has been deleted by the ITAT, Raipur in assessee's case i.e. ITA No.192/RPR/2024 for A.Y.2011-12, dated 03.12.2024, therefore, there was no question of sustaining the penalty which was based on the said quantum addition.

3. The Ld. Sr. DR conceded that the quantum on which penalty has been levied has already been deleted by the ITAT, Raipur in ITA No.192/RPR/2024 for A.Y.2011-12, therefore, penalty does not survive.

4. I have carefully considered the submissions of the parties herein, perused the order of the Tribunal on quantum appeal. On a perusal of the order of the Tribunal, it is noted that the Tribunal vide its order passed in ITA No.192/RPR/2024 for A.Y.2011-12 has deleted the addition observing as follows:

“10. I have thoughtfully considered the facts involved in the present case in the backdrop of the contentions advanced by the Ld. Authorized Representatives of both the parties. Admittedly, it is a matter of fact borne from the report filed by the A.O., i.e. ITO-1(3), Bhilai dated 27.11.2024 (copy placed on record), that no order of transfer u/s. 127 of the Act transferring the case of the assessee from ITO-1(1), Bhilai to ACIT-1(1), Bhilai is found available on record. I find that the issue involved in the present appeal i.e. as to whether or not the assessment order passed by the A.O de-hors any order of transfer u/s. 127 of the Act had been looked into by the **ITAT, Raipur, “SMC” Bench** in the case of **Sarita Jain Vs. ITO, Ward-4(1), Raipur, ITA No.260/RPR/2023, dated 24.06.2024**, wherein after relying on a plethora of judicial pronouncements, it was held as under:

“13. I have thoughtfully considered the contentions of the Ld. Authorized Representatives of both the parties in the backdrop of the material available on record. Before proceeding any further, I deem it fit to cull out the provisions of Section 127 of the Act, which reads as under:

"127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers

to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—

(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred."

(emphasis supplied by me)

14. Admittedly, it is a matter of fact borne from the record that though the Notice u/s 143(2), dated 29.07.2016, Page 1 of APB was issued by the ITO-2(1), Raipur but thereafter the assessment had been framed vide order passed u/s.143(3) of the Act dated 27.12.2017 by the ITO-2(2), Raipur. The Ld. AR had placed on record a Notification No.1/2014-15 dated 15.11.2014, as per which, the JCIT, Range-2, Bhilai in exercise of the powers conferred upon him under sub-section (1), (2) and (3) of Section 120 of the Act by Pr. Commissioner/Commissioner of Income Tax-2, Raipur, had directed

the A.O's to exercise and perform functions under the Income Tax Act, 1961/Wealth Tax Act, 1957 in respect of respective cases or classes of persons in the territorial areas specified in the notification. Nothing has been brought on record by the Ld. DR which would reveal that any notification vesting jurisdiction over the case of the assessee with the ITO-4(2), Raipur was issued after the notice u/s.143(2), dated 29.07.2016 was issued by the ITO-2(1), Raipur.

15. Apropos the claim raised by the A.O, i.e. ITO-4(1), Raipur in his letter dated 10.05.2024 (supra) that as the jurisdiction over the assessee's case remained within the same range, therefore, there was no requirement for the Pr. CIT to pass any order of transfer u/s. 127 of the Act, the same is found to be both factually and principally wrong. The case of the assessee had been transferred from ITO-2(1), Raipur to ITO-4(2), Raipur, i.e. from Range 2 to Range 4. Be that as it may, as per the mandate of Section 127 of the Act transfer of any case from one A.O. to any other A.O. would mandatorily require recording of reasons for doing so on the part of the concerned authority, viz. Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. It is further provided in sub-section (1) of Section 127 of the Act that wherever it is possible to do so the appropriate authority shall afford a reasonable opportunity of being heard in the matter to the assessee. Although sub-section (3) of Section 127 of the Act dispenses with the requirement of affording a reasonable opportunity of being heard to the assessee in a case where the transfer of the case is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place, but it does not dispenses with the statutory requirement of recording of the reasons for doing so by the concerned authority. As such, in the case before me, where jurisdiction over the case of the assessee had been transferred to ITO-4(2), Raipur from ITO-2(1), Raipur, i.e. within the same city, though no requirement of affording a reasonable opportunity of being heard to the assessee was required, but the pre-condition contemplated under sub-section (1) of Section 127 of the Act, i.e., recording of reasons for doing so by the appropriate authority could not have been done away with.

16. My aforesaid view that as per the mandate of law, a transfer order is statutorily required to be passed by the prescribed authority u/s.127 of the Act, and an A.O cannot on his own transfer an income tax file to another officer in the absence of the aforesaid order is squarely covered by the judgment of the **Hon'ble High Court of Calcutta** in the case of **Kusum Goyal Vs. ITO and Ors. (2010) 329 ITR 283 (Cal)**. For the sake of clarity, the observations of the Hon'ble High Court are culled out as under:

"The question which falls for consideration is whether under section 127 of the Act an Assessing Officer on his own can transfer an income tax file to another officer and whether an order is required to be passed. In order to appreciate the issue it is necessary to refer to the relevant provisions in section 127 of the Act which is as under :

"127.(1) The Director General or Chief Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner -

(a) where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) Where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place." (Emphasis supplied)

From a reading of the language of section 127(3) it is evident that when a file is transferred from one assessing officer to another whose offices are located in the same city, locality or place, though other statutory formalities are required to be

complied with, the opportunity of hearing as postulated in section 127 (1) and (2) in case of inter city transfer, is not required.

Now keeping the position of law in mind let the letter/notice dated 21st October, 2009 issued by the respondent no.2 be examined. In order to appreciate the issue it is necessary to refer to the relevant portion of the impugned intimation issued by the respondent no.2 which is as under:

"Since your income has exceeded minimum threshold limit of Rs.10 lac for the assessment year 2007-2008, the jurisdiction to/of your case automatically gets vested with the Jurisdictional DCIT-Circle-54, Kolkata as per above Directives.

You are kindly informed hereby that no order u/s 127 of the Income Tax Act 1961 by the Ld. Commissioner of Income Tax – XIX, WB is required to be passed for getting the assessment records transferred from ITO Ward-54(2), Kolkata to DCIT Circle-54, Kolkata by virtue of the provisions of sub-section 3 of section 127 of the Income Tax Act, 1961. For your ready reference the provisions of the said section is appended below.

Section 127 sub-section (3) of the Income Tax Act, 1961 states/reads as:
.....

From the foregoing provisions it is clear that the Commissioner of Income Tax is not required to pass any order transferring the case from/to any Assessing Officer(s) if "the offices of all such officers are situated in the same city, locality or place." (Emphasis supplied).

It is evident that the respondent no.2 had sought to justify his action by stating that the jurisdiction automatically gets vested with the jurisdictional officer and no order under section 127 is required to be passed. **In my view, the letter/notice dated 21st October, 2009 is patently illegal since it has been held in this judgement that in case of transfer within the same city, locality or place although the opportunity of hearing as postulated in section 127(1) and (2) has been dispensed with, other statutory formalities which includes issuing an order are required to be complied with.** Similarly transfer of files for the assessment years 2007-2008, 2008-2009 and the earlier years as intimated in the letter/notice dated 30th July, 2009 issued by the respondent no.1 is also bad in law. The argument of the respondents that in case of intra city transfer no order is required to be passed, cannot be accepted in view of the settled position of law in Kashiram Aggarwalla (supra) and in S.L.Singhania (supra) wherein the validity of the orders were under challenge, meaning thereby an order

recording transfer has to be on the records. The judgement in Subhas Chandra Bhaniramka (supra) where it has been held that in case of transfer of file under section 158BD resort has to be made to section 127 also applies in the instant case. The judgement in M.A.E.K.K. Verma (supra) relied on by the Revenue is not applicable as it dealt with the question whether in case of intra city transfer notice is required to be served and whether separate orders of transfer are required under Wealth Tax Act, 1957 and Gift Tax Act, 1956. Therefore, since it has been held in this judgement that it is imperative on part of the respondents to issue order under section 127(3), the letters/notices under challenge are set aside and quashed. The writ petition is allowed. Consequential proceedings are also set aside and quashed. Accordingly, the notice dated 6th January, 2010 regarding the penalty proceedings under section 271(1)(c) for the assessment year 2006-07 is also set aside and quashed. The application being G.A.No. 81 of 2010 is also allowed.

No order as to costs"

(emphasis supplied by me)

17. Also, a similar issue had been dealt with by the **ITAT, Raipur** in the case of **Roop Das Vs. ITO, Ward-2(1), Bhilai, ITA Nos.310 & 311/RPR/2023 dated 09.04.2024** wherein, the Tribunal after relying on the judgments of the **Hon'ble Supreme Court** in the case of **Ajanta Industries Vs. Central Board of Direct Tax supra**) and that of the Hon'ble **High Court of Calcutta** in the case of **Kusum Goyal Vs. ITO & Ors. (supra)** had decided the issue in favor of the assessee, observing that a transfer order is statutorily required to be passed by the prescribed authority u/s.127 of the Act, and an A.O cannot on his own transfer an income tax file to another officer in absence of the aforesaid order u/s.127 of the Act. For the sake of clarity, the observations of the Tribunal are culled out as under:

"11. Apropos the claim raised by the A.O, i.e. ITO-2(1), Bhilai in her letter dated 14.03.2024 (supra) that as the jurisdiction over the assessee's case remained within the same range, therefore, there was no requirement for the Pr. CIT to pass any order of transfer u/s. 127 of the Act, the same is found to be both factually and principally wrong. The case of the assessee had been transferred from ITO-1(4), Bhilai to ITO-2(1), Bhilai, i.e from Range 1 to Range 2. Be that as it may, as per the mandate of Section 127 of the Act transfer of any case from one A.O to any other A.O would mandatorily require recording of reasons for doing so on the part of the concerned authority, viz. Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. It is further provided in sub-section (1) of Section 127 of the Act that wherever it is possible to do so the appropriate

authority shall afford a reasonable opportunity of being heard in the matter to the assessee. Although sub-section (3) of Section 127 of the Act dispenses with the requirement of affording a reasonable opportunity of being heard to the assessee in a case where the transfer of case is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place, but it does not dispense with the statutory requirement of recording of the reasons for doing so by the concerned authority. As such, in the case before me, where jurisdiction over the case of the assessee had been transferred to ITO-2(1), Bhilai from ITO-1(4), Bhilai, i.e. within the same city, though no requirement of affording a reasonable opportunity of being heard to the assessee was required, but the pre-condition contemplated under sub-section (1) of Section 127 of the Act, i.e., recording of reasons for doing so by the appropriate authority could not have been done away with.

12. My aforesaid view that the requirement of recording reasons u/s.127(1) of the Act for transferring of a case from one A.O to another is mandatorily required, is supported by the judgment of the **Hon'ble Supreme Court** in the case of **Ajanta Industries Vs. Central Board of Direct Tax (1976) 102 ITR 281 (SC)**. It was, inter alia, observed by the Hon'ble Apex Court that requirement of recording reasons u/s. 127(1) of the Act is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the files although not communicated to the assessee. It was further observed that recording of reasons and disclosure thereof is not a mere idle formality. The Hon'ble Apex Court observed that now when law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated. For the sake of clarity, the relevant observations of the Hon'ble Apex Court are culled out as under:

"We are clearly of opinion that the requirement of recording reasons under section 127(1) is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee."

(emphasis supplied by me)

13. Also, my aforesaid view that as per the mandate of law, a transfer order is statutorily required to be passed by the prescribed authority u/s. 127 of the Act, and an A.O cannot on his own transfer an income tax file to

another officer in absence of the aforesaid order is squarely covered by the judgment of the **Hon'ble High Court of Calcutta** in the case of **Kusum Goyal Vs. ITO and Ors, (2010) 329 ITR 283 (Cal.)**. For the sake of clarity, the relevant observations of the Hon'ble High Court are culled out as under:

"The question which falls for consideration is whether under section 127 of the Act an Assessing Officer on his own can transfer an income tax file to another officer and whether an order is required to be passed. In order to appreciate the issue it is necessary to refer to the relevant provisions in section 127 of the Act which is as under :

"127.(1) The Director General or Chief Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner -

(a) where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) Where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices

of all such officers are situated in the same city, locality or place.”
(Emphasis supplied)

From a reading of the language of section 127(3) it is evident that when a file is transferred from one assessing officer to another whose offices are located in the same city, locality or place, though other statutory formalities are required to be complied with, the opportunity of hearing as postulated in section 127 (1) and (2) in case of inter city transfer, is not required.

Now keeping the position of law in mind let the letter/notice dated 21st October, 2009 issued by the respondent no.2 be examined. In order to appreciate the issue it is necessary to refer to the relevant portion of the impugned intimation issued by the respondent no.2 which is as under:

“Since your income has exceeded minimum threshold limit of Rs.10 lac for the assessment year 2007-2008, the jurisdiction to/of your case automatically gets vested with the Jurisdictional DCIT-Circle-54, Kolkata as per above Directives.

You are kindly informed hereby that no order u/s 127 of the Income Tax Act 1961 by the Ld. Commissioner of Income Tax – XIX, WB is required to be passed for getting the assessment records transferred from ITO Ward-54(2), Kolkata to DCIT Circle-54, Kolkata by virtue of the provisions of sub-section 3 of section 127 of the Income Tax Act, 1961. For your ready reference the provisions of the said section is appended below.

Section 127 sub-section (3) of the Income Tax Act, 1961 states/reads as:
.....

From the foregoing provisions it is clear that the Commissioner of Income Tax is not required to pass any order transferring the case from/to any Assessing Officer(s) if “the offices of all such officers are situated in the same city, locality or place.” (Emphasis supplied).

It is evident that the respondent no.2 had sought to justify his action by stating that the jurisdiction automatically gets vested with the jurisdictional officer and no order under section 127 is required to be passed. **In my view, the letter/notice dated 21st October, 2009 is patently illegal since it has been held in this judgement that in case of transfer within the same city, locality or place although the opportunity of hearing as postulated in section 127(1) and (2) has been dispensed with, other statutory formalities which includes issuing an order are required to be complied with.**

Similarly transfer of files for the assessment years 2007-2008, 2008-2009 and the earlier years as intimated in the letter/notice dated 30th July, 2009 issued by the respondent no.1 is also bad in law. The argument of the respondents that in case of intra city transfer no order is required to be passed, cannot be accepted in view of the settled position of law in Kashiram Aggarwalla (supra) and in S.L.Singhania (supra) wherein the validity of the orders were under challenge, meaning thereby an order recording transfer has to be on the records. The judgement in Subhas Chandra Bhaniramka (supra) where it has been held that in case of transfer of file under section 158BD resort has to be made to section 127 also applies in the instant case. The judgement in M.A.E.K.K. Verma (supra) relied on by the Revenue is not applicable as it dealt with the question whether in case of intra city transfer notice is required to be served and whether separate orders of transfer are required under Wealth Tax Act, 1957 and Gift Tax Act, 1956. Therefore, since it has been held in this judgement that it is imperative on part of the respondents to issue order under section 127(3), the letters/notices under challenge are set aside and quashed. The writ petition is allowed. Consequential proceedings are also set aside and quashed. Accordingly, the notice dated 6th January, 2010 regarding the penalty proceedings under section 271(1)(c) for the assessment year 2006-07 is also set aside and quashed. The application being G.A.No. 81 of 2010 is also allowed.

No order as to costs"

(emphasis supplied by me)

14. As in the case before me no order of transfer u/s. 127(1) of the Act had been shown to have been passed, and in fact, the case of the assessee had been transferred simplicitor on the basis of a letter dated 11.04.2018 addressed by ITO-1(4), Bhilai to ITO-2(1), Bhilai; therefore, it is a clear case of invalid assumption of jurisdiction on the part of the ITO-2(1), Bhilai who in absence of any valid assumption of jurisdiction had framed the assessment vide his order u/s.147 r.w.s. 144 of the Act, dated 30.11.2018. I, thus, in terms of my aforesaid observations quash the assessment framed by the ITO-2(1), Bhilai u/s.147 r.w.s. 144 of the Act dated 30.11.2018 for want of valid assumption of jurisdiction on his part.

15. As I have quashed the assessment framed by the A.O u/s. 147 r.w.s. 144 of the Act dated 30.11.2018 for want of valid assumption of jurisdiction, therefore, I refrain from adverting to and dealing with the grounds of appeal raised by the assessee, based on which, the additions made by the A.O has been assailed before me, which, thus, are left open."

18. Also, I find that **ITAT, Kolkata** in the case of **D. Craft Entertainment P. Ltd. Vs. ITO, ITA No.1461/Kol/2017 dated 12.10.2018**

after relying on the judgment of the **Hon'ble High Court of Calcutta** in the case of **Kusum Goyal Vs. ITO & Ors (supra)** had adjudicated the aforesaid issue in favor of the assessee. For the sake of clarity, the observations of the Tribunal are culled out as under:

"6. We find that no notice u/s.143(2) was issued by ITO, Wd-6(1), Kolkata before completing the assessment. We note that ITO, Wd-34(2), Kolkata did not enjoy the jurisdiction over the assessee company by virtue of both the earlier Notification No.228/2001 dated 31.07.2001(CBDT) as well as the latest Notification No.50/2014 dated 22.10.2014 of CBDT as discussed above. Therefore, the assessment completed by ITO, Wd- 6(1), Kolkata on the strength of the notice issued u/s. 143(2) of the Act by ITO, Wd-34(2), Kolkata (who did not enjoy jurisdiction) is non-est in law and, therefore, is bad in law and consequently null in the eyes of law. Moreover, we also take note that Pr. CIT/CIT-12, Kolkata under whom ITO, Ward-34(2), Kolkata functioned has not issued any order of transfer of the jurisdiction as contemplated u/s. 127 of the Act to ITO, Wd-6(1), Kolkata. The Hon'ble jurisdictional High Court in Kusum Goyal (2010) 329 ITR 283 (Cal) has clearly spelt out that the ITO on its own cannot transfer the jurisdiction without order from the competent authority. In this case, we note that there is no mention in the assessment order of any transfer order passed by the concerned CIT-12, therefore, the contention of the ITO, Ward-6(1), Kolkata that the jurisdiction has been transferred from ITO, Wd-34(2) to ITO, Wd-6(1), Kolkata is also without authority and vitiates the transfer of jurisdiction as claimed by the AO in the assessment order and thus this fact also vitiates the assessment order. In the light of the above as well as the contention of the assessee that no opportunity of hearing was rendered to it by ITO, Wd-6(1), Kolkata before framing assessment u/s. 144 of the Act which omission on the part of AO also is against principles of natural justice and the impugned assessment u/s 144 of the Act is fragile for non-adherence of principles of natural justice on the part of AO. Therefore, looking from any angle as discussed above and especially taking note that the impugned assessment order passed by the ITO, Wd-6(1), Kolkata without issuing notice u/s. 143(2) of the Act is coram non-judice and therefore null in the eyes of law and, therefore, need to be quashed and we quash the impugned assessment order dated 13.03.2015 passed by ITO, Wd-6(1), Kolkata. The additional grounds raised by the assessee are allowed."

19. As in the case before me no order of transfer u/s.127(1) of the Act had been shown to have been passed, therefore, it is a clear case of invalid assumption of jurisdiction by the ITO-4(2), Raipur who in absence of any valid assumption of jurisdiction had framed the assessment vide his order u/s.143(3) of the Act, dated 27.12.2017. As the facts and issues involved in the present appeal remain the same as were involved in the aforesaid cases, therefore, following the same parity of reasoning, I quash the assessment framed by the ITO-4(2), Raipur u/s.143(3) of the Act dated 27.12.2017 for want of valid assumption of jurisdiction on his part.

20. As I have quashed the assessment framed by the A.O, i.e ITO-4(2), Raipur u/s. 143(3) of the Act dated 27.12.2017 for want of valid assumption of jurisdiction, therefore, I refrain from adverting to and dealing with the grounds of appeal raised by the assessee, based on which, the additions made by the A.O have been assailed before me, which, thus, are left open.

21. In the result, appeal of the assessee is allowed in terms of the aforesaid observations.”

As the facts involved in the present case on the first principle remains the same as were there in the aforesaid case i.e. Sarita Jain Vs. ITO, Ward-4(1), Raipur (supra), therefore, I follow the same. Thus, the **Ground of appeal No.2** raised by the assessee is allowed in terms of the aforesaid observations.

11. **Grounds of appeal Nos. 5 & 6** being general in nature are dismissed as not pressed.

12. As I have quashed the assessment framed by the A.O, i.e ACIT-1(1), Bhilai u/ss.144/147 of the Act, dated 26.11.2018 for want of valid assumption of jurisdiction, therefore, I refrain from adverting to and dealing with the grounds of appeal raised by the assessee, based on which, the additions made by the A.O have been assailed before me, which, thus, are left open. Thus, the **Grounds of appeal Nos. 1, 3 & 4** are disposed off in terms of the aforesaid observations.”

5. That on totality of the facts emerging, I am of the considered view that since quantum itself has been deleted by way of quashing of assessment, penalty based on the said quantum addition does not have any legal validity to survive. The aforesaid view is fortified by the judgment of the **Hon'ble High Court of Delhi** in the case of **CIT Vs. R. Dalmia (1992) 107 Taxation 107** wherein it has been held that no penalty survives after deletion of additions, forming the basis for the levy of penalty. Further, It was held by **Hon'ble Rajasthan High Court** in the

case of **CIT Vs. Cosmopolitan Trading Corporation reported as 274 ITR 640** and **Hon'ble Punjab & Haryana High Court** in the case of **CIT Vs. Prakash Industries Ltd reported as 322 ITR 622** that when the entire addition had been deleted in the quantum appeal, no reason survives for sustaining the penalty. Accordingly, penalty imposed by the A.O and sustained by the Ld. CIT(Appeals)/NFAC is quashed.

6. As per the above terms, the grounds of appeal raised by the assessee are allowed.

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

Order pronounced in open court on 20th day of May, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 20th May, 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