

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.128/RPR/2025
निर्धारण वर्ष / Assessment Year : 2013-14

Avanindra Nath Agrawal
1063, Akansha, Geeta Nagar,
Opportunity. Anupam Nagar Garden,
Raipur (C.G.)-492 001
PAN: AEHPA0353D

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rajesh Kumar Chawda, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 22.07.2025

घोषणा की तारीख / Date of Pronouncement : 22.07.2025

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 11.02.2025 for the assessment year 2012-13 as per the grounds of appeal on record.

2. 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.

3. The legal issue that has been raised by the Ld. Counsel for the assessee is that in the present case, notice u/s. 148 of the Income Tax Act, 1961 (for short 'the Act') for reopening of the assessment is invalid for the fact that the said notice was sent beyond the period of four years without recording any failure on the part of the assessee for disclosing truly and fully all material facts. The case of the assessee pertains to A.Y.2012-13 and the applicability for such assessment year, the reopening u/s. 147/148 of the Act could have been done only within a period four years. However, in the present case, such reopening has been done beyond the period six years and this is an admitted fact.

4. At the same time, the department has failed to bring on record any evidence suggesting any failure on the part of the assessee for disclosing truly and fully all material facts necessary for assessment. In this regard, the Ld. Sr. DR was directed to furnish report from the A.O and the said report was placed by her on record. The relevant submission of the A.O as per the said report is extracted as follows:

“(2) The reassessment proceedings have to be invoked within a span of 4 years however in the case of the assessee the same was reopened after 6 years.

As per old provisions of the Act, Notice u/s. 148 could be issued for 4 years from the end of A.Y. Further, Notice u/s. 148 could have been issued upto 6 years from the end of A.Y in cases where income escaping assessment is Rs.1 lakh or more.

Since, in the case of the assessee income escaping assessment for A.Y.2012-13 is Rs.61,65,450/- which is more than Rs.1 lakh therefore the case of the assessee was rightly reopened within 6 years by issuing notice u/s. 148 of the Act, dated 31.03.2019.”

As evident, it is admitted by the department that the case of the assessee was reopened after 6 years. It is also the contention of the A.O that notice u/s. 148 of the Act can be issued upto 6 years from end of the assessment year in cases where income escaping assessment is Rs.1 lakh or more and since in the case of the assessee income escaping assessment for A.Y.2012-13 is Rs.61,65,450/- which was more than Rs.1 lakh therefore, the case of the assessee was rightly reopened within 6 years by issuing notice u/s. 148 of the Act, dated 31.03.2019.

5. In this regard, let us refer to relevant provision of Section 147 of the Act which deals with the contended issue before us:

“147. Income escaping assessment.—If the Assessing Officer has reason to believe" that any income chargeable to tax has escaped assessment" for any assessment year, he may", subject to the provisions of sections 148 to 153, assess or reassess" such" income "and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings" under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this 'section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material fact necessary for his assessment, for that assessment year.....”

6. That as evident as applicable to the assessment year in question i.e. A.Y.2012-13 wherein assessment has been completed for the relevant assessment year, no action shall be taken as per this provision after expiry of 4 years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of

section 142 or section 148 or to disclose fully and truly all material fact necessary for his assessment, for that assessment year. None of the limbs applies to the case of the assessee nor the revenue has able to place on record any evidence regarding any failure on the part of the assessee “to disclose truly and fully all material facts necessary for assessment.” At the same time, ground taken by the A.O justifying the reopening beyond the period of 6 years saying that whenever there is a case where income escaping assessment is Rs.1 lakhs or more, in such cases, notice u/s. 148 of the Act could have been issued upto 6 years from the end of the assessment year, however, no such limb emanates from the said proviso to Section 147 of the Act and therefore, this reason as stated by the A.O is not emanating from the statute, hence, the said observation is perverse and infructuous and does not contain legal validity. We 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 xxxxx

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 xxxxx

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.)”

Therefore, considering the facts that viz. **(i)** reopening was done beyond the period of 6 years; **(ii)** department has not proved any failure on the part of

the assessee to disclose fully and truly all material facts necessary for assessment; **(iii)** the A.O has stated frivolous invalid ground justifying the action of the department, therefore, such reassessment proceedings initiated beyond the period of 6 years is invalid, void ab initio, hence quashed.

7. Since the reassessment is quashed thereafter all the other proceedings becomes non-est in the eyes of law. As the legal issue has been answered in favour of the assessee therefore the grounds on merits becomes academic only.

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

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

Order pronounced in the open court on 22nd day of July, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
PARTHA SARATHI CHAUDHURY
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 22nd July, 2025.

SB, Sr. PS

आदेश की प्रतिलिपि अग्रहित / 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, 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.