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 Nos.412 & 413/RPR/2025

निर्धारण वर्ष /Assessment Years : 2013-14 & 2014-15

Bhagwandas Jagdish Prasad
Petrol Pump, Main Road,
Bagbahara-493 449 (C.G.)
PAN: AAMFB0173H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Mahasamund (C.G.)

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 28.07.2025
घोषणा की तारीख / Date of Pronouncement : 28.07.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM

The captioned appeals preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 03.06.2025 for the assessment years 2013-14 & 2014-15 as per the grounds of appeal on record.

2. Both the parties herein conceded that since the facts and issues involved in both these appeals are absolutely similar and identical, therefore, the cases may be taken up together and dispose of vide this consolidated order.

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 pertains to the validity of the reassessment proceedings u/s. 148/147 of the Income Tax Act, 1961 (for short 'the Act') challenging the same that it is hit by the "1st proviso" to Section 147 of the Act. It is the contention of the Ld. Counsel that the reopening has been done in both these cases beyond the period of four years without recording any failure

on the part of the assessee in disclosing fully and truly all material facts required for the assessment for that relevant assessment year.

5. I have carefully considered the submissions of the parties and the documents placed on record. That so far as legal ground regarding legal validity of the proceedings u/s. 147/148 of the Act is concerned, it is noted that as per reasons recorded for both the assessment years, the A.O has reopened the matters beyond the period four years and at the same time, there has been no failure brought on record on the part of the assessee in disclosing fully and truly all material facts required for assessment for both the relevant assessment years. In fact, there is no whisper even regarding any such failure on the part of the assessee. The A.O has simply relied on the guidelines issued by Oil Companies in respect of maximum admissible evaporation/handling loss regarding petrol and diesel and had disallowed claim of the assessee without bringing out salient features of the IOC guidelines vis-à-vis facts of the assessee's case. The said guidelines could not be strictly applied and is substantially dependent on the facts and circumstances of each case. That as to say that once franchise is taken from parent company then how the petrol or diesel are stored, whether such inspection are conducted in a periodic manner by the parent company in order to understand that the franchise owner is adhering to such principles, whether the issue related

to evaporation/handling loss shall not also dependent upon weather conditions prevalent in a particular place and whether such IOC guidelines spells out determination with regard to the place where such petrol pump is situated and the issue at hand i.e. regarding evaporation/handling loss of petrol and diesel.

6. The A.O has also not brought in the reasons regarding that whether there is any active failure on the part of the assessee regarding evaporation/handling loss of such petrol or diesel. The practical aspect in these cases has to be dealt with vis-à-vis IOC guidelines in order to portray any failure on the part of the assessee as prescribed under the "1st proviso" to Section 147 of the Act. But in these cases, no such failure has been brought on record by the A.O. Admittedly, in both these cases, such reassessment proceedings have been conducted beyond the period of four years without recording any failure on the part of the assessee in disclosing fully and truly all material facts necessary for assessment. In these peripheries of the facts, I refer to the decision of the Hon'ble **Jurisdictional High Court** in the case of **Hariom Ingots and Power Pvt. Ltd. Vs. Pr. CIT (2022) 444 ITR 306 (C.G.).** In the said decision, the Hon'ble Jurisdictional High Court had held as follows:

> "6..... For issuance of notice under Section 148 of the I.T. Act, there should be tangible material and mandatory compliance of Section 147 of I.T. Act. Proceedings of reassessment has been initiated against company after lapse

of 4 years of submission of return, which is not in dispute. Under first proviso to Section 147 of the I.T. Act, for starting the reassessment proceedings after lapse of 4 years, Assessing Officer has to record his conclusion that there was failure on the part of assessee in not disclosing fully and truly all material facts necessary for assessment of that particular assessment year, which is not appearing from the reading of the Annexure i.e. reasons for issuance of notice.

7. Considering the aforementioned facts and circumstances of the case, reason assigned for issuance of notice and provisions mentioned therein, in the opinion of this Court, there was no reason/ground available with Assessing Officer to issue notice under Section 148 of the I.T. Act. Issuance of notice under Section 148 of the I.T. Act to petitioner is not in accordance with the first proviso to Section 147 of the I.T. Act, therefore, it is not sustainable, which is liable to be quashed and it is hereby quashed.

8. The writ petition is accordingly allowed."

7. Further, I find that **ITAT, Raipur "DB" Bench** in the case of the **Avanindra Nath Agrawal Vs. DCIT, Circle-1(1), Raipur, ITA No. 128/RPR/2025, dated 22.07.2025** had dealt with the similar issue observing as follows:

"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 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.)"

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."

8. Respectfully following the aforesaid judicial pronouncements and on examination of the facts on record on the same parity of reasoning, I hold that both these cases of the assessee are hit by the "1st proviso" to Section 147 of the Act.

9. The Ld. Sr. DR also could not refute through any evidence regarding these facts on record.

10. In such scenario, when in both the assessment years, the reassessment proceedings have been initiated beyond the period of four years without bringing on record any failure on the part of the assessee as enshrined in the "1st proviso" to Section 147 of the Act, I hold that such reassessment is invalid, bad in law and void ab initio, hence quashed.

11. 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.

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

13. In the result, both the appeals of the assessee are allowed.

Order pronounced in open court on 28th day of July, 2025.

Sd/-
(**PARTHA SARATHI CHAUDHURY**)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 28th July, 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