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IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "E" DELHI)

BEFORE SHRI C.L. SETHI AND SHRI K.G. BANSAL

ITA NO. 286(Del)2004
Assessment year: 1995-96

Income Tax Officer,
Ward 33(2), New Delhi.

V. Shri Krishan Kumar Gupta,
1821/50, Naiwala, Karol Bagh,
New Delhi.

(Appellant)

(Respondent)

Appellant by: Shri G.S. Sahota, Sr. DR
Respondent by: Ms. Rano Jain

ORDER

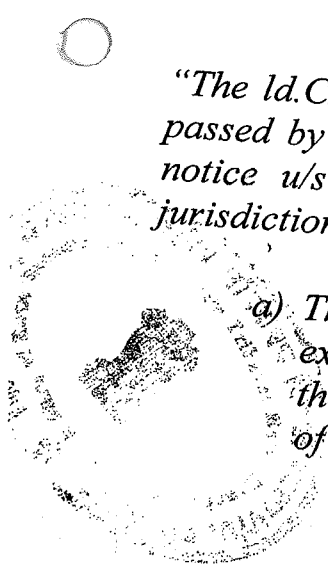
PER C.L. SETHI, J.M.

In the present appeal filed by the revenue against the order dated 31.10.2003 passed by the CIT(A) in the matter of an assessment made by the Assessing Officer u/s 143(3)/148 of the Income Tax Act, 1961 for the assessment year 1995-96. The revenue has raised the following grounds:-

"The ld.CIT(A) XXVI, New Delhi has erred in cancelling the order passed by the Assessing Officer u/s 147 of the Act holding that the notice u/s 148 was issued by an Assessing Officer not holding jurisdiction despite the fact that :-

- a) The notice u/s 148 was issued by the Assessing Officer who exercised jurisdiction in respect of the address under which the assessee himself maintained account with the State Bank of India, Rohtak Road Industrial Complex, Delhi and in*

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respect of which bank a/c the Assessing Officer received information from the DDIT(Inv.)Faridabad.

- b) The pending 147 proceedings were transferred to the Assessing Officer who exercised jurisdiction in respect of the residential address furnished by the assessee and who thereafter completed the assessment.*
- c) The assessee apparently filed a forged photocopy of the 148 notice containing assessee's residential address, claiming that the Assessing Officer [ITO Ward 25(4)] issued the said notice without jurisdiction whereas in fact no notice u/s 148 was issued to the assessee at his residential address as per the case records."*

2. The issue raised in the aforesaid grounds of appeal is as to whether the Assessing Officer, who had issued notice u/s 147 of the act had any jurisdiction over the assessee to issue notice u/s 148 of the Act and as to whether the assessment completed by the Assessing Officer, Ward 33(2), New Delhi was valid in the eyes of law.

3. A notice u/s 148 was issued by the ITO, Ward 25(4), who initiated proceedings u/s 147 of the Act on the basis of information received by him from DDIT(Inv.)Faridabad that the assessee had introduced the funds amounting to Rs. 4,75,000/- through the accommodation entry in the form of agricultural income with the help of Jai Trading Co. in his bank account No. 25/4202, State Bank of India, Rohtak Road, Delhi by using the address 487/107, New Ramlila Ground, Peera Garhi, Delhi. Having received the notice issued by the Assessing Officer u/s 148 of the Act, the assessee raised

an objection before the Assessing Officer challenging the jurisdiction of the ITO, Ward 25(4) vide his letter dated 30.04.2002 and requested to drop the proceedings. Before the ITO, Ward 25(4), the assessee furnished his address as 1821/50, Naiwala, Karol Bagh, New Delhi. On the basis of this information as to the address of the assessee, the ITO, Ward 25(4) transferred the case to ITO, Ward 33(2), New Delhi. Thereafter the ITO, Ward 33(2) issued notice u/s 142(1) of the Act to the assessee and then completed the assessment u/s 143(3)/148 of the Act vide order dated 24.3.2003 .

4. Being aggrieved with the action of the ITO, Ward 33(2), New Delhi in completing the assessment u/s 148 on the basis of the notice issued u/s 148 by the ITO, Ward 25(4), the assessee preferred an appeal before the CIT(A) challenging the validity of the proceedings initiated u/s 147 of the Act as well as the assessment so completed u/s 147 of the Act.

5. Before the CIT(A), the assessee submitted a written reply which has been reproduced by the CIT(A) in his order as under:-

"That the case of the assessee was reopened u/s. 148 on 28/3/2002 by the ITO, Ward 25(4). Photostat copy of the notice issued is placed as per Annexure-A. In reply to said notice, assessee filed the reply dated 20th April, 2002 on 1/5/2002. Photostat copy of the reply filed is placed as per

Annexure-B. It was challenged that notice issued was without jurisdiction as it was apparently clear from the notice. The address mentioned on the notice was of Karol Bagh whereas the ITO 25(4) had no jurisdiction over Karol Bagh and also assessee had never filed any return of income in ward 25(4). Also the learned ITO had no I.T. return of the assessee for the assessment year 95-96. In the month of July, August, 2002 the learned ITO realized that he had no jurisdiction over the case and thus he transferred the case to the ITO, Ward 33(2) where the assessee was being assessed and thus it is wrong to say that case was not transferred on the basis of address furnished by the assessee. It has been wrongly stated by the learned A.O. at para.3 of his order that "Notice u/s. 142(1) dated 29/8/02 was served upon the A.R. of the assessee but the assessee did not comply with the requirement of the same". In this connection, it is submitted that on 29/8/02, the assessee alongwith G.S. Grover, C.A. attended the proceedings of the learned ITO where notice u/s. 142(1) dated 29/8/02 was served on the assessee for 9/9/02. This can be verified from the order sheet of the learned ITO. On 9/9/02, the learned ITO was not in his room from 3 pm to 4.30 pm as he had gone to Courts, so reply dated 9/9/02 was filed in his office. Photostat copy of the notice u/s. 142(1) dated 29/8/02 and reply of the assessee dated September 9, 2002 are placed as Annexure-C and D respectively. Your honour will observe from the reply that since no proceedings were pending in his office and as such information asked is uncalled for. The learned ITO 25(4) has transferred the file to the learned ITO 33(2), it confirms that he had no jurisdiction over the case and as such re-opening was illegal and bad in law. Also the case transferred without any further order u/s. 127.

It has been wrongly stated by the learned ITO at para. 4 of his order that challenge of territorial jurisdiction was not tenable because address of 487/107, near Ram Lila Ground furnished by the assessee in the bank account was with the intention to conceal the proper jurisdiction. In this connection it is submitted that before your honour that assessee filed its income tax return for the assessment year

1995-906 on 31/10/95 vide R. No.4365 in ward 24(1) where the assessee had the proper jurisdiction over the case and the assessee had given the same address i.e. 487/107, Peera Garhi. Photostat copy of the acknowledgement income-tax return for the assessment year 95-96 having filed in ward 24(1) is placed as per annexure-E. It is pertinent to mention here that both the learned Income-tax Officers had no earlier assessment records of the assessee and as such the reopening of the case is illegal. In this connection, it is brought to your kind notice that interest of Rs.4,35,940/- was charged u/s. 234A against which assessee filed application u/s. 154 on 5/5/03 claiming that assessee did file its return on 31/10/95 in ward 24(1). Photostat copy of application u/s.154 on 9/5/03 and reduced the interest u/s. 234A o Rs.17,040/-. Photostat copy of the order u/s. 154 is placed as per annexure-G..

It has been stated at para 5 of the assessment order that information called for in the notice u/s. 142(1) dated 29/8/02 has not been furnished by the assessee. In this connection, your honour's kind attention is drawn towards assessee's reply dated 9/9/02 placed at annexure-D which has been stated above but the learned ITO is silent on his acquiring valid jurisdiction for the reason best known to him.

It has been stated at para. 8 of the assessment order that assessee was required to file his return of income in response to notice u/s. 148 of Income-tax Act duly served upon him. In this connection it is submitted before your honour that notice u/s. 148 was served by learned ITO Ward 25(4) who had no jurisdiction over the case but the learned ITO 33(2) who framed the assessment on the basis of issue of notice u/s. 148 and thus the assessment order passed is illegal and without any jurisdiction.

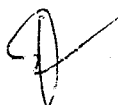
Since the assessee has been challenging the jurisdiction of the case, the assessee through its letter dated April, 24 requested a copy of the reasons recorded for reopening of the case. Photostat copy of the reasons recorded for reopening of the case by the learned ITO 25(4) and approved by worthy CIT-

IX as obtained from the learned ITO are placed as per annexure-I to K. From the perusal of the Annexure-K, your honour will observe that, the learned ITO 25(4) had no income-tax return and thus he had no jurisdiction over the case. From the perusal of annexure-K, your honour will observe that, the learned ITO 25(4) had no Income-tax return and thus he had no jurisdiction over the case. From the perusal of Annexure-J where the worthy CIT-IX has given the approval, your honour will observe that at Sr. No.-7, it is clear whether provisions of 147(b) or both are applicable and at Sr. No.11 there are no reasons for belief that income has escaped assessment. Also there is no order of CIT about his satisfaction on reopening. The worthy CIT has given the approval in a mechanical fashion i.e. without application of mind. From the perusal of annexure-I, your honour will observe that ITO sent the proposal for reopening of the case u/s. 147(a) but no 147(b) as stated by him in annexure-J.

In view of the above submission, the reopening of the case is illegal, arbitrary, without any jurisdiction, without any application of mind and against the facts and circumstances of the case and thus bad in law."

6. Before the CIT(A), the assessee also cited number of decisions in support of his contentions, which have been mentioned by the CIT(A) at pages 5&6 of his order.

7. The assessee's contentions were intimated to the Assessing Officer by the CIT(A) for his comments and explanation. The Assessing Officer submitted a remand report to the CIT(A) which has been reproduced by the CIT(A) in para 7 of his order as under:-



"1. The information was received from DDIT(Inv.) Faridabad that Shri Krishan Kumar Gupta had introduced the funds amounting to Rs.4,75,000/- through the accommodation entry in the form of agricultural income with the help of the Jai Trading Co. in his bank account no. 25/4202 State Bank of India, Rohtak Road, DSIDC Delhi by using the address 487/107 Near Ramllila Ground, Peera Garhi.

2. ITO, Ward-25(4) having territorial jurisdiction over the address 487/107, Peera Garhi moved a proposal for initiating the proceedings u/s. 148 and for obtaining the approval of the CIT vide letter dated 26/3/02 which was forwarded by the Addl. CIT Range-25. The same approved by the CIT-IX and the approval was conveyed to the ITO, Ward 25(4) vide letter F.No.CIT-IX-01-02 dated 27/3/2002. Accordingly, notice u/s. 148 was issued on 28/3/2002.

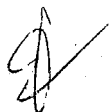
3. The assessee raised objection challenging the jurisdiction of the ITO w 25(4) vide letter dated 30/4/02 and requested to drop the proceedings on this basis. The case was transferred to this ward on the basis of the address furnished by the assessee, i.e., 1821/50 Naiwala Karol Bagh, New Delhi. It may further be noted that prior to filing return of income at Karol Bagh address the assessee was assessed at the address of 487/107 Peera Garhi in ward 24(1) which was also the territorial jurisdiction before the restructuring of the department.

4. The notice u/s. 142(1) was issued to the assessee in continuation to the proceeding initiated by the ITO Ward 25(4). The assessment was completed after giving due opportunity to the assessee. All the facts relating to the proceedings are duly incorporated in the assessment order".

8. A copy of the remand report was then furnished to the counsel for the assessee for his counter reply. After considering the materials on record

including the remand report, the CIT(A) decided the issue by observing and holding as under:-

"9. It has been further stated that the ITO has himself stated that prior to filing of return at Karol Bagh address, the appellant was assessed at the address of 187/107 Peera Garhi in Ward 24(1), New Delhi which has also a territorial jurisdiction before the restructuring of the department and return for 1995-96 filed on 31/10/95 vide receipt no.4365 and revised return of assessment year 94-95 dated 31/9/95 and 1996-97 were filed with ITO Ward 24(1), New Delhi. They also filed copies of acknowledgements with the returns and it has been argued that only the A.O. can issue notice u/s. 147/148 and the appellant's jurisdiction with ACIT, Circle-24(3) from where the case had been sent to ACIT, Circle 24(1), New Delhi. So the A.O., Ward 25(4) issuing notice u/s. 148 had no jurisdiction. Hence the A.O. issuing notice u/s. i.e., 25(4) had no jurisdiction over the case. The ITO in his remand report has also confirmed that the notice was issued by ITO, Ward 25(4) and the assessee was never assessed there. Even though ITO Ward 24(1) has all the territorial jurisdiction over the 487/107, Peera Garhi, however, since the appellant had challenged the jurisdiction, the ITO Ward 25(4) transferred the case to the present AO (ITO, Ward 33(2) who had the right to issue notice. The appellant has also challenged the action of the ITO Ward 33(2) in completing the case. It has been contended that the ITO, Ward 33(2) should have issued fresh notice u/s. 148 before going to make assessment proceedings u/s. 144. This has not been done. The contention of the appellant appeared to be correct. The AO, Ward 25(4) who have issued notice u/s. 148 did not have the appropriate jurisdiction to issue notice u/s. 144. The AO, Ward 33(2) should have issued a fresh notice u/s. 148 before passing the order u/s. 143(3) read with section 147/148. This was not done, Hence appellant's contention that notice u/s. 148 should be vitiated having been issued by an officer not having jurisdiction over the case is correct. Subsequently, the



case has been transferred to ITO, Ward 33(2) who has passed the order. He has also not bothered to issue fresh notice u/s. 148. The appellant has only raised a further objection that this is as a case suo motto transferred between two officers of different CIT charges and the ITO Ward 33(2) should have only accepted the case after transfer order u/s. 127 were issued in this case.

10. Looking to the facts of the case, it become clear that notice u/s. 148 has been issued by an officer not having jurisdiction and this fault was not rectified after transferring the case to the ITO having the correct jurisdiction. He should have issued the fresh notice u/s. 147, which he has not done despite the assessee challenging his jurisdiction. Under such circumstances, this notice u/s. 148 has been issued by a officer not holding jurisdiction. The whole proceeding u/s 148 stand cancelled, therefore, other grounds of appeal in this case become redundant."

9. Being aggrieved with the order of CIT(A), the revenue has filed this appeal before the Tribunal.

10. The Id. DR has submitted that inasmuch as the assessee has participated in the assessment proceedings, the assessment order cannot said to be invalid and void ab initio. He further submitted that the ITO, Ward

25(4) had issued notice u/s 148 as per the address mentioned by the assessee in the bank account with the State Bank of India, Rohtak Road, Industrial Complex, Delhi and as such the notice issued by him cannot said to be without jurisdiction. He further submitted that when the assessee submitted his address of Karol Bagh, the ITO, Ward 25(4) transferred the assessment record to the ITO, Ward 33(2), who had territorial jurisdiction over the

address furnished by the assessee. He, therefore, contended that the CIT(A) was unjustified in cancelling the assessment made u/s 147 of the Act by the ITO, Ward 33(2), New Delhi.

11. The learned counsel for the assessee, on the other hand, reiterated the contentions and submissions that were made before the CIT(A). The assessee's contentions before the CIT(A) have already been reproduced above and, therefore, we feel no need to reproduce the same again here. The authorized representative of the assessee, Ms. Rano Jain, relied upon the following decisions:-

1. *CIT v. Smt. Anjali Dua*, [2008]11 DTR (Del)93;
2. *The decision of ITAT, Delhi Bench 'F', Delhi in the case of Shri Ranjeet Singh v. ACIT.*

12. We have heard both the parties and have gone through the orders of the authorities below. It is not in dispute that the notice u/s 147 was issued by the ITO, Ward 25(4) on the basis of the address mentioned in the bank account of the assessee with the State Bank of India, Rohtak Road, DSIDC, Delhi. Having received the notice u/s 148 issued by the ITO, Ward 25(4), the assessee raised objection challenging the jurisdiction of the ITO, Ward 25(4) vide letter dated 30.4.2002. The assessee mentioned that the assessee had addressed at 1821/50, Naiwala, Karol Bagh, New Delhi. The ITO,



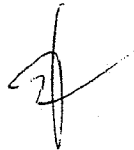
Ward 25(4) thereafter transferred the file to the ITO, Ward 33(2), New Delhi, who ultimately completed the assessment u/s 143(3)/148 of the Act on 24.03.2003. The ITO, Ward 33(2) did not issue any fresh notice u/s 148 of the Act to the assessee. He taken up the case from the stage of issuing the notice of hearing u/s 142(1) or 143(2) of the Act.

13. From the aforesaid facts discussed above, it is clear that the ITO, Ward 25(4) had accepted the assessee's objection and then transferred the file to the ITO, Ward 33(2), New Delhi. Had the ITO, Ward 25(4) valid jurisdiction over the assessee and validly issued the notice u/s 147 of the Act, there was no need on his part to transfer the file to ITO, Ward 33(2), New Delhi without having any order of transfer of the jurisdiction passed by any Competent Authority. The action of the ITO, Ward 25(4) in transferring the file to ITO, Ward 33(2), New Delhi without any order of jurisdiction transferring the file from his Ward to ITO, Ward 23(2) by any Competent Authority, makes it clear that the ITO, Ward 25(4) had actually no jurisdiction over the assessee and thus the notice issued by him u/s 147 of the Act was beyond his jurisdiction. It is further clear that the ITO, Ward 33(2) did not issue any fresh notice u/s 148 of the Act to the assessee, but completed the assessment on the basis of the notice issued u/s 148 by the ITO, Ward 25(4) of the Act, which is not valid and within the jurisdiction



inasmuch as no valid proceedings u/s 147 were initiated by the Assessing Officer, Ward 25(4), having valid jurisdiction over the present assessee. The fact that the present assessee filed its return of income for the assessment year 1995-96 before the ITO, Ward 24(1) is not in dispute. In the assessment for the assessment year 1995-96, the Assessing Officer charged interest u/s 234 A against which the assessee filed an application u/s 154 on 5.5.2003 before the ITO, Ward 24(1), who completed the assessment for the assessment year 1995-96. The ITO, Ward 24(1) then passed an order u/s 154 on 9.5.2003 and reduced the interest u/s 234 A to Rs. 17,040/-. It is thus clear that the ITO, Ward 24(1) exercised jurisdiction over the assessee on 9.5.2003 when he passed the order u/s 154 on an application filed by the assessee u/s 154 on 5.5.2003 with reference to the return of income for the assessment year 1995-96. The present notice has been issued u/s 147 by the ITO, Ward 25(4) on 28.03.2002, when the jurisdiction over the assessee's case was with ITO, Ward 24(1), New Delhi. Thus from this aspect of the matter also, the notice u/s 147 issued by ITO, Ward 25(4) was without jurisdiction.

14. Moreover, the ITO, Ward 33(2) who passed the present assessment order without issuing any fresh notice u/s 148 of the Act cannot be said to have a valid jurisdiction over the assessee unless and until the case has been

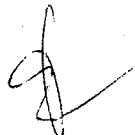


transferred to him from ITO, Ward 25(4), by any order passed u/s 127 of the Act by any Competent Authority. In the present case, the ITO, Ward 33(2) had exercised the jurisdiction merely on the basis of intimation given by the ITO, Ward 25(4) and merely on file being transferred by the ITO, Ward 25(4) of his own to the ITO, Ward 33(2) of the Act.

15. The Hon'ble Delhi High Court in the case of CIT v. Smt. Anjali Dua (supra) has held that the notice issued u/s 148 on 28.3.2003 by the then ITO, Ludhiana was without jurisdiction inasmuch as, the assessee had shifted from Ludhiana to New Delhi in July, 1997 and had been filing his return of income for assessment year 1997-98 onwards at New Delhi.

16. In the case of Shri Ranjeet Singh v. ACIT (supra), the Tribunal has held that the notice issued by the ITO, Ward 2(2), Ghaziabad was not in substance and effect in conformity with the provisions of section 120 read with section 147 of the Act as the notice was issued without jurisdiction. In that case, it was found by the Tribunal that having received the notice u/s 148, the assessee raised the objection immediately by saying that he was assessed to tax by DCIT, Circle 21(2), New Delhi and notice issued by the ITO, Ghaziabad was invalid.

17. In the light of the discussions made above, we are inclined to uphold the order of the CIT(A) in holding that the assessment made by the ITO,



Ward 33(2) is without jurisdiction and thus invalid and is thus to be cancelled. The order of the CIT(A) is thus upheld.

18. In the result, the appeal filed by the revenue is dismissed.

This decision was pronounced in the open court on 17.10.2008.


(K.C. Bansal)
Accountant Member


(C.L. Sethi)
Judicial Member

Dated: 17.10.2008

*RM

copy forwarded to:

1. ITO, Ward 33(2), New Delhi.
2. Shri Krishan Kumar Gupta, 1821/50, Naiwala, Karol Bagh, New Delhi.
3. CIT
4. CIT(A)
5. DR

true copy

by order


Deputy Registrar

Delhi Branch, New Delhi