

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

**I.T.A. No. 1563/Del/2018
Assessment Year: 2015-16**

MANISH KUMAR & SONS HUF,
A-48, OMAXE RPS GREEN VALLEY,
SECTOR-41-42,
FARIDABAD
HARYANA
(PAN: AAIHM9664A)
(ASSESSEE)

VS. ITO, WARD 1(5),
FARIDABAD

(RESPONDENT)

Assessee by: SH. KAPIL GOEL, ADVOCATE
Revenue by: SH. S.L. ANURAGI, SR. DR.

ORDER

This appeal is filed by assessee against the Order dated 12..2.2018 passed by the Ld. CIT(A), Faridabad relating to Assessment Year 2015-16 in which he has raised as many as 6 grounds in detail. However, the sole issue involved in these grounds is relating to addition of Rs. 40,76,656/-. Further the assessee has also filed a Paper Book containing pages 1 to 74 in which he has filed the Additional Ground Application under Rule 11 of the ITAT Rules; copy of ITR for AY 2015-16 filed on 12.3.2016 with Faridabad address; copy of ITR for AY 2014-15 filed on 31.8.2014 with Faridabad same address; Notice u/s. 143(2) of the Act dated 26.7.2016 issued by DCIT, Circle 2, Hazaribagh; copy of notice u/s. 142(1) r.w.s. 129 dated 12.7.2017 issued by ITO, Ward 1(5) Faridabad and order u/s. 127 dated 27.3.2017 and

copies of various case laws supporting the additional ground raised by the assessee. For the sake of convenience, the additional ground raised by the Assessee is as under:-

"That assessment framed u/s. 143(3) by ITO, Ward 1(5) Faridabad for the period under consideration (AY 2015-16) is void ab initio as notice u/s. 143(2) dated 26.7.2016 issued by DCIT, Circle 2, Hazaribagh, on the basis of returns regularly filed u/s. 139 dated 12.3.2016 with Faridabad address and no valid and legal notice u/s. 143(2) being issued by assessee's Assessing Officer (ITO Ward 1(5), Faridabad) as defined in Section 2(7A) of the Act who has framed impugned assessment, which creates a dent in the whole assessment, accordingly the orders passed by AO and First Appellate Authority deserves to be quashed."

3. Ld. Counsel of the Assessee submitted that the assessment framed u/s. 143(3) by ITO, Ward 1(5) Faridabad for the period under consideration (AY 2015-16) is void ab initio as notice u/s. 143(2) dated 26.7.2016 issued by DCIT, Circle 2, Hazaribagh, on the basis of returns regularly filed u/s. 139 dated 12.3.2016 with Faridabad address and no valid and legal notice u/s. 143(2) being issued by assessee's Assessing Officer (ITO Ward 1(5), Faridabad) as defined in Section 2(7A) of the Act who has framed impugned

assessment, which creates a dent in the whole assessment, accordingly he requested to admit the additional ground by relying upon the decision of the Hon'ble Supreme Court of India in the case of NTPC 229 ITR 383 (SC) (Supra) and decide the same first.

4. On the contrary, Ld. DR strongly opposed the admission of additional ground (legal) raised by the assessee. However, he relied upon the orders of the authorities below.

5. After hearing both the parties as well as perusing the additional ground alongwith the orders passed by the Revenue Authorities and the case laws cited by the Ld. counsel for the assessee, I am of the considered view that additional ground raised by the assessee under rule 11 of the ITAT rules deserves to be admitted being purely legal and jurisdictional ground which goes to the root of the matter and for which necessary facts are available on record. In admitting this additional ground, I am supported by the recent decision of the Hon'ble Punjab and Haryana High Court in case of VMT Spinnig reported at 389 ITR 326 and Hon'ble Delhi High Court decision in the case of Silver Line reported at 383 ITR 455, wherein Hon'ble Apex Court decision in the case of NTPC Limited 229 ITR 383 was relied. Following this I admit the additional ground raised by the assessee and proceed to decide the additional ground first.

6. The brief facts of the case are that Assessee filed the return of income for the assessment year 2015-16 on 12/03/2016 of Rs 4,15,280/-. Later on, the case of the assessee was selected under scrutiny through CASS. The Statutory notices were issued and served in time to the assessee. In response to the same, the Assessee filed the necessary details. Thereafter, the AO completed assessment u/s. 143(3) of the Act on 7.11.2017 at assessed income of Rs. 44,91,936/-. Against the assessment order, the Assessee appealed before the Ld. CIT(A) who vide his impugned order dated 12.2.2018 has dismissed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A), assessee appealed before the Tribunal.

7. Ld. Counsel for the assessee submitted that assessment framed u/s. 143(3) by ITO, Ward 1(5) Faridabad for the period under consideration (AY 2015-16) is void ab initio as notice u/s. 143(2) dated 26.7.2016 issued by DCIT, Circle 2, Hazaribagh, on the basis of returns regularly filed u/s. 139 dated 12.3.2016 with Faridabad address and no valid and legal notice u/s. 143(2) being issued by assessee's Assessing Officer (ITO Ward 1(5), Faridabad) as defined in Section 2(7A) of the Act who has framed impugned assessment, which creates a dent in the whole assessment, hence, the same may be quashed. In support of his contention, he relied upon the following decisions:

1. Vizag bench of ITAT in Ashok Periwal I.T.A.No.339/Viz/2016

09.05.2018
2. Jaipur bench of ITAT in Asha Nath in ITA 7216/Del/2017 03/08/2018
3. Delhi ITAT in case of Yogesh Yadav in ITA 1757/Del/2016 (order dated 09/10/2017)
4. Delhi ITAT in case of Akhilesh Aggarwal in ITA 4099/Del/2013 order dated 22/02/2016 (B bench)
5. Delhi ITAT in case of Al Faheem Meatex Pvt Ltd in ITA 6122 & 6123/Del/2015 order dated 09/06/2017 (E bench)
6. Kol ITAT in case of Sukumar Ch Sahoo in ITA 2073/Kol/2016 order dated 27/09/2017 (C bench)
7. Delhi ITAT in case of Kushal Timber (P) Ltd in ITA 578/Del/2010 order dated 21/10/2015

8. Ld. DR relied upon the order of the authorities below. But could not controvert the contentions of the Ld. Counsel for the assessee and not produced any contrary decision/judgement.

9. I have heard both the parties and perused the records, especially the Paper Book filed by the Assessee's counsel and all the case laws cited by him. I note that assessee filed his return of income on 12.3.2016 of Rs. 4,15,280/- Page No. 4 of the Paper Book with address mentioned as "A- 48 Omaxe RPS Green Valley Sector 41-42 Faridabad Haryana 121001". This case was selected for scrutiny u/s 143(2) of the Act vide notice dated 26.07.2016 issued by DCIT Circle II Hazaribagh (Page No. 6 of the Paper Book). Since assessee was regularly filing return from AY 2012-2013 onwards at Faridabad same Address so he requested that case should be

transferred to Faridabad as jurisdiction lies with Faridabad only due to which case was transferred to Faridabad AO as admitted in first para of AO order, vide order u/s 127 dated 28.03.2017 passed by PCIT Hazaribagh. For the sake of convenience, para first of the assessment order is reproduced below:-

"Return declaring income of Rs. 415280/- was e-filed by the assessee on 12.3.2016. The case was selected for scrutiny under CASS (Computer Assisted Selection Scrutiny). After taking the case into scrutiny notice under section 143(2) of the Income Tax Act (in short "Act") dated 26.07.2016 issued by the DCIT, Circle-II, Hazaribagh Faridabad to the assessee through speed post vide dispatch No. 2551 dated 26.7.2016 fixing the case for hearing on 17.8.2016. On the fixed date, assessee attended the proceeding and filed written reply wherein stated that the assessee is regularly filing the income tax return at Faridabad address only and requested to transfer his case to the Faridabad AO. After passing order u/s. 127 of the Act by the Pr. CIT, Hazaribagh vide its order Fine.CIT/HZB/Tech/ u/s. 127/2016-17/3081-87 dated 28.3.2017, the case of the assessee was transferred to this office on 30.9.2017. On receipts of case on transfer, notice u/s. 142(1) read with section 129 of the Act was issued on 14.10.2017 fixing the case for hearing on 20.7.2017. In n response to the notice issued, Sh. Dinesh Kumar Aggarwal, FCA attended the proceedings and filed written reply. Asked to furnish the rest of the information as asked for

vide u/s. 142(1) of the Act. Request for adjournment. On his request, case was adjourned to 21.8.2017.”.....

9.1 After perusing the aforesaid contents of the assessment order mentioned in para first of the said order, it is crystal clear that without any valid notice issued u/s 143(2) of the Act by Faridabad AO, impugned assessment is framed by ITO Ward 1(5) Faridabad, simply in extension to proceedings initiated by Hazaribagh DCIT Circle 2 who is admittedly not AO of assessee within meaning of section 2(7A) of the Act on date of issue of notice u/s 143(2) of the Act. So on this short count itself impugned proceedings deserves to be quashed being unsustainable in the eyes of law. I further note that the case laws cited by the Id. counsel for the assessee are applicable in the present case. However, the most direct decision of the ITAT, Delhi (E-Bench) was decided in case of Al Faheem Meatex Pvt. Ltd. vs. ACIT in ITA Nos. 6122 & 6123/Del/2015 (Ays. 2010-11 & 2011-12) vide order dated 09.6.2017 which is directly applicable in the present case. The Tribunal in the case of Al Faheem Meatex Exports Pvt Ltd (supra) vide para No. 6 has held as under:-

"6. We have carefully consider the rival contentions and perused the copies of the return filed before us by the assessee. The first paragraph of the assessment order speaks that notice under section 143(2) was first issued by the DCIT, Circle, Ghaziabad on 29.8.2011. Admittedly, the notice should have been issued on or before 30th September, 2011 and it was issue don 29.8.2011. However, the question is whether the notice was issued by the correct jurisdictional officer or not. In the present case as mentioned by the AO himself that the case was subsequently transferred to the Assessing Officer as

per the actual jurisdiction on 07/09/2012 and subsequently he issued notice under section 143(2) on 20.9.2012. From the above facts, it is apparent that first notice was issued by the DCIT, Ghaziabad on 29/08/2011, who was not having jurisdiction over the assessee. It is the legality of this notice that is required to be tested. According to the provisions of section 143 (2) of the act the notice for verifying the return of income is required to be issued by the 'assessing officer'. The assessing officer has been defined under section 2 (7A) of the act, which means the assistant Commissioner or the deputy Commissioner or assistant director or deputy director or the income tax officer who is vested with the relevant jurisdiction by the virtue of directions order issued under subsection (1) or subsection (2) of section 120 or any other provisions of the act and additional Commissioner or additional director or joint Commissioner or joint director who is directed under clause (b) of subsection (4) of that section to exercise or perform all or any of the powers and functions carried on or assigned to an assessing officer under this act. Before us, no such directions issued under section 120 (1) or (2) issued in favour of DCIT, Ghaziabad was

produced. In view of this, we are unable to hold that at that relevant time he was holding jurisdiction over the assessee. As the original jurisdiction over the assessee by the DCIT, Ghaziabad could not be established the provisions of section 127 of the act are not applicable. Further, the provisions of section 124 (3) also does not come to the rescue of the revenue because in the present case the assessee is filed return of income showing the address of Meerut and subsequently according to the assessing officer actual jurisdiction lies with him, but the impugned notice issued under section 143 (2) was issued on 29/08/2011 by DCIT, circle Ghaziabad. Therefore, it is apparent that notice under section 143 (2) which should have been issued by 30/09/2011 by the correct jurisdictional officer was not issued.”

9.2 I further note that the aforesaid Division Bench decision was duly followed by the SMC Bench, in the case of Sh. Yogesh Yadav vs. ITO passed in ITA No. 1757/Del/2016 (AY 2011-12) vide order dated 09.10.2017 being the identical facts / reasoning with the aforesaid case of Al Faheem Meatex Exports Pvt. Ltd. (Supra) and accordingly assessment framed as declared as void-ab-initio.

10. Keeping in view of the facts and circumstances of the case and respectfully following the aforesaid precedents being the identical facts of the present case, I hold the present assessment is void ab initio, hence, the

same is quashed and accordingly, the additional legal ground raised by the assessee is allowed. Since I have quashed the assessment on the legal ground itself, the other grounds on merit became academic, hence, need not be adjudicated.

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

Order pronounced on 22-11-2018.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated : 22-11-2018

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.