

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCHES (CAMP AT MEERUT))**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4501/Del./2018
(ASSESSMENT YEAR : 2013-14)**

DCIT, Circle 2, vs. Shri Nitin Rastogi,
Meerut. A – 64, Saket,
Meerut.
(PAN : AGWPR5462R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.K. Jain, Advocate
REVENUE BY : Shri Yogesh Sharma, Senior DR

Date of Hearing : 09.01.2019

Date of Order : 16.01.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, DCIT, Circle 2, Meerut (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 09.03.2018 passed by Ld. CIT (Appeals), Meerut qua the Assessment Year 2013-14 on the grounds inter alia that :-

“1. Whether in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) has erred in law and fact in quashing the assessment proceedings and treating the consequential assessment order as null and void by holding that notice u/s 143(2) issued by ITO, Ward-IV(2), Jalandhar, as legally invalid and out of jurisdiction as it has been reported by

the Assessing Officer in his scrutiny report that during the A. Y. 2009-10, the assessee had filed his return of income at Income Tax Office, Jalandhar, with the address of Jalandhar because of which the PAN of the assessee was lying in the jurisdiction of ITO, Ward-IV(2), Jalandhar, who was therefore legally correct in issuing the notice u/s 143(2) of the I. T. Act, 1961, when the case of the assessee was selected for scrutiny through CASS and hence the notice u/s 143(2) issued by ITO, Ward-IV(2), Jalandhar, cannot be held to be legally invalid as it was issued and served well within time by the Assessing Officer in whose jurisdiction the PAN of the assessee lay.

2. Whether in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) has erred in law and fact in holding the addition made by A.O. on account of restriction of trade discount on the sale of private books to 18%, as unsustainable without taking into consideration the fact that the assessee failed to give any concrete reason as to why he is selling his books to only one purchaser i.e. M/s Chitra Prakashan Ltd., when there may be some other purchaser who may be willing to buy books from the assessee at a lower trade discount.

3. Whether in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) has erred in law and fact in holding the addition made by A.O. as unsustainable ignoring the fact that the trade results of the assessee were not worth accepting as he was not maintaining any stock register since the inception of business and was selling his books to only one concern that was controlled by the father of the assessee.

4. Whether in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) has erred in law and fact in holding that the A.O. did not specifically give any opportunity to assessee rebut any adverse finding detected by him during the course of assessment proceedings ignoring the fact that the A.O. vide order sheet entry dated 07.03.2016 required the assessee to provide justification for non-maintenance of stock register and excess discount provided to a related concern from which all sales were made.

5. That in the facts and circumstances of the case, the order of the ld. Commissioner of Income Tax(A), Meerut may be set aside and that of the AO be restored.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : The assessee is into the business of publication work in the name and style of M/s. Rajluxmi Publications who is deriving income from business and interest income from other sources. During assessment proceedings, AO noticed that the assessee has not maintained stock register and has made sales to only one party i.e. M/s. Chitra Prakashan Pvt. Ltd. with a discount of 18% to 55% of the MRP. AO restricted the discount given by the assessee at 18% and thereby assessed the income of the assessee at Rs.1,38,96,710/- as against the declared income of Rs.46,72,830/-.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has deleted the addition made on account of restricting the discount to 18% by allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. The Revenue has challenged the impugned order passed by the Id. CIT (A) on legal ground that the Id. CIT (A) has erred in law in quashing the assessment proceedings as well as on merit.

6. Perusal of para 1 of the assessment order apparently goes to prove that the assessee has e-filed his return of income for the year under assessment on 07.09.2013 declaring income of Rs.46,72,830/- and his case was selected for scrutiny and notice u/s 143 (2) of the Income-tax Act, 1961 (for short 'the Act') was issued on 09.09.2014 by ITO, Ward 4 (2), Jalandhar, which was duly served upon the assessee. However, second notice u/s 143 (2) along with notice u/s 142 91) of the Act was issued to the assessee which was also served upon and assessee was represented through Shri S.K. Jain, Advocate.

7. It is also not in dispute that the assessee has filed income-tax return along with computation of income, copy of which is available at pages 1 to 10 of the paper book, giving designation of AO, Ward/Circle 2 (1), Meerut. It is also not in dispute that the assessee has been duly assessed in the preceding as well as succeeding years by AO, Ward/Circle 2 (1), Meerut and has never been assessed at Jalandhar. It is also not in dispute that AO, Jalandhar after admitting the fact that correct jurisdiction to assess the assessee lies with AO, Meerut, transferred the assessment

record to AO, Meerut, who has finally framed the assessment on 23.03.2016.

8. In the backdrop of the aforesaid undisputed facts of the case, the sole question arises for determination in this case is as to whether AO, Meerut, issued and served notice u/s 143 (2) of the Act to the assessee upto 30.09.2014 to assume the jurisdiction to framed assessment. When undisputedly the original and correct jurisdiction to frame the assessment in case of assessee was at Meerut, the jurisdiction initially assumed by AO, Jalandhar by issuing notice u/s 143 (2) dated 09.09.2014 could not have been transferred except by following the procedure lay down u/s 127 of the Act. Admittedly, no such order u/s 127 of the Act was passed by Principal CIT, Meerut and as such, jurisdiction has never been transferred to Jalandhar. So, the assessment framed by AO, Meerut on the basis of notice dated 09.09.2014 issued u/s 143 (2) is illegal, null and void i.e. without jurisdiction. AO, Meerut was required to issue notice u/s 143 (2) before 30.09.2014 whereas he has issued the notice u/s 143 (2), available at pages 17 7 18 of the paper book, on 30.07.2015 which is otherwise barred by limitation. So, assessment framed in this case without issuing a legally valid notice is not sustainable in the eyes of law.

9. Even otherwise, on merit, Id. CIT (A) has also thrashed the issue by carefully examining sale bills of sole distributor made available on the assessment record showing that the assessee has given trade discount to the sole distributor ranging from 40% to 55% and in turn, the sole distributor forwarded the discount to the shopkeeper regarding private author reference books ranging from 25% to 40% and as such, the addition made by the AO cannot be sustained.

9. In view of what has been discussed above, we find no illegality or perversity in the findings returned by the Id. CIT (A) on legal issues as well as on merits, hence appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 16th day of January, 2019.

Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER

sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated the 16th day of January, 2019
TS

Copy forwarded to:

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

AR, ITAT
NEW DELHI.