IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.2682/Del/2018
Assessment Year: 2011-12

Attar Singh, C/o Shri Sudesh Garg, Advocate, 1012, 10th Floor, Surya Kiran Building, KG Marg, New Delhi.	Vs	ITO, Ward-1(2), Gurgaon.

PAN: ASDPS1581M

ITA No.2913/Del/2018
Assessment Year: 2011-12

ITO, Ward-1(5), Gurgaon.	Vs.	Attar Singh, S/o Late Harchand, Village – Nakhraula, Tehsil-Manesar, Gurgaon (Haryana). PAN: ASDPS1581M

ITA No.2683/Del/2018
Assessment Year: 2011-12

Devender Kumar, C/o Shri Sudesh Garg, Advocate, 1012, 10th Floor, Surya Kiran Building, KG Marg, New Delhi.	Vs.	ITO, Ward-1(4), Gurgaon.

PAN: AJSPK0869N

ITA No.3112/Del/2018
Assessment Year: 2011-12

ITO, Ward-1(4), Gurgaon.	Vs .	Devender Kumar, C/o Shri Sudesh Garg, Advocate, 1012, 10th Floor, Surya Kiran Building, KG Marg, New Delhi. PAN: AJSPK0869N

ITA No.2684/Del/2018
Assessment Year: 2011-12

Parvinder Kumar, C/o Shri Sudesh Garg, Advocate, 1012, 10th Floor, Surya Kiran Building, KG Marg, New Delhi. PAN: ARVPS9806J	Vs.	ITO, Ward-3(2), Gurgaon.

ITA No.2700/Del/2018
Assessment Year: 2011-12

ITO, Ward-3(2), Gurgaon.	Vs.	Parvinder Kumar, S/o Shri Harchand, 295, MIG DDA Flats, Prasad Nagar, Phase-1, New Delhi. PAN: ARVPS9806J

(Appellant) (Respondent)

Assessee by	:	Shri D.C. Agarwal, Advocate & Shri Sudesh Garg, Advocate
Revenue by	:	Shri Sanjay Goyal, CIT, DR
Date of Hearing	:	04.07.2019
Date of Pronouncement	:	08.08.2019

ORDER

PER R.K. PANDA, AM:

The above batch of cross appeals filed by the respective assessees and the Revenue are directed against the common order dated 20th February, 2018 of the CIT(A)-1, Gurgaon, relating to assessment year 2011-12.

2. Since common issues are involved in all these appeals, therefore, these were heard together and are being disposed of by this common order, for the sake of convenience.

ITA No.2682/Del/2018 (by the assessee) & ITA No.2913/Del/2018 (by the Revenue)

3. Facts of the case, in brief, are that the assessee is an individual and derives income from 'Salary' and 'Income from other sources.' He filed his return of income on 5th March, 2013, declaring the total income at Rs.1,94,860/- which was revised to Rs.3,81,630/- on 6th March, 2013. On the basis of the information received that the assessee has entered into a transaction of sale of immovable property during the F.Y. 2010-11 for Rs.46,85,30,000/- to different parties and the land sold is situated at a distance of less than 8 kms. from the Municipal Corporation limit of Gurgaon for which the land is qualified to be a capital asset u/s 2(14) of the IT Act, 1961 and as the assessee has not shown any capital gain tax in his income-tax return, the Assessing Officer reopened the assessment by recording reasons and issued notice u/s 148 of the IT Act on 25th March, 2015. The notice was duly served on the assessee. In compliance of the said notice u/s

148, the assessee submitted that the return filed on 6th February, 2013, vide acknowledgement No.5697256900603 should be considered as return filed in response to notice u/s 148. The assessee also requested for copy of reasons for reopening of the case u/s 148 of the IT Act which was provided to the assessee.

4. The Assessing Officer issued notice u/s 142(1) along with questionnaire requiring the assessee to submit the following information:-

I. Furnish the copy of return, computation of income, balance sheet and profit and loss account of the relevant year and last two years.

II. Furnish details of properties/assets along with the sale/purchase made during the year as under: (a) Sale consideration (b) Mode of receipt of sale consideration (c) Destination of sale consideration. In case any deduction u/s 54, 54B, 54EC, 54F has been claimed, then furnish documentary evidence thereof.

III. Details of bank accounts giving name with complete address of your banks, nature of account with account numbers in which transaction relating to sales/purchase of properties have been made.

5. On the fixed date of hearing, none appeared before the Assessing Officer. However, on 12th October, 2015, the AR of the assessee raised objection to issue of notice u/s 148 stating that a notice dated 25th March, 2015 proposing to reopen the assessment for assessment year 2011-12 on 6th April, 2011 was received and another notice u/s 148 dated 16th April, 2015 received on 23rd April, 2015 for the

same assessment year. It was submitted that a notice u/s 148 cannot be issued during the pendency of any proceeding till the conclusion of the previous proceeding. Therefore, the notice issued on 16th April, 2015 is illegal. The Assessing Officer disposed of the various objections raised by the assessee by rejecting the same and issued a show cause notice asking for various details.

6. The Assessing Officer noted that the assessee along with his brothers Sh. Parvinder Kumar and Sh. Devinder Kumar (all sons of Late Sh. Harichand) and others (in total 21 persons, hereafter referred as owners), have entered into a collaboration agreement on 14th Dec 2006 with M/s Bestech India Pvt. Ltd, Gurgaon (hereafter referred as developer). The said collaboration agreement was not registered. As per the said collaboration agreement, the owners were having total of 253 Kanals, 01 Marla of land in revenue village Nakhrola, Gurgaon with their different land holdings. The owners and developer have entered into the said collaboration agreement as the owners were desirous of developing Group Housing complex or commercial/cyber over the said land. As owners were not fully equipped to execute and complete the proposed work of Group housing complex, they entered into this agreement with the developer due to his reputation/ experience /expertise and capability to obtain permission for change of land use and to obtain license from the Government for the development/construction of the said housing complex. The Assessing Officer analysed the various clauses of the collaboration agreement. He noted that the

owners issued a special power of attorney in 2006 in favour of one Shri Sunil Satija and Shri Dharmendra Bhandari, Directors of Bestech India Pvt. Ltd., nominees of the company for the purpose of representing before the Government Authorities to get the change of land use, sanction, LOI and permission for construction/development of the housing project on the said land for building, carrying out construction and other legal requirements. The owners through M/s Bestech India Pvt. Ltd., made an application on 04.01.2007 to the Government of Haryana to grant permission to construct a residential project over the said land. The Government of Haryana through the Director, Town & Country Planning has issued LOI and consequently the licence on 31.05.2008 to construct the Group housing complex on the said land. The licence was granted in the names of the land owners in collaboration with Bestech India Pvt. Ltd. subject to the condition that the licensee will not give any advertisement for the sale of space before the approval of layout/building plan. On going through the copy of account of the assessee with M/s Bestech India Pvt. Ltd., it is noticed that he has received a total payment of Rs.15,61,76,676/-. Subsequently, the assessee along with his brothers Shri Devender Singh and Shri Parvinder Kumar, has executed/registered sale deed in respect of 20 Kanals (out of above land) on 28th February, 2011 for a total consideration of Rs.46,85,30,000/- in favour of M/s Bestech India Pvt. Ltd. In the said sale deed, there is a reference of above collaboration agreement dated 14th December, 2006 vide which the owners were having share of 35% out of the saleable area. It has further been mentioned that they are now not interested in

obtaining duly constructed space of 35% and wanted Bestech to purchase the above land along with all rights accrued to them by virtue of above collaboration.

7. The Assessing Officer observed that as per the statement of the assessee, he filed his return of income u/s 139 on 6th March, 2013 for assessment year 2011-12. However, the assessee has not shown any income from the above transaction of receipt of Rs.15,61,76,676/- from M/s Bestech India Pvt. Ltd. on account of sale of space to the extent of his share in the residential group housing project. Therefore, the assessee is liable to explain as to why the income to the tune of Rs.15,61,76,676/- should not be charged to tax. Rejecting the various explanations given by the assessee, the Assessing Officer brought to tax an amount of Rs.15,28,82,122/- under the head 'Business or profession' and an amount of Rs.81,59,714/- as accrued long-term capital gain. The relevant observations of the Assessing Officer from para 4 onwards read as under:-

> "4. In view of these facts the assessee was asked to explain vide order sheet entry dated 12.10.2015 and letter dated 23.11.2015 as to why income accrued/earned on this transaction should not be assessed as income under the head business/profession. In response of the same, there was no submission made the assessee or the AR.
>
> In view of the detailed facts and reason as above, it is clear that the land owners including the assessee converted their land holding collectibly with the help of developer to develop the same as constructed space (Units/Apartments) where the cost/market of each unit depends on various parameters as discussed above. The land owners were facing the risk and rewards involved w.r.t. the market condition in respect of potential sale consideration of the units (reward in case of appreciation and risk if there is depression in the rates of apartments depending upon market conditions). The owners including the assessee have taken a series of activities like:
>
> • Entering into collaboration with a reputed builder.

• Putting the sale consideration in terms of 35% share in the space.

• Getting licence in their names for CLU to construct/develop a residential housing project on the said land.

• Intent of maximization of profit by intention of selling the space as units.

• By putting various conditions in the collaboration agreement upon the developer for speedy / efficient execution of the project to get the constructed space.

• The developer was used due to his brand, experience, expertise (as mentioned on page 2 of the collaboration agreement).

• The developer was used for assisting the owners to get the licence from the Government, construction of project at the cost of the developer

• All three factors have helped the assessee / owners to maximize their sale proceeds.

Therefore, on the composite analysis of the facts it is clear that the assessee has entered into the transaction of converting his individual land parcel along with other owners collectibly into stock in trade to be developed/constructed as residential housing project to be sold in differed units (as stock in trade) which is an adventure in the nature of trade. Therefore, income of the assessee on this transaction as accrued is assessed as income under the head business/profession.

It is also worthwhile mentioning here that as per the report of Sub-Registrar, Manesar, the said land is situated at a distance of mere 3 km from the notified distance from the MC limits of Gurgaon.

5. In view of the above, the income from Capital Gains and Income from business of the assessee for the A.Y. 2011-12 is as under:

Area of land of the assessee	=	11 Kanal 3 marla (1/3rd of 33 kanal 9 marla)
Sales Consideration u/s 50C as on 31.05.2008	=	Rs. 83,62,500/- (Sales Consideration @ Rs. 60,00,000/- per acre in view of the verbal field enquiries)
Less :		
Indexed cost of acquisition @ Rs. 20,000/- per acre	=	Rs.34,843 * 582/100

= Rs.2,02,786/-

(in the absence of complete details, the land is assumed to be belonging to the assessee due to inheritance and the cost as on 1/4/81 is taken @ Rs. 25,000/- per acre)

Accrued LTCG = Rs. 81,59,714/-

Total sale consideration = 16,12,44,622/- (as submitted by the assessee)
Less:-
Cost of Stock in trade = 83,62,500/-

Income under the head business/ Profession = Rs.15,28,82,122/-."

8. The Assessing Officer accordingly determined the total income of the assessee at Rs.16,14,23,466/- as against the returned income of Rs.3,81,630/-.

9. Before CIT(A), the assessee, apart from challenging the addition on account of long-term capital gain and income from business and profession, challenged the validity of reopening of the assessment on account of jurisdiction. However, the ld.CIT(A) was not fully satisfied with the arguments advance by the assessee. So far as the treatment of the income as adventure in the nature of trade is concerned, the ld.CIT(A) held that the profits arisen to the assessee on account of transfer of land, vide sale deed dated 28th February, 2011 are taxable as long-term capital gain. He, however, rejected the arguments advanced by the assessee challenging the validity of reopening as well as the validity of jurisdiction by the Assessing Officer.

10. So far as the issue relating to validity of jurisdiction is concerned, it was argued before the CIT(A) that the assessee was filing his return with the ITO,

Ward 40(3), New Delhi and has never requested for transfer of jurisdiction to Gurgaon. A copy of the submissions of the assessee was forwarded to the Assessing Officer. The Assessing Officer, vide his report dated 12th September, 2016, submitted that the assessee himself had mentioned the address in the ITR as Village-Nakhraula, Tehsil Manesar, Gurgaon. The Assessing Officer reported that this address falls under the territorial jurisdiction of Gurgaon and, as such, the Assessing Officer, Gurgaon was vested with the jurisdiction of the assessee as per section 124 of the IT Act. The Assessing Officer further submitted that the assessee had not raised any objection against the jurisdiction during the assessment proceedings.

11. Based on the arguments advanced by the assessee and the report of the Assessing Officer, the ld.CIT(A) rejected the claim of the assessee challenging the validity of jurisdiction by the Assessing Officer over the assessee. He noted that section 246A of the IT Act, 1961 provides the issues against which an appeal can be filed before the CIT(A). Since the orders passed u/s 120 to 127 are clearly not appearing in section 246A, therefore, the same is not appealable. For the above proposition, he relied on the decision of the Hon'ble Allahabad High Court in the case of *CIT vs. British India Corporation Ltd., 337 ITR 64*. He further noted that during the assessment proceedings, the assessee had never raised any such objection. According to the ld.CIT(A), as per section 124(3)(a), no person can challenge the jurisdiction after one month from the date of service of notice

u/s 143(2) and 142(1). Relying on various decisions, he held that jurisdiction cannot be called in question by the assessee after the expiry of one month from the date of service of notice. Further, according to the ld.CIT(A), even in a case where jurisdiction is irregularly exercised, the assessee can be said to have waived the objection regarding jurisdiction if such assessee has participated in the proceedings. For the above proposition, he relied on the decision of the Hon'ble Punjab & Haryana High Court in the case of *CWT vs. Siri Paul Oswal (2007) 293 ITR 273*. He further noted that as per the report of the Assessing Officer, the address mentioned by the assessee in the return filed by him was Gurgaon address and, as such, there was no mistake of the Assessing Officer at Gurgaon in initiating the proceedings u/s 148. He accordingly upheld the validity of jurisdiction by the Assessing Officer of Gurgaon.

12. So far as the validity of the reopening of the assessment on the basis of assumptions and presumptions are concerned, he also rejected the same on the ground that the Assessing Officer had specific information with regard to sale of land by the assessee along with his two brothers for which each of the brothers had received consideration of Rs.16,10,57,231/-. The Assessing Officer had verified this information with the assessment records and noted that no income from these transactions had been shown by the assessee in the return of income filed. The information received by the Assessing Officer was specific and precise and there was no ambiguity about the information received. Further, the

Assessing Officer had applied his mind to the information received by verifying the assessment records and observing that no income from sale transaction had been shown by the assessee in the return of income filed by him. Relying on various decisions, the ld.CIT(A) upheld the action of the Assessing Officer in reopening of the assessment. He also rejected the ground raised by the assessee challenging the completion of the assessment u/s 143(3) without service of notice u/s 148 and without providing sufficient opportunity to the assessee. So far as the addition on merit is concerned, the ld.CIT(A) upheld the addition made by the Assessing Officer. He, however, treated the entire sale consideration as long-term capital gain after considering the cost of acquisition as computed by the Assessing Officer @ Rs.20,000/- per acre which comes to Rs.2,02,786/-. The ld.CIT(A) directed that the long-term capital gain be adopted at Rs.16,10,41,866/-. The ld.CIT(A) also denied the benefit of deduction u/s 54B and 54F on the ground that the assessee could not substantiate with evidence to show that he has made investment in construction of house property within the prescribed time or that he has purchased agricultural land in his own name for claiming deduction u/s 54B.

13. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

> "1. The Ld. CIT (A) has erred on facts and in law in upholding the action of issuing notice under Section 148 of the Income Tax Act, 1961 by ITO Ward 1(2), Gurgaon as he was not in possession of assessment record related to the appellant for the reason that the appellant was assessed at Delhi, being a Delhi Police employee and had filed the return of income with ITO, Ward 40(3), Delhi. Ld CIT (A) has further erred in not quashing the re-

assessment order passed u/s 143(3)/147 of the Income Tax Act, 1961 in consequence of the same.

2. The Ld. CIT (A) has erred on facts and in law in upholding assumption of jurisdiction by the ITO Ward 1(2), Gurgaon in gross violation of mandatory provisions of Section 127 of the Income Tax Act, 1961 in spite of being fully aware that the appellant was assessed in a different commissioner's jurisdiction at Delhi and no order by the aforesaid commissioner u/s 127 of the Act was passed. Ld CIT (A) has further erred in not quashing the re-assessment order passed u/s 143(3)/147 of the Income Tax Act, 1961 in consequence of the illegal assumption of jurisdiction.

3. The Ld. CIT (A) has erred on facts and in law in upholding the mechanical reopening of the assessment by ITO Ward 1(2), Gurgaon purely on assumptions and presumptions without satisfying himself with the necessary conditions for reopening of assessments.

4. Without prejudice to the other grounds of appeal the Ld. CIT (A) has erred on facts and in law in holding that the collaboration agreement dated 14.12.2006 was not transfer within the meaning of Section 2(47) of the Income Tax Act, 1961 even though the appellant had, among others, handed over possession of the land, executed irrevocable power of attorney, irrevocably transferred development, sale and third party encumbrance rights to the developer and in spite of the fact that the aforesaid agreement was never repudiated by either of the party and the final sale agreement was culmination of the same agreement.

5. The Ld. CIT (A) has erred on facts and in law in holding that the land transferred was a capital asset and not an agriculture land ignoring the fact that it was an ancestral land on which agricultural activities were done by the appellant/ancestors for ages, it was shown as agriculture land in revenue records and stamp duty was charged on the transfer of this land treating it to be an agriculture land.

6. Without prejudice to the other grounds of appeal the Ld. CIT (A) has erred on facts and in law in assuming value of the land at the rate of Rs. 25,000/- per acre as on 01.04.1981 as taken by the AO.

7. Without prejudice to the other grounds of appeal the Ld. CIT (A) has erred on facts and in law in denying the benefit of deduction u/s 54B and 54F of the Income Tax Act, 1961 on account of investments made in the agricultural land/residential house eligible for the aforesaid deductions.

8. The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter and modify any of the grounds of appeal."

14. The ld. counsel for the assessee strongly challenged the order of the CIT(A) in rejecting the claim of the assessee challenging the validity of jurisdiction by the Assessing Officer. He submitted that all the three assessees are in employment of Delhi Police and they sold their agricultural land to M/s Bestech India (P) Ltd. for a sum of Rs.46,80,30,000/- and each person got sale consideration of Rs.15,61,76,667/- which they claimed to be exempt from tax being the sale of agricultural land. He submitted that the Assessing Officer, Gurgaon issued notice u/s 148, rejected the objections and made assessment treating the activity of sale of agricultural land by the assessee partly as capital gain upto the date of conversion into stock-in-trade and, thereafter as adventure in the nature of trade which was taxed u/s 28. The ld.CIT(A), on the other hand, taxed the entire surplus under the head 'Capital gains' on the ground that the land is situated within 8 Kms of Municipal limits.

15. The ld. counsel, referring to page 152 of the paper book, submitted that the assessee has been regularly filing his return of income with Assessing Officer, Delhi and, hence, the Assessing Officer Delhi had jurisdiction over him. He is an employee of Delhi Police receiving salary from Delhi Police, has official residence in Delhi at PS, Dwarka-Sector-9, South West District, New Delhi. Referring to page 253, he submitted that his PAN is linked with ITO, Ward 64(3), Delhi which was earlier ITO, Ward 40(3). Referring to the reply from the CPIO obtained under section 6(3) of the RTI Act, he submitted that his PAN is linked

with ITO, Ward 64(3). There is no transfer of jurisdiction u/s 127 from the Assessing Officer of Delhi to Assessing Officer of Gurgaon at the time of issuance of notice u/s 148. Referring to Form No.16 issued by the employer and the income-tax returns for different assessment years filed in paper book, he submitted that the Assessing Officer, Gurgaon lacked inherent jurisdiction over the assessee.

16. The ld. counsel for the assessee submitted that the fact that the jurisdiction over the assessee was with the Assessing Officer of Delhi was known to the Assessing Officer of Gurgaon before issue of notice u/s 148. Referring to page 133 of the paper book, he submitted that the assessee, vide letter dated 25th February, 2013 and vide another letter dated 14th March, 2013, copy of which is placed at page 135 of the paper book, submitted that the ITO (Intelligence) sought to verify from the assessee about the transaction of sale of immovable property. He was intimated, vide letter dated 15th March, 2013 that the assessee had filed income-tax return for the concerned year. Referring to page 141 and 142 of the paper book, he submitted that the Assessing Officer, Gurgaon, was intimated in response to notice u/s 148 issued by him on 25th March, 2015 that the original return was filed on 6th March, 2013 vide acknowledgement No.569725690060313. He submitted that the PAN of the assessee was available with the Assessing Officer of Gurgaon who could have verified as to the place where PAN is linked. He submitted that as per the information received under

RTI, the PAN of the assessee was transferred on 22nd April, 2016. Similarly, in the case of Shri Devender Kumar, it was transferred on 11th September, 2017 and in case of Shri Parvinder Kumar, it was transferred on 19th March, 2015. However, the notice u/s 148 in all the three cases were issued on 25th March, 2015, 2nd September, 2013 and 2nd September, 2013, respectively. Referring to page 148 and 149 of the paper book, he submitted that while disposing of the objection, vide order dated 30.11.2015, the Assessing Officer, Gurgaon had examined the ITR. Once he had examined the income-tax return, he would have also seen that the ITO mentioned therein is ITO, Ward 40(3), Delhi and, therefore, he had no jurisdiction to proceed with notice u/s 148. Referring to page 137 of the paper book, he submitted that in the order sheet dated 25th March, 2015, the Assessing Officer had clearly mentioned that the fact of sale of agricultural land had not been disclosed in the return of income filed by the assessee. This clearly shows that the return filed with the Assessing Officer, Ward 40(3), Delhi was before him and after examination of the same he inferred that the sale of agricultural land had not been declared.

17. He submitted that even as per section 120, the Assessing Officer, Gurgaon could not have jurisdiction over the assessee for the following reasons:-

(i) As per section 120 of the Income Tax Act the Board may assign jurisdiction to AO on the basis of territorial area(Sub section 3).

(ii) As per section 124(1) of the Act where AO has been vested with jurisdiction over area then within the limit of such area the AO will have jurisdiction over a person who carries on business or profession in that area and where such business is carried on in more places then, if the principal place of business or profession is situated in that area.

(iii) The AO will have jurisdiction over a person if he is residing within the area.

(iv) AO Gurgaon could not have natural jurisdiction over the assessee as they are in employment in Delhi Police and are residing in Delhi. Further they are not carrying out any business or profession in Gurgaon.

18. Referring to the provisions of section 124(2), he submitted that Assessing Officer Gurgaon did not invoke the said section which is mandatory and section 124(2) of the Act will get precedence over section 124(3) of the Act. For the above proposition he relied on the decision of the Hon'ble Delhi High Court in the case of *Kunjimal & Sons v. CIT (1982) 138 ITR 391 (Del)*. He accordingly submitted that in spite of the assessee having not objected u/s 124(3) although the assessee is not legally required to do so, the assumption of jurisdiction by the Assessing Officer without taking recourse to section 124(2) and, thereafter, issuance of notice u/s 148 is bad in law.

19. So far as the allegation of the Revenue that the assessee has not raised an objection u/s 124(3) is concerned, he submitted that the said section is applicable

for voluntary returns u/s 139(1) or u/s 115WD filed by the assessee and section 124(3)(b) is applicable when such return is not filed by the assessee. It is not applicable in respect of the return to be filed in response to notice u/s 148. For the above proposition, he relied on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Lalitkumar Bardia (2017) 84 taxmann.com 213 (Bombay). In any case, he submitted that Shri Attar Singh has objected the above jurisdiction vide his letter dated 30.11.2015, copy placed at page 146 of the paper book and which was disposed of by the Assessing Officer vide his order dated 30.11.2015, copy of which is placed at pages 148 and 149 of the paper book. So far as the allegation of the CIT(A) that the assessee has not raised objection about the jurisdiction within the prescribed period of one month is concerned, he submitted that it is only in case of voluntary return filed by the assessee that the dispute over jurisdiction has to be raised within time allowed in section 124(3). However, in case of return filed in response to notice u/s 148, the time limit for raising objections cannot be placed by virtue of section 124(3). He submitted that assumption of jurisdiction over the assessee, regularly assessed elsewhere by a different Assessing Officer without there being a valid transfer of jurisdiction over the case of the assessee u/s 127 will amount to lack of jurisdiction. For the above proposition, he relied on the decision of Hon'ble Supreme Court in the case of *Indian Bank vs. Manilal Govindji Khona (2015) 3 SCC 712*. He submitted that lack of satisfaction of jurisdictional fact can never confer jurisdiction and an objection to it can be raised at any time even in appeal proceedings. The mere

fact that no objection is taken before the Assessing Officer would not by itself bestow jurisdiction to the Assessing Officer. Such an objection can be taken in appeal also. For the above proposition, he relied on the decision of the Hon'ble Bombay High Court in the case of Mavany Brothers vs. CIT (2015) 62 taxmann.com 50 (Bombay).

19.1 So far as the allegation of the CIT(A) that by participating in the assessment proceedings, the assessee has apparently given a consent to the jurisdiction of the Assessing Officer, Gurgaon is concerned, he submitted that mere participation in proceedings or acquiescence would not confer jurisdiction upon Assessing Officer who otherwise was not Assessing Officer of the assessee. For the above proposition, he relied on the decision of the Hon'ble Bombay High Court in the case of *CIT vs. Lalitkumar Bardia (2017) 84 taxmann.com 213 (Bombay).* Referring to the decision of the Hon'ble Supreme Court in the case of *Kanwar Singh Saini vs. High Court of Delhi (2012) 4 SCC 307 (SC),* he submitted that the Hon'ble Apex Court in the said decision has held that 'there can be no dispute between settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court.' He also relied on various other decisions for this proposition.

20. The ld. counsel vehemently argued that notice u/s 148 can be issued by the Assessing Officer having jurisdiction over the assessee who is regularly assessed to tax. For the above proposition, he relied on the following decisions:-

(i) Lt. Col. Paramjit Singh v. CIT (1996) 89 taxman 536 (P&H);

(ii) Dushyant Kumar Jain vs. DCIT (2016) 66 taxmann.com 126 (Delhi);

(iii) M.I. Builders (P) Ltd. vs. ITO (2008) 115 ITD 419 (Lucknow); and

(iv) Jindal Photo Films Ltd. vs. DCIT (1998) 234 ITR 170 (Del).

21. Referring to the various decisions relied on by the CIT(A) he submitted that all those decisions are distinguishable and not applicable to the facts of the present case. He submitted that on the facts of the present case the decision of the Hon'ble Punjab & Haryana High Court in the case of *Lt. Col. Paramjit Singh (supra)* which is the jurisdictional High Court will be applicable. In this case, the facts were that the assessee's original assessment was completed at Pune. Thereafter, he shifted to Jalandhar, but his assessment records were not transferred to the Assessing Officer of Jalandhar by passing an order u/s 127. On the basis of a complaint received from assessee's relatives, the Assessing Officer at Jalandhar initiated reassessment proceedings for issuing notice u/s 148. The Hon'ble Punjab & Haryana High Court held that the Assessing Officer at Jalandhar had no jurisdiction to reopen the assessment and, therefore, notice issued u/s 148 was liable to be quashed. He accordingly submitted that since the notice u/s 148 has been issued by an officer not having jurisdiction over the

assessee, therefore, the entire reassessment proceedings should be quashed. He also relied on the following decisions:-

i) Sant Baba Mohan Singh vs. CIT (1973) 90 ITR 197 (All.);

ii) P.V. Doshi vs. CIT (1978) 113 ITR 22 (Guj.);

iii) Sitaram Rathore v. CIT (1994) 77 Taxman 265 (MP);

iv) Mrs. Uma Loomba v. CIT (2000) 108 Taxman 232 (Del);

v) Abhishek Jain vs. ITO (2018) 94 taxmann.com 355 (Del);

vi) Bhagwan Devi Saraogi v. ITO (1979) 118 ITR 906;

vii) CIT v. Poonam Chand Surana (2014) 41 taxmann.com 330 (Raj.);

viii) Dushyant Kumar Jain v. DCIT (2016) 66 taxmann.com 213 (Bom);

ix) CIT v. M.I. Builders (P) Ltd. (2014) 44 taxmann.com 360 (All.);

x) Raza Textiles Ltd. v. ITO (1973) 87 ITR 539 (SC); and

xi) Smt. Smriti Kedia vs. UOI (2012) 20 taxmann.com 426 (Cal).

22. The ld. DR, on the other hand, strongly relied on the order of the CIT(A). He submitted that in the returns of income filed by the assessee, he had consistently shown his address of Gurgaon and in the ITR filed for the relevant assessment year 2011-12, the address shown is of Tehsil Manesar, Gurgaon, Haryana. Further, the copies of ITRs for assessment year 2012-13 and 2013-14 which are of subsequent assessment years and the assessment year under consideration and which are being extracted from the department's online data base also shows that even in the subsequent ITRs the address shown is of Tehsil

Manesar. Therefore, it is evident that the address is consistently of Gurgaon and not of Delhi. So far as the argument of the ld. counsel for the assessee that after issuing notice u/s 148 dated 25th March, 2015, the assessee was issued another notice u/s 148 dated 16th April, 2015 which was received by the assessee on 23rd April, 2015 and, therefore, the notice u/s 148 dated 16th April, 2015 is illegal is concerned, he submitted that the assessee himself has admitted that he had received notice u/s 148 sent at Gurgaon address. This establishes the fact that he was residing at the address provided in the notices u/s 148 issued by the Assessing Officer and, therefore, the claim of the assessee that he was not the resident of Gurgaon, but, Delhi alone is without any basis. He submitted that the assessee was very much a resident of Gurgaon not only on the basis of address shown by him in the ITR, but, he has duly received the notice sent by the Assessing Officer at the Gurgaon address. Similarly, there is no illegality caused by the Assessing Officer by issuing the second notice and, at the most, the second notice may be treated as infructuous. Referring to the provisions of section 124(3), he submitted that no person can challenge the jurisdiction of the Assessing Officer after one month from the date of service of notice u/s 143(2) and 142(1). Further, the assessee, during the course of assessment proceedings regularly appeared before the Assessing Officer and till the completion of the assessment, the jurisdiction was never challenged.

23. Referring to the decision of the Hon'ble Delhi High Court in the case of *Abhishek Jain vs. ITO (2018) 94 taxmann.com 355 (Delhi),* he submitted that the

Hon'ble Delhi High Court in the said decision has held that in terms of section 124(3)(b) the jurisdiction of an Assessing Officer cannot be called in question by an assessee after expiry of one month from the date on which he was served with a notice for reopening of assessment u/s 148. He accordingly submitted that since, in the case of the assessee, the jurisdiction assumed by the ITO, Gurgaon was not challenged within the time limit provided in section 124(3) the jurisdiction of the Assessing Officer over the assessee cannot be called in question. He accordingly submitted that the ld.CIT(A) has correctly held that the ITO, Gurgaon has correctly exercised jurisdiction in framing the assessment. So far as the ground raised by the assessee that the Assessing Officer had reopened the case in a mechanical manner is concerned, he submitted that the return of the assessee was processed u/s 143(1) and no assessment was carried out. Further, the reopening was made within four years from the end of the assessment year under consideration. Referring to the decision of the Delhi High court in the case of *CIT vs. S.S. Ahluwalia (2014) 46 taxmann.com 169*, he submitted that the Hon'ble High Court in the said decision has held that in case the assessee shifts his residence or place of business or work, etc., the Assessing Officer of the place where the assessee has shifted or otherwise will have jurisdiction and it is not necessary that in such case an order u/s 127 is required to be passed. Further, the Hon'ble High Court in the said decision has held that an assessment order passed without making reference to Commissioner u/s 124 is not a nullity for want of jurisdiction but it results in an irregularity which can be rectified by order of remit

and directing Assessing Officer to continue with proceedings from stage where error had occurred. Referring to the decision of the Hon'ble Delhi High Court in the case of *Indu Lala Rangwala vs. DCIT (2016) 384 ITR 337*, he submitted that the Hon'ble High Court in the said decision has held that an intimation issued u/s 143(1) can be subjected to proceedings for reopening so long as the ingredients of section 147 are fulfilled. An intimation u/s 143(1)(a) cannot be treated to be an order of assessment. There being no assessment u/s 143(1)(a), the question of change of opinion does not arise. The ld. DR, apart from supporting the order of the CIT(A) and the various decisions relied by him therein also relied on the following decisions:-

i) Raymonds Woollen Mills Ltd. vs. ITO & Ors., 236 ITR 34;

ii) Vasudev Fatandas Vaswani v. ITO,, 2018-TIOL-2305-HC-AHM-IT;

iii) PCIT v. Paramount Communication (P) Ltd., 2017-TIOL-253-SC-IT;

iv) PCIT vs. Paramount Communication (P) Ltd. (2017) 79 taxmann.com 409 (Delhi), 392 ITR 444 (Delhi);

v) Krishna Developers & Co. v. DCIT (2018) 91 taxmann.com 306 (SC);

vi) Vasudev Fatandas Vaswani v. ITO (2018-TIOL-2305-HC-AHM-IT);

vii) Mohammedally Noorbhoy Bandukwala Trust vs. ITO (2017-TIOL-341-HC-MUM-IT);

viii) Aravali Infrapower Ltd. vs. DCIT (2017-TIOL-42-SC-IT),

ix) Aravali Infrapower Ltd. vs. DCIT (2017) 390 ITR 456 (Del);

x) Dr. Chhangur Rai vs. CIT (2017-TIOL-660-HC-ALL-IT);

xi) Amsa India Pvt. Ltd. vs. CIT (2017-TIOL-603-HC-DEL-IT);

24. The ld. counsel, in his rejoinder, submitted that the decisions relied on by the ld. DR in the case of *Abhishek Jain (supra)* and in the case of *S.S. Ahluwalia (supra)* are not applicable. First of all, the A.O. falling under the jurisdiction of Punjab & Haryana High Court is bound by the decision of the Hon'ble Punjab & Haryana High Court in the case of *Lt. Col. Paramjit Singh (supra)* wherein it has been held that if the assessment proceedings already completed by an Assessing Officer are to be reopened or if the income for the relevant assessment year has to be reassessed, it is the ITO who assessed the same in the first instance has the jurisdiction to proceed in the matter u/s 147 read with section 148 unless the case has been transferred by a competent authority to another Assessing Officer u/s 127 and, in that event, the latter will have jurisdiction to proceed. Thus, in the absence of any transfer order, no Assessing Officer other than the one who initiated the proceedings or completed the assessment, shall have the jurisdiction to continue with the proceedings or even to reopen a concluded assessment. Further, in the case of Abhishek Jain (supra), the fact that the assessee was regularly assessed in Delhi was not intimated to the Assessing Officer of Noida whereas in the case of the assessee it was duly submitted before the Assessing Officer that he is filing the return of income at Delhi. In the case of Abhishek Jain, the assessee has not mentioned his PAN whereas in the present case, the PAN of the assessee was very much available before the Assessing Officer. In

the case of Abhishek Jain, in the KYC documents, the address of the assessee was in Noida whereas in the instant case it was in the knowledge of the Assessing Officer that the assessee was employed with Delhi Police. In the case of Abhishek Jain, the Hon'ble High Court held that it was mala fide on the part of the assessee not to intimate prior to the limitation period i.e., 31.03.2016 and was waiting for time limit to expire whereas in the case of the assessee, ample time was available before the Assessing Officer for verification and consequential issue of notice by the Assessing Officer of current jurisdiction. Further, no mala fide intention can be attributed to the present assessee i.e., Mr. Attar Singh. Even in the case of other two assessees the time limit for issue of notice u/s 143(2) was available as returns were filed on 6th March, 2013 by both the assessees. In the case of Abhishek Jain, ITO, Noida, had no knowledge that the assessee was regularly assessed with the ITO, Delhi and after knowing that he had transferred the case to ITO, Delhi. However, in the present case, even after knowing that the assessee is regularly assessed with the Assessing Officer of Delhi, the Assessing Officer Gurgaon chose to issue notice u/s 148 and also completed the assessment even though the time period for issuing notice u/s 148 by the Assessing Officer of Delhi had not expired.

25. Similarly, so far as the reliance on the case of S.S. Ahluwalia (supra) is concerned, he submitted that here the assessee was an IAS officer of Nagaland cadre who was compulsorily retired in 1993. During the period 1971-72 to 1978-

79, he was filing his return of income at Dimapur, Nagaland. In July 1978 he was posted to Delhi on deputation in the Ministry of Home Affairs, a position which he continued to hold till 1984. The income-tax returns for the assessment years 1980-81 to 1983-84 were filed at Delhi with the ITO, Salary Circle. The return for the assessment year 1984-85 was filed by the Respondent at Dimapur, Nagaland on 8th August, 1985. The return was processed on 31st March, 1987 u/s 143(1) of the IT Act. A search by the CBI took place on 27th March, 1987 on the basis of certain allegations that he has acquired certain commercial properties at Delhi apart from huge unaccounted/undisclosed deposits in the form of FD receipts which were in the name of the assessee and his family members. The Assessing Officer at Delhi issued notice u/s 148 on 26th June, 1987 in respect of assessment year 1984-85, 1985-86, 1986-87 and 1987-88. Further, in that case, there was exchange of correspondence between the Assessing Officer at Delhi and ITO, Dimapur and the ITO Dimapur considered and accepted that for the assessment year 1986-87 the Assessing Officer at Delhi had jurisdiction to initiate and complete the assessment proceedings. Further, an order u/s 127 of the Act was passed on 14th August, 1995. However, in the instant case, despite the Assessing Officer of Gurgaon knowing that the assessee was filing his return of income at Delhi and was posted in Delhi Police, did not intimate the Assessing Officer of Delhi and himself proceeded to complete the assessment after reopening of the same despite ample time was available with him for completion

of the assessment. He accordingly submitted that the decisions relied on by the ld. DR are not applicable to the facts of the present case.

26. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the plethora of decisions relied on by both the sides. We find the assessee in the instant case is an employee of Delhi Police, receiving salary from Delhi Police and has official residence in Delhi at PS, Dwarka-Sector-9, South West District, New Delhi. A perusal of the reply received under the RTI Act vide F.No. Pr.CIT-22/RTI/2018-19/10356 Dated 3rd January, 2019 shows that the PAN is linked to ITO, Ward 64(3), Delhi with PAN No.ASDPS1581M. As per the said RTI application, the aforesaid PAN was transferred from ITO, Ward 64(3) Delhi under the charge of PCIT, Gurgaon on 26th April, 2016. We find the Assessing Officer, on the basis of the information received that the assessee with his two brothers has sold his agricultural land to M/s Bestech India Pvt. Ltd. for a sum of Rs.46,85,30,000/-, reopened the assessment after recording reasons and by issuing notice u/s 148 of the Act. A perusal of the assessment order shows that the assessee from the very beginning was challenging the assumption of jurisdiction by the Assessing Officer. Even before the CIT(A), the assessee has challenged the assumption of jurisdiction by the Assessing Officer. However, the ld.CIT(A) rejected the same on the ground that the order u/s 120/127 are not appealable u/s 246A. Further, the assessee has

not raised any objection u/s 124(3)(a) to the transfer within one month from the date of service of notice u/s 143(2)/142(1). While doing so, he has relied on the decision of the Punjab & Haryana High Court in the case of *Smt. Jaswinder Kaur Kooner vs. CIT (A) (2007) 291 ITR 80* and in the case of *Subhash Chander v. CIT (2008) 166 Taxman 307* and the decision of the Hon'ble Allahabad High Court in the case of *CIT vs. Sohal Lal Sewa Ram Jaggi (2009) 222 CTR 412* and various other decisions. He further held that where the jurisdiction has irregularly been exercised and the assessee participated in the proceedings, the assessee can be said to have waived the objection regarding jurisdiction. Further, the assessee has mentioned his address of Gurgaon in the return of income. The ld. CIT(A) accordingly held that the Assessing Officer has rightly assumed jurisdiction over the assessee and there is no irregularity or illegality.

27. It is the submission of the ld. counsel for the assessee that the Assessing Officer, Gurgaon was intimated vide letter dated 4th May, 2015 that the original return was filed on 6th March, 2013 with the Assessing Officer of Delhi and the Assessing Officer, Gurgaon could have verified as to which place the PAN is linked with. It is also the argument of the ld. counsel for the assessee that the case of the assessee was not transferred from the Assessing Officer of Delhi to Assessing Officer of Gurgaon by passing an order u/s 127 that the Assessing Officer, Gurgaon did not invoke the provisions of section 124(2) which is mandatory and which will get precedence over section 124(3). It is also the

argument of the ld. counsel for the assessee that the assessee is not required to raise any objection u/s 124(3) and such objection can be raised at any time. Similarly, it is also his argument that the issue of lack of jurisdiction can be raised at any stage and even in appeal proceedings and the jurisdiction cannot be conferred by consent or waiver and notice u/s 148 can be issued only by the Assessing Officer having jurisdiction over the assessee who is regularly assessed to tax.

28. We find some force in the above argument of the ld. counsel for the assessee. We find the Hon'ble Punjab & Haryana High court in the case of Lt. Col. Paramjit Singh (supra) while deciding an identical issue has observed as under:-

> "4. We have heard counsel for. the parties and in the normal course we would have accepted the preliminary objection raised by the Department and directed the petitioner to raise all the pleas before the Income-tax Officer, but keeping in view the fact that the present is a case where there is a total lack of jurisdiction in respondent No. 2, we are interfering in the matter. There is no gainsaying the fact that the petitioner was posted at Pune when he was in the service of the Army and for the assessment year in question he filed his return of income with the Income-tax Officer there and the same stands assessed. The proceedings had been completed and the tax found payable had been deposited/accounted for. Thereafter, if the assessment proceedings are to be reopened or if the income for the relevant assessment year is to be reassessed, it is the Income-tax Officer who assessed the same in the first instance alone has the jurisdiction to proceed in the matter under Section 147 read with Section 148 of the Act unless the case has been transferred by a competent authority to another Assessing Officer under Section 127 of the Act and in that event the latter will have jurisdiction to proceed. Section 127 of the Act which is relevant for our purpose is reproduced hereunder for facility of reference :
>
> "127. Power to transfer cases.--(1) The Director-General or Chief Commissioner or Commissioner may, after giving, the assessee a reasonable

opportunity of being heard in the matter, wherever it is possible to do so, and after recording, his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director-General or Chief Commissioner or Commissioner,--

(a) where the Directors-General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director-General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order ;

(b) where the Directors-General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring, the case may, similarly, be passed by the Board or any such Director-General or Chief Commissioner or Commissioner as the Board, may by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in Sub-section (1) or Sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under Sub-section (1) or Sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.--In Section 120 and this section, the word 'case', in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

5. Under the aforesaid provision, the Director-General or Chief Commissioner or Commissioner can transfer any case at any stage of the proceedings from one Assessing Officer subordinate to him to another. If

both the Assessing Officers are not subordinate to the same Director-General or Chief Commissioner or Commissioner, then the transfer can be made on the respective Directors-General or Chief Commissioners or Commissioners agreeing and in the event of disagreement, by the Board or any such Director-General or Chief Commissioner or Commissioner authorised by it. The section expressly provides that on such a transfer it is not necessary to reissue any notice when the same has already been issued by the Assessing Officer from whom the case is transferred and the Assessing Officer to whom the case is transferred is entitled to proceed from the stage at which he receives the case from his predecessor. It is also provided that wherever it is possible to do so, the assessee shall be given a reasonable opportunity of being heard before an order of transfer is passed and that the competent authority will record his reasons for the transfer. The Explanation to Section 127, makes it clear that once an order of transfer is made under the section, all pending proceedings for different years are transferred and the Assessing Officer to whom the case is transferred would be in a position to continue all the pending proceedings and to institute further proceedings against the assessee in respect of any year, past or future, and even to reopen the assessment for an earlier year which stood completed at the date of the transfer. It is clear that in the absence of any transfer order no Assessing Officer other than the one who initiated the proceedings or completed the assessment shall have jurisdiction to continue with the proceedings or even to reopen a concluded assessment. It is common ground between the parties that the file of the petitioner pertaining to the assessment year 1988-89 has not been transferred from the jurisdiction of the Assessing Officer, Pune, to the Income-tax Officer, Jalandhar (respondent No. 2 herein). As a matter of fact, no order of transfer has been passed by the competent authority under Section 127 of the Act for any assessment year and, therefore, the proceedings for reassessment initiated by respondent No. 2, are wholly without jurisdiction. We have, therefore, no hesitation in quashing the impugned notice dated March 13, 1995 (annexure P-4 with the writ petition), issued by respondent No. 2 under Section 148 of the Act.

6. It was also contended on behalf of the petitioner that respondent No. 2 did not have sufficient material before him for reopening the assessment proceedings and that it was a mala fide exercise of the power since it was being exercised at the behest of the father of the petitioner's son-in-law. Since we have held that the Income-tax Officer, Jalandhar, has no jurisdiction to reopen the concluded assessment of the petitioner for the assessment year 1988-89, we are not examining these contentions of learned counsel for the petitioner.

7. In the result, the writ petition is allowed and the proceedings for reassessment initiated by respondent No. 2 under Section 148 of the Act set aside with costs which are assessed at Rs. 1,000."

29. We find the Hon'ble Delhi High Court in the case of *Dushyant Kumar jain vs. DCIT (2016) 66 taxmann.com 126 (Delhi)*, has held that it was only the Assessing Officer who had passed the original assessment, was empowered to exercise powers under section 147/148 to reopen that assessment. The relevant observation of the Hon'ble Delhi High Court from para 15 to 17 reads as under:-

> "15. What is evident from the counter affidavit filed by the Respondent is a clear admission that the officer who issued the notice dated 14th March, 2014, and recorded the reasons for re-opening the assessment, i.e. the ITO Ward 39(2) was not the AO of the Assessee. That single fact in itself vitiates the reopening of the assessment. What is also evident is that, perhaps realising the error, a subsequent notice dated 23rd June 2014 under Section 148 was issued by the AO of the Assessee. However, it was beyond the deadline of 31st March, 2014 under Section 149(1)(b) of the Act.
>
> 16. The reasons given by the Department in its counter affidavit do not in any way explain the patent illegality in invoking the powers under Section 148 of the Act for reopening the assessment of the Assessee for AY 2007-08. The mere fact that the definition of an AO in terms of Section 2(7-A) of the Act also includes a DCIT and other superior officers or an ITO of some other ward who may be vested with the relevant jurisdiction by virtue of orders issued under Section 120 (1) or Section 120 (2) of the Act will not make a difference to the above legal position. The reason is not far to seek. It is only the AO who has issued the original assessment order dated 13th April 2009 for AY 2007-08 under Section 143 (3) of the Act who is empowered to exercise powers under Section 147/148 to re-open the assessment. This is because he alone would be in a position to form reasons to believe that some income of that particular AY has escaped assessment. This again cannot be based on a mere change of opinion. Further, in terms of Section 151 of the Act such a move will have to have the prior approval of the CIT. Under the scheme of the Act, if a superior officer forms an opinion that the original assessment order is prejudicial to the interests of the Revenue, recourse can be had to Section 263 of the Act. In any event the question of an ITO who is not the AO who passed the original assessment order under Section 143(3) of the Act for particular AY, exercising the powers under Sections 147/148 of the Act to re-open that assessment does not arise.
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> 17. Consequently, this Court quashes the notices dated 14 th March 2014 and 23rd June 2014 as well as the order dated 28 th January, 2015 passed by the DCIT rejecting the objections of the Petitioner. The writ petition is allowed

and the application is disposed of in the above terms but, with no order as to costs."

30. Since, admittedly, in the instant case, the assessee was regularly filing his return of income at Delhi with his PAN No. linked with the Assessing Officer at Delhi and he was residing at PS, Dwarka-Sector-9, South West District, New Delhi, in government accommodation and was getting salary from the Delhi Police, therefore, merely because the assessee has received the notice, which was sent in his Gurgaon address and has participated in the assessment proceedings will not give jurisdiction to the Assessing Officer at Gurgaon to have jurisdiction over the assessee. So far as the argument of the ld. DR that the assessee has participated in the assessment proceedings and, therefore, has apparently given his consent to the transfer of jurisdiction to the Assessing Officer of Gurgaon is concerned, the same, in our opinion, would not confer jurisdiction upon the Assessing Officer who otherwise was not the Assessing Officer of the assessee. The Hon'ble Bombay High Court in the case of CIT vs. Lalitkumar Bardia (supra) has held that mere participation in proceedings or acquiescence would not confer jurisdiction upon the Assessing Officer who otherwise was not the Assessing Officer of the assessee. The Hon'ble Apex Court in the case of Kanwar Singh Saini (supra) has held that there can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the party nor by a superior court.

31. So far as the argument of the Revenue that the assessee has not raised any objection to the jurisdiction within the prescribed time period is concerned, we find merit in the argument of the ld. counsel that the issue to lack of jurisdiction can be raised at any stage in a case where the return has been filed in response to notice u/s 148/158BC/153A. We find the Hon'ble Bombay High Court in the case of Mavany Brothers vs. CIT (supra) while adjudicating an identical issue has observed as under:-

> "13. We have considered the rival contentions. The jurisdiction under Section 147/148 of the Act is an extra ordinary jurisdiction and can only be exercised when condition precedent as provided in Sections 147/148 of the Act are satisfied. It is the appellant's case that the aforesaid conditions are not satisfied inasmuch as in the absence of the Assessing Officer having the original return of income available it would not be possible for him to have a reasonable belief that income chargeable to tax has escaped assessment. This issue of jurisdiction according to the respondent - Revenue could only have been raised before the Assessing Officer and not having been raised before him, the appellant had waived its rights to raise the same. The appellant having submitted to the jurisdiction of the Assessing Officer cannot now challenge the same. This is not entirely correct. It is well settled that mere acquiescence will not give jurisdiction to an authority who has no jurisdiction. In fact this Court in CIT V/s. ITSC reported in 365 ITR 87 has held that mere participation by a party in proceedings without jurisdiction will not vest/confer jurisdiction on the authority. Reason to believe that income chargeable to tax has escaped assessment is a jurisdictional fact and only on its satisfaction does the Assessing Officer acquire jurisdiction to issue notice. Thus this lack of satisfaction of jurisdictional fact can never confer jurisdiction and an objection to it can be raised at any time even in appeal proceedings. The mere fact that no objection is taken before the Assessing Officer would not by itself bestow jurisdiction as the Assessing Officer. Such an objection can be taken in appeal also. Moreover, the Apex Court in its recent decision in Kanwar Singh Saini V/s. High Court Of Delhi reported in 2012(4) SCC 307 has held that it is settled position that conferment of jurisdiction is a legislative function and cannot be conferred by consent of petitioner. An issue of jurisdiction can be raised at any time even in appeal or execution. Reliance in this regard could usefully be made to Indian Bank v/s Manilal Govindji Khona reported in 2015 (3) SCC 712. Paras 22 of the said judgment read as under :

> "22. In Sushil Kumar Mehta case [Sushil Kumar Mehta v. Gobind Ram Bohra, (1990) 1 SCC 193] this Court has elaborately considered the relevant factual and legal aspect of the case and has laid down the law at para 10, after referring to its earlier decision of a four-Judge Bench of this Court speaking through Venkatarama Ayyar, J. in Kiran Singh v. Chaman Paswan [AIR 1954 SC 340 : (1955) 1 SCR 117] , which would be worthwhile to be extracted as under: (Sushil Kumar Mehta case [Sushil Kumar Mehta v. Gobind Ram Bohra, (1990) 1 SCC 193] , SCC p. 199)
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> 6. "10. … '6. … It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities.' (Kiran Singh case [AIR 1954 SC 340 : (1955) 1 SCR 117] , AIR p. 342, para 6)"
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> Thus, it is open to the petitioner to raise the issue of jurisdiction before the appellate authorities."

32. In view of the above discussion and considering the fact that the assessee was employed with Delhi Police and was regularly filing his return of income at Delhi under ITO, Ward 64(3) [earlier ITO, Ward 40(3)] and since this fact was known to the ITO at Gurgaon, therefore, in absence of any transfer of jurisdiction u/s 127, we hold that the ITO, Gurgaon has no jurisdiction over the assessee. Therefore, respectfully following the decision of the Hon'ble Punjab & Haryana High Court, which is the jurisdictional High Court in view of the assessment order being passed by the ITO at Gurgaon, we hold that the Assessing Officer, Gurgaon had no jurisdiction over the assessee to issue notice u/s 148 and consequently pass the order u/s 147/143(3). Therefore, the notice issued u/s 148 is quashed. Since

the reopening is quashed the subsequent orders passed on account of such reopening are also quashed.

33. So far as the decisions of the Hon'ble Delhi High Court relied upon by the ld. DR, are concerned these decisions in our opinion are not applicable to the facts of the present case. In the case of Abhishek Jain (supra), we find the Assessing Officer, Noida had issued notice u/s 148 on the basis of deposits made in cash in ICICI Bank, Noida. The fact that this assessee was regularly assessed in Delhi was not intimated to the Assessing Officer at Noida and the assessee had not mentioned his PAN in the ICICI Bank and the address of the assessee was also in Noida. After the completion of the time barring period which is 31st March, 2016, the assessee intimated on 19th May, 2016 that he had been regularly assessed in Delhi. Under these circumstances, the Hon'ble Delhi High Court held that it was mala fide on the part of the assessee not to intimate prior to 31.03.2016 and the assessee was waiting for time limitation to expire and, therefore, the Hon'ble High Court held that in terms of section 124(3)(b), the jurisdiction of an Assessing Officer cannot be called in question by an assessee after the expiry of one month from the date on which he was served with a notice for reopening of assessment u/s 148. However, in the instant case, the assessee had enclosed the copy of return filed with the Assessing Officer of Delhi with his PAN and acknowledgement number. It was in the knowledge of the Assessing Officer of Gurgaon that the assessee is in employment of Delhi Police and his PAN is linked

with ITO of Delhi. Further, there was ample time available before the Assessing Officer for verification and consequential issue of notice by the Assessing Officer of correct jurisdiction and no mala fide intention can be attributed to the present assessee.

34. Similarly, in the case of S.S. Ahluwalia (supra) is concerned, in that case also the respondent assessee was assessed at Delhi from 1980-81 to 1983-84. From the assessment year 1984-85 to 1987-88, he was filing the return at Dimapur. The case of the assessee was reopened u/s 148 by the ACIT, Investigation, Delhi, on the basis of certain CBI search. When the question of jurisdiction issue came before the Hon'ble High Court, the Hon'ble High Court held that in case the assessee shifts his residence or place of business or work, etc., the Assessing Officer of the place where the assessee has shifted or otherwise will have jurisdiction and it is not necessary that in such case an order u/s 127 is required to be passed. While going through para 51 of the order, it shows that at clause 8 of para 51, there was exchange of correspondence between the ITO of Delhi and ITO of Dimapur and ITO Dimapur considered and accepted that for assessment year 1984-85 to 1987-88, the Assessing Officer at Delhi had jurisdiction to initiate and complete the assessment proceedings. Similarly, order u/s 127 of the Act was passed and the case was transferred to ITO, Ward 20, New Delhi. Thus, the case of S.S. Ahluwalia (supra) cannot be equated with that of the assessee. In any case, since the Assessing Officer of Gurgaon has passed the

assessment order, who falls under the jurisdiction of Punjab & Haryana High Court, therefore, the decision of Hon'ble Punjab & Haryana High Court will prevail over the decision of the Hon'ble Delhi High Court. If the assessment proceedings already completed by Assessing Officer are to be reopened or if the income for the relevant assessment year is to be reassessed, it is the ITO who assessed the same in the first instance has the jurisdiction to proceed in the matter u/s 147 read with section 148 unless the case has been transferred by a competent authority to another Assessing Officer u/s 127 and, in that event, latter will have jurisdiction to proceed. Thus, in the absence of any transfer order, no other Assessing Officer than the one who initiated the proceedings or completed the assessment shall have jurisdiction to continue with the proceedings or even to reopen a concluded assessment. Since in the instant case the assessee was regularly filing his return with ITO at Delhi and since no transfer order u/s 127 of the IT Act, 1961 was passed transferring the case to ITO, Gurugram, therefore, only the ITO, Delhi had jurisdiction to issue notice u/s 147 and the ITO, Gurugram has no jurisdiction to issue notice u/s 148 to the assessee.

35. In view of the above discussion, we hold that the notice issued by the Assessing Officer at Gurgaon is void ab initio on account of lack of jurisdiction. Therefore, the proceedings are quashed. Since the assessee succeeds on this legal ground, the various other grounds on merit are not being adjudicated being academic in nature. Since the legal ground raised by the assessee challenging the

reassessment proceedings are decided in favour of the assessee, the grounds raised by the Revenue in its appeal become infructuous and the same is accordingly dismissed.

ITA Nos.2683/Del/2018 & 3112/Del/2018 (Shri Devender Kumar vs. ITO and vice versa)

AND

ITA Nos.2684/Del/2018 & 2700/Del/2018 (Shri Parvinder Kumar vs. ITO and vice versa)

36. After hearing both the sides, we find the grounds raised by the respective assessees and the Revenue in the above appeals are identical to grounds raised by the assessee and Revenue in ITA Nos.2682/Del/2018 & 2913/Del/2018. We have already decided the issue and the legal ground raised by the assessee challenging the validity of the reassessment proceedings have been decided in favour of the assessee. Accordingly, the appeal filed by the assessee has been allowed and the appeal of the Revenue has been dismissed. Following similar reasonings, the appeals filed by the assessees are allowed and the appeals filed by the Revenue are dismissed.

37. In the result, all the three appeals filed by the assessees are allowed and the appeals filed by the Revenue are dismissed.

The decision was pronounced in the open court on 08.08.2019.

Sd/-	Sd/-
(SUCHITRA KAMBLE)	(R.K. PANDA)
JUDICIAL MEMBER	ACCOUNTANT MEMFBER

Dated: 08th August, 2019

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi