

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'C': NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 6553/Del/2016
(Assessment Year: 2007-08)**

Inder Mohan Khurana, 4/5917, Dev Nagar, Karol Bagh, New Delhi. PAN-AAAPK7219D	Vs	ITO, Ward-51(2), Room No.-1411, Civic Centre, New Delhi-110002.
APPELLANT		RESPONDENT
Appellant by	Shri S.D.Kapila, Adv. & Sh.R.R.Maurya, Adv.	
Respondent by	Shri Janardan Das, Sr.DR	

ORDER

PER ANADEE NATH MISSHRA, AM

[A]. This appeal has been filed by the assessee against the order dated 20.10.2015 passed by Learned Commissioner of Income Tax(Appeals)-17, New Delhi [in short "Ld.CIT(A)"] pertaining to assessment year 2007-08. The assessee has raised following grounds of appeal:-

1. *"On the facts & in the circumstances of the case, the Ld.CIT(Appeal) erred in holding that the Assessing Officer had valid jurisdiction in issuing the impugned notice u/s 148 of the Act.*
2. *The Ld.CIT(A) erred in law and on facts in holding that the proceedings u/s 147 and the consequential assessment order are not bad in law and therefore a nullity.*

3. *That the Ld.CIT(Appeal) erred in law and on fact was not acceptable and therefore the addition of Rs.66,50,000 was correctly made by the Ld. Assessing Officer.*

4. *That the Ld.CIT(A) erred in rejecting the confirmation letter affidavit filed by Mr. Solo with Assessing Officer without examining Mr. Solo who had presented himself for this purpose.*

5. *That the addition of Rs.66,50,000/- made u/s 68 by the Ld.AO on the basis of suspicion and surmises may kindly be deleted.”*

[B]. Return of income was originally filed by the assessee on 30.10.2007 in the office of ITO, Ward-33(4), New Delhi. This return was processed u/s 143(1) of the Income Tax Act, 1961 [in short “Act”]. On 31.03.2014, notice u/s 148 of the Act was issued by ITO, Ward-24(3), New Delhi, for initiating proceedings u/s 147 of the Act after recording reasons to believe, that income of the assessee had escaped the assessment. The jurisdiction of ITO, Ward-24(3), New Delhi to issue aforesaid notice dated 31.03.2014 u/s 148 r.w.s. 147 of the Act was objected to by the assessee, contending that he had been filing his return of income with ITO, Ward-33(1), New Delhi. Therefore, the assessee contended before ITO, Ward-24(3), New Delhi that notice issued by ITO, Ward-24(3), New Delhi was not valid, as he did not have jurisdiction over the case. The objection of the assessee was rejected by ITO, Ward-

24(3), New Delhi vide letter dated 01.08.2014 in the following words:-

“Kindly refer to the objections raised by your AR vide his letter dated 28.04.2014 for issuance of notice u/s 148 of the Income tax Act.

In this connection, the main objection raised by your AR is on the ground that the assessee has been filing his income tax return with ITO, Ward 33(1), New Delhi and that this office has no jurisdiction to issue the Notice u/s 148 of the Income Tax Act. In this connection, your goodself is informed that the notice u/s 148 of the Income tax Act was issued after obtaining prior approval of the competent authority in terms of relevant section of the Income tax Act. Further, the territorial jurisdiction over the Sainik Farm Area, where the assessee resides falls in this Ward and as per section 124(1)(b), the notice was rightly issued by an officer who is competent to do so. Thus, the notice u/s 148 has been issued by an assessing officer who is competent to do so. Thus, the notice u/s 148 has been issued by an assessing officer who is competent to do so. Accordingly, there is no merit in the objections so raised and the same are hereby dismissed. You are directed to file your return of income immediately in terms to provisions of section 148 of the Income tax Act.”

[B.1].The assessee petitioned vide letter dated 20.08.2014 of Joint Commissioner of Income tax, Range-24, New Delhi requesting for determining the jurisdiction of the assessee. The relevant portion of the aforesaid petition is reproduced hereunder:-

“We file this letter before your goodself for the determination of the lawful jurisdiction of the abovementioned assessee and for identification of the assessing officer having jurisdiction over the assessee.

FACTS:

1. *Mr. Inder Mohan Singh Khurana, an assessee having income from business, has been regularly running his business operations from the premises 4/5917, Dev Nagar, Karol Bagh, New Delhi 110 005.*
2. *He has been regularly filing his income returns with Ward 33(1), having jurisdiction over the abovementioned Karol Bagh address. Copies of the income tax return acknowledgements for the last three years are attached herewith in support of this statement. Also attached is the income tax return acknowledgement for AY 2007-08 which was also filed with Ward 33.*
3. *On 1.4.2014, the assessee received a notice U/s 148, reopening his case for AY 2007-08. Such notice was sent by the Income Tax Officer, Ward 24(3). Copy of the notice is attached herewith.*
4. *The assessee filed his objection to such notice issued on 28.4.2014, on the ground that the same was issued without jurisdiction and was therefore invalid and non est. Copy of the objection filed is also submitted herewith.*
5. *The ITO, Ward 24(3), vide his letter Dt. 1.8.2014, conveyed his non-acceptance of the assessee's contention of incorrect jurisdiction. Copy of such letter is attached.*

CONTENTIONS:

1. *For the past many years, the assessee has regularly been assessed in Ward 33(1) which includes Karol Bagh, where he carries on his business. Tins is also In accordance*

with Section 124(1)(a) which provides that in respect of persons carrying on business or profession, an assessing officer will exercise jurisdiction 'if 'the place at which he carries on his business or profession is situate within the area..'. Thus in accordance with the law, the jurisdiction of the assessee lies with Ward 33(1).

2. The Ld. ITO has supported his jurisdiction over the assessee by basing his decision on Section 124(l)(b). However, this section applies to persons other than those carrying on business or profession. For business assessees, the jurisdiction is decided vide Section 124(1)(a). Adoption of Section 124(l)(b) in case of business assessee's too will lead to an absurd situation where an assessee will simultaneously fall under the jurisdiction of two assessing officers. The Ld. ITO's action of justifying his jurisdiction over the assessee on the basis of Section 124(1)(b) leads to precisely such a situation and is thus incorrect.

3. Even Section 124(5) of the Income Tax Act does not come to the aid of the Department to allow jurisdiction over the assessee to Ward 24(3) as such section has limited application in cases where the income tax officer and the assessee are completely localized in a particular area and the income is also earned in such area and nowhere else. This has been ruled by the jurisdictional Delhi High Court in the case of Kanjimal & Sons Vs,. CIT (138 ITR 039-Del).

On the basis of the above it is contended that the Ld. ITO, Ward 24(3) had no jurisdiction over the assessee and thus was not his 'assessing officer' who had authority to issue a notice U/s 143 upon him. Thus, as the notice is without authority and lacked proper sanction, the same is invalid and non est. Therefore it is requested that the assessment

proceedings U/s 148 initiated upon the assessee vide such notice be cancelled and ought to be dropped.”

[B.2]. In the meantime, on 19.08.2014 itself, ITO, Ward-24(3), New Delhi *suo moto* transferred the assessment record to ACIT, Circle-33(1), New Delhi. Later, on 30.10.2014, notice u/s 142(1) of the Act was issued by ACIT, Range-51(1), New Delhi in connection with the proceedings u/ s 147 of the Act initiated through the aforesaid notice u/s 148 of the Act dated 31.03.2014. Vide letter dated 18.12.2014, the assessee objected to re-assessment proceedings initiated vide aforesaid notice u/s 148 of the Act r.w.s. 147 of the Act. The relevant portion of the aforesaid letter dated 18.12.2014 of the assessee wherein the assessee objected to the proceedings, but without prejudice filed return alongwith balance sheet and P&L A/c is reproduced as under:-

“Dear Sir,

In response to your letter dt.30/10/2014, the assessee has to state as follows:-

- 1. Notice u/s 148 (Dy. no. 1685 dt. 31.3.2014) was issued by Shri Gajendra Prashad, ITO ward 24(3). New Delhi.*
- 2. On receipt of the said notice I appeared before ITO Ward 24 (3) and informed him that the jurisdiction over my case was with ITO Ward 33(1) / (4). Consequentially, the notice u/s 148 and consequential proceedings are illegal and without jurisdiction. I reiterate the same.*

3. *I have now received notice u/s 142(1) dt. 30.10.2014 calling for return of income for A.Y. 2007-08. It is submitted that no valid notice u/s 142(1) calling for return of income for A.Y. 2007-08 can now be issued. The first para of the notice has not been struck off. The impugned notice u/s 142(1) is illegal also because it has been issued in pursuance of an invalid notice u/s 148 issued by Income-tax Officer ward 24(3), who never held jurisdiction over my case.*

4. *As per para 3 of the impugned notice, I submit that no annexure is not endow! with the notice u/s 142(1). It may kindly be noted that the notice u/s 142(1.) does not specify any document to be produced by me.*

5. *Without prejudice to our main submissions questioning the jurisdiction and legality of the present proceedings, we, in the spirit of cooperation, submit the following documents for the year ending 31.3.2007:-*

i. Copy of Return filed along with acknowledgement receipt dated 30.10.2007.

ii. Copy of Balance Sheet & Profit & Loss Account.

6. *I request that the return originally filed by me on 30.10.2007 u/s 143(1) of the Act may be considered as return in pursuance of notice u/s 148.*

7. *It is once again requested that before proceeding further, you may please supply 'reasons' recorded by ITO Ward 24 (3) before issuing notice u/s 148 dated 31.3.2014."*

[B.3]. Eventually, assessment order was passed by ITO, Ward-51(2), New Delhi wherein an addition of Rs.66,50,000/- was made on account of unexplained loan deemed as income of the assessee u/s 68 of the Act. Aggrieved, the assessee filed appeal before Ld.CIT(A).

In the appeal filed by the assessee before Ld.CIT(A), the assessee, inter alia, took grounds against exercise of jurisdiction u/s 147 r.w.s. 148 of the Act, assumed by ITO, Ward-24(3), New Delhi vide aforesaid notice issued on 31.03.2014 u/s 148 of the Act. These grounds were rejected by Ld.CIT(A) vide para 4.1 of his appellate order dated 20.10.2016. The relevant portion of the order of Ld.CIT(A) is reproduced for ease of reference:-

4.1. "I have carefully considered the facts and circumstances of the case and also the submission of the appellant but I do not find any force in the argument of appellant. The fact remains that as per territorial jurisdiction over the Sainik Farm area where the appellant was residing fails under the jurisdiction of ITO, Ward-24(3), New Delhi, therefore, as per sec.124(l)(b) of the IT Act, the notice was rightly issued by the AO who was having jurisdiction over the case and who was competent to do so as per the IT Act. The case was reopened after recording the reasons and getting necessary approval from the JCIT, Range-24. Under these circumstances, since, the action u/s 147 was taken by the ITO, Ward-24(3), New Delhi who was having territorial jurisdiction over the case and before issuing notice u/s 148, due procedure as required under the Income Tax Act was followed, therefore, I do not find any infirmity in the AO's order in reopening the case and issuance of notice u/s 148 of the IT Act. It is pertinent to the mention here that on receipt of notice u/s 148, objections were raised by the appellant which were dealt with by the AO and a letter was communicated to the appellant with regard to rejection of objections raised. After restructuring, the case was

transferred to the concerned AO of Range-51, New Delhi. The copies of reasons recorded were also provided to the appellant. In view of above discussion, I find that there was no procedural lapses with regard to reopening the case, therefore, the appeal on these grounds is dismissed.”

[B.4]. Ld.CIT(A) also rejected the grounds taken by the assessee on the merits of the aforesaid addition of Rs.66,50,000/-. Eventually, vide the aforesaid appellate order dated 20.10.2016, Ld.CIT(A) dismissed the assessee’s appeal. Aggrieved again, the assessee has filed this present appeal before Income Tax Appellate Tribunal (in short “ITAT”).

[C]. In the grounds of appeal raised by the assessee in the present appeal, the first two grounds are against assumption of jurisdiction by the Assessing Officer, u/s 147 of the Act vide aforesaid notice dated 31.03.2014 issued u/s 148 of the Act. The remaining three grounds in the present appeal before us in ITAT are on the merits of the aforesaid addition amounting to Rs.66,50,000/-. In the course of the appellate proceedings in ITAT, following papers were filed from the assessee’s side:-

1.	<i>Income tax return dated 30.10.2007 filed with jurisdictional AO Ward 33(4), New Delhi</i>
2.	<i>Reasons recorded by AO for issuance of notice u/s 148 Ward 24(3) New Delhi</i>
3.	<i>Notice u/s 148 dated 31.3.2004 issued by AO Ward 24(3) New Delhi</i>
4.	<i>Assessee letter dated 15.04.2014 addressed to the AO Ward 24(3) for providing the copy of reason recorded</i>
5.	<i>Assessee filed 'Objections' dt. 28.04.2014 with AO ward 24(3) on jurisdiction along with return for last three year</i>

6.	Assessee letter dated 01.05.2014 before the AO along with copy of letter dated 28.04.2014 challenging of jurisdiction of AO ward 24(3).
7.	Notice u/s 142(1) dated 01.05.2014 issued by AO Ward 24(3)
8.	Assessee letter dated 13.05.2014 before AO Ward 24(3) annexing copy of letter dated 28.04.2014 challenging jurisdiction (Sr. No. 5)
9.	Assessing Officer Ward 24(3) Order dated 01.08.2014 rejecting objection.
10.	Assessee petition dated 25.08.2014 before JOT Range 24 for determination of jurisdiction over the assessee annexing Return for last three years filed with ITO Ward 33(4) New Delhi. Notice dt. 31.03.2014 u/s 148 Objections dated 28.04.2014 filed with AO Ward 24(3) (Sr. no. 5) Assessing officer Ward 24(3) order dated 01.08.2014 rejecting objections (Sr. no. 9)
11.	Notice u/s 142(1) dated 30.10.2014 issued by ACIT Circle 51(1) for first time.
12.	Assessee reply dated 18.12.2014 before ACIT 51(1) New Delhi along with Return, balance sheet and profit and loss account
13.	Notice u/s 143(2) dated 18.12.2014 issued by Circle 51(1) New Delhi
14.	Assessee submission dated 26.12.2014 filed with ACIT Circle 51(1)
15.	Submission before ACIT Circle 51(1) New Delhi dated 11.02.2015 along with L1C premium receipt
S. No.	Particulars
1.	Sequence of event
2.	Dushyant Kumar Jain v. Dv. CIT ^ 381 ITR 428.(Del.)
3.	Dr. Mrs. K.B. Kumar v. Income-tax Officer [2011] 12 taxmann.com 318 (Delhi) & 47 SOT 192
4.	Smt. Prabhavati S. Shah r. CIT 231 ITR 1 (Bom.)
5.	CIT v. Navodaya Castles Pvt. Ltd. 367 ITR 306 (Del.)
6.	Sona Electronic Co. v. CIT 152 ITR 507(Del.)
7.	Abhishek Jain v. Income Tax Officer 405 ITR 1 (Del.)
8.	Padamsundara Rao (DECD) and Others v. State of Tamilnadu and Others [2002] 255 ITR 147(S.C)
9.	Returns & Jurisdiction
10.	Sardar Baldev Sing v. CIT 40 ITR 605(S.C)
11.	Section 64 of 1922Act

Sr. No.	Particulars
1.	Assessment Order for A.Y. 2001-02
2.	Assessment Order for A.Y. 2006-07
3.	Letter dt. 28.06.2016 filed with CIT(A), assessee willing to produce Mr. Solo for examination.
4.	Notification regarding New Jurisdiction of Income- tax in Delhi w.e.f. 15.11.2014.
5.	Rohtak & Hissar District Electricity Supply Co. v. CIT 128 ITR 52(Del) HCl

[C.1]. Before us, Ld. Counsel for the assessee contended that the jurisdiction over the assessee vested in ITO, Ward-33(4), New Delhi

at the time when [on 31.03.2014] the aforesaid ITO, Ward-24(3), New Delhi issued the aforesaid notice dated 31.03.2014 under section 148 of the Act for initiating proceedings u/s 147 of the Act. He further contended that original return was filed by the assessee on 30.10.2007 with the aforesaid ITO, Ward-33(4), New Delhi; and, that on 30.10.2007 the return was also processed in the jurisdiction of ITO, Ward-33(4), New Delhi, u/s 143(1) of the Act. He further contended that no valid order by any Competent Authority was in existence on 31.03.2014 transferring the jurisdiction of the assessee from ITO, Ward-33(4), New Delhi to ITO, Ward-24(3), New Delhi. In view of these facts, Ld. Counsel for the assessee submitted, that ITO, Ward-24(3), New Delhi had no jurisdiction to initiate proceedings u/s 147 of the Act by issue of notice dated 31.03.2014 u/s 148. Ld. DR did not dispute these facts contended by Ld. Counsel for the assessee and relied on the orders of the AO and Ld.CIT(A).

[D]. We have heard both sides. We have perused materials on record. We have referred to judicial precedents mentioned in the record. It is not in dispute that the jurisdiction over the assessee vested in ITO, Ward-33(4), New Delhi, at the time when [on 31.03.2014] the aforesaid ITO, Ward-24(3), New Delhi issued the aforesaid notice dated 31.03.2104 under section 148 of the Act for initiating proceedings u/s 147 of the Act. It is also not in

dispute, that original return was filed by the assessee on 30.10.2007 with the aforesaid ITO, Ward-33(4), New Delhi. It is further not in dispute that on 30.10.2007 the return was also processed in the jurisdiction of ITO, Ward-33(4), New Delhi, u/s 143(1) of the Act. It is furthermore not in dispute that no valid order by any Competent Authority was in existence on 31.03.2014 transferring the jurisdiction of the assessee from ITO, Ward-33(4), New Delhi to ITO, Ward-24(3), New Delhi. In any case, by transferring the assessment records of the assessee to Circle-33(1), New Delhi on 19.08.2014 the aforesaid ITO, Ward-24(3), New Delhi has already, by necessary implication, admitted in effect that the jurisdiction over the assessee did not vest in Ward-24(3), New Delhi. In view of these facts, we are of the view that ITO, Ward-24(3), New Delhi lacked jurisdiction to issue aforesaid notice u/s 148 dated 31.03.2014 for initiation of proceedings u/s 147 of the Act. **If an Assessing Officer issued a notice to an assessee u/s 148 of the Act for initiating proceedings u/s 147 of the Act, without having jurisdiction over the assessee; such a notice is void ab initio, and an assessment order passed in consequence thereof is non est, devoid of any legal force.** For these views, we take support from the order of the Hon'ble High Court of Delhi in the case of *Dushyant Kumar Jain vs DCIT [2016] 66 taxmann.com 126 [Delhi]* in which the Hon'ble High Court held as under:-

16. “.....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.....”

[D.1]. We also take support from the following precedents in support of our aforesaid view:-

- [i] *Dr.Mrs. K.B.Kumar vs ITO [2011] 12 taxmann.com 318 (Delhi) & 47 SOT 192;*
- [ii] *ITO vs Krishan Kumar Gupta [2008] 16 DTR 1 (Delhi-Trib.);*
- [iii] *Ranjeet Singh vs Asstt. CIT [2009] 120 TTJ (Delhi) 517; and*
- [iv] *CIT vs Smt Anjali Dua [2008] 174 Taxman 72 (Delhi)*

[D.2]. In view of the foregoing, we quash the aforesaid notice dated 31.03.2014 issued u/s 148 of the Act whereby proceedings u/s 147 of the Act were initiated; and we accordingly annul the aforesaid assessment order dated 30.03.2015 passed u/s 148/143(3) of the Act. Thus, Ground Nos. 1 and 2 in the present appeal filed by the assessee are allowed.

[D.3]. In view of our decision to quash the aforesaid notice and annul the assessment order, the remaining three grounds of appeal relating to merits of the aforesaid addition of Rs.66,50,000/- do not need to be adjudicated, being purely academic in nature. Hence,

Ground Nos. 3, 4 and 5 raised by the assessee in the present appeal are not adjudicated.

[E]. For statistical purposes, the appeal of the assessee is allowed.

Order pronounced in the open court on 06th day of September, 2019.

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 06.09.2019
** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI