

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ C ” BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER And
Ms. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2400/Ahd/2011

(निर्धारण वर्ष/Assessment Year : 2005-06)

Smt. Sangeeta Mukeshkumar Jain Prop. of EES JAE INC., B-601, Anmol Tower Nr.Shahibaug Dafnala Shahibaug, Ahmedabad-380 004	बनाम/ Vs.	The ITO Ward-2(3) Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABSPJ 8269 M		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Rajeev Kumar, AR
प्रत्यर्थी की ओर से/Respondent by:	Shri Lali P.Jain, Sr.DR

सुनवाई की तारीख/ Date of Hearing	21/08/2019
घोषणा की तारीख /Date of Pronouncement	25/10/2019

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-6, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-VI/ITO.WD.2(3)/494/10-11 dated 17/08/2011 arising in the assessment order passed under s.143(3) r.w.s.263 of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 07/12/2010 relevant to Assessment Year (AY) 2005-06.



- 2 -

2. The Assessee has raised the following grounds of appeal:-

1. *The impugned assessment order dated 07-12-2010, passed by the Income Tax Officer, Ward 2(3), Ahmedabad (ITO), imposing a tax demand of Rs. 66, 11,188/- (Rs. Sixty-six lakh eleven thousand one hundred eighty eight only), in respect of the assessment A.Y. 2005-06, is ab initio void as the ITO has no jurisdiction to pass the Assessment Order for A.Y. 2005-06, in case of the Appellant.*
2. *The assessment has been done, without affording any proper and reasonable opportunity of hearing to the Appellant, which is a mandatory requirement under the Act.*
3. *The assessment has been done without issuing a notice u/s 143(2) which is a mandatory requirement under the Act.*
4. *The amount of Rs. 5, 33,174/-, which was added in the income of the appellant vide assessment order, applying Section 40(i)(ia) read with first proviso of Section 194 A (1), is totally illegal. This Section came into operation in the subsequent year. The Ld. ITO failed to consider this fact.*
5. *An amount of Rs. 1,23,46,500/- added in the income of the appellant in the Assessment Order has already been confirmed in the hands of Shri Mangilal Devaji Devasi, an ex-employee of the appellant, by the CIT-Appeals-4l,Mumbai vide his order dated 01-10-2010. The same amount cannot be added in the hands of the appellant.*
6. *The addition of Rs 18, 49,345/- is based on the estimate of gross profit of the appellant, arbitrarily estimated by the ITO at the rate of 1.5% of the sales.*
7. *The Ld. ITO has not at all applied his mind to the facts and circumstances of the case. He has blindly copied the earlier order that had been set aside by the CIT-I, Ahmedabad.*
8. *All these additions are contrary to the provisions of the I.T. Act, but the Ld. CIT-Appeals failed to delete these additions.*
9. *The Appellant craves leave of the Hon'ble Tribunal to amend, modify, and add above grounds of appeal if necessary.*



- 3 -

3. The 1st issue raised by the assessee in ground No. 1 is that the AO of ward 2(3) of the Act has framed assessment under section 143(3) read with section 263 of the Act without having jurisdiction over the assessee, therefore the order is void ab initio.

4. At the outset, the learned AR before us submitted that the case of the assessee was transferred from the jurisdiction of the ITO 12(1), Ahmedabad to Dy.CIT Circle 12, Ahmedabad to the present ITO 2(3), Ahmedabad (the A.O. for short) without following the procedure for the transfer of a case of an assessee from the jurisdiction of one Assessing Officer to another as prescribed u/s 127 of the Act. The assessee has not been served with any order passed by the competent authority transferring her case from the ITO 12(1) Ahmedabad to Dy.CIT, Circled 12, Ahmedabad and then again to the present A.O. This makes the entire proceedings without jurisdiction null and void. The assessee relies upon the judgments of the Hon'ble Supreme Court and High Court in support of her contention.

5. On the other hand, the learned DR submitted that the assessee for the assessment year 2006-07 has filed her return of income in the ward No. 12(1) which was subsequently transferred to DCIT-Circle 12 and accordingly, the assessment was made therein. Later on the case of the assessee was transferred to the ward No. 2(3) by the order of the DCIT dated 30-01-2009. Accordingly, the learned DR vehemently supported the order of the authorities below.



- 4 -

6. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee had been filing her return of income consistently to the ITO Ward 2(3) except for the year under consideration. As such the assessee for the year under consideration has filed her return of income dated 31 October 2005 in ward 12(1) of the income tax office as evident from the copy of the acknowledgment of the ITR which is placed on page 1 of the paper book filed by the Revenue.

Subsequently, the file of the assessee was transferred from the ITO 12(1) to the DCIT-circle 12 vide letter No. Addl.CIT.R-12/AHD/Tech-8/2007-08 dated 30-08-2007 as evident from the transfer memo from income tax assessment records which is placed on page 4 of the paper book filed by the Revenue. This fact can also be verified from the assessment order dated 27-12-2007 as reproduced under:

“This case is assigned in this circle vide Addl.CIT, Range-12, Ahmedabad’s letter No.Addl.CIT R-12/AHD/Tech-8/2007-08 dated 30-8-2007.”

Accordingly, the assessment was framed by the DCIT-circle 12, Ahmedabad vide order dated 27-12-2007. However, the assessment order dated 27-12-2007 was revised by the Commissioner of Income Tax under section 263 of the Act vide order dated 29 December 2009.



- 5 -

In the meantime, the jurisdiction of the assessee was transferred from the DCIT-circle 12 to ITO ward 2(3) by the DCIT vide letter dated 30 January 2009 which is placed on page 8 of the paper book filed by the Revenue.

Accordingly, the order in consequence to the direction of the learned CIT under section 263 of the Act was passed by the ITO ward 2(3) under section 143(3) read with section 263 of the Act vide order dated 7-12-2010.

Now the controversy arises whether the transfer of jurisdiction of the assessee in the light of the facts and circumstances described above, is within the provisions of law as specified under section 127 of the Act. The relevant extract of the provision of section 127 of the Act reads as under:

(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



- 6 -

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 stage⁴⁰ of the proceedings, and shall not render necessary the re-issue 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^{40a} 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.]

A perusal of the above provisions reveals that the jurisdiction of the assessee from one AO to the other AO can be transferred by Director General, Principle Commissioner or Commissioner only after recording the reason and giving an opportunity of being heard to assessee in pursuance to the provisions specified under section 127 of the Act. However, we note that there was no compliance of the provision of



ITA No.2400/Ahd/2011
Smt. Sangeeta Mukesh Jain vs. ITO
Asst.Year - 2005-06

- 7 -

section 127 of the Act for transferring the case of the assessee from ITO ward 12(1) to DCIT-Circle 12 and then further transfer to ITO ward 2(3) of the income tax office. On a question to the learned DR to ascertain whether there was any order passed by the competent income tax authorities under section 127 of the Act for transferring the case of the assessee from one AO to the AO. But he could not make any satisfactory reply.

Therefore, we are of the view that the assessment order passed under section 143(3) of the Act dated 27 December 2007 by the DCIT-Circle 12 and consequential assessment order under section 143(3) read with section 263 of the Act dated 7 December 2010 by the AO of ward 2(3) is invalid as such income authorities never had jurisdiction over the assessee in the manner provided under section 127 of the Act. Thus both the orders are liable to be quashed.

In this regard, we draw support and guidance from the judgment of Hon'ble Supreme Court in case of Ajanta Industries reported in 102 ITR 281 wherein it was held as under:

“we find that in the 1961 Act section 127 replaced section 5(7A) where the legislature has introduced, inter alia, the requirement of recording reasons in making the order of transfer. It is manifest that once an order is passed transferring the case file of an assessee to another area the order has to be communicated. Communication of the order is an absolutely essential requirement since the assessee is then immediately made aware of the reasons which impelled the authorities to pass the order of transfer. It is apparent that if a case file is transferred from the usual place of residence or office where ordinarily assessments are made to a distant area, a great deal of inconvenience and even monetary loss is involved. That is the reason why



ITA No.2400/Ahd/2011
Smt. Sangeeta Mukesh Jain vs. ITO
Asst.Year - 2005-06

- 8 -

before making an order of transfer the legislature has ordinarily imposed the requirement of a show-cause notice and also recording of reasons. The question then arises whether the reasons are at all required to be communicated to the assessee. It is submitted, on behalf of the revenue, that the very fact that reasons are recorded in the file, although these are not communicated to the assessee, fully meets the requirement of section 127(1). We are unable to accept this submission”

In view of the above, we hold that the order passed by the AO as discussed above is not sustainable in the eyes of law. Accordingly, any addition made to the total income of the assessee in such order cannot be upheld. Accordingly, the assessee succeeds on technical reason as discussed above. Thus, we are not inclined to adjudicate the issue on merit. Hence the ground of appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is partly allowed.

This Order pronounced in Open Court on	25 /10/2019
-----------------------------------------------	--------------------

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 25/10/2019



ITA No.2400/Ahd/2011
Smt. Sangeeta Mukesh Jain vs. ITO
Asst.Year - 2005-06

- 9 -

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-6, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad