

IN THE INCOME TAX APPELLATE TRIBUNAL “B”, BENCH KOLKATA
BEFORE SHRI S. S. GODARA, JM & DR. A.L. SAINI, AM

ITA No.400/Kol/2018
(Assessment Year: 2008-09)

Ojasvi Motor Finance Pvt. Ltd. 6/13, North Avenue Kesava Perumal Puram Chennai-600028.	Vs.	ITO, Ward-1(4), Kolkata
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACO2343M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by : Shri S.M. Surana, Advocate
Respondent by : Shri Radhey Shyam, CIT

सुनवाई की तारीख / Date of Hearing : 11/11/2019
घोषणा की तारीख/Date of Pronouncement : 05/02/2020

आदेश / O R D E R

Per Dr. A. L. Saini, AM:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2008-09, is directed against the order passed by Commissioner of Income Tax (Appeals)-6, Kolkata, in Appeal No.11111/CIT(A)-6/Kol/2014-15, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3)/147/263/144 of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’), dated 24.03.2014.

2. However, in this appeal the assessee has raised a multiple grounds of appeal but at the time of hearing the solitary grievance of the assessee has been confined to ground No.2, which reads as follows:

“2. For that the ld. CIT(A) erred in confirming the order of the A.O when the A.O had no jurisdiction to complete the assessment since the jurisdiction over the assessee was duly transferred u/s 127 to ACIT, Central Circle -2(3), Chennai.”

3. At the outset, the ld. Counsel for the assessee submitted before us that Assessing Officer framed the assessment u/s 143(3)/147/263/144 of the Act on 24.03.2014 without any jurisdiction. The ld. Counsel submitted that the Assessing

Officer had no jurisdiction to complete the assessment in Kolkata, since the jurisdiction over the assessee was duly transferred u/s 127 to ACIT, Central Circle 2(3), Chennai, CIT Central-II, Chennai on 15.03.2013, therefore, assessment framed by the Assessing Officer [ITO,Wd-1(4), Kolkata], dated 24.03.2014 u/s 143(3)/147/263/144 of the Act is without jurisdiction and therefore should be quashed.

4. On the other hand, ld DR for the Revenue submitted before the Bench that for administrative convenience the assessment was framed by Income Tax officer Kolkata . The ld DR for the Revenue filed written submissions before the Bench, the important part of the written submission is reproduced below:

“The order of Calcutta High court in the case of Ramshila Enterprises (P) Ltd is not applicable in the instant case. In the said case, the jurisdiction of the [Ramshila Enterprises (P) Ltd] was transferred on 03.09.2012 much before the issuance of notice u/s 263 on 18.03.2013 and passing the order u/s 263 on 26.03.2013. So issuance of notice under sec 263 and consequent order passed u/s 263 by CIT, Kol-II were held without jurisdiction.

While in the Ojasvi Motor Finance Pvt. Ltd the jurisdiction of this assessee was transferred on 15.03.2013 from ITO Wd-1(4), Kolkata to ACIT CC-II(3), Chennai but the notices u/s 263 were issued to assessee on 21.12.2012 & 15.01.2013 and also the order u/s 263 was passed on 07.03.2013 much before the order u/s 127 of IT Act for transferring the jurisdiction. Therefore no any question arises regarding the jurisdiction issue.”

5. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. We note that order under section 127 of the Income Tax Act was issued by the Commissioner of Income Tax, Kolkata-1, on 15.03.2013 whereby the Commissioner transferred the jurisdiction from ITO,Wd-1(4), Kolkata to ACIT Central Circle-II(3), Chennai. The order was passed by the assessing officer Ward-1(4) Kolkata on 24.03.2014, which is

without jurisdiction. For that we rely on the Judgment of the Hon`ble High Court of Calcutta in the case of **RAMSHILA ENTERPRISES PRIVATE LTD, 383 ITR 546 (Cal-HC)**, wherein it was held as follows:

“15. Mr. Poddar, learned senior advocate, drew our attention to an order dated 3rd September, 2012 appearing at page 584 of the additional papers filed by him, which is an order passed under section 127 of the Income Tax Act by no other than the CIT, Kolkata-II, Kolkata, who passed the impugned order under Section 263, transferring the jurisdiction over five assessees including the appellant before us to the ACIT/DCIT, Central Circle XIX, Kolkata in the interest of revenue for better coordination, effective investigation and meaningful assessment consequent to a search conducted on 17th November, 2011 against the business concern of Atha Mines. Mr. Poddar contended that the appellant before us is not in any way connected with Atha Mines Group. But the point of substance is that the impugned order under section 263 was passed by the CIT, Kolkata-II, Kolkata in spite of the fact that the jurisdiction had already been transferred by his predecessor-in-office by his order dated 3rd September, 2012 with immediate effect. Mr. Poddar contended that CIT, Kolkata-II, Kolkata thereafter had no longer any jurisdiction left with him to be exercised in respect of the return or returns filed by the assessee or assessments made. He submitted that the exercise of power was not only ex parte, without notice, but was also without jurisdiction. He drew our attention to the letter dated 18th March, 2013 received by his client from the Deputy Commissioner of Income-tax, which is a notice under section 143(2) pertaining to the assessment year 2012-2013. He submitted that the order dated 3rd September, 2012 transferring jurisdiction to a ACIT/DCIT, Central Circle-XIX, Kolkata had already become operative and was also acted upon. Therefore, CIT, Kolkata-II, Kolkata could not have exercised jurisdiction. The impugned order passed by him is altogether without jurisdiction and is, therefore, a nullity.

16. He drew our attention to a judgment of the Apex Court in the case of Pandurang and Others Vs. State of Maharashtra reported in (1986) 4 SCC 436 for the proposition that even a right order by a wrong forum is a nullity. In the aforesaid judgment their Lordship held as follows:-

“4. When a matter required to be decided by a Division Bench of the High Court is decided by a learned Single Judge, the judgment would be a nullity, the matter having been heard by a court which had no competence to hear the matter, it being a matter of total lack of jurisdiction. The accused was entitled to be heard by at least two learned Judges constituting a Division Bench and had a right to claim a verdict as regards his guilt or innocence at the hands of the two learned Judges. This right cannot be taken away except by amending the rules. So long as the rules are in operation it would be arbitrary and discriminatory to deny him this right regardless of whether it is done by reason of negligence or otherwise. Deliberately, it cannot be done. Negligence can neither be invoked as an alibi, nor can cure the infirmity or illegality, so as to rob the accused of his right under the rules. What can be done only by at least two learned Judges cannot be done by one

learned Judge. Even if the decision is right on merits, it is by a forum which is lacking in competence with regard to the subject matter. Even a 'right' decision by a 'wrong' forum is no decision. It is non-existent in the eye of law. And hence a nullity. The judgment under appeal is therefore no judgment in the eye of law. This Court in State of M.P. v. Dewadas has taken a view which reinforces our view. We, therefore, allow the appeal, set aside the order passed by the learned Single Judge, and send the matter back to the High Court for being placed before a Division Bench of the High Court, which will afford reasonable opportunity of hearing to both the sides and dispose it of in accordance with law, expeditiously."

17. He also relied upon a Division Bench judgement of this Court in the case of ITO, 'A' Ward, District Howrah And Others Vs. Ashoke Glass Works reported in (1980) 125 ITR 491 (Cal) wherein the following view was expressed:-

"So when the jurisdiction is validly removed by a competent authority under the provisions of a statute, the original court or any Tribunal or authority in such event will be incompetent, as having ceased to have jurisdiction, to proceed further with the pending proceeding or proceeding which may be instituted after such removal of jurisdiction."

18. Mr. Ghosal, learned senior advocate appearing for the revenue submitted that the transfer order itself indicates that jurisdiction of ITO, WD-4(1), Kolkata was transferred to SCIT/DCIT Central Circle XIX, Kolkata, which is at page 584.

19. The jurisdiction of the CIT remained unchanged. In other words, it is the jurisdiction of the Trial Court, which was changed. The jurisdiction of the appellate authority remained unchanged. Therefore, the order under challenge was validly passed by the CIT.

20. Mr. Poddar, in reply, drew our attention to the explanation appended to section 127 of the Income-tax Act which reads as follows:-

"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 or such order or direction in respect of any year."

21. He submitted that the transfer of a case would mean all pending and future proceedings. He submitted that even the learned Tribunal has conceded that "CIT, Central Circle, Kolkata had jurisdiction over cases with ACIT/DCIT, Central Circle-XIX, Kolkata".

22. He submitted that having held that the learned Tribunal was wrong in point of law, in holding as follows:-

“The definition of ‘case’ for the purpose of sec.127 of the Act as given in the Explanation below sec.127 does not debar the Commissioner from transferring only a particular case, more so when the request for transfer was made in specific circumstances, such as proper co-ordination of search cases. The Commissioner transferring jurisdiction has power to transfer all proceedings under the Act, which are pending, completed or which may be commenced after the date of transfer, but that does not mean that he does not have powers to restrict his order of transfer only to a particular case for which request was made, thereby, leaving the jurisdiction in respect of other cases pertaining to an assessee to be exercised by the AO/CIT who already had it. The power to do a particular act also includes a power to restrict the exercise of power partly. It cannot be said that the power should be exercised either as a whole or not at all. Such an argument is fallacious and defeats the very purpose of conferring a larger power. As the actual transfer of the files from the incumbent AO to the new AO had taken place only on 29.7.2013 and further the order sought to be revised by the ld. CIT u/s 263 was passed much prior to the even making of request for transfer of jurisdiction in respect of search matters, we have absolutely no doubt in our mind that only the CIT Kolkata II, Kolkata had the jurisdiction to revise the assessment order passed u/s147 as has been done in this case. The contention of the learned AR in this regard is held to be without substance and not unacceptable.”

23. *We have considered the rival submissions. It is not necessary for us to consider whether the Commissioner had jurisdiction to restrict the order of transfer, for the simple reason that the order of transfer in this case was not a restricted one. Reading the order dated 3rd September, 2012 as a whole, it does not appear that any restricted transfer was sought to be made for any particular year or years or otherwise. The order of transfer, as we have already indicated, was passed in the interest of revenue for better coordination, effective investigative and meaningful assessment.*

24. *The actual transfer of files may have taken place on 29th July, 2013 but admitted position is that a notice under Section 143(2) by the transferee-assessing officer was issued on 18th March, 2013. The existence of files does not confer the jurisdiction when the same has validly been transferred and also acted upon. The jurisdiction over the subject-matter has to be conferred by law. The jurisdiction in this case had been transferred by the order dated 3rd September, 2012 by no other than the CIT Kolkata- II, Kolkata himself. Once that was done CIT Kolkata – II, Kolkata lost the seisin over the matter. He became ‘functus officio’.*

25. *Reference in this regard may be made to the Stroud’s Judicial Dictionary of Words and Phrases, 7th Edition, Page 1085 wherein the following meaning has been expressed:-*

“FUNCTUS OFFICIO. An arbitrator or referee cannot be said to be functus officio when he has given a decision which is held to be no decision at all (Davies v Howe Spinning Co Ltd, 27 B.W.C.C. 207).

Where a judge has made an order for a stay of execution which has been passed and entered, he is functus officio, and neither he nor any other judge of equal jurisdiction has jurisdiction to vary the terms of such stay (Re V.G.M. Holding Ltd [1941] 3 All E.R. 417).

An arbitrator or umpire who has made his award is functus officio, and could not by common law alter it in any way whatsoever; he could not even correct an obvious clerical mistake. See Mordue v Palmer, 6 Ch. App. 22; Henfree v Bromley, 6 East, 309; Brooke v Mitchell, 6 M. & W.473. See now Arbitration Act 1950 (c.27), s.17.”

26. Reference may also be made to the judgement in the case of *Re V.G.M. Holdings, Ltd.* reported in 1941 (3) All England Law Reports, 417 wherein the following views were expressed:-

“I think that it would be a strange position if a judge were at liberty to reconsider his decision and grant a stay of execution after he had made an order refusing it. I think that, when a judge has made an order such as that in the present case, the only remedy for the respondent, if he is dissatisfied with the order, is to go to the Court of Appeal...”

27. A special bench in the case of *Komal Chand –Vs- The State of Madhya Pradesh*, reported in AIR 1966 Madhya Pradesh 20 opined in this regard as follows:-

“Section 35 of the Stamp Act, inter alia, says that no instrument chargeable with duty shall be registered by any public officer unless such instrument is duly stamped. This provision thus casts a duty on the registering officer to examine whether an instrument presented for registration is duly stamped. If, as section 36 says, an instrument chargeable with duty shall not be registered unless such instrument is duly stamped, then it follows that the registering officer must perform the duty of seeing whether an instrument presented for registration is or is not duly stamped before admitting it to registration and not afterwards. If he finds that the document is not duly stamped, then he must impound it under Section 33 of the Act. Neither in the Registration Act nor in the Stamp Act is there any provision giving to the registering officer any power to examine whether an instrument already registered was or was not duly stamped and to impound it. As soon as the registering officer registers a document presented to him for registration, the function in the performance of which the document was produced before him is over and thereafter becomes functus officio having no power under section 33 to impound the instrument.

The matter is really concluded by the decision of the Supreme Court in Govt. of Uttar Pradesh v. Mohammad Amir Ahmad Khan, AIR 1961 SC 787. That was a case where the question arose whether the Collector has any power to impound an instrument sent to him for adjudication under section 31 of the Stamp Act. The Supreme Court held that under that section the Collector had no such power, as the provision gave him the power only to give his opinion as regards the duty with which in his judgment the instrument was chargeable and when that function was performed by the Collector he became functus officio.

It was observed by the Supreme Court that the power to impound only exists when an instrument is produced before judicial officers or other officers performing judicial functions as evidence of any fact to be proved, or before other public officers who have to perform any function in regard to those instruments as, for example, registration. The Supreme Court also approved the decisions in Collector, Ahmednagar v. Rambhau, AIR 1930 Bom 392 (FB); Paiku v. Gaya, ILR (1948) Nag 950 : (AIR 1949 Nag 214) and Panakala Rao v. Kumaraswami, AIR 1937 Mad 763 where the doctrine of functus officio was applied and it was held that the Court had no power to recall and impound a certificate of sale after executing it and delivering it to the purchaser, or to reopen a case and impound documents proved after signing the decree, or to impound an instrument admitted in evidence after delivery of judgment. Here, when the Sub-Registrar had registered the document in question on 31st October, 1950 he became functus officio on that date and thereafter he had no power to impound the same.

In the present case, the Sub-Registrar purported to act under paragraph 232 of the Registration Manual when he made a report to the Collector that the 'Takseemnama' was not duly stamped. But on reading paragraphs 231 and 232 it is clear that they do not say that after a document is admitted to registration, the registering officer can make a report to the Collector that it was not sufficiently stamped on the other hand, paragraph 231 expressly lays down a direction that before taking any further action, that is to say, in the matter of registration, the registering officer must see that the document is duly stamped. The words "after registering the document" occurring in paragraph 232 obviously refer to the entry of the document in the Register maintained of documents presented for registration. They do not mean that the registering officer can make a report about insufficiency of stamp after the document has been admitted to registration."

28. *In the case of SBI –vs- S. N. Goyal reported in 2009 (8) SCC 92 the following views were expressed:-*

"It is true that once an authority exercising quasi-judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. But the question is as to at what stage an authority becomes functus officio in regard to an order made by him. P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn., Vol. 2, pp. 1946-47) gives the following illustrative definition of the term "functus officio":

Thus a judge, when he has decided a question brought before him, is functus officio, and cannot review his own decision."

Black's Law Dictionary (6th Edn., p. 673) gives its meaning as follows:

"Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority."

We may first refer to the position with reference to civil courts. Order 20 of the Code of Civil Procedure deals with judgment and decree. Rule 1 explains when a judgment is pronounced. Sub-rule (1) provides that the court, after the case has been heard, shall pronounce judgment in an open court either at once, or as soon thereafter as may be practicable, and when

the judgment is to be pronounced on some future day, the court shall fix a day for that purpose of which due notice shall be given to the parties or their pleaders. Sub-rule (3) provides that the judgment may be pronounced by dictation in an open court to a shorthand writer [if the Judge is specially empowered (sic by the High Court) in this behalf]. The proviso thereto provides that where the judgment is pronounced by dictation in open court, the transcript of the judgment so pronounced shall, after making such corrections as may be necessary, be signed by the Judge, bear the date on which it was pronounced and form a part of the record. Rule 3 provides that the judgment shall be dated and signed by the Judge in open court at the time of pronouncing it and when once signed, shall not afterwards be altered or added to save as provided by Section 152 or on review. Thus, where a judgment is reserved, mere dictation does not amount to pronouncement, but where the judgment is dictated in open court, that itself amounts to pronouncement. But even after such pronouncement by open court dictation, the Judge can make corrections before signing and dating the judgment. Therefore, a Judge becomes functus officio when he pronounces, signs and dates the judgment (subject to Section 152 and power of review). The position is different with reference to quasi-judicial authorities. While some quasi-judicial tribunals fix a day for pronouncement and pronounce their orders on the day fixed, many quasi-judicial authorities do not pronounce their orders. Some publish or notify their orders. Some prepare and sign the orders and communicate the same to the party concerned. A quasi-judicial authority will become functus officio only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. The order dated 18-1-1995 made on an office note, was neither pronounced, nor published/notified nor communicated. Therefore, it cannot be said that the appointing authority became functus officio when it signed the note dated 18-1-1995.”

29. Applying the law laid down in S. N. Goyal’s (supra) case we are reinforced, in our opinion that the CIT Kolkata – II, Kolkata had become functus officio prior to 18th March, 2013 because the transferee – assessing officer had assumed jurisdiction without which the notice dated 18th March, 2013 under Section 143(2) could not have been issued. Therefore, the order of transfer was duly published/ notified and/or communicated and thereafter acted upon by the transferee-assessing officer.

30. We are, as such of the opinion that the issuance of the notice dated 18th March, 2013 under Section 263 and the consequent order dated 26th March, 2013 passed under Section 263 of the Income Tax Act were acts without jurisdiction and therefore a nullity.”

6. In assessee`s case under consideration, the order under section 127 of the Income Tax Act was issued by the Commissioner of Income Tax, Kolkata-1, on 15.03.2013 whereby the Commissioner transferred the jurisdiction from ITO,Wd-1(4), Kolkata to ACIT Central Circle-II(3), Chennai. Whereas, the assessment order was passed by the assessing officer Ward-1(4) Kolkata on 24.03.2014, which is without jurisdiction. Even a ‘right’ decision by a ‘wrong’ forum is no decision. It is non-existent in the eye of law. And hence a nullity. The assessment order under appeal is therefore no order in the eye of law, hence we quash the assessment order.

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

Order pronounced in the open court on this 05/02/2020.

**Sd/-
(S. S. Godara)**

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

Dated:05/02/2020

RS, Sr.PS

**Sd/-
(A. L. Saini)**

लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant- Ojasvi Motor Finance Pvt. Ltd.
2. प्रत्यर्थी / The Respondent.- ITO, Ward-1(4), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

//True Copy//

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.