

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI G. S. PANNU, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 3361/DEL/2014 (A.Y 2008-09)

Manjit Singh Sarin 4/6, Desh Bandhu Gupta Road New Delhi ALCPS0030R (APPELLANT)	Vs	ITO Ward-23(4) New Delhi (RESPONDENT)
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Appellant by	Sh. K. P. Garg, CA
Respondent by	Ms. Rakhi Vimal, Sr. DR

Date of Hearing	18.02.2020
Date of Pronouncement	08.05.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 18/03/2014 passed by CIT(A)-1, XXVIII, New Delhi for Assessment Year 2008-09.

2. The grounds of appeal are as under:-

1. *The order of Ld. CIT(A) is perverse and perjury of justice, being imaginative, inspired and creative of twisted facts of the assessee and against the material on record.*
2. *The learned CIT(A) has erred in upholding the impugned Ex-party order of the learned assessing officer which is without jurisdiction, contrary to law, barred by time, passed without complying to the provisions of the Income Tax Act & Rules.*

3. *The Ld. CITA has erred in upholding the order of the Assessing Officer, which is arbitrary, based on conjectures and surmises.*

4. *Without prejudice to the above legal grounds the learned AO has erred on facts and in law in making the following additions on merits and the Ld. CIT(A) has erred in confirming the same:*

a. *Rs.25,00,000 on ad hoc basis as unexplained investment in purchases made outside books, stating at page-5, "Keeping in view the figures of purchases, the sundry creditor appears to be on a higher side which is more than 8.5 times which is unbelievable".*

b. *Rs.10,81,512/- estimating net profit on estimated undisclosed sales, on ad hoc basis stating at page-6, "The assessee has shown sales at Rs.25,33,095/- only. As no closing stock has been shown the sales is estimated at Rs. 50,00,000/- in the absence of any detail and net profit of 25% is charged to tax".*

c. *Rs.2,00,000/- on account of short term capital gain, stating at page-6 of the order, "For taking the benefit under section 111-A, the transaction should have been made through recognized stock exchange and secondly the STT and assessed as income from other sources".*

d. *Rs.86,506/- on account of estimated interest under the head, "INCOME FROM OTHER SOURCES", stating on page-6, "The assessee has declared interest income of Rs.113494/-. In the absence of any details, information filed by the assessee, the income on account of interest is estimated at Rs. 2,00,000/-.*

e. *Rs.1,15,000/- on account of disallowance of claim under chapter VI-A stating, "In the absence of any evidence, the same is not allowed".*

5. *The learned AO has erred on facts and in law in ordering to charge interest*

u/s 234A, 234B, 234C and 234D and the Ld. CITA has erred in not adjudicating on this ground stating that these are mandatory and consequential, without examining the merits and the provisions of the Act.

PRAYER:

- 1. The order of the A.O. as upheld by the learned CIT-A be declared as null and void ab-initio, additions made by AO and upheld by Ld. CITA be deleted, and the income returned by the assessee be accepted as true as per law; or such other order as Your Honors may deem fit under the circumstances of the case be passed.*
- 2. The appellant craves leave and sanction of the Hon'ble ITAT to file additional evidence, if so required for proper prosecution of the case, based on facts and circumstances, which has not been or could not be educed or filed before lower authorities either because proper and sufficient opportunity was not provided or because it was not solicited or its need was not appreciated or because the evidence was denied and came into the hands of the appellant subsequently.*
3. The assessee is carrying on trading of modular furniture in the name of M/s Avis Design and Interiors and is also engaged in the import of such furniture. Return of income was filed on 31/03/2009 with the jurisdictional ITO Ward 39(4), New Delhi in view of the change in office address to 4/6, Desh Bandhu Gupta Road, Paharganj, New Delhi, and getting the change of address duly recorded in PAN, declaring net taxable income of Rs.3,31,147/-. The first notice u/s 143(2) was issued on 30/09/2009 by the Assessing Officer, Ward 23(4) and served on the same date by affixture at the old address: F- 14, Geetanjali Enclave, New Delhi as stated by the Assessing Officer in the order, fixing the case for 6.10.2009. None appeared on behalf of the assessee. The first notice received by the assessee is dated 20.07.2010 for 05/08/2010,

which was served at the address: 4/6, Desh Bandhu Gupta Road, Paharganj, New Delhi - the correct address of the assessee as per return & as per PAN card as stated by the Assessee. Since this notice was issued by the Assessing Officer Ward 23(4), the assessee filed his objection on 5/8/2010 and also by Speed Post on 07/08/2010. The Assessing Officer Ward 23(4) issued another notice dated 30/11/2010 for 10/12/2010 and the assessee repeated his objection to the jurisdiction and that the proceedings being carried out by the Assessing Officer Ward 23(4) are illegal and without jurisdiction as well as void ab-initio. Hence, the assessee submitted that the assessee under no obligation had to respond to the same. The Assessing Officer Ward 23(4) passed an ex-parte order but did not serve the same. However on 21.01.2011, the Assessing Officer issued notice u/s. 221(1) to the assessee intimating an outstanding demand of Rs. 18,93,635/- for AY 2008-09 u/s.144. The assessee filed his letter dated 09.02.2011 requesting the Assessing Officer to give certified copy of the notice of demand u/s.156 and the order on the basis of which, the said demand has been created. Since no action was taken on that request, the assessee filed an application for the same under RTI Act on 17/2/2011, in response to which the Assessing Officer Ward 23(4) supplied the following copies on 21.3.2011 :

1. Order u/s.7(1) of the RTI Act
2. Notice u/s.274 dated 31.12.2010
3. Notice of demand u/s. 156 for Rs. 18,93,635 for AY 2008-09
4. Computation Sheet
5. Assessment Order dated 31-Dec.2010 u/s.1 44.
6. Order sheet starting from 05-08-09 (altered to 05-08-10)

The Assessing Officer made the following additions:

- a. Rs.25,00,000 on ad hoc basis stating at page-5, *“Keeping in view the figures of purchases, the sundry creditor appears to be on a higher side which is more than 8.5 times which is unbelievable. In the*

absence of any details available/furnished by the assessee, it is estimated that the purchases to the extent of Rs.25,00,000/- have been made out of books. The same treated as unexplained, investment and added to be income of the assessee. ”

b. Rs. 10,81,512/- on ad hoc basis stating at page-6, *‘The assessee has shown sales at Rs. 25,33,095/- only. As no closing stock has been shown the sales is estimate d at Rs.50,00,000/- in the absence of any detail and net profit of 25% is charged to tax, as the assessee has failed to furnish the details of expense s claimed in the return of income. Which comes to Rs.12,50,000/-. The assessee has declared net profit of Rs. 1, 68,488/-, thus the balance amount of Rs. 10,81,512/- is added back as income from undisclosed sources. ’*

c. Rs.2,00,000/- on account of short term capital gain, stating at page-6 of the order, *“The assessee has declared short term capital gain under section 111-A at Rs.164165/-. The assessee has not filed the details in respect of short term capital gain claimed to be assessed under, section 111-A of the I.T, Act, 1961. For taking the benefit under sect ion 111-A, the transaction should have been made through recognized stock exchange and secondly the STT and assessed as income from other sources ”.*

d. Rs.86,506/- under the head, *“INCOME FROM OTHER SOURCES”*, stating on page-6, *‘The assessee has declared interest income of Rs.11 3494/-. In the absence of any details, information filed by the assessee, the income on account of interest is estimated at Rs. 2,00,000/-*

Thus the difference between the declared is assessed as income from undisclosed sources ”.

e. Rs.1,15,000/- on account of disallowance of claim under chapter VI-A stating, *“In the absence of any evidence , the same is not allowed.”*

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR further submitted that the limited issue in this case is whether the Assessing Officer Ward 23(4), New Delhi had acquired proper jurisdiction on the assessee within the meaning of Sec. 120 of the Income Tax Act, 1961. The plain answer as per evidence on record is that he has failed in every respect in this regard. The said Assessing Officer only usurped the jurisdiction in a dictatorial manner, contrary to law which cannot under any circumstances be validated. The facts in this regard are that the assessee filed his return of income with the jurisdictional ITO Ward 39(4), New Delhi at the address of the principal place of business as 4/6D, Deshbandhu Gupta Road, Paharganj, Delhi. There is no dispute that the territorial jurisdiction of this business address falls under the ITO Ward 39(4). The ITO Ward 23(4) New Delhi claimed jurisdiction on the ground that PAN was still lying with on the basis of assessment made by him for AY 2006-07. Accordingly he requested the ITO Ward 39(4) falling under the charge of a totally different CIT-13 vide his letter No. ITO/ward 23(4)-2009-10/97 dated 29.09.2009 delivered in the office of the ITO Ward 39(4) on 29.09.2009.

6. The Ld. AR submitted, that the ITO Ward 23(4) falling under Pr. CIT 8 had no authority in law to get the file transferred from ITO Ward 39(4) falling under the charge of a different Commissioner, Delhi-13, directly. This is in gross violation of the procedure laid down in the Act and such violation cannot entrust the ITO Ward 23(4) with jurisdiction on the assessee. For seeking transfer of jurisdiction, there is a prescribed procedure in Sec. 127 and the CIT-8 had to refer the issue to CIT-13 explaining the reasons as to why he wants to get the case transferred to him. A regular order u/s 127 had to be passed by Pr.CIT-13 and only then the jurisdiction could be transferred from Ward 39(4) to Ward 23(4). On receipt of notice dated 20.07.2010 from ITO

Ward-23(4), the assessee filed his objection on 05.08.2010. Even on receipt of this objection, the Assessing Officer did not act on it and no effort was made to comply with the statutory provisions for acquisition of proper jurisdiction in accordance with law. On the contrary the Assessing Officer Ward-23(4) dismissed the objection vide his order dated 30.11.2010 by stating as under:

“That the wrong PAN was erroneously quoted in the said notice due to a typographical mistake. However, the first notice originally served by way of affixture contains the correct PAN-ALCPS0030R. That the jurisdiction over the case lies with the undersigned and the return was transferred from Ward 39(4) on 29.09.2009 as the PAN shows my jurisdiction”.

This itself shows perversity of action of the Assessing Officer transgressing all the rules, procedure and provisions of the Act. This order is perverse and contrary to law and cannot provide jurisdiction to the Assessing Officer Ward-23(4). Further, even the assertion made in the rejection order that the PAN shows his jurisdiction is erroneous. The change of address and jurisdiction was duly noted and intimated to the assessee by NSDL/ PAN Authorities vide their letter dated 20.04.2009.

7. The Ld. AR further submitted that in any case even this transfer cannot justify acquisition of jurisdiction for issue of notice u/s 143(2) on 30.09.2009 and that too directly by affixture at the address of Gitanjali Enclave as per his record and not at the address given in the return. Further the affixation is not as per rules. No notice was issued and served as provided in Sec. 282 of the Act and there is no report of any failure to serve the notices in the normal course either by post or through notice server. A detailed write up on the invalidity of affixture was filed before the CIT(A), which has been reproduced by him, in the order, but ignored while rejecting the objection of the assessee. The only notice served on the assessee u/s. 143(2)/142(1) is dated 20.7.2010, which is barred by time and cannot provide jurisdiction for making assessment u/s.143(3), as per settled law.

8. Regarding assessment u/s. 144, the Ld. AR submitted that the question of appearance, therefore, for processing the case does not arise as the fact of acquisition of jurisdiction was never intimated by the ITO Ward-23(4) to the assessee before 30.11.2010, when the ITO dismissed the objection of the assessee by a non speaking letter without evidence. The assessee filed rejoinder to ITO's rejection letter dated 30.11.2010 on 13.12.2010 and thereafter there was no proceedings whatsoever and the Id. ITO straight away passed his order u/s 144 dated 31.12.2010, which too was not served on the assessee for the simple reason that it mentions the wrong address of the assessee i.e. Gitanjali Enclave which was the address as per record of ITO Ward 23(4) in AY 2006-07, while the address on the return filed by the assessee was: 4/6D, Deshbandhu Gupta Road, Pahar Ganj, New Delhi, which return has been claimed by the ITO Ward-23(4) to have been received/transferred to him by the ITO Ward-39(4). This means even this claim of the ITO that he received the return is erroneous and malafide. The negligence of the ITO Ward 23(4) is perineal. He committed similar error in AY 2006-07 and the order passed by him u/s. 143(3) for AY 2006-07 was set aside as null and void, being without jurisdiction, by the Id. CIT(A)-23, Delhi vide his order dated 17.11.2009.

9. The Ld. DR submitted that the notice u/s 143(2) and 142(1) were issued at the both address i.e. F-14, Gitanjali Enclave, New Delhi and 4/6 Deshbandhu Gupta Road, Paharganj, New Delhi which were given by the Assessee on the return of income. Even refund voucher amounting to Rs. 4,40,230/- of A.Y.2006-07 on 29.04.2010 was dispatched at the address F-14, Gitanjali Enclave, New Delhi was delivered and encashed. The Ld. DR also pointed out the order of the CIT(A) wherein it is stated that the assessee has perused the online electoral rolls even in 2014 continue to be address F-14, Gitanjali Enclave, New Delhi. The Ld. DR relied upon the decision of the Tribunal in case of Abhishek Jain vs. ITO (2018) 94 taxmann. Com 355 (Delhi) and also that of Hon'ble Supreme Court in case of Pr. CIT vs. I-Ven Interactive

Ltd. Mumbai in Civil Appeal No. 8132 of 2019 order dated 18.10.2019.

10. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note here that the assessee mentioned the address of 4/6 Deshbandhu Gupta Road, Paharganj, New Delhi on the return of income for A.Y. 2008-09. The return was filed on 31/03/2009, therefore, the notice had to be served by the Assessing Officer having jurisdiction on the assessee within six months of the end of the financial year in which the return was submitted i.e. 30/09/2009. The jurisdictional Assessing Officer at the relevant time was Ward 39(4), New Delhi, who did not issue any notice u/s. 143(2). There is no dispute that the territorial jurisdiction of this business address falls under the ITO Ward 39(4). The ITO Ward 23(4) New Delhi claimed jurisdiction on the ground that PAN was still lying with the said ward and on the said basis, the assessment has to be made by him for AY 2008-09. Accordingly he requested the ITO Ward 39(4) falling under the charge of a totally different CIT-13 vide his letter No. ITO/ward 23(4)-2009-10/97 dated 29.09.2009 delivered in the office of the ITO Ward 39(4) on 29.09.2009. The submission of the Ld. AR that the ITO Ward 23(4) falling under Pr. CIT 8 had no authority in law to get the file transferred from ITO Ward 39(4) falling under the charge of a different Commissioner, Delhi-13, directly appears to be correct and just, as the Income Tax Act has given a proper guideline as to change of jurisdiction and its procedure. But in the present case, there is gross violation of the procedure laid down in the Act. For seeking transfer of jurisdiction, there is a prescribed procedure in Sec. 127 and the CIT-8 had to refer the issue to CIT-13 explaining the reasons as to why he wants to get the case transferred to him. A regular order u/s 127 had to be passed by Pr.CIT-13 and only then the jurisdiction could be transferred from Ward 39(4) to Ward 23(4). On receipt of notice dated 20.07.2010 from ITO Ward-23(4), the assessee filed his objection on 05.08.2010. Even on receipt of this objection, the Assessing Officer did not act on it and no effort was made to comply with the statutory provisions for

acquisition of proper jurisdiction in accordance with law. Thus, the Assessing Officer without deciding the issue of jurisdiction passed the Assessment Order under Section 144 of the Income Tax Act, 1961 which is not as per the mandate of the Income Tax Act, 1961. The Assessee has intimated the change of address within the prescribed time and the assessee has taken all the necessary steps to object the jurisdiction which was not at all considered by the Assessing Officer at the relevant time. In fact, the said Assessing Officer does not have any jurisdiction. Thus, the Assessment Order itself becomes null and void ab initio. Hence, Ground Nos. 1, 2 and 3 are allowed. Since, Ground nos. 1, 2 and 3 goes to the root of the matter there is no necessity to decide the issues on merit. We, therefore, allow the appeal of the assessee.

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

Order pronounced on this 08th Day of May, 2020.

**Sd/-
(G. S. PANNU)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 08/05/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	13.5.2020
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	