

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**

[Before Shri P. M. Jagtap, Vice-President and Shri A. T. Varkey, JM]

**I.T.A. No. 1909/Kol/2017**  
**Assessment Year: 2008-09**

M/s OSL Developers Pvt. Ltd. (PAN: AAGCA 8599 K )	Vs.	ITO, Ward-5(3), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	05.11.2020
Date of Pronouncement	03.12.2020
For the Appellant	Shri S. M. Surana, Advocate
For the Respondent	Shri Imokaba Jamir, CIT

**ORDER**

**Per Shri A.T. Varkey, JM:**

This is an appeal preferred by the assessee against the order of Ld.CIT(A)-17, Kolkata dated 31.05.2017 for 2008-09.

2. At the outset, the Ld. A.R of the assessee Shri S. M . Surana, has raised the legal issue that the ITO, Ward-5(3), Kolkata (A.O) did not enjoy jurisdiction to pass the assessment order dated 25.03.2014, which action of ITO when appealed against, the Ld CIT(A)-17 has confirmed it by passing the impugned order on 31.05.2017; and assessee is assailing before us the legal issue of jurisdiction of AO i.e. ITO, Ward-5(3), Kolkata to frame the assessment order dated 25.03.2014. According to Ld. AR, for this relevant assessment year i.e. AY 2008-09, the original AO as per section 124 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) was the ITO, Ward-5(3), Kolkata and he had legally passed the reassessment order u/s. 147/143(3) of the Act dated 29.09.2010 by making an addition of Rs.20,640/- against assessee’s Returned Income of Rs.1060/-. According to Ld. A.R on 22.03.2011, the name of the

assessee company got changed from M/s Alter Towers Pvt. Ltd. to M/s OSL Developers Pvt. Ltd. and drew our attention to page 3 of the paper book where the copy of fresh Certificate of Incorporation consequent upon change of name has been issued by the Assistant Registrar of Companies, West Bengal is found placed therein in the PB. Further, it was brought to our notice that on 25/26.08.2011 search u/s 132 of the Act was conducted in the assessee's premises. Thereafter on 28.08.2012 consequent to the search on 25.08.2011, the Ld Commissioner of Income Tax, Kolkata-II, (hereinafter CIT-II) exercising his powers u/s 127 of the Act, transferred the jurisdiction of assessment from ITO, Ward-5(3), Kolkata to DCIT/ACIT, Central Circle-XVII, Kolkata (hereinafter DCIT, CC-XVII, Kolkata) on the request of the Ld Commissioner of Income Tax Act (hereinafter CIT-I) by letter dated 8/14.12.2011. [*The copy of the order of transfer of assessee's case u/s. 127 from ITO, Ward-5(3) to DCIT/ACIT central Circle-XVII, Kolkata vide order dated 28.08.2012 is placed before us and which is reproduced infra*]. Pursuant to the transfer of assessee's case u/s. 127 of the Act, the DCIT, CC-XVII, Kolkata assumed jurisdiction and issued notice u/s 153A of the Act for the relevant assessment year AY2008-09 dated 06.12.2012 (refer pg. 2 of PB). Thereafter on 28.03.2013, the Ld. Pr. CIT-II, Kolkata invoked his revisionary jurisdiction u/s. 263 of the Act and set aside the re-assessment order framed originally by ITO, Ward-5(3) dated 29.09.2010 u/s. 147/143(2) of the Act and directed de-novo assessment (*it may be noted that this was an event after the transfer of jurisdiction of assessee's case by CIT-II u/s. 127 of the Act from ITO-5(3) to DCIT, CC-XVII dated 28.08.2012*). Thereafter, the ITO, Ward-5(3) has given effect to the order of Ld. Pr. CIT-II revisional order dated 28.03.2013, by framing reassessment order dated 25.03.2014 u/s. 263/143(3) for the relevant assessment year 2008-09 [*which re-assessment order of ITO, which was confirmed by the impugned order of Ld. CIT-17 is challenged before us*]. Further, according to Ld. A.R for the very same assessment year (AY 2008-09) the jurisdictional DCIT, CC-XVII, Kolkata has passed the order u/s. 153A/143(3) of the Act on 31.03.2014 which is found placed at Pages 10 to 12 of PB. According to Ld. AR, the ITO, Ward-5(3), Kolkata had no jurisdiction to frame assessment on 25.03.2014 because the jurisdiction vested with

him u/s. 124 of the Act has been transferred on 28.08.2012 u/s. 127 of the Act to DCIT/ACIT, Central Circle-XVII. Therefore, according to the Ld. A.R, the ITO, Ward-5(3), Kolkata did not had the jurisdiction as on 25.03.2014 to pass the re-assessment order for AY 2008-09. For completeness, he also brought to our notice that subsequently on 31.05.2016, the case of assessee was again retransferred from DCIT, CC-XVII, Kolkata to ITO, Ward-5(3), Kolkata (page 24-26 of paper book). Therefore, according to Ld. AR, the ITO, Ward-5(3), Kolkata had no jurisdiction to frame assessment on 25.03.2014. For this proposition of law, he referred to the decision of the Co-ordinate Bench of Tribunal, Kolkata in the case of M/s Rungta Irrigation Ltd. vs. ACIT in ITA No. 1224/Kol/2019 for AY 2015-16 dated 06.09.2019, wherein the Tribunal relied upon the order of the Jurisdictional High Court in the case of M/s Ramshila Enterprise 383 ITR 546 (Cal) and upheld the contention of assessee on similar legal issue. So, he relied on the decisions of the Hon'ble High Court of Calcutta in M/s Ramshila Enterprises (supra) and that of the Tribunal in M/s Rungta Irrigation Ltd. (supra). In the light of the aforesaid submission and in the light of case laws it was urged by the Ld. AR that since the re-assessment order dated 25.03.2014 passed by ITO, Ward-5(3), Kolkata is bad in law and it may be held as *ab initio void*.

3. Per contra, the Ld. CIT, DR Shri Imokaba Jamir vehemently opposed the plea of the Ld. A.R of the assessee. According to him, the assessee is estopped from challenging the jurisdiction of ITO, Ward-5(3) as per sub-section (3) of section 124 of the Act, unless the assessee had duly raised the question of jurisdiction of AO within a month of receipt of statutory notices u/s. 142(1)/143(2)/148/153/153C of the Act. And since the assessee has not bothered to raise such objection to the notice of Assessing Officer (i.e. issued by ITO, Ward-5(3), Kolkata) the assessee is now barred from raising the jurisdiction of ITO, Ward-5(3). According to Ld. DR, since assessee was aware that its case has been transferred from ITO, Ward-5(3), Kolkata to DCIT, CC-XVII, Kolkata, then it was duty bound to have alerted the ITO which assessee quietly participated and it was only before the Ld. CIT(A) that the assessee for the

first time raised this legal issue, which was rightly repelled by Ld. CIT(A). According to him, having participated in the re-assessment proceedings before the ITO, Ward-5(3), Kolkata, who had territorial jurisdiction in the assessee's case, the re-assessment order of ITO dated 25.03.2014 is saved by sub-section (5) of section 124 of the Act, and the assessee cannot now turn back and say that the Assessing Officer did not have jurisdiction so, he wants us to reject this legal issue raised by the assessee.

4. We have heard both the parties and perused the records. In order to appreciate the legal issue raised in respect of jurisdiction of ITO, Ward-5(3) to frame re-assessment order dated 25.03.2014, the date of events highlighting the jurisdiction enjoyed by different Income Tax Authorities in the case of assessee are as under:

Sl. No.	Date	Event	Paper book page
1.	29.09.2010	ITO, Ward-5(3) passed for AY 2008-09 reassessment order dated 29.09.2010 u/s. 147/143(3) of the Act.	
2.	22.03.2011	Name of Company changed from M/s. Alter Towers P. Ltd. to M/s. OSL Developers Pvt. Ltd.	Paper Book page 3
3.	25/26.08.2011	Search conducted in the premises of assessee	
4.	28.08.2012	CIT-II, Kolkata transferred assessee's case u/s. 127 of the Act to DCIT/ACIT, CC-XVII from ITO, Ward-5(3)	Order u/s. 127 by CIT-II on the request of CIT-1 dated 8/14.12.2011 placed before us (reproduced infra).
5.	06.12.2012	DCIT,CC-XVII assumed jurisdiction over assessee and issued notice u/s. 153A for this assessment year (AY 2008-09)	Paper book, page 2
6.	28.03.2013	Pr. CIT, Kol-II order u/s. 263 setting aside order of ITO, Ward-5(3) dated 29.09.2010 for de novo assessment	
7.	25.03.2014	Reassessment order framed by ITO, Ward-5(3) giving effect to the order of Pr. CIT u/s. 263 dated 28.03.2013 which is the impugned order of AO before us, which action of AO/ITO confirmed by Ld. CIT-17 is in appeal before us.	Vide copy of assessment order filed with appeal
8.	31.03.2014	Reassessment u/s. 153A/143(3) for the same assessment year (AY 2008-09) completed by DCIT, Central Circle-XVII.	Paper book pages 10-12
9.	31.05.2016	Case of assessee retransferred u/s. 127 by Pr. CIT-I from DCIT, Central Circle to ITO 5(3).	Paper-book page 24-26 (item no. 39, page 25).

5. In view of the aforesaid dates and sequence of events, the legal question to be adjudicated is, whether the ITO, Ward-5(3) was empowered on 25.03.2014 to give effect to the order of Pr. CIT-II dated 28.03.2013 passed u/s. 263 of the Act. This question needs to be answered in the light of the fact that by an earlier order dated 28.03.2013 passed u/s. 127 of the Act, by the then CIT-II, Kolkata had transferred the jurisdiction over the assessee's case from ITO, Ward-5(3), Kolkata to the charge of DCIT/ACIT, Central Circle-XVII, Kolkata, on the request of CIT-I dated 8/14.12.2011.

6. For understanding the legal position with regard to the jurisdiction of Income tax authorities, it is pertinent to make reference to the relevant provisions of section 120, 124, 127 and 129 of the Act which are reproduced herein below:

***120. Jurisdiction of income- tax authorities***

*(1) Income- tax authorities shall exercise all or any of the powers and perform all or any of the functions Conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.*

*(2) The directions of the Board under sub- section (1) may authorise any other income- tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income- tax authorities who are subordinate to it.*

*(3) In issuing the directions or orders referred to in sub- sections (1) and (2), the Board or other income- tax authority authorised by it may have regard to any one or more of the following criteria, namely:-*

- (a) territorial area;*
- (b) persons or classes of persons;*
- (c) incomes or classes of income; and*
- (d) cases or classes of cases.*

*(4) Without prejudice to the provisions of sub- sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,-*

*(a) authorise any Director General or Director to perform such functions of any other income- tax authority as may be assigned to him by the Board;*

*(b) empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be,*

*assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of*

*(5) The directions and orders referred to in sub- sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.*

*(6) Notwithstanding anything contained in any direction or order issued under this section, or in section 124, the Board may, by notification in the Official Gazette,, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income- tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification.*

#### **124. Jurisdiction of Assessing Officers**

*(1) Where by virtue of any direction or order issued under sub- section (1) or sub- section (2) of section 120, the Assessing Officer has beenvested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction-*

*(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and*

*(b) in respect of any other person residing within the area.*

*(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Director General or the Chief Commissioner or the Commissioner; or where the question is one relating to areas within the jurisdiction of different Directors General or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.*

*(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer-*

*(a) where he has made a return under sub- section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub- section*

*(1) of section 142 or subsection (2) of section 143 or after the completion of the assessment, whichever is earlier;*

*(b) where he has made no such return, after the expiry of the time allowed by the notice under sub- section (1) of section 142 or under section 148 for the Making of the return or by the notice under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.*

*(c) where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub- section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.)*

*(4) Subject to the provisions of sub- section (3), where an assessee calls in question the jurisdiction of an- Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub- section (2) before the assessment is made.*

*(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub- section (1) or sub- section (2) of section 120.]*

### **127. Power to transfer cases**

*(1) The Pr. Director General or Director General or Pr. Chief Commissioner or Chief Commissioner or Pr. 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 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 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.

#### **129. Change of incumbent of an office**

*Whenever in respect of any proceeding under this Act an income- tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income- tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:*

*Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard."*

7. A bare reading of the foregoing provisions reveal that an Assessing Officer (hereinafter 'AO') has been vested with the jurisdiction to assess the income of an assessee by virtue of the directions or orders issued by the Board under sub-section (1) or sub-section (2) of section 120 of the Act. The direction u/s. 120(1) is given by the Board, for the exercise of the powers and performance of the functions by all or any of the Income Tax Authorities, as specified u/s. 116 of the Act. As per sub-section (2) of Section 120 of the Act, the Board may delegate its powers to Income tax authorities as specified in Section 116, for issuing the orders in writing, for the exercise of the powers and performance of the functions by all or any of the other Income Tax Authorities who are subordinate to that authority. We also note that the concurrent jurisdiction can be vested in more than one AO, which is discernible by a conjoint reading of Section 120(5) with Section 120(2) of the Act. Section 124(1) of the Act confers jurisdiction on an AO, by virtue of jurisdiction vested by any direction or order issued by CBDT under sub-section (1) and / or (2) of section 120 of the Act. The AO is vested with the jurisdiction u/s. 124 of the Act, over any area within the

limits of such area (i.e. territorial jurisdiction), where he shall exercise jurisdiction over any person (assessee) who/which carries on business or profession and if the place at which he (assessee) carries on his business or profession is situated within the area ear-marked for him (AO); or in case if that person's (assessee's) business or profession is carried on in more places than one, then only if the principal place of his business or profession is situated within the jurisdictional territorial area, the AO gets jurisdiction over that assessee. Other than the assessee's who are not in Business or Profession, in their cases, the AO will be vested with the jurisdiction if the person (assessee) is residing within the territorial area ear-marked by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120 of the Act which section clarifies this position of law. However, when there is a question to be determined as to whether an AO has jurisdiction to assess any person, then it would be decided by the authorities stipulated in sub-section (2) of section 124 of the Act i.e, by the concerned Principal/Director General or Principal/Chief Commissioner or Principal/ Commissioner, as the case may be. In case, if the question is one relating to areas within the jurisdiction of different Income tax authorities, then by the concerned (Principal/Directors General or Principal/Chief Commissioners or Principal/ Commissioners as stipulated therein) and in the event the other Income-tax authority also agrees, then the question will be resolved mutually or else it will be referred to the CBDT. So, as per the scheme of the Act it can be noted that once the AO of an assessee is vested with the jurisdiction u/s. 124 read with sec. 120(1) & (2) of the Act, and he gets jurisdiction to assess the income of an assessee by issues statutory notices against the assessee in accordance to law. And no person (assessee) shall be entitled to call in question the jurisdiction of an AO unless made within the period prescribed under clauses (a), (b) and (c) of section 124(3) of the Act [i.e, within one month]. We also note that sec. 124(5) saves the action of the AO who has territorial jurisdiction over the assessee in respect of the income earned by the assessee from the territorial jurisdiction vested in him by virtue of any directions or orders issued u/s. 120(1) or (2) of the Act. So, this saving provision which saves the action of an AO is limited to the income accruing or arising or received within the limits of his territorial area as

conferred to him (AO) by order under sub-sec. (1) or (2) of sec. 120 of the Act and not otherwise. So, this saving provision will come into play only if in the first place the AO is vested with the jurisdiction by an order/direction issued under sub-sec. (1) or (2) of sec. 120 of the Act. Thus, as per the scheme of the Act, it can be seen that sections 120 and 124 vest jurisdiction on Income Tax Authorities and on AO respectively and, therefore, both sections i.e. sections 120 and 124 of the Act must be read in conjunction and harmoniously to decide the territorial jurisdiction which is prescribed by the direction or orders by the CBDT under sub-sec. (1) or (2) of sec. 120 of the Act.

8. Having taken note of the provisions of Section 120 & 124, we however find that Section 127 is a separate code of its own. Section 127(1) empowers, the Pr. Director General or Director General or Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner, as stipulated therein, to transfer any case from one or more AO subordinate to him. In other words, under Section 127(1) the Pr. Director General or Director General or Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner, as stipulated therein, can transfer the case records of an assessee from one AO to another functioning under his own charge. On the contrary, Section 127(2) empowers the foregoing authorities to transfer of cases of assessee's from the AOs from his jurisdiction to the AOs who are not functioning under his jurisdiction i.e, who are not subordinate to such authority. In the cases covered u/s 127(2) therefore, if the Pr. Director General or Director General or Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner, of the AO to whom the case of an assessee is proposed to be transferred, agrees for the transfer of the case, then the transfer of an assessee's case can made u/s. 127(2)(a) of the Act. However in case there is any disagreement between such authorities, the matter is required to be referred to the Board which in turn decides the issue of transfer or the Board can then authorize an Income Tax authority by notification as stipulated in clause (b) of sub-sec.(2) of section 127 of the Act. Sub-section (4) of Section 127 of the Act provides that upon the transfer of case

by the authorities specified in sub-section (1) or (2) of section 127 of the Act, can be done at any stage of the proceedings, and by virtue of this transfer order, the AO to whom the case is transferred need not re-issue notice already issued by the earlier AO or AOs from whom the case is transferred. In other words, Section 127(4) saves the actions of the AO from whom the case is transferred and allows the AO to whom the case of an assessee is transferred to take forward the proceedings from the point where the earlier jurisdictional AO had left. Here, it would be important to note the Explanation to section 127 which defines the expression 'case'. A reading of the said Explanation shows that the expression 'case' in relation to any person, whose name is specified in the transfer order passed u/s. 127 of the Act, means all proceedings under the Act in respect of any year which may be pending on the date of such order or direction or it may have been completed on or before such date, and includes also all proceedings under the Income-tax Act which may be commenced after the date of such order or direction of any year. This definition of the expression 'case' implies that, once a transfer is made by the authority specified in sub-section (1) or (2) of section 127 of the Act who had the jurisdiction over an AO who in turn had jurisdiction over the assessee/person/entity, by virtue of direction/order issued under section 120(1) or (2) of the Act, then the entire assessment of the person i.e. pre-transfer and post-transfer as on date of transfer will stand transferred and thereafter for all purposes of the Income Tax Act, the AO of the assessee to whom the case is transferred, will be the Assessing Officer in respect of the said the assessee for pre and post proceedings from the date of transfer. In other words, once transfer order of a case of an assessee is issued u/s. 127 of the Act the legal effect will be that (i) all the proceedings of the assessee under the Act in respect of any year which may be pending on the date of such order will stand transferred, (ii) all the completed assessment order of the assessee on or before the date of transfer will also stand transferred and (iii) all proceedings under the Act in respect of the assessee which may be commenced after the date of such transfer order have to be undertaken by the transferred new AO.

9. In the light of the above discussion, let us examine the facts involved in the appellant's/assessee's case and ascertain whether the ITO, Ward-5(3), Kolkata enjoyed jurisdiction over the appellant's case so as to enable him to frame reassessment order dated 25.03.2014 u/s. 263/143(3) for the AY 2008-09. As noted, the jurisdiction over the appellant's case initially was vested with the ITO Ward-5(3) Kolkata, since the territorial jurisdiction over area or limits of area, where assessee's principal office of business was situated. The vesting of jurisdiction with the said officer was in terms of the order/ direction of the CBDT u/s. 120(1) of the Act or by Income Tax Authorities (sec. 116) who were delegated the powers to issue orders/directions vesting the jurisdiction of assessment over the authorities subordinate to it. The said Assessing Officer [ITO-ward 5(3)] enjoyed jurisdiction over the appellant upto 28.08.2012. Thereafter, by virtue of order passed by the Ld. CIT-II, Kolkata dated 28.08.2012 u/s 127(2), the said AO i.e. ITO, Ward-5(3), Kolkata was divested of his jurisdiction over the appellant and the jurisdiction stood transferred in favour of DCIT, Central Circle-XVII, Kolkata, the scanned copy of the order of Ld CIT-II dated 28.08.2012 passed u/s 127 of the Act is as under:-

Order u/s 127(2)(a) of the Income-tax Act, 1961

अर्डर सं 04 / 2012-13, दिनांक: 28.08.2012

Consequent to a Search operation conducted on 25.08.2011 against the business concern of "OSL" Group of cases, the C.I.T.(Central-I), Kolkata vide his letter dated 08/14 .12. 2011 [ F.No.CIT(C)-I/Centralisation/Kol/11-12/8838] requested that the jurisdiction over the assessee, mentioned in Col.2 of the schedule below, be transferred to the Assessing Officer mentioned in col.5 of the schedule below.

Consequently, in exercise of the powers conferred upon me by sub-sections (1), (2) and (3) of section 127 of the Income-tax Act, 1961, and all other powers enabling me in this behalf, I, the Commissioner of Income Tax, Kolkata-II, Kolkata, do hereby transfer the jurisdiction over the assessee mentioned in Col. (2) of the schedule below, from the Assessing Officer mentioned in Col. (4) to the Assessing Officer mentioned in Col. (5) of the said schedule, in the interest of revenue for better co-ordination, effective investigation and meaningful assessment.

SL. No. (1)	Name of the Assessee (2)	P.A.N. (3)	From (4)	To (5)
1.	M/s OSL Developers Pvt. Ltd.	AAGCA8599K	ITO,Ward-5(3),Kol	DCIT/ACIT, Central Circle-XVII, Kolkata

This order will take immediate effect.

From the plain reading of the order u/s 127(2) dated 28.08.2012, we find that the

transfer of jurisdiction over the appellant's case from the charge of ITO, Ward-5(3), Kolkata to DCIT/ACIT, Central Circle-XVII, Kolkata was absolute and without reserving any right of concurrent jurisdiction over the appellant to ITO, Ward-5(3), Kolkata. Further, this fact is clear by the re-transfer order of assessee's case latter passed on 31.05.2016 by pr. CIT-I u/s. 127 of the Act from DCIT, CC-XVII, Kolkata to ITO, Ward-5(3).

10. Before us the Ld. CIT, DR vehemently contented that since the present assessee's principal office is within the territorial jurisdiction of ITO, Ward-5(3), the AO i.e, ITO Ward-5(3) continued to have jurisdiction as per section 124 read with section 120(1) or (2) of the Act and, therefore, ITO, Ward-5(3) enjoyed jurisdiction to pass the reassessment order dated 25.03.2014 and his action was saved by section 124(5) of the Act. We are, however, unable to accept such contention for the following reasons. For adjudicating this contention, let us first examine the relevant provisions of sub-section (5) of sec. 124 of the Act and Explanation under section 127 of the Act, which read as follows:

***Sec. 124(5):-** Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub- section (1) or sub- section (2) of section 120.*

***Sec. 127;-***

*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.*

11. From a plain reading of sub-sec. (5) of sec. 124 of the Act, it is noted that though it is an over-riding provision yet it has inherent limitation as prescribed in that section itself. If one carefully reads sub-section (5) of sec. 124 of the Act, then it will be noted that it starts with the words “*Notwithstanding anything contained in this section or in any direction or order issued under section 120 of the Act*”. The express

language employed by the Parliament clearly shows that provisions of sub-sec. (5) of section 124 overrides only the other provisions of Section 124 of the Act and any orders/directions issued u/s. 120 of the Act, which necessarily means that non-obstante clause is limited in its operation in respect of sub-section (1) to (4) of sec. 124 or direction/order issued under section 120 of the Act and not with regard to any order of transfer of case of an assessee made u/s. 127 of the Act. In the circumstances when one reads the definition of “case” as set out in the Explanation to Section 127 of the Act, then it means that when a Chief Commissioner or Commissioner makes an order for transfer of jurisdiction in exercise of the powers conferred by Section 127 of the Act, from an AO who is vested with jurisdiction by virtue of direction/order issued under sub-section (1) or (2) of section 120 of the Act to another AO who is not vested with such jurisdiction as per direction/order issued u/s. 120(1) and (2) of the Act; then by virtue of such transfer order u/s. 127 of the Act, the jurisdiction of an AO u/s. 124 vested by virtue of an order/direction vested on an AO as per sec. 120(1) or (2) of the Act is taken away and thus the original AO is divested of the jurisdiction enjoyed u/s. 124 read with sub-sec. (1) or (2) of section 120 of the Act. We therefore hold that contention put forth by the Id. CIT, DR that provisions of Section 124(5) being overriding in nature, the ITO, Ward-5(3), Kolkata simultaneously held concurrent jurisdiction is devoid of any merit. Such interpretation is not in accordance with the extant provisions of Section 124(5) read with Section 127 of the Act. In our opinion in the facts of this case, once the order u/s 127(2) was passed on 28.08.2012 by the Ld. CIT-II, Kolkata unconditionally transferring the jurisdiction over the appellant’s case to the charge of DCIT/ACIT, Central Circle-XVII, Kolkata; then by virtue of such an order, the jurisdiction enjoyed by ITO, Ward-5(3), Kolkata in terms of Section 124 read with Section 120(1) & (2) stood abrogated. Accordingly after 28.08.2012, the ITO, Ward-5(3), Kolkata could not have exercised any powers conferred on the AO by the Act for the purposes of any proceedings against the appellant. And in this case, we have noted that ITO, Ward-5(3) got back his power only on re-transfer of assessee’s case to him when the order u/s. 127 was passed later on 31.05.2016, so the question of ITO, Ward-5(3), Kolkata giving effect to Pr. CIT-II order dated 28.03.2013 does not

rise at all on 25.03.2014. Thus we find that in assessee's case the ITO, Ward-5(3) did not enjoy jurisdiction to assess the income of assessee as an AO between 28 December 2012 and 31 May 2016.

12. As noted earlier, the ITO, Ward-5(3), Kolkata ceased to be AO of assessee after the transfer order was passed by Ld. CIT-II, Kolkata on 28.08.2012, so after such order by the competent authority (which fact is not disputed before us), then the ITO, Ward-5(3), Kolkata became *functus officio* and was divested of the jurisdiction. For the reasons as discussed in the foregoing therefore we hold that in the given facts of the case, the appellant's case was not saved by the provisions of Section 124(5) of the Act. Accordingly, the contentions of the Ld. CIT, DR are rejected being devoid of any merit in law as well as on facts.

13. Coming to the next contention of the Ld. CIT, DR that since the assessee did not question the territorial jurisdiction of the AO i.e. ITO, Ward-5(3), Kolkata after it received statutory notice from him and therefore the assessee is estopped/shut-out from doing so as stipulated by sub-section (3) of sec. 124 of the Act. On this contention we note that sub-section (3) of section 124 of the Act will come into play only when a question arises as to whether an AO has jurisdiction to assess any person u/s. 124 of the Act and when the AO derives his powers from the direction or order issued by CBDT and/or authorities under sub-section (1) or (2) of sec. 120 of the Act respectively. It is true that when a question of jurisdiction arises in the event an AO assumes jurisdiction u/s. 124 of the Act by virtue of the jurisdiction vested by direction or order issued by CBDT and/or other authorities under sub-section (1) or (2) of sec. 120 of the Act, then assessee is estopped from raising an objection to the jurisdiction, after the time period prescribed under sub-section (3) of sec. 124 of the Act lapses. This however is not applicable to the facts of the appellant's case. Admittedly the AO i.e. ITO, Ward-5(3) had enjoyed jurisdiction u/s. 124 of the Act by virtue of direction or order issued by CBDT and/or authorities under sub-section (1) or (2) of section 120 of the Act was legally divested of his jurisdiction over the appellant's case by virtue of

the order u/s. 127 of the Act dated 28.08.2012, and thereafter ITO, Ward-5(3), Kolkata could not have *suo moto* assumed jurisdiction u/s. 124 of the Act, since he became *functus officio*. In our opinion therefore in the appellant's case, the provision of section 124(3) does not come into play since the case of the assessee was legally transferred by the competent authority u/s. 127 of the Act as far back as in the year 2012. In the circumstances therefore, as discussed above, once transfer of the case of the assessee is ordered u/s. 127 of the Act, the AO ITO, Ward-5(3), Kolkata who was vested with the jurisdiction by virtue of the direction or order issued under sub-section (1) or (2) of sec. 120 and section 124 of the Act stood divested of the same. As held by the Hon'ble jurisdictional High Court in M/s. Ramshila Enterprises Pvt. Ltd. (infra), since the jurisdiction was divested of the earlier AO by virtue of transfer order u/s. 127 of the Act, the earlier AO, which in this case is AO i.e. ITO, Ward-5(3), Kolkata ceased to be Assessing Officer after the date of transfer i.e. 28.08.2012 and therefore he (i.e. ITO, Ward-5(3), Kolkata) ought not to have issued statutory notices upon the assessee unless he had been re-empowered or vested by a fresh transfer order u/s. 127 of the Act (i.e. from DCIT, CC-XVII, Kolkata to ITO, Ward-5(3), Kolkata), which is not the case of the Revenue and though it did later happen in this case (Re-transfer as on 31.05.2016). In the circumstances therefore, the ITO, Ward-5(3), Kolkata could not have usurped the jurisdiction when his jurisdiction was divested of it, by order dated 28.08.2012 by Ld. CIT-II, Kolkata u/s. 127 of the Act. Subsequent to the order u/s. 127 of the Act i.e., w.e.f. from 28.08.2012, the DCIT, Central Circle-XVII, Kolkata succeeded to the jurisdiction of the assessee and the jurisdiction continued to vest in him (DCIT, CC-XVII, Kolkata) till it was legally taken away by order u/s. 127 dated 31.05.2016 by Pr. CIT-I, Kolkata and transferred back to ITO, Ward-5(3), Kolkata. Therefore, as per the discussions (supra) there was no necessity for the assessee to have questioned the jurisdiction of ITO, Ward-5(3), as envisaged under sub-sec. (3) of sec. 124 of the Act since in the first place ITO, Ward-5(3), Kolkata did not enjoy jurisdiction u/s. 124 of the Act over the assessee's case. In our considered opinion Section 124(3) of the Act does not come into play in this case and so in no way help the Department to justify the action of ITO, Ward-5(3), Kolkata in issuing

statutory notices to the assessee, which action itself was without jurisdiction. So the challenge raised by the Ld CIT, DR fails. Therefore, we do not find any merit in the contention of the Ld. CIT, DR on this score.

15. For the reasons set out above therefore, we uphold the objections/legal issue raised by the appellant against the validity of the re-assessment order passed by ITO-5(3) Kolkata dated 25.03.2014 u/s 263/143(3) for AY 2008-09. We accordingly hold that since in the present case the ITO-5(3) Kolkata , did not enjoy jurisdiction over the case of the appellant on 25.03.2014, the re-assessment order passed u/s 263/143(3) dated 25.03.2014 was legally unsustainable and therefore is null in the eyes of law and therefore quashed. The assessee accordingly succeeds on the legal issue raised before us.

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

Order is pronounced in the open court on 03.12.2020.

Sd/-

(P. M. Jagtap)  
Vice President

Sd/-

(A. T. Varkey)  
Judicial Member

Dated: 03.12.2020

*SB, Sr. PS*

Copy of the order forwarded to:

1. Appellant- M/s OSL Developers Pvt. Ltd., (formerly known as Alter Towers Pvt. Ltd. 234/34A,FMC Fortuna, AJC Bose Road, Ground Floor, Kolkata-700020.
2. Respondent- ITO, Ward-5(3), Kolkata
3. The CIT(A)- 13, Kolkata (sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata

