

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

(Through Video Conferencing)

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No. 1185/Del./2020, A.Y. : 2015-16

ACIT, vs. Globus Construction Pvt. Ltd.
Circle-1, Noida.
Ghaziabad

(PAN : AAECG8128L)

(APPELLANT) (RESPONDENT)

**REVENUE BY : Sh. Zoib Hussain, Sr. Stading Counsel
and Sh. Ravi Prakash,
ASSEESSEE BY : Sh. Sh. Rohit Tiwari, Sh. Mohan Kalra, Adv.**

ITA No. 6614/Del./2019, A.Y. : 2009-10

ITO, Ward-2(4), vs. Praveen Bidhuri
Noida. New Delhi.

(PAN : AJOPB1460C)

(APPELLANT) (RESPONDENT)

**REVENUE BY : Sh. Zoib Hussain, Sr. Stading Counsel
and Sh. Ravi Prakash,
ASSEESSEE BY : Sh. Praveen Bidhuri, Assessee**

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ITA No.- 6614/Del/2019 and others.

ITA No. 1228/Del./2020, A.Y. : 2010-11

ITO, Ward-2(3),
Noida. vs. Omprakash Sharma,
GB Nagar.

(PAN : ATYPP8017D)

(APPELLANT)

(RESPONDENT)

REVENUE BY : Sh. Zoib Hussain, Sr. Stading Counsel
and Sh. Ravi Prakash,

ASSESSEE BY : None

ITA No. 1187/Del./2020, A.Y. : 2010-11

ITO, Ward-3(3), vs. Sandeep Kumar Aggarwal,
Noida. Noida..

(PAN : AGNPA1430H)

(APPELLANT)

(RESPONDENT)

REVENUE BY : Sh. Zoib Hussain, Sr. Stading Counsel
and Sh. Ravi Prakash,

ASSESSEE BY : None

ITA No. 1179/Del./2020, A.Y. : 2010-11

ITO, Ward-1(5), vs. Jaiveer Singh,
Noida. GB Nagar.

(PAN : BESPS4506L)

(APPELLANT)

(RESPONDENT)

REVENUE BY : Sh. Zoib Hussain, Sr. Stading Counsel
and Sh. Ravi Prakash,

ASSESSEE BY : None

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ITA No.- 6614/Del/2019 and others.

C.O. No.- 49/Del/2020, A.Y. 2010-11
(Arising out of ITA No. 1146/Del./2020)

Sh. Jahagir Alam, vs. ITO,
Noida. Ward-1(5),
Noida.

(PAN : AMXPA9467A)
(APPELLANT) **(RESPONDENT)**

REVENUE BY : Sh. Zoib Hussain, Sr. Stading Counsel
and Sh. Ravi Prakash,
ASSESSEE BY : None

ITA No. 6945/Del./2019
A.Y. : 2009-10

Dharam Singh, vs. ITO,
Ghaziabad. Ward-1(2),
Ghaziabad.

(PAN : EKEPS6792D)
(APPELLANT) **(RESPONDENT)**

REVENUE BY : Sh. Zoib Hussain, Sr. Stading Counsel
and Sh. Ravi Prakash,
ASSESSEE BY : None

C.O. No. -152/Del/2019,
(Arising out of ITA No. 6945/Del./2019)
A.Y. : 2009-10

ITO, vs. Dharam Singh,
Ward-1(2), Ghaziabad.
Ghaziabad.

(PAN : EKEPS6792D)
(APPELLANT) **(RESPONDENT)**

ITA No. 6823/Del./2019,

A.Y. : 2015-16

ITO, vs. Rama Gupta,
Ward-2(2). Ghaziabad.
Ghaziabad.
(PAN : ACHPG6302Q)
(APPELLANT) (RESPONDENT)

REVENUE BY : Sh. Zoib Hussain, Sr. Stading Counsel

Sh. Ravi Prakash

ASSESSEE BY : Sh. Akhilesh Kumar , Advocate

ITA No. 6837/Del./2019,

A.Y. : 2015-16

ITO, vs. Vikas Mittal,
Ward-2(5). Ghaziabad.
Ghaziabad.
(PAN : AKKPM6751A)
(APPELLANT) (RESPONDENT)

REVENUE BY : Sh. Zoib Hussain, DR

ASSESSEE BY : Sh. Akhilesh Kumar , Advocate

Date of Hearing : 16.12.2020

Date of Order : 08.01.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

For the sake of brevity, aforesaid appeals and cross objections bearing identical question of facts and law are being disposed of by way of composite order.

2. Appellants Dharam Singh, Cross objector Jahagir Alam and appellant (Income Tax Officer, Ward-2(3), Noida) by filing

aforesaid appeals and cross objections sought to set aside the impugned orders all dated 31.12.2018 passed by Sh. S.K. Srivastava Ld.CIT(A)1, Noida on the identical grounds inter alia that :-

1. *Because Sh. S.K. Srivastava, the then CIT(A)-1, Noida had been compulsorily retired by the Government of India with effect from 11.06.2019 and accordingly, he had become functus officio w.e.f. 11.06.2019. Accordingly, any discharge of function by an officer who has become functus officio is a nullity in law and without jurisdiction.*

2. *In this regard, reliance is placed on the decision of the Hon'ble High Court of Karnataka in the case of Rudragouda v. The University of Agricultural Sciences and Ors., Writ Petition No. 31734/2016 (S-RES), wherein it was held that: -*

"The petitioner/officer after his retirement becomes functus officio. No officer can continue to discharge his functions subsequent to his retirement and more particularly, to take action against the subordinate officer or to seek sucl direction from this Court" (emphasis added)

It is to be noted that the term functus officio has been defined to mean the following: -

Black's Law Dictionary I'Sixth Edition Page 6731 gives its meaning as follows: Having fulfilled the function, discharged the office, or accomplished the purpose. and therefore, of no further force or authority.

Accordingly, it is submitted that once the then CIT(A)-Noida has been compulsorily retired i.e., with effect from 11.06.2019, any order prima facie passed by him or acted upon by him after the date of his compulsory retirement is without jurisdiction.

3. *Because a vigilance inspection for the work carried out by Sh. Sanjay Kumar Srivastava IRS (Retd.), who was posted to as CIT(A)-1 Noida with the additional charge of CIT(A)-2 Noida, prior to his compulsory retirement w.e.f 11.06.2019 was conducted on 19.06.2019 by the Vigilance Team of Income Tax*

(Vigilance), which revealed that orders purported to have been passed by Sh. Srivastava in the month of December, 2018 were prima-facie passed in the month of June, 2019. In majority of these orders liable to have been uploaded on the ITBA system were uploaded between 11th June to 13th June, 2019, i.e. after his demitting the office, as per the charge sheet filed by the CBI. As per the CBI's charge sheet there are also indications of falsification of records to allude towards dispatch of these orders on 7th June, 2019, whereas they were dispatched on 14th June, 2019 It was further revealed that 104 orders were claimed to be passed by Sh. S.K. Srivastava during December, 2018, however, many of them were uploaded to the central server using his RSA token only after his retirement.

4. *Because Ld. CIT(A)-I, Noida has committed a jurisdictional error by deciding the appeal beyond fifteen days of the last hearing in contravention of Instruction no. 20/2003 dated 23.12.2003 issued by the CBDT and the order was uploaded on the ITBA after an inordinate delay of time, as it was uploaded after he was compulsorily retired under provisions of Fundamental Rules (FR) 56(J).*

5. *Because the order of the CIT(A)-I, Noida, being a nullity in the eyes of law, may be set aside for fresh adjudication to the jurisdictional Ld. CIT(A), Noida.*

6. *Because, it is immaterial whether an order passed without jurisdiction is in favour of Revenue or against it. Such an order is contrary to the administration of the Income Tax Act and it pollutes the streams of justice. Therefore, Revenue would be an aggrieved party if a Commissioner of Income Tax (Appeals) passes an order without jurisdiction and it is in interest of the revenue as well as tax administration to ensure that orders are passed b) correct legal authority under the Act.*

7. *Because the Revenue being 'State' cannot be a beneficiary of an order passed without jurisdiction by an Appellate Commissioner and therefore it is absolutely immaterial ultimately the case was decided in favour of the revenue by the Appellate Commissioner albeit without jurisdiction.*

8. *Because any orders, instructions or directions issued under Section 268A(1) by the Board to other income tax authorities for fixing monetary limits would not apply to orders passed without jurisdiction when the officer*

himself had no jurisdiction to grant relief or pass any order whatsoever.

9. Because the monetary limits fixed pursuant to Section 268A will only apply to orders passed by authorities with jurisdiction and not to authorities without jurisdiction. Section 268A(1) of the Act reads as follows: -

"Section 268A. (1) The Board may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of this Chapter"

10. The Revenue craves leave to modify any of the grounds above and/or to add any fresh ground or grounds as and when it is required to do so."

3. Notices to the respondents were sent through revenue department and were duly served. Sh. Praveen Bidhuri assessee appeared in person in ITA No. 6614/Del/2019, Sh. Rohit Tiwari and Mohan Kalra, Advocate appeared in ITA No. 1185/Del/2020 and Sh. Akhilesh Kumar, Advocate appeared in ITANo.6823/Del/2019 and 6837/Del/2019 and in rest of the appeals none appeared on behalf of the respondent / assessee and as such their appeals have been taken up to decide ex parte with assistance of the Ld. Sr. Standing Counsel for the revenue.

4. We have heard the Ld. Sr. Standing Counsel, Sh. Zoib Hussain , Sri Praveen Bidhuri assessee in preson, Sh. Rohit Tiwari and Mohan Kalra, Advocate, Sh. Akhilesh Kumar, Advocate

and perused the impugned orders passed by CIT(A)-I, Noida and supporting documents placed on file by the appellants / cross objectors.

5. Undisputedly Sri S.K. Srivastava Ld. CIT(A)-1 Noida was having jurisdiction over appeals filed under Income Tax Act pertaining to Noida-1 and Noida-2; it is also not in dispute that CIT(A)-1, Noida was having no jurisdiction over the appeals pertaining to Ghaziabad Jurisdiction.

6. It is also not in dispute that Sri S.K. Srivastava got compulsorily retired with effect from 11.06.2019. It is also not in dispute that on the complaint filed by Ms. Anuja Sarangi, Directorate General of Income Tax (DGIT-Vigilance) FIR bearing no. RC 1202019A0004 dated 04.07.2019 was registered by Central Bureau of Investigation (CBI), Anti Corruption Branch (ACB), Ghaziabad against Sh. S.K.Srivastava then CIT(A)- 1 and 2 Noida u/s 120-B, 420, 468 IPC and Section-7 of the Prevention of Corruption Act, 1988 (as amended in 2018) for having indulged in Acts of Omission and Commission adversarial to the interest of revenue. It is also one of the allegation in the FIR that Sri S.K. Srivastava claimed to have passed 104 orders as CIT(A)-1 and CIT(A)-2, Noida during December, 2018 but prima facie passed in the Month of June, 2019. In the backdrop of

the aforesaid facts and circumstances of the captioned cases the

sole question arises for determination in this cases is :

“as to whether impugned orders passed by Ld. CIT(A)-1 and 2 Noida are illegal, bad in law and non-est having been passed without jurisdiction in violation of CBDT notification and after his compulsory retirement (with effect from 11.06.2019 ?).

7. So far as appeals bearing ITA No. 1185/Del/2020, A.Y. 2015-16, CO No. 49/Del/2020, A.Y. 2010-11, 6623/Del/2019, A.Y. 2015-16, ITA No. 6945/Del/20, A.Y. 2009-10, CO No. 152/Del/2019, A.Y. 2009-10 are concerned they are pertaining to Ghaziabad jurisdiction and only CIT(A)- Kanpur is having the jurisdiction to try and entertain the same as per CBDT notification no. 66/2014 dated 13/11/2014 read with order no. C.C IT/CCA, Kanpur-III. It is beyond comprehension as to how and under what circumstances CIT(A)-1 Noida has dealt with and disposed of these appeals pertaining to Ghaziabad which are apparently beyond his jurisdiction.

8. From the copy of notification dated 13th November, 2014 issued by Central Board of Direct Taxes (CBDT) copy of order dated 15.11.2014 passed by the Chief Commissioner of Income Tax, Kanpur specifying the jurisdiction of CIT(A)s, copy of FIR No. RC 1202019A0004 dated 04.07.2019 and report on the basis of vigilance inspection qua the work and conduct of Sh.S.K.

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Srivastava CIT(A)-1 Noida conducted by D.G.I.T(Vigilance), New Delhi, it is proved on record that Sri S.K.Srivastava CIT(A)-1, Noida who was compulsorily retired w.e.f 11.06.2019 and vigilance team of Income Tax conducted vigilance inspection qua his work and conduct found following illegalities and irregularities committed by him :-

- “a. Sh.Sanjay Kumar Srivastava, IRS (Retd.) (87052) while posted as / CIT(A)-, Noida with additional charge of CIT(A)-2, Noida, prior to his compulsory retirement w.e.f 11.6,2019 indulged in acts of omission and commission adversarial to the interest of revenue.**
- b. Orders reported to have been passed by Sh.Srivastava in the month of December, 2018, were prima-facie passed in the month of June, 2019.**
- c. All these orders liable 10 have been uploaded on ITBA system were uploaded between 11th June to 13th June, 2019, after his demitting the office.**
- d. There are also indications of falsification of records to allude towards dispatch of these orders on 7th June, 2019, whereas they were dispatched on 14th June, 2019.**
- e. Sh.Sanjay Kumar Srivastava passed 13 orders which were outside his jurisdiction.**
- f. It was claimed that 104 orders were passed by Sh.Sanjay Kumar Srivastava during December, 2018, however many of them were uploaded to the central server using his RSA token only after his retirement.**
- g. It is apprehended that either the orders were not passed by Sh.Sanjay Kumar Srivastava during December, 2018, or if the orders were indeed passed during . December, 2018, then the possibility of undue financial gains by delaying the issue of orders cannot be ruled out,**
- h. It is apprehended that role of private players like contractual engages/outsourced staff in the above activities was very evident and requires in depth investigation.”**

9. From the aforesaid illegalities and irregularities brought on record by the Vigilance Inspection Team of Income Tax Department qua the work and conduct of CIT(A)-Noida it has come on record CIT(A)-I, Noida has decided Income Tax Appeals referred to in preceding para no. 7 pertaining to Ghaziabad Jurisdiction over which he has no jurisdiction purportedly on 31.12.2018 whereas it is proved on record that all these appeals were disposed of in the month of June, 2019 after his compulsory retirement. It is also proved on record that all the impugned orders have been uploaded on ITBA system between 11th June to 13th June, 2019 after his demitting the office by Sri S.K.Srivastava, CIT(A)-1 and 2 Noida. It is also proved that he has uploaded the impugned orders to the Central Server using his RSA token only after his retirement. All these facts to go to prove that the impugned orders have been passed by Sri S.K.Srivastava, CIT(A)-1 and 2 Noida after his compulsory retirement with effect from 11.06.2019, because the moment he ceases to hold his office he has become functus officio.

10. Hon'ble Supreme Court in case of **United Commercial Bank Ltd. vs. workman 1951 SCR 380** in the identical situation held that Jurisdictional defect strikes at the very authority of the

Court to pass any decree and such a defect cannot be cured even by consent of the parties.

10A. Hon'ble Supreme Court of India in case cited as **Kanwar Singh Saini vs. High Court of Delhi** held that order/decree passed by court having no jurisdiction is a nullity by returning following findings :

“There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. [Vide *United Commercial Bank Ltd. v. Workmen, Nai Bahu v. Lala Ramnarayan, Natraj Studios (P) Ltd. v. Navrang Studios, Sardar Hasan Siddiqui v. STAT, A.R. Antulay v. R.S. Nayak Union of India v. Deoki Nandan Aggarwal, Karnal Improvement Trust v. Parkash Wantft, U.P. Rajkiya Nirman Nigam Ltd. v. Indure (P) Ltd., State of Gujarat v. Rajesh Kumar Chimanlal Barot, Kesar Singh v. Sadhu, Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and CCE v. Flock (India) (P) Ltd.*]

11. Hon'ble Supreme Court in case of **Fatma Bibi Ahmed Patel & Anrs (2008) 6 SCC 789** held that jurisdictional issue goes to the root of the matter and the entire proceedings having been initiated illegally and without jurisdiction, and thus are nullities.

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12. In view of what has been discussed above and following the decisions rendered by Hon'ble Supreme Court in case of **Fatima Bibi (supra), United Commercial Bank (supra) and Kanwar Singh Saini (supra)** without entering into the merits of the captioned appeals, we are of the considered view that the impugned orders suffer from jurisdictional defect which is not curable having been passed by Ld. CIT(A)-1 and 2 Noida after his compulsory retirements with effect from 11.06.2019, when he was functus officio, are not sustainable in the eyes of law, hence, nullities. So question framed is answered in affirmative.

13. Consequently, impugned orders passed in the captioned appeals by CIT(A)-1 and 2 Noida are set aside to the files of the respective jurisdictional CIT(A)-1 and 2 Noida and CIT(A) Ghaziabad to decide afresh in accordance with law by providing an opportunity of being heard to the assessee / revenue. Consequently aforesaid appeals / cross objections are allowed for statistical purposes.

Order pronounced in open court on this 16th day of December, 2020.

**Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER
Dated the 8th day of January, 2021**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

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Sd/- Sd/-

AM JM

ITA No.- 6614/Del/2019 and others.

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- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-20, New Delhi.
- 5.CIT(ITAT), New Delhi.

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