

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 5776/Del/2018  
Assessment Year: 2014-15

Onkar Gupta P-181, ATS Green Village, Sector-93A, Noida – 201 304  PAN No. AFIPG 0854 R <b>(APPELLANT)</b>	Vs.	DCIT, Circle-2, Noida  <b>(RESPONDENT)</b>
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Appellant by	Shri Pratap Gupta, FCA
Respondent by	Shri Ajay Kumar, Sr. DR

Date of hearing:	09/02/2021
Date of Pronouncement:	17/02/2021

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 31.05.2018 passed by the Commissioner of Income Tax (Appeals)-I, Noida relating to Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is an individual stated to be having business income, income from house property and income from other sources. Assessee filed his return of income for A.Y. 2014-15 on 22.09.2014 declaring total income at Rs.1,13,71,690/-. The case was taken for scrutiny and thereafter, assessment was framed u/s 143(3) of the Act vide order dated 09.12.2016 and the total income was determined at Rs.1,33,33,535/-.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 31.05.2018 in Appeal No.102/2017-18/Noida dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised following grounds:

- “1. That ld CIT(A) without appreciating the correct facts of the case in not justified in law and facts and circumstances in the case in confirming the jurisdiction of DCIT- Circle -2 with any order under section 127 of the I. T. Act passed by CIT(Admn.) as valid jurisdiction. Order passed by DCIT-Circle-2 is without jurisdiction and should be quashed.*
- 2. That ld CIT(A) without appreciating the correct facts of the case is not justified in law and facts and circumstances of the case in stating that appellant has not contested the jurisdiction before the assessing officer and has accepted the same having waived its objection to same.*
- 3. Without prejudice to ground of appeal no 1 and 2, the ld CIT(A) is not justified in law and facts and circumstances of the case in confirming the order passed under section 143(3) without issuing the notice under section 143(2) by DCIT-2, Noida as valid order.*
- 4. That ld CIT(A) without appreciating the correct facts of the case is not justified in law and facts and circumstances of the case in confirming the addition of Rs.19,61,845/- made by ld assessing officer on account of gross receipt shown in profit and loss account by observing that appellant has not*

*corroborated any discrepancy in the same which is totally incorrect and misleading to the documents on record placed by appellant.*

5. *Assessee has every right to make, add, delete, modify or alter any grounds of appeal at the time of hearing.”*

5. Before us, Ld AR submitted that in grounds No 1 to 3, assessing is challenging the validity of the assessment and in ground No 4 assessee is challenging the addition on merits.

6. On the validity of assessment, Learned AR submitted that initially notice under section 143(2) was issued by DCIT Circle 71(1) New Delhi to the assessee. He submitted that DCIT Circle 71(1) New Delhi was having jurisdiction over the salary employees only. Later on, when it came to the notice of DCIT Circle 71(1) New Delhi that assessee was not having salary income during the year under consideration but was having income from business and profession and the address of the Assessee was of Noida, he transferred the assessment records to DCIT Circle (2) Noida. The Ld AR submitted that the transfer of the case of the assessee to DCIT, Circle 2, Noida was not in accordance with the provisions of the Act as no order for transfer of the case to DCIT, Circle(2) Noida was passed u/s 127 of the Act. He submitted that the order u/s 127 of the Act was necessary as the transferring AO was in Delhi and the AO to whom the records of the assessee were transferred was in Noida (U.P). Ld AR further submitted that the assessee on receipt of notice under section 143(2)/142(1) from DCIT Circle 2 Noida and during the course of assessment

proceedings before DCIT Circle 2, Noida, had challenged his jurisdiction and objected to the proceedings initiated in the absence of any order under section 127 of the Income Tax Act. He submitted that DCIT, Circle 2 Noida proceeded with the assessment and thereafter framed assessment u/s 143(3) vide order dtd 9.12.2016. In support of his contention of the assessee's challenge of jurisdiction before AO, he pointed to the copy of the letter addressed to the DCIT, Circle 2 Noida which is placed in the paper book. In support of his contention that no order u/s 127 has been passed for transferring the case from Delhi to Noida, he submitted that assessee vide letter dtd 20.2.2020 has sought information from DCIT Circle 2 Noida under the Right to Information Act (RTI) about when the jurisdiction of the assessee was transferred from Delhi to Noida and whether any order for transfer of the case from Delhi to Noida and vice versa was passed under section 127 of the Act. He submitted that in response to the RTI application, DCIT vide order dtd 18.3.2020 passed U/s 7(1) of the Right to Information Act, 2005, has stated that "No information regarding passing of order u/s 127 of the Income Tax Act, 1961, is available with his office". He pointed to the copy of the relevant reply which is placed at Page 58 of the Paper Book.

7. He thereafter submitted that the ACIT, Circle 71(1), Delhi also in response to the information sought by the assessee under the Right to Information Act vide letter dated 19.03.2020 has

stated that its office does not have any information about the passing of any order u/s 127 of the Act. He pointed to the relevant reply which is placed at page 54 of the paper book. He therefore submitted that in the absence of any order passed u/s 127 of the Act, the assessment order and the consequential order passed by CIT(A) Noida are not in accordance with law and therefore the same be set aside.

8. The learned DR on the other hand supported the order of AO and CIT(A).

9. We have heard the rival submissions and perused the material on record. Before us, the assessee has challenged the validity of the assessment order passed by DCIT, Circle 2 Noida. It is an undisputed fact and as also noted by the AO in the assessment order that initially notice u/s 143(2) was issued by ACIT, Circle 71(1) Delhi but the case was transferred to DCIT, Circle 2, Noida and the impugned assessment u/s 143(3) (order dated 09.12.2016) has been framed by DCIT, Circle 2, Noida, UP.

10. Section 127 of the Income tax Act, deals with the power to transfer the cases. Sec. 127 of the Act confers power on the IT authorities to transfer the cases from one AO to any other AO, who are subordinate to another officer. Where the AO or AOs from whom the case is to be transferred and the AO or AOs to whom the case is to be transferred are not subordinate to the same

Director General or Chief CIT or CIT, the power of transfer has been conferred on the CIT from whose jurisdiction, the case is to be transferred, if both the respective CITs are in agreement and such power of transfer is exercisable after giving the assessee a reasonable opportunity of being heard in the matter and after recording reasons for doing so.

11. The present case falls within the ambit of sub-section (2) of s. 127 since both the Assessing Officers are not subordinate to the same higher authority, one being at Delhi and the other at Noida (UP). Sub-section (2) visualises two situations-clause (a) and clause (b). Clause (a) deals with a situation where the designated higher authorities of both the areas to whom the respective Assessing Officers are subordinate are in agreement. Once they are in agreement that the assessment jurisdiction has to be transferred then the designated higher authority from whose jurisdiction the case is to be transferred may provide the assessee a reasonable opportunity of being heard wherever it is possible to do so and after recording the reasons for doing so, pass the order of transfer. The reading of clause (a) further reveals that reasonable opportunity of hearing has to be provided before passing an order under section 127(2). Thus the order passed under section 127(2) must indicate that the assessee was provided a reasonable opportunity of hearing and must also record the reasons for transfer of assessment jurisdiction. Clause (b) visualizes a situation where the two designated higher

authorities are not in agreement regarding transfer of assessment jurisdiction. In such a situation, the order is to be passed by the Central Board of Direct Taxes or by the designated higher authority as may be authorised by the Central Board of Direct Taxes by a notification in the Official Gazette on its behalf.

12. In the present case from the copies of the replies received by the assessee in response to the information sought under RTI Act, which are placed on record, clearly reveals that the no order u/s 127 of the Act has been passed for transferring the case of the assessee from Delhi to Noida (UP) meaning thereby that the procedure prescribed under section 127 of the Act has not been complied with. Further, it is also a fact that before DCIT, Circle 2, Noida, assessee had objected to his jurisdiction to frame the assesment but however the assessment has been framed by DCIT, Circle-2, Noida.

13. In the light of the above discussions, we are of the view that since the impugned assessment order has been passed without complying with the statutory procedural requirements, the assumption of jurisdiction by DCIT, Circle-2, Noida was not legally valid. In such a situation, we are of the view that the order passed by the AO is void ab initio and therefore it has to be set aside. We accordingly set aside the assessment order of the AO dated 9.12.2016 passed u/s 143(3). Since we have set aside the order of the AO, the consequential impugned order of the CIT(A)

also does not survive. Since the assessment order itself been set aside, the grounds of appeal on merits have been rendered academic and therefore not dealt with. **Thus the assessee's grounds of appeal no 1 to 3 are allowed and other grounds are rejected.**

**14. In the result, the appeal of the assessee is partly allowed.**

**Order pronounced in the open court on 17.02.2021**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

*Date:- 17.02.2021*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI