

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1065/JP/2019
निर्धारण वर्ष/Assessment Years : 2013-14

Deputy Commissioner of Income Tax, Central Circle-1, Jaipur	बनाम Vs.	Smt. Pallavi Mishra A-801, 'Aurum' Tilak Marg, C- Scheme, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACQPT5720L		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

प्रत्याक्षेपण/ C.O. No. 23/JP/2019
(Arising out of आयकर अपील सं./ITA No. 1065/JP/2019)
निर्धारण वर्ष/Assessment Year 2013-14

Smt. Pallavi Mishra A-801, 'Aurum' Tilak Marg, C- Scheme, Jaipur	बनाम Vs.	Deputy Commissioner of Income Tax, Central Circle-1, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACQPT5720L		
प्रत्याक्षेपक/ Objector		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri G.M. Mehta (FCA)
राजस्व की ओर से/ Revenue by : Shri B.K. Gupta (CIT)

सुनवाई की तारीख/ Date of Hearing : 02/07/2021
उदघोषणा की तारीख/ Date of Pronouncement : 14/07/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue and the cross objection by the assessee arising out of the order of the Id. CIT(A)-4, Jaipur dated 21/06/2019 pertaining to A.Y 2013-14.

2. Briefly stated, facts of the case are that search & seizure operations u/s 132(1) were carried out on 30.10.2014 at the various business and residential premises of NIMS Group including the premises of the assessee who is part of the said group. Thereafter in response to notice u/s 153A, the assessee filed her return of income declaring total income of Rs. 26,26,510/- as against total income of Rs.24,73,160/- declared in her original return of income filed u/s 139 of the Act. The assessment was completed u/s 143(3) read with section 153A vide order dated 29.12.2016 wherein the Assessing Officer made an addition amounting to Rs. 6,86,686/- towards undisclosed investment in plot of land situated at B-140 to B-149, Shivaji Nagar, Jaipur on substantive basis. Further, protective addition of Rs. 3,27,83,846/- was made in the hands of the assessee as undisclosed investment in land bearing Khasra No. 551,551/673, 552 at village Jugalpura, Chitanukalan, Tehsil Amer, Jaipur wherein substantive addition was proposed in the hands of the M/s Indian Medical Trust. Accordingly, the assessment was completed at Rs. 3,60,97,040/- as against return of income of Rs. 26,26,510/-.

3. Being aggrieved, the assessee challenged the order and the findings of the Assessing Officer before the Id. CIT(A) in respect of both substantive and protective additions. Regarding the addition of Rs. 6,86,686/- made by the AO on substantive basis, the same was confirmed by the Id. CIT(A) against which the assessee carried the matter in appeal before the Tribunal and the Co-ordinate Bench vide its

order dated 24.07.2018 in ITA No. 1028/JP/2017 has deleted the said addition holding that the addition has been made without reference to any incriminating material which can demonstrate any investment over and above disclosed in the financial statements. The addition made by the AO was held not sustainable and the same was deleted.

4. Regarding protective addition of Rs. 3,27,83,846/- on account of undisclosed investment in the land situated at village Jugalpura, Chitanukalan, Teh. Amer, Jaipur, the assessee took a specific ground of appeal challenging the same before the Id CIT(A). During the pendency of the appellate proceedings before the Id CIT(A), the Assessing Officer passed another order dated 15.09.2017 u/s 143(3)/153A/245D(4) of the Act, referred to as order passed to give effect to the order of Settlement Commission u/s 245D(4) dated 30/06/2017 of the Act, wherein the AO converted the earlier protective addition made in the hands of the assessee on account of undisclosed investment in the land situated at village Jugalpura, Chitanukalan, Teh. Amer, Jaipur into substantive addition. The said order passed by the AO u/s 143(3)/153A/245D(4) of the Act was brought to knowledge of Id. CIT(A) and it was submitted that the assessee shall be filing a separate appeal against the said order passed by the AO dated 15.09.2017 as required by law. The Id. CIT(A) considering the submissions of the assessee held that since the protective addition has been converted and treated as substantive addition by the Assessing Officer, the ground of appeal so taken by the assessee has become infructuous and ground of appeal so taken by the assessee was treated as dismissed.

5. Against the order u/s 143(3)/153A/245D(4) of the Act dated 15.09.2017 passed by the AO wherein the protective addition was converted into substantive addition, the assessee filed another appeal before the Id. CIT(A)-4, Jaipur who vide impugned order dated 17.06.2019 has deleted the said addition. Against the said order and findings of the Id CIT(A), the Revenue is now in appeal before us and the assessee has also filed her cross objection.

6. Firstly, we take up the Revenue's appeal wherein the grounds of appeal read as under:-

"1. Whether the Ld. CIT(A) was justified in deleting the addition of Rs.3,27,83,846/- in view of the fact that the assessee has not explained the source of undisclosed investment in purchase of land.

2. Whether the Id. CIT(A) was justified in ignoring the facts that the Hon'ble ITSC has relied upon a subsequent report of the Pr. CIT(C) and wherein the PCIT(C) has submitted that the addition of undisclosed investment in land should be made in the hands of Ms. Pallavi Tomar and no IMT.

3. Whether the Id. CIT(A) was justified in ignoring the facts that protective addition of Rs.3,27,83,846/- was made in the case of the assessee and after the order of the Hon'ble ITSC, the same was made as substantive addition. The conversion of protective to substantive addition is well within the jurisdiction of the AO."

7. At the outset, the Id. CIT/DR submitted that the Revenue wishes to take certain additional grounds of appeal which are purely legal in nature and in light of the Hon'ble Supreme Court decision in case of

NTPC vs. CIT (229 ITR 883), it was prayed that the additional grounds of appeal may be admitted and adjudicated upon on merits. The additional grounds of appeal so sought to be raised by the Revenue read as under:-

"A. The learned CIT Appeal has erred in law in adjudicating against an order which was not appealable before the CIT Appeal, ab initio.

B. The learned CIT(Appeal) exceeded his jurisdiction in adjudicating against the said order dated 15.09.2017, as such an order is not covered as an appealable order detailed in section 246A of the IT Act 1961.

C. The learned CIT(Appeal) erred in law and on facts in admitting and adjudicating the appeal purportedly filed against order dated 15.09.2017 passed by the ACIT Central Circle-1, Jaipur shown to be pertaining to AY 2013-14 with the heading, "Order giving effect to the order under section 245D(4) of the Act passed by the Income Tax Settlement Commission, New Delhi"

D. Whether the Id. CIT(A) was justified in passing the order without Remand Report of the AO. The Id. CIT(A) has not provided proper opportunity of hearing, which is against the principles of natural justice, and which is a specific requirement of IT Act, 1961.

E. After the search the NIMS group/IMT was centralized with the AO i.e. ACIT, Central Circle-1, Jaipur. The assessee Smt. Pallavi Tomar is also one of the members of this group and her residence was also covered in search and her case was also centralized with the AO, Central Circle-1, Jaipur. Therefore, the AO has jurisdiction over the

case of the Smt. Pallavi Tomar. The AO has passed the order well within its jurisdiction. Whether the CIT(A) was justified in holding that "After framing of original order the Assessing Officer exhausted his jurisdictional over the appellant. Any modification in the original order would have been resorted to only if the jurisdiction for the same is validly assumed. In absence of assumption of jurisdiction as per know provision of law, the impugned order is nullity and is required to be set aside.

.....

After framing of assessment, the Assessing Officer becomes functus officio. He no longer remains in jurisdiction to redo or re-compute such assessment."

8. It was submitted by the Id CIT/DR that the Revenue has challenged the assumption of jurisdiction by the Id CIT(A) stating that the order so passed by the AO is not an appellable order as so referred to in section 246A of the Act and hence, admitting an appeal against the said order and adjudicating the grounds of appeal so taken by the assessee is beyond his jurisdiction. It was submitted that the AO has passed the order dated 15.09.2017 to give effect to the order u/s 245D(4) passed by the Income Tax Settlement Commission and once the jurisdiction of the matter lies with ITSC and the AO passes an order to give effect to the order of ITSC, the matter clearly falls outside the regular appellate route wherein the appeal could have been filed before the Id CIT(A). It was further submitted that the Id CIT(A) has adjudicated the additional grounds of appeal without calling for the remand report from the AO and therefore, the Revenue has not been

provided an opportunity of being heard violating the principles of natural justice. It was further submitted that the Id CIT(A) was again wrong in holding that after framing the assessment, the AO becomes functus officio as in the instant case, once the ITSC has passed the order, the AO is well within his jurisdiction to compute the income and give effect to the order so passed by the ITSC. He accordingly submitted that the order so passed by the Id CIT(A) may thus be set-aside for want of jurisdiction and other reasons as stated above.

9. In his submissions, the Id. AR submitted that in first three additional grounds of appeal, the Revenue has challenged the jurisdictional of Id. CIT(A) -4, Jaipur who had admitted and decided the appeal of the assessee. It was submitted that these additional grounds of appeal should not be admitted for the following reasons. It was submitted that in remand report dated 04.04.2018 before the Id. CIT(A), the AO raised jurisdiction issue of the Id. CIT(A). However, these revised grounds of appeal, the jurisdiction issue of Id. CIT(A) has now been challenged for the first time. It was further submitted that in Form No. 36 dated 29.08.2019, there is no ground challenging the jurisdiction of Id. CIT(A) in admitting and deciding the appeal. It was submitted that in demand notice dated 15.09.2017 issued u/s 156 of the Act pursuant to which the demand was raised on the assessee, the AO herself had directed that if assessee intends to challenge the assessment of income/fine/penalty, appeal can be presented within 30 days to Id. CIT(A)-4, Jaipur. It was submitted that as per the directions of the Id. AO herself, the assessee had presented the appeal before the Id. CIT(A)-4, Jaipur and therefore, challenging jurisdiction of the Id.

CIT(A) through these additional grounds of appeal is against the principle of natural justice and such grounds of appeal should be dismissed as void ab initio. It was further submitted that as per the provisions of section 246A(1)(a) of the Act where the assessee denies his liability to be assessed under the Act, he can prefer appeal to the Id. CIT(A) and accordingly, the assessee had preferred the present appeal within time allowed under the law.

10. Regarding fourth additional ground of appeal taken by the Revenue, it was submitted that the said ground of appeal has been taken without considering the order of the Id. CIT(A) as well as the assessment records. It was submitted that relevant discussion for the remand to the AO is duly found in the order of Id. CIT(A) as apparent from the following table as under:-

S. No.	Para & page {of order of CIT(A)}	Related discussion by CIT(A)
1.	Para 2.2, page (3)	During the course of hearing of this appeal, the appellant has also raised following additional grounds of appeal. Same was forwarded to the learned AO too on 15.04.2019.
2.	Para 5, Page 10	The written submissions filed by the Id. A/R was forwarded to the learned AO calling for remand report vide letter No. CIT(A)-4/JPR/2017-18/815 dated 05.12.2017 has been called from the AO.
3.	Para 5.2, Page 10	The DCIT, CC-1, Jaipur, vide letter no. 11 dated 04.04.2018 has submitted the

		aforesaid report through Addl. CIT, Central Range, Jaipur No. 26 on 05.04.2018, the relevant extracts of which is reproduced herein as under:- Kingly refer to your office letter Nos.
4.	Para 6, Page 15	A copy of the said report has also been provided to the A/R of the appellant on 9.4.2018 for rejoinder comments.

11. It was accordingly submitted that though there appears to be no requirement under law for obtaining remand report from the AO for adjudication of any legal grounds of appeal. However, for adjudication of any additional grounds raised in appeal by the assessee or where there is any complexity in assessment order or where any clarification is required, the remand report may be obtained from the Assessing Officer before deciding the appeal. It was submitted that in the instant case, the additional grounds of appeal were forwarded to the Assessing Officer and after considering the remand report of the AO and rejoinder filed by the assessee, the appellate order was passed by the Id. CIT(A) and accordingly, there is no legal force in the additional ground so raised by the Revenue and the same may not be admitted.

12. Regarding fifth additional ground of appeal, it was submitted that it is not a ground of appeal but it is in respect of past history of the assessee and jurisdiction of the AO for which Id. CIT(A) at para 7.4 of his order has giving a finding that after completion of assessment, the Assessing Officer becomes functus officio and he no longer remains

in jurisdiction to redo or re-compute such assessment. Such an assessment once framed can be modified either u/s 154 or u/s 147 or to give a give effect to an order in appeal u/s 250 or s. 254 or revision u/s 263/264 of the Act. It was accordingly submitted that the finding of the Id. CIT(A) that Assessing Officer has become functus officio after completion of the assessment order is as per the provisions of the Act and therefore, the additional grounds of appeal so taken by the Revenue may not be admitted.

13. After hearing both the parties and considering the grounds so sought to be raised by the Revenue, we find that these grounds of appeal relating to challenging the jurisdiction of the Id CIT(A) to pass the impugned order, not providing adequate opportunity to the Revenue and challenging the findings of the Id CIT(A) wherein he has set-aside the assumption of the AO in passing the order dated 15.09.2017 are purely legal grounds of appeal which can be raised for the first time during the course of present proceedings and the same are hereby admitted for adjudication on merits.

14. Coming to the merits of these grounds of appeal, firstly, we refer to the order so passed by the Id CIT(A) wherein the relevant findings read as under:

"7. As regards the additional ground, I have considered the additional ground raised and the submissions made in this regard. In my view the additional ground raised is purely legal in nature and involves the question of law. The adjudication of the same does not require any investigation or examination of fresh facts but the same can be decided on the basis of facts and

material on record. Therefore in view of decision of Hon'ble Supreme Court in the case of NTPC vs. CIT 229 ITR 383 as well as Mahindra & Mahindra Limited vs. DCIT 122 TTJ 577 (Mum) (SB), the additional grounds raised is admitted for adjudication.

7.1 Briefly, the Id. Counsel for the appellant submitted that the impugned order is passed in the case of the appellant reportedly giving effect to the order of Settlement Commission which was passed in the case of Indian Medical Trust and not the appellant herself. The appellant never filed any application for settlement of her case before Settlement Commission. Therefore the order impugned in the present appeal could not have been passed by the Ld. AO. It is also contended that even the settlement commission in its' order has not directed to take any action or recompute the income of the appellant herein. The AO passed the impugned order without any notice or affording an opportunity of hearing to the appellant and hence the same is bad in law as it is in violation of principle is of natural justice.

7.2 It is also contended that order for the year under appeal was passed u/s 143(3) r.w.s 153A on 29-12-2016. In the said assessment an addition of Rs. 3,27,83,846/- was made on protective basis as substantive addition was proposed in the case of Indian medical trust as per report of the Pr. CIT(C) Under Rule 9 of Settlement Commission Rules. After the framing of original order the Assessing Officer exhausted his jurisdiction over the appellant. Any modification in the original order would

have been resorted to only if the jurisdiction for the same is validly assumed. In absence of assumption of jurisdiction as per known provision of law, the impugned order is in nullity and is required to be set aside.

7.3 Further, I have perused the order impugned in the present appeal. The said order is passed purportedly giving effect to the order of Income Tax Settlement Commission in the case of Indian medical trust. An order giving effect to the order of settlement commission can be passed provided the person is an applicant before the settlement commission.

Admittedly, in the present case the present appellant was not an applicant to settle his case before the Settlement Commission. In the case of the appellant, the Assessing Officer passed original assessment on 29-12-2016 u/s 143(3) r.w.s 153A of the Act. Such an order could have been modified provided the Assessing Officer has achieved jurisdiction for the same. Since the order impugned in the present appeal dated 15 September 2017 is to give effect to the order passed by Settlement Commission u/s 245D(4) dated 30/06/2017 of the Act, the pre-condition is that the Settlement Commission should have passed some order directing the assessing officer to do so. Since the applicant before the Settlement Commission was not the present appellant, but Indian Medical Trust which is a separate legal and taxable entity, any order passed in the case of Indian Medical Trust by Settlement Commission will not automatically vest jurisdiction in the

Assessing Officer to modify any order passed in any other assessee's case.

7.4 I have also perused the order of Settlement Commission running from page no. 1 to 161 passed in the case of Indian Medical Trust wearing (wherein) I do not find any direction so as to modify the original order passed in the case of the present appellant. It is therefore not forthcoming from the record as to how the Assessing Officer assumed jurisdiction to frame the present assessment purportedly giving effect to the order of Settlement Commission. Section 153 prescribes the time limit for completion of assessment, reassessment and recomputation. According to which the same is to be completed within 21 months from the end of the assessment year in which the income was first assessable. After framing of assessment, the Assessing Officer becomes functus officio. He no longer remains in jurisdiction to redo or re-compute such assessment. Such an assessment once framed can be modified either u/s. 154 or u/s. 147 or to give a give effect to an order in appeal u/s 250 or s. 254 or revision u/s 263/264. Thus every time an assessing officer modifies an order, he has to reassume the jurisdiction for the same by taking recourse to some provision in the act, or by way of some direction from some authorities. In the present case it is seen that the Assessing Officer has resorted to modify the order purportedly for giving effect to the order of Settlement Commission. However reading the order of Settlement Commission, there is no direction contained therein

so as to modify the assessment of the appellant herein. The order of Settlement Commission is only in respect of computation of income of an entity called Indian Medical Trust. The said trust is a separate legal and taxable entity. Therefore any order in the case of Indian Medical Trust will not alter the income of the appellant herein. I (am) therefore of the view that the Assessing Officer exceeded his jurisdiction in passing the order impugned before me purportedly stating to be giving effect to the order of Settlement Commission. Since there is no direction contained in the order of Settlement Commission in regard to the present appellant, the additional grounds raised by the appellant is valid and is allowed. The order passed by the Ld. AO is invalid and the additions are liable to be deleted ab-initio."

15. We now refer to the order passed by the AO dated 15.09.2017 with the heading "order giving effect to the order u/s 245D(4) of the Act passed by the Income Tax Settlement Commission, New Delhi" and the contents thereof read as under:

"2. Now, the order u/s 245D(4) dated 30-06-2017 on the Settlement Application no. RJ/JP-51/15-16/16-IT passed by the ITSC, Additional Bench-II, New Delhi, has been received in the case of M/s Indian Medical Trust. On going through this order, it has been found that there is no discussion of the undisclosed investment in the land at Jugalpura for which substantive-addition was proposed by the department in the hands of M/s Indian Medical Trust. The issue of investment in the land at Jugalpura

has not been discussed at all in the order u/s 245D(4) of the Act meaning thereby that this issue has not been considered by the ITSC in the hands of M/s Indian Medical Trust. Therefore, the protective addition of Rs. 3,27,83,846/- made on account of undisclosed investment in the land at Jugalpura, Tehsil Amer, Jaipur, in the order u/s 143(3) r.w.s. 153A of the Act dated 29-12-2016 is being converted into substantive addition in the hands of Smt. Pallavi Tomar Rana for AY 2013-14 on giving the effect to the order u/s 245D(4) dated 30-06-2017 on the Settlement Application no. RJ/JP-51/15-16/16-IT passed by the ITSC, Additional Bench-II, New Delhi.

2. On giving effect to the order u/s 245D(4) dated 30-06-2017 on the Settlement Application no. RJ/JP-51/15-16/16-IT passed by the ITSC, Additional Bench-II, New Delhi, the total income of the assessee is computed as under:-

Return Income	Rs. 26,26,510
Add:- Substantive addition as discussed in para no. 5 of the order u/s 143(3) r.w.s 153A dated 29-12-2016	Rs. 6,86,686/-
Add: Substantive addition as discussed in para no. 6 of the order u/s 143(3) r.w.s 153A dated 29-12-2016 and para no. 2 of this order	Rs. 3,27,83,846/-
Assessed Total Income	Rs. 3,60,97,042/-

R/O	Rs. 3,60,97,040/-
-----	-------------------

The total income of the assessee in the status of individual for Assessment Year 2013-14 relevant to previous Year 2012-13 is assessed at Rs. 3,60,97,040/- u/s 143(3) r.w.s 153A of the Act. The form ITNS-150 showing calculation of tax and interest chargeable is attached herewith and forms a part of this Order. A notice of demand u/s 156 of the Act and challan for payment of tax is hereby issued."

16. The AO has stated that the order of the Income Tax Settlement Commission has been passed u/s 245D(4) dated 30.06.2017 in case of M/s Indian Medical Trust and the matter relating to investment in the land at Jugalpura has not been discussed at all and not considered in the order u/s 245D(4) in the hands of M/s Indian Medical Trust. There is thus a clear acknowledgment by the AO that the assessee was not an applicant before Income Tax Settlement Commission and there was no discussion relating to investment in the land at Jugalpura in the order so passed by the Income Tax Settlement Commission. Therefore, the question of any direction by the Income Tax Settlement Commission and passing of any order by the AO to give effect to non-existent directions doesn't arise at first place and that too, in the hands of the assessee who is not an appellant before the Income Tax Settlement Commission. Therefore, we see no reason but to agree with the Id CIT(A), who after going through the order passed by the AO as well as by Income Tax Settlement Commission, has recorded a finding that the assessee was not an applicant before Income Tax Settlement Commission and there being no direction by the Income Tax Settlement

Commission in respect of the assessee by way of modification of the original assessment order passed u/s 143(3) r/w section 153A dated 29.12.2016, the order so passed by the AO purportedly giving effect to the order of ITSC u/s 245D(4) is without jurisdiction.

17. Here, it is relevant to note, as apparent from the original assessment order passed u/s 143(3) r/w section 153A dated 29.12.2016 and in particular, from reading of para 6.8 and 6.9 of the said order, the department has claimed the undisclosed investment in impugned land purchase amounting to Rs 327.83 crores in the hands of Indian Medical Trust and substantive addition was thus proposed by the department before the Income Tax Settlement Commission in the hands of Indian Medical Trust. There was thus a proposal to make substantive addition in the hands of Indian Medical Trust, however, in the order so passed by the Income Tax Settlement Commission u/s 245D(4), there was no discussion about any undisclosed investment in aforesaid immovable property which is apparently suggestive of the fact that such a proposal was not accepted by Income Tax Settlement Commission and as a matter of fact, no addition was made in the hands of M/s Indian Medical Trust on substantive basis.

18. It is further noted that subsequently the AO basis the receipt and examination of the order of the Income Tax Settlement Commission, has drawn an inference that since the matter relating to investment in the land at Jugalpura has not been considered by Income Tax Settlement Commission in the hands of M/s Indian Medical Trust (in whose hands substantive addition was originally proposed by the

department), the protective addition originally made in the hands of the assessee u/s 143(3) r/w 153A in respect of the said transaction needs to be converted into substantive addition and thereafter, the AO changed his earlier position as taken in the original assessment proceedings and proceeded to converted the protective addition into substantive addition in the hands of the assessee by way of impugned order dated 15.09.2017.

19. We, therefore, find that it is case where there was no substantive addition made in the hands of Indian Medical trust at first place and in absence of substantive addition, the AO has proceeded with protective assessment in the hands of the assessee. Secondly, subsequent to completion of original assessment proceedings made on protective basis in hands of the assessee, realizing the fact that no substantive addition has been made in hands of either of two assesseees, the AO changed his position and took a suo-moto decision to convert protective addition into substantive addition in the hands of the assessee. It is AO's own independent decision subsequent to completion of original assessment and not something which is directed by the Income Tax Settlement Commission.

20. The question which therefore arises for consideration is post completion of original assessment proceedings, what is the basis of the assumption of such jurisdiction by AO to suo-moto convert protective assessment into substantive assessment and under what specific provisions of law, the AO has assumed such jurisdiction and passed the impugned order dated 15.09.2017.

21. The concept of substantive and protective assessment though not defined in the Income Tax Act has the necessary legal recognition by the Courts. It has been held by the Courts that in cases where it appears to the income tax authorities that certain income has been received during the relevant assessment year but it is not clear who has received that income and prima facie, it appears that the income may have been received either by A or by B, it would be open to the relevant income tax authorities to determine the said question by taking appropriate proceedings both against A and B by way of substantive and protective assessment. Once an assessment has been made, the veracity of the additions are to be adjudicated by the appellate authorities in both the cases and the appellate authority has to give a specific finding in whose hands the income on account of impugned addition is to be finally assessed. Therefore, to safeguard the interest of Revenue, the AO can assess the income in more than one hand but this procedure can be permitted at the stage of assessment and once the assessment is done, the taxability in the rights hands need to be decided by the appellate authority and pursuant to decision by the appellate authority, the AO can take the necessary action to finally assess the income in right hands and enforce recovery of taxes. In the instant case, as we have noted above, there is no substantive addition in hands of Indian Medical trust and in the case of the assessee, post completion of original assessment proceedings and during the pendency of the appellate proceedings before the Id CIT(A), the AO took a suo-moto decision to convert protective assessment into substantive assessment and raised the demand notice for recovery of taxes on the assessee, thereby initiating the recovery proceedings against the

assessee. As to the basis of such change in position of the AO, the Id CIT(A) has also recorded a finding that post completion of the original assessment proceedings, there are no fresh facts or enquiries which have been conducted by the AO and all the enquiries and facts were forming part of the original assessment proceedings and only basis is that there was no reference to the issue of investment in hands of Indian Medical Trust in the order of the Settlement Commission. Such a change in position thus amounts to change of opinion on same set of facts. In any case, once the Id CIT(A) was ceased of the matter, the AO could have brought this up before the Id CIT(A) and sought necessary directions. Where however, the AO still hold the belief to take suo-moto action to convert protective assessment into substantive assessment, he could have invoked his jurisdiction in terms of section 147 on satisfaction of conditions specified therein and in absence of thereof, the present action of the AO cannot be sustained in the eyes of law. In this regard, we find that the Id CIT(A) has rightly held that once an assessment has been framed by the AO, he becomes *functus officio* and whenever the AO wishes to modify and/or enhance the assessment, he is required to reassume the jurisdiction under the Act after satisfying the conditions as so contained in section 154 or section 147 of the Act. Further, the AO can assume jurisdiction so as to give effect to an order or directions so contained in order passed u/s 250/254/263/264 of the Act. In the instant case, the AO has not invoked his jurisdiction under section 154 and section 147 and the order so passed is again not an order to give effect to the directions contained in any order passed u/s 250/254/263/264 of the Act, thus, the action of the AO doesn't have the necessary sanction of the relevant

provisions and the order so passed has been rightly set-aside by the Id CIT(A) for want of jurisdiction and requisite sanction under law.

22. Further, given the fact that the order so passed by the AO whereby protective assessment u/s 153A r/w 143(3) has been converted into substantive assessment alongwith raising the demand notice on the assessee u/s 156 and initiating the recovery proceedings, the order so passed is clearly an order against which the assessee can appeal before the Id CIT(A) u/s 246A which clearly provides that the assessee can appeal against an order where the assessee denies his liability to be assessed under the Act. Therefore, there is no infirmity in the action of Id CIT(A) in assuming jurisdiction u/s 246A in the instant case and passing the impugned order after calling for the remand report from the AO and providing adequate opportunity to both the parties.

22. In the result, all the additional grounds of appeal as well as original ground of appeal no. 3 taken by the Revenue are hereby dismissed.

23. Given that we have confirmed the findings of the Id CIT(A) in setting aside the order of the AO for want of jurisdiction and necessary sanction under law, other grounds of appeal taken by the Revenue have become academic and we don't deem it necessary to adjudicate the same. Hence, the same are dismissed as infructious.

24. The grounds in assessee's cross objections are effectively in support of the findings of the Id CIT(A) which we have already dealt with supra, hence, doesn't require any separate adjudication.

In the result, both the appeal of the Revenue and the cross objection of the assessee are disposed off in light of above directions.

Order pronounced in the open Court on 14/07/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 14/07/2021

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- DCIT, Central Circle-1, Jaipur
2. प्रत्यर्थी / The Respondent- Smt. Pallavi Mishra, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1065/JP/2019 & CO No. 23/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar