

**IN THE INCOME TAX APPELLATE TRIBUNAL
“GAUHATI” BENCH**

**BEFORE HON’BLE SHRI PARTHA SARATHY CHAUDHURY,
JM AND**

**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)**

आयकरअपील सं./ I.T.A. No. 423/Gau/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

Sunshine Builders 4 th Floor, Shima Plaza Ulubari, G.S Road Guwahati, Assam-781007	बनाम/ Vs.	ACIT, Circle-Jorhat Aaykar Bhawan, Tarajan A.T Road, Jorhat-Assam-785001.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ABGFS-1867-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Jay Prakash Gupta, CA, Ld. AR
Revenue by	:	Shri N.T. Sherpa. Ld. JCIT-Sr.DR

सुनवाई की तारीख/ Date of Hearing	:	08/11/2021
घोषणा की तारीख / Date of Pronouncement	:	08/11/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order the Ld. Commissioner of Income Tax (Appeals), Jorhat [CIT(A)] dated 25/06/2019 in the matter of assessment framed by the Ld. Assessing Officer (AO) u/s. 144 of the Income-tax Act, 1961 on 19/12/2016.
2. The Ld. AR, appearing for assessee, raised arguments to submit that the assessment order is bad-in-law since territorial jurisdiction of the assessee was transferred to Gauhati whereas the assessment was framed by Ld.AO situated at Jorhat. The Ld. AR also submitted that the additional evidences submitted by the assessee were not admitted by

learned first appellate authority and the issue was not decided on merits. The Ld. DR, on the other hand, submitted that the assessee failed to appear during the assessment proceedings. The attention was also drawn to the fact that the assessee did not inform Ld. AO about change in jurisdiction. Having heard rival submissions, our adjudication would be as given in subsequent paragraphs.

3. The material facts are that an assessment was framed against the assessee on best judgment basis u/s. 144 of the Act since the assessee failed to appear before Ld. AO despite being provided with various opportunity of hearing as noted by Ld. AO on page-2 of the order. Accordingly, the income was determined at Rs.20.98 Crores.

4. During appellate proceedings, the assessee contested the jurisdiction of Ld. AO as well as filed additional evidences under Rule 46A of the I.T Rules, 1962 in support of the submissions. However, Ld. CIT(A) rejected the legal ground by observing that the assessee did not appear before Ld. AO. No copy of the transfer of jurisdiction was filed before Ld. AO. In fact the information about the transfer of jurisdiction was received by Ld. AO only on 29/03/2017. Further, the assessee never raised the issue of territorial jurisdiction for many years and chose to remain silent. Therefore, the legal grounds were rejected. On merits, Ld. CIT(A) refused to admit additional evidences since the assessee did not cooperate during assessment proceedings. Aggrieved, the assessee is in further appeal before us.

5. So far as the legal issue is concerned, we concur with the observations of Ld. CIT(A) and note that the application for transfer of jurisdiction was filed by the assessee before appropriate authority on 20/07/2016 and an order was passed u/s 127 on 10/11/2016 as per the

request of the assessee transferring the territorial jurisdiction. But this fact was never brought to the notice of Ld. AO by the assessee and the assessee chose to remain silent. In fact, no submissions were made before Ld. AO and Ld. AO had no option but to assess the assessee u/s 144. The same is evident from show-cause notices dated 17/11/2016 and 08/12/2016 issued by Ld. AO to the assessee wherein it was observed that the assessee's case lies with Jorhat jurisdiction since 2006 and the same was not transferred by the order of appropriate authority. The assessee was also directed to file the requisite information and documents. However, no reply was submitted by the assessee against any of these notices and the issue of jurisdiction was never raised before Ld. AO. Therefore, the legal ground has rightly been rejected by learned first appellate authority.

6. So far as the issue on merits is concerned, we find that the assessee had submitted additional evidences during first appellate proceedings which were dismissed merely on the ground that the assessee did not cooperate during assessment proceedings. Considering the fact that the additional evidences would have material bearing on the issue, we admit the same and remit the issue back to the file of Ld. AO for fresh adjudication after considering assessee's submissions as well as additional evidences. The assessee is directed to substantiate his claim before Ld.AO.

7. The appeal stand partly allowed for statistical purposes.

Order pronounced on 08th November, 2021.

Sd/-

(Partha Sarathi Chaudhury)

न्यायिक सदस्य / **Judicial Member**

Kolkata; दिनांक Dated : 08/11/2021

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

****Sr.PS, PP**

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

(Senior P.S., DDO)

आयकरअपीलीयअधिकरण,/ ITAT, Kolkata.