

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "A", KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

[VIRTUAL COURT HEARING]

**ITA No.580/Kol/2017
Assessment Year: 2012-13**

Phoenix Overseas Limited 13B, Bidhan Sarani, Chanda Plaza, 4 th Floor, Kolkata - 700006. PAN: AADCP0393F	Vs.	ACIT, Range - 7, Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri K.M. Roy, CA
Respondent by : Smt. Ranu Biswas, ACIT, DR

Date of Hearing : 21.12.2021
Date of Pronouncement : 25.02.2022

ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER:

The present appeal has been preferred by the assessee for the assessment year 2012-13 against the order dated 03.01.2017 passed by the Commissioner of Income Tax (Appeals) -3, Kolkata(hereinafter referred to as CIT(A)).

2. The assessee has raised various grounds on merit in the appeal memo challenging the additions on various grounds. The assessee has also filed additional ground vide letter dated 23.07.2019 challenging the assessment framed u/s 143(3) on legal issue that in absence of order u/s 127(1) of the Act transferring the cases between subordinate officers, the assessment order framed by Additional

CIT(A) is without valid jurisdiction. The grounds raised as reproduced as under:

“i. That the assessment order passed by Addl. CIT-Range-7 u/s 143(3) of the Income Tax, 1961 is non est in the eyes of law since he cannot be construed as an assessing officer u/s 2(7A) of the Income Tax Act, 1961 and consequently the order lacks jurisdiction and is liable to be quashed.

ii. That without prejudice to above, in absence of order u/s 127(1) of the Income Tax Act, 1961 for transfer case between subordinate officers the assessment order passed by Addl. CIT is without jurisdiction.”

3. The ld. Counsel for the assessee at the outset pointed out by referring to the assessment order that the assessment was framed by Addl. CIT, Range-7, Kolkata without any valid jurisdiction as there was no order passed u/s 127(1) of the Act transferring jurisdiction to Addl. CIT. The Ld. AR referred to order no. 2/2014-15 dated 29.05.2014 whereby the CIT(A)-3, Kolkata has transferred the jurisdiction from DCIT, Range-7 to JCIT Range-7 as appearing at serial no. 20. The ld AR submitted that there was restructuring of jurisdiction. The ld AR submitted that till 14.11.2014 CIT derived powers from S.O.732(E) dated 31.07.2001 which was superseded by notification S.O. 2752(E) w.e.f. 15.11.2014. The ld AR submitted that Order No.2/2014-15 dated 29.05.2014 transferring the jurisdiction from DCIT Cir-7 to JCIT Range-7 stands superseded w.e.f. 15.11.2014 and no new order was passed vesting the jurisdiction with JCIT/Addl.CIT. The learned counsel, therefore, submitted the assessment is without valid jurisdiction and is non est in the eyes of law. The ld. counsel for the assessee relied on a couple of decisions namely DCIT, Cir-7(1), Kolkata vs Ganesh Realty & Mall Development Pvt. Ltd. ITA No. 581/Kol/2017 A.Y. 2012-13 & ACIT vs Tata Sons Ltd., Bombay ITA No. 2519/Mum/2009 A.Y. 2004-05 & others. The

ld. AR submitted that in the aforesaid two decisions , the Coordinate Benches have been held that order passed by the ACIT is invalid and without jurisdiction as the revenue has failed to establish that he has the valid jurisdiction u/s 120(4)(b) of the Act to pass the assessment order. The AR submitted that the Add. CIT can perform function and exercise power of the AO only if specifically directed u/s 120(4)(b) of the Act post 15.11.2014. The Ld. AR therefore submitted that the assessment so framed may kindly be quashed as being invalid and bad in law.

4. The Ld. DR on the other hand submitted that the delegation of powers or vesting the authority to frame assessment per se is an internal exercise of the department and assessee has no locus standi to question the same as no prejudice is caused to the assessee by such intra departmental transfer of jurisdiction. The ld DR submitted that Add. CIT is also an official of the department and therefore, the arguments of the ld. counsel for the assessee is devoid of any merit that the Add.CIT cannot pass the assessment order as there was no order post restructuring of jurisdiction of the AO.

5. After hearing rival submissions and perusing the materials on record and the provisions of the Act with respect to the hierarchy of the department to perform various functions , we observe that the Add. CIT is not an Assessing Officer within the meaning as defined by reason of fact u/s 2(7A) of the Act. From the perusal of the definition of Assessing Officer, we note that the Add. CIT can be an Assessing Officer and can exercise power as the Assessing Officer under an order of the Central Board of Direct Taxes and subject to such conditions and restrictions as may be specified therein empowering Principal Chief Commissioner or Chief Commissioner or

commissioner to issue orders in writing. However, we note that the revenue has failed to place before us any such order passed u/s 120(4)(b) and order u/s 127 of the Act post restricting of jurisdiction vide notification no. 2752(E) w.e.f. 15.11.2014 for transferring jurisdiction to Add. CIT Range 7 as the earlier notification has been superseded by the above notification. Therefore, we find merit in the contentions of the ld. AR with regard to invalid jurisdiction being exercised by Add. CIT who passed the order without there being an order u/s 127 of the Act pursuant to order u/s 120(4)(b) of the Act. The case of the assessee is squarely covered by the decision of the coordinate bench in DCIT vs M/s. Ganesh Realty & Mall Development Pvt. Ltd. in ITA No. 581/Kol/2017(supra) in which identical issue has been decided in favour of the assessee. . We find that the case of the assessee is squarely covered by the above decision of the coordinate bench. Therefore , respectfully the above decision we hold that the assessment has been framed without valid jurisdiction and is accordingly quashed. The additional grounds raised by the assessee are allowed.

4.Since we have allowed the appeal of the assessee on jurisdictional issue , the grounds raised on merits need no adjudication.

5. In the result, the captioned appeal of the assessee is allowed.

Order pronounced in the open court on 25.02.2022.

**Sd/-
(SANJAY GARG)
JUDICIAL MEMBER**

**Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER**

Kolkata, Dated: 25.02.2022.
Biswajit, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Kolkata
The CIT (A) Concerned, Kolkata
The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata