

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “SMC” BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.7483/Del/2019**

**[Assessment Year : 2016-17]**

Gagandeep Singh, H.No.651, FF, Sec-10A, Near Meenakshi Public School, Gurgaon, Haryana-122001. PAN-BAIPS1735F	vs	ITO, Ward-1(5), Gurgaon.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri M.R.Sahu, CA	
<b>Respondent by</b>	Shri Sanjay Kumar, Sr.DR	
<b>Date of Hearing</b>	22.02.2022	
<b>Date of Pronouncement</b>	12.04.2022	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee for the assessment year 2016-17 is directed against the order of Ld. CIT(A)-1, Gurgaon dated 20.06.2019. The assessee has raised following grounds of appeal:-

**1. *Legal Ground Jurisdictional Issue:***

*“1.1 That in the assessee-appellant's case notice u/s 143(2) dated 29/08/2019 was issued by ITO, Ward 71(1), New Delhi which was replied on 12th Sept 2018 in the E-Proceeding Portal, subsequently notice u/s 143(2) dated*

*27/09/2018 was issued by ITO, Ward 1(5),Gurgaon and assessment order dated 07/12/2018 u/s 143(3) was passed by ITO, Ward 1(5),Gurgaon. It is submitted that judicially it is well settled that assessment has to be completed by the authority who has initiated the proceeding for making assessment that is ITO, Ward 71(1),New Delhi accordingly authority to complete the proceeding taken over by ITO, Ward 1(5),Gurgaon without following the procedures laid down u/s 127(1) and u/s 127(2) is bad in law, thus assessment order dated 07/12/2018 passed by ITO/Ward 1(5) is illegal and void ab initio. The assessee appellant thus prays for quashing the assessment order dated 07/12/2018 passed by ITO, Ward 1(5),Gurgaon without valid jurisdictional authority.*

*1.2. That it is a settled position in law that mere participation in assessment proceeding will not confer jurisdiction accordingly even though jurisdictional issue was neither raised before ITO, Gurgaon nor before CIT(A) the same can be raised before Tribunal. The assessee appellant thus prays for admitting this legal grounds of appeal having regard to the ratio of the decision of the Supreme Court in the case of "Kanwar Singh Saini Vs. High Court of Delhi (2012) 4 SCC 307 followed by Bom.HC in the case of" CIT-1, Nagapur Vs. Lalitkumar Bardia (2017) 84 taxamnn.com 213."*

## **FACTS OF THE CASE**

2. Facts giving rise to the present appeal are that the assessee has filed his return of income electronically, on 29.03.2018 declaring an income of Rs.2,060/- and the same was processed u/s 143(1) of the Income tax Act, 1961 (“the Act”). Subsequently, the case of the assessee was selected for limited scrutiny on the basis of large agricultural income. Requisite statutory notice u/s 143(2) of the Act was issued to the assessee. In response to the notices, the assessee filed information on ITBA portal. However, the Assessing Officer (“AO”) did not accept the contentions of the assessee and a sum of Rs.25,68,752/- was treated as income from other sources. Hence, the AO assessed the income at Rs.25,70,812/- against the returned income of Rs.2,060/-.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal of the assessee.

4. Now, the assessee is in appeal before this Tribunal.

5. At the outset, Ld. Counsel for the assessee submitted that the impugned order as passed by AO is without authority of law. He submitted that there was no valid transfer of jurisdiction from ITO,

Ward-71(2), Delhi to ITO, Ward-1(5), Gurugram. He submitted that the Revenue has now admitted that transfer order passed u/s 127 of the Act, is not traceable.

6. Ld. Sr. DR opposed these submissions and submitted that impugned assessment order has been passed without authority of law. He submitted that merely because the transfer order was not traceable that does not mean that jurisdiction was not validly exercised by the AO. Further, he submitted that the Income Tax Officer, New Delhi had filed a letter on 06.01.2022 stating the status of the transfer order.

7. I have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. I find that the Revenue had filed a letter dated 06.01.2022. Relevant contents of the letter are reproduced hereunder for ready-reference:-

*2. "In this context, I am directed to convey that PAN transfer order was passed by Pr.CIT-24, Delhi (now merged with Pr.CIT-15, Delhi) in the System on 27.09.2018 and PAN was transferred from ITO, Ward-71(2), Delhi to ITO, Ward 1(5), Gurugram vide transfer order no. 200000579053 on 27.09.2018 in the ITBA System. The all out efforts were made to*

*trace; a physical copy of Order u/s 127 from the available records in Pr. CIT-I5, Delhi office as well as from assessing officer but no such order has been found in available records. A copy of assessing officer reply vide letter F.No. ITO/W-71 (1)/2020-21/497 dated 29.12.2021 is enclosed.*

3. *Further, an effort was made to get a copy of transfer order no. 200000579053 from ITBA System. However it was seen that no such order was found in ITBA>PAN>View Transfer Order screen although the number of transfer order is available in ITBA>PAN>PAN jurisdiction history. As it was a technical issue, therefore, an ITBA Ticket vide no. 1547341 was raised on 27.12.2021. The ITBA vide resolution dated 29.12.2021 intimated that "PAN BAIPS1735F has been transferred through bulk transfer order id '200000579053' to destination "Ward 1(5) Gurgaon" on date "9/27/2018" and order has created by "PCIT, Delhi-24 "(copy enclosed)."*

8. In view of the above letter, it is clear that the order transferring the jurisdiction from AO, Delhi to AO, Gurugram is not available with the Revenue. The assessee has taken a specific objection regarding the transfer of jurisdiction to Assessing Officer at Gurugram. In the absence of the transfer order, as claimed to have been passed by the concerned Ld. Pr.CIT, Delhi on 27.09.2018, assessment order therefore, passed by the Assessing Officer is held to be without authority of law. It is incumbent upon the Revenue to demonstrate the validity of the order passed by the AO at Gurugram

in the case of the assessee. The Revenue has on this ground grossly failed to furnish the order passed by the Ld. Pr. CIT u/s 127 of the Act conferring jurisdiction on AO who passed the impugned order. Hence, the assessment order is hereby quashed for want of necessary jurisdiction. However, the Revenue would be at liberty to file an appropriate application if the order of Ld. Pr.CIT, Delhi is traced/ retrieved for recalling of the present order. The appeal of the assessee is allowed on this ground. I am not expressing my view on other grounds raised by the assessee as the assessment has been quashed for want of proper jurisdiction.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 12<sup>th</sup> April, 2022.

***Sd/-***

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI