



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "SMC", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT**

ITA No.110/LKW/2022  
Assessment Year: 2017-18

Anil Kumar Khandelwal(HUF) 39, Moar Kothi, Gangapur Bareilly	v.	The ITO 1(1) Bareilly
TAN/PAN:AACHA2002E		
(Appellant)		(Respondent)

Appellant by:	Shri P. K. Kapoor, C.A.		
Respondent by:	Shri Harish Gidwani D.R.		
Date of hearing:	12	07	2022
Date of pronouncement:	21	07	2022

**ORDER**

This is assessee's appeal against the order of the ld. CIT(A), NFAC, Delhi, dated 15.3.2022, for Assessment Year 2017-18, raising the following grounds of appeal:

- 1. BECAUSE no notice u/s 143(2) of the Act was issued by the ITO-1(1), Bareilly-New, being the income-tax authority vested with the jurisdiction of Assessing Officer in the case of the appellant, the assessment order dated 20.12.2019 passed by the said Income-tax authority is wholly without jurisdiction and consequently the said assessment order deserved to be held as bad in law and thus was liable to be quashed.*
- 2. BECAUSE even if it is held that the ACIT-1, Bareilly was validly vested with the jurisdiction of the Assessing Officer on the date of issue of notice u/s 143(2) dated 24.09.2018 then also the assessment order dated 20.12.2019 cannot be held to be legally valid as the same was not passed by the ACIT-1, Bareilly who initiated the regular assessment proceedings by issuing notice u/s 143(2) dated 24.09.2018.*

3. BECAUSE, without prejudice to the aforesaid grounds, the assessment order dated 20.12.2019 passed by ITO-1(1), Bareilly-New is without jurisdiction as no order u/s 127 of the Act has been passed for transferring the case from ACIT-1, Bareilly, who initiated regular assessment proceedings by issue of notice u/s 143(2) dated 24.09.2018, to the ITO-1(1), Bareilly-New.

4. BECAUSE the Id. CIT(A) has erred in law and on facts in confirming the addition of Rs.27,01,500/- made u/s 69A of the Act on the alleged ground that the appellant failed to explain the source of cash deposited in the bank account of the appellant during demonetization, period.

5. BECAUSE, contrary to the observation of id. CIT(A), the appellant had furnished cogent evidences before the authorities below which went to conclusively prove the availability of sufficient cash in hand from earlier withdrawals out of which the appellant had deposited the sum of Rs.27,01,500/- in his bank account and as such the id. CIT(A) was not correct in holding without rebutting the said evidences that the appellant failed to explain the source of cash deposited in the bank account and on that basis in confirming the addition u/s 69A of the Act by working out availability of cash in hand on the basis of his own imaginary /presumptive calculation.

6. BECAUSE the Id. CIT(A) is not correct in confirming the addition of Rs.27,01,500/- u/s 69A of the Act without rebutting the evidences in support of availability of cash placed by the appellant before the authorities below.

7. BECAUSE on the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in confirming the unlawful addition of Rs.27,01,500/- by mis-reading/mis-interpreting the cited precedents which squarely supported the appellant's case.

8. BECAUSE looking to the facts and circumstances of the case, the provisions of section 69A of the Act did not get attracted in the present case and consequently the id. CIT(A)

*ought to have deleted the addition of Rs.27,01,500/-made by the Assessing Officer.*

*9 BECAUSE the order passed by id. CIT(A) is based on presumption, surmises and conjectures and has been passed wholly in an arbitrary manner,*

*10. BECAUSE the impugned order has been passed in complete violation of principles of natural justice and without affording due and effective opportunity of being heard to the appellant.*

*11. BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice.*

*12. BECAUSE on the facts and in the circumstances of the case, the impugned order is liable to be set-aside and quashed.*

2. The brief facts of the case are that the assessee e-filed its return of income on 23.3.2018 for the Assessment Year 2017-18 showing an income of Rs.11,92,170/-. The case was selected for scrutiny and notices under section 143(2) and 142(1) of the I.T. Act were served on the assessee, which were duly complied with. The assessment was completed under section 143(3) of the I.T. Act at a total income of Rs.38,93,670/- by making addition of Rs.27,01,500/-, treating the cash deposit in the bank account of the assessee as undisclosed income of the assessee.

3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id. CIT(A), who, vide impugned order dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before us.

4. At the outset, the Id. Counsel for the assessee inviting my attention to Grounds no. 1 to 3, submitted that the notice, dated 24.9.2018 under section 143(2) of the I.T. Act (APB:32 &

33) was issued by the ACIT, Circle-1, Bareilly, who, in fact, was not vested with the jurisdiction of the Assessing Officer in the case of the assessee, which is apparent from the fact that the Assessing Officer (DCIT) himself transferred the file to the ITO, Ward 1(1), Bareilly, vide letter dated 16.10.2018 (APB:34); that therefore, the notice dated 24.9.2018, issued by the DCIT, is illegal and the assessment order dated 20.12.2019, which has been passed by the ITO-1(1), Bareilly in pursuance of the said notice, is bad in law; that even if the DCIT, Circle-1, Bareilly is held to be vested with the jurisdiction in the case of the assessee, then also, the assessment order passed by the ITO, Ward 1(1), Bareilly cannot be held to be legal, as the same has not been passed by the DCIT, Circle-1, Bareilly; that in the absence of any order under section 127 of the Act, passed by the Commissioner of Income Tax for transferring the case from DCIT, Circle-1, Bareilly to the ITO, Ward 1(1), Bareilly, the assessment order passed by the latter is without jurisdiction; that since the notice under section 143(2) of the I.T. Act in this case had been issued by the DCIT, Circle-1, Bareilly and the assessment order has been passed by the ITO, Ward 1(1), Bareilly, who did not issue notice under section 143(2), the assessment order is without jurisdiction, as no order under section 127 of the I.T. Act has been passed, transferring the case from the DCIT, Circle-1, Bareilly to the ITO, Ward 1(1), Bareilly; and that since no order was passed under section 127 of the Act, therefore, the Department cannot take the benefit of the provisions of section 127(4) of the Act.

5. The Id. D.R., on the other hand, has heavily placed reliance on the orders of the authorities below and it was submitted that now the procedure is that Range is set up and

under that Range any Assessing Officer can issue notice under section 143(2) and any other Assessing Officer falling under that Range can pass the assessment order; and that since both the Assessing Officers fall under the same Range, therefore, there is a concurrent jurisdiction and hence this argument of the assessee is not tenable and is required to be dismissed.

6. The ld. Counsel for the assessee, in rejoinder, has submitted that even if the arguments of the ld. D.R. are accepted that there is a concurrent jurisdiction, even then within that Range, the same Assessing Officer needs to complete the assessment, who had issued notice under section 143(2) of the Act and in this regard reliance has been placed on the judgment of the Hon'ble Delhi High Court in the case of 'Valvoline Cummins Ltd. vs. Dy. CIT', 307 ITR 103 (Del) and my attention was invited to the relevant findings of the Hon'ble Court in paragraphs 29 & 30. As regards the submissions of the ld. D.R. on the issue that assessee had not objected to the issue of jurisdiction as per criteria laid down under section 124 of the Act, the ld. Counsel for the assessee has submitted that the Hon'ble Jurisdictional Allahabad High Court in the case of 'CIT vs. Dalipur Construction (P) Ltd.' in Income Tax Appeal No. 43 of 2015 has considered this issue and has decided the same in favour of the assessee and therefore, it was argued that the Grounds taken by the assessee be allowed and the assessment order be quashed as being passed by an Assessing Officer having no jurisdiction.

7. I have heard the rival parties and have gone through the material placed on record. The assessee has taken up the jurisdictional issue and has argued that the Assessing Officer

who had issued notice under section 143(2) had no jurisdiction over the assessee. In this respect, I find that it is an undisputed fact that notice under section 143(2) was issued by DCIT, Circle-1, Bareilly, a copy of which is placed at APB:32&33. It is also undisputed fact that, vide letter dated 16.10.2018, the DCIT, Circle-1, Bareilly, had had transferred the case to ITO, Ward 1(1), Bareilly. It is also an undisputed that after the receipt of the case file from the DCIT, Circle-1, Bareilly, the ITO, Ward 1(1), Bareilly did not issue any notice under section 143(2) of the Act. The above facts prove that notice under section 143(2) dated 24.9.2018 was issued by the DCIT, Circle-1, Bareilly, who did not have jurisdiction over the assessee and that is why the case was transferred to the Assessing Officer, who had passed the assessment order. The argument of the ld. D.R. was that since the Range was headed by the same CIT, therefore, both the Assessing Officers were having concurrent jurisdiction on the assessee and, therefore, the Assessing Officer of the same Range was empowered to take up the assessment proceedings, even if he had not issued the notice under section 143(2), as the assessment proceedings will be deemed to have continued from the date when the notice was issued.

8. In the case of 'Valvoline Cummins Ltd. vs. Dy. CIT' (supra), it has been held that there is a distinction between concurrent exercise of power and joint exercise of power. It has been held that when power has been conferred upon two authorities concurrently, either one of them can exercise that power and once a decision is taken to exercise the power by any one of those authorities, that exercise must be terminated by that authority only. It has been further held that it is not that one authority can start exercising a power and the other authority,

having concurrent jurisdiction, can conclude the exercise of that power. The relevant findings of the Hon'ble Delhi High Court, as contained in paragraphs 28 to 30 of the order, are reproduced below:

*“28. On the issue of "concurrent" jurisdiction between the Addl. CIT and the Dy. CIT, learned counsel for the assessee relied upon a decision of the Calcutta High Court in Berger Paints India Ltd. & Ors. vs. Asstt. CIT & Ors. (2000) 164 CTR (Cal) 637 : (2000) 246 ITR 133 (Cal). The Calcutta High Court had explained the meaning of the expression "concurrent" to mean two authorities having equal powers to deal with a situation but the same work cannot be divided between them. This is what the Calcutta High Court had to say :*

*"Concurrent jurisdiction means a subordinate authority can deal with the matter equally with any superior authority in its entirety so that either one of such jurisdictions can be invoked. It cannot be construed as concurrent jurisdiction when one part of the assessment will be dealt with by one superior officer and the other part will be dealt with by one subordinate officer."*

*29. It appears to us quite clearly that there is a distinction between concurrent exercise of power and joint exercise of power. When power has been conferred upon two authorities concurrently, either one of them can exercise that power and once a decision is taken to exercise the power by any one of those authorities, that exercise must be terminated by that authority only. It is not that one authority can start exercising a power and the other authority having concurrent jurisdiction can conclude the exercise of that power. This perhaps may be permissible in a situation where both the authorities jointly exercise power but it certainly not permissible where both the authorities concurrently exercise power. One example that immediately comes to the mind is that of grant of anticipatory bail. Both the Sessions Judge and the High Court have concurrent power. It is not as if a part of that power can be exercised by the High Court and the balance power can be exercised by the Sessions Judge. If*

*the High Court is seized of an application for anticipatory bail it must deal with it and similarly if the Sessions Judge is seized of an anticipatory bail, he must deal with it. There can be no joint exercise of power both by the High Court as well as by the Sessions Judge in respect of the same application for anticipatory bail.*

*30. In the facts of the present case, since the Addl. CIT had exercised the power of an AO, he was required to continue to exercise that power till his jurisdiction in the matter was over. His jurisdiction in the matter was not over merely on the passing of the assessment order but it continued in terms of s. 220(6) of the Act in dealing with the petition for stay. What has happened in the present case is that after having passed the assessment order, the Addl. CIT seems to have washed his hands of the matter and left it to the Dy. CIT to decide the stay petition filed under s. 220(6) of the Act. We are of the opinion that this was not permissible in law.”*

9. In the present case, the notice under section 143(2) has been issued by one Assessing Officer and the assessment has been concluded by an another Assessing Officer, which means that the Assessing Officer who issued the notice under section 143(2) did not complete the assessment and, therefore, the argument with regard to concurrent jurisdiction is not tenable. As a natural corollary, therefore, the order passed by the Assessing Officer is also not tenable in view of the fact that the notice under section 143(2) was issued by one Assessing Officer and the assessment has been completed by another Assessing Officer. The Lucknow Bench of the Tribunal, in the case of ‘Bajrang Bali Industries vs. ACIT’ in I.T.A. No.724/Lkw/2017, on this issue, has held as under:

*“5. We have heard the rival parties and have gone through the material placed on record. It is undisputed fact that the assessment order dated 11.03.2016 has been passed by*

DCIT-2, Kanpur who had issued notice u/s 143(2) on 07.09.2015. The provisions relating to time limit for issue of statutory notice u/s 143(2) are contained in the provisions to Section 143(2) itself which provides that no notice under this section shall be served on the assessee after the expiry of six months from the end of financial year in which the return is furnished.

6. In the present case, the return of income was furnished on 30.09.2013. The financial year in which the return was filed expired on 31.03.2014 and therefore, last date for issue of notice was 30.09.2014. The statutory period for issuance of notice u/s 143(2) expired on 30.09.2014 and by 30.09.2014 the notice u/s 143(2), which was within the prescribed period of time, was issued only by DCIT-IV, Kanpur who had no jurisdiction over the case, as the DCIT-IV himself had transferred the case to DCIT-2, Kanpur vide memo dated 20.08.2015, a copy of which is placed at paper book Page 3. Therefore from the above facts and circumstances, it become apparent that the first Assessing Officer who issued notice on 30.09.2014 had no jurisdiction to assess the assessee and, therefore, he transferred the case to DCIT-2, Kanpur who though had jurisdiction to assess the assessee but issued notice u/s 143(2) only on 07.09.2015 by which date period for issuance of notice had expired. We further find that no order u/s 127 of the Act was passed by the Assessing Officer to transfer the case from Kanpur-4 to Kanpur-2. The Assessing Officer who had jurisdiction to assess the assessee issued notice u/s 143(2) only on 07.09.2015 which was beyond the prescribed time limit for issuance of such notice. Therefore, the notice issued u/s 143(2) by DCIT, Kanpur-2 beyond the statutory period of time is without jurisdiction and therefore, any order passed in consequence of such notice is also liable to be quashed. Therefore, we are in agreement with the argument of Ld. AR. Accordingly, additional grounds of appeal 5 to 8 are allowed. Since we have decided the legal issues, in favour of assessee the grounds on merits of the case have become infructuous and have not been adjudicated.”

10. With regard to the argument of the ld. D.R. that as per section 124(3) of the Act, the assessee should have challenged the jurisdiction on receipt of notice within 30 days of receipt of notice, which he had not done and, therefore, now the jurisdiction cannot be challenged, I find that the Hon'ble jurisdictional Allahabad High Court, in the case of 'CIT vs. Dalipur Construction (I) Ltd.' in Income Tax Appeal No. 43 of 2015 has considered this aspect and has held as under:

*“2. Admittedly order of assessment was passed by an officer who did not have jurisdiction in the matter and this objection was taken in appeal by Assessee before Commissioner of Income Tax (Appeals) [hereinafter referred to as the "CIT(A)"] but he rejected this ground vide order dated 29.12.2011 observing that said objection ought to have been taken before Assessing Officer itself. In further appeal before Income Tax Appellate Tribunal, Lucknow Bench 'B', Lucknow (hereinafter referred to as the "Tribunal") it has allowed Assessee's appeal vide judgment and order dated 28.11.2014, hence this appeal under Section 260A of Income Tax Act, 1961 (hereinafter referred to as the "Act, 1961"), challenging aforesaid order of Tribunal.*

*3. Learned counsel appearing for Revenue sought to argue that objection regarding jurisdiction ought to have been taken at the first instance, i.e., before Assessing Officer and once it was not taken, assessment order cannot be challenged.*

*4. However, he could not dispute that lack of jurisdiction in such case is not a mere irregularity and if that be so, if an authority has no jurisdiction in the matter, same cannot be conferred even by consent of parties. Something which is wholly without jurisdiction, that is nullity in the eyes of law, no principle of law would come to confer any kind of effectiveness to such proceedings so as to have any legal consequences.*

5. *As early as in 1951 the Apex Court in United Commercial Bank Limited versus Their Workmen AIR 1951 SC 230 held:*

*"No acquiescence or consent can give a jurisdiction to a court of limited jurisdiction which it does not possess."*

6. *In Kiran Singh versus Chaman Paswan AIR 1954 SC 340, the Court said:*

*"A defect of jurisdiction ... strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."*

7. *In Benarsi Silk Palace Vs. Commr, of Income Tax [1964] 52 ITR 220 (All), this Court held:*

*"Jurisdiction could be conferred only by statute and not by consent and acquiescence. Since jurisdiction is conferred upon Income Tax Officer to proceed under Section 34 (1) only if he issues a notice an assessee cannot confer jurisdiction upon him by waiving the requirement of a notice because jurisdiction cannot be conferred by consent or acquiescence."*

8. *In Kali Das Wadhvani & Anr. Vs. Jagjiwan Das and another 1985 (2) ARC 533, this Court observed as under:*

*"It is well settled that a jurisdiction cannot be conferred on a court by consent, acquiescence or waiver where there is none, nor can it be ousted where it is. Acquiescence, waiver or consent of the parties may be relevant in objections relating to pecuniary or territorial jurisdiction of the Court, but these factors have no relevance where the Court lacks inherent jurisdiction which strikes at the very root or authority of the Court to pass any decree and renders the decree, if passed a nullity."*

9. *In Sardar Hasan Siddique Vs. State Transport Appellate Tribunal, AIR 1986 All. 132, the Division Bench of this Court observed:*

*"A Tribunal of limited jurisdiction cannot derive jurisdiction apart from the statute. No approval or consent can confer jurisdiction upon such a tribunal No amount of*

*acquiescence waiver or the like can confer jurisdiction of a Tribunal is lacking, the doctrine of nullity will come into operation and any decision taken or given by such a Tribunal will be a nullity."*

10. *In Karnal Improvement Trust Vs. Prakashwanti, (1995) 5 SCC 159, the Supreme Court observed that acquiescence does not confer jurisdiction and an erroneous interpretation equally should not be perpetuated and perpetrated defeating of legislative animation. A similar view has been taken in U.P. Rajkiya Nirman Nigam Ltd. Vs. Indure Pvt. Ltd., AIR 1996 SC 1373.*

11. *In S. Sethuraman Vs. R. Venkataraman and Ors. AIR 2007 SC 2499, Apex Court observed that if jurisdiction cannot be conferred by consent, it cannot clothe the authority to exercise the same in an illegal manner. The above authority has been referred to and relied on by Apex Court recently in Collector, Distt. Gwalior and another Vs. Cine Exhibitors P. Ltd. and another AIR 2012 SC 1239.*

12. *Hence, the mere fact that objection was not taken before Assessing Officer will not make the order of assessment final as it has been passed by competent authority. In our view Tribunal has rightly upheld the order of CIT(A)."*

11. Similar are the findings in the case of 'Pr. CIT-II Lucknow vs. Mohd. Rizwan' in Income Tax Appeal No. 100 of 2015 where, the Hon'ble jurisdictional Allahabad High Court has decided the issue in favour of the assessee.

12. The other argument of the ld. Counsel for the assessee was that no order was passed under section 127 of the Act for transfer of the case from one Assessing Officer to another Assessing Officer and, therefore, the Department cannot take benefit of the provisions of section 127(4) of the Act. In this respect, the argument of the ld. D.R. was that since there was

concurrent jurisdiction, no order under section 127 of the I.T. Act was required to be passed. I find that power to transfer cases is contained in section 127 of the Act, which, for the sake of completeness, is reproduced below:

*“SECTION 127.*

*Power to transfer cases.*

*[(1) The [Principal Director General or Director General] or [Principal Chief Commissioner, Chief Commissioner or Principal Commissioner or Commissioner] may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.*

*(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same [Principal Director General or Director General] or [Principal Chief Commissioner, Chief Commissioner or Principal Commissioner or Commissioner],—*

*(a) where the [Principal Director General or Director General] or [Principal Chief Commissioner, Chief Commissioner or Principal Commissioner or Commissioner] to whom such Assessing Officers are subordinate are in agreement, then the [Principal Director General or Director General] or [Principal Chief Commissioner, Chief Commissioner or Principal Commissioner or Commissioner] from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;*

*(b) where the [Principal Director General or Director General] or [Principal Chief Commissioner, Chief Commissioner or Principal Commissioner or Commissioner] aforesaid are not*

*in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Director General or Director General] or [Principal Chief Commissioner, Chief Commissioner or Principal Commissioner or Commissioner] as the Board may, by notification in the Official Gazette, authorise in this behalf.*

*(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.*

*(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.”*

13. The analysis of above provisions, as contained in section 127(1), demonstrates that the Principal Director General/ Principal Chief Commissioner or Chief Commissioner or Commissioner, may, after recording his reason for doing so, transfer any case from one or more Assessing Officers to another Assessing Officers subordinate to them. Sub section (4) of Section 127 empowers such Officer to transfer a case under sub-section (1) or (2) at any stage of the proceedings and any such transfer shall not render necessary reissuance of any notice already issued by the Assessing Officer from whom the case is transferred. The provisions of sub-section (4) of section 127 will be applicable only when there is an order under section 127 of the Act. Since the Department was not able to show any order

passed under section 127 of the Act, this argument of the ld. Counsel for the assessee is also accepted.

14. In view of the above facts and circumstances and the judicial precedents, Grounds no. 1 to 3 taken by the assessee are allowed. As such, the assessment order is held to be void ab initio and is quashed. Nothing further thus survives for decision and the rest of the Grounds are rejected as infructuous.

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

Order pronounced in the open Court on 21/07/2022.

Sd/-  
[A. D. JAIN]  
VICE PRESIDENT

DATED:21/07/2022

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order  
Assistant Registrar