

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH 'H', NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**I.T.A.Nos.6282/Del/2019 & Others
[Assessment Years-2015-16 & Others]**

Sr. Nos	ITA No(s)	Asst. Year(s)	Appeal(s) by Appellant vs. Respondent		Revenue By	Assessee By
			Appellant	Respondent		
1.	6828/Del/2019	2015-16	ITO, Ward-1(1), Ghaziabad	Ansal Srivastava, 368, 2 nd Floor, Shakti Khand-4, Indrapuram, Ghaziabad, Uttar Pradesh PAN-DDXPS7063G	Shri Sanjai Kumar Yadav, Addl.CIT, Ms. Niharika Kucchal, Advocate on behalf of Standing Counsel, Shri Zoheb Hussain	Shri G.B.Srivastava, Father of the assessee
2.	1174/Del/2020	2009-10	ITO, Ward-1(5), Noida	Jayant Budhiraja, B-146, Sec-50, Noida, Uttar Pradesh PAN-AAEPB0516A	--do--	None
3.	1175/Del/2020	2009-10	--do--	--do--	--do--	--do--
4.	1176/Del/2020	2009-10	--do--	--do--	--do--	--do--
5.	1177/Del/2020	2009-10	--do--	--do--	--do--	--do--
6.	1180/Del/2020	2014-15	ITO, Ward-1(4), Ghaziabad	Mohd. Shahzad, H.No.27, Street No.27, Peer Colony, Ghaziabad, Uttar Pradesh-201001. PAN-CGDPS1398N	--do--	--do--
7.	1183/Del/2020	2009-10	ITO, Ward-1(1), Noida	Shri Ajit Chouhan, S/o-Shri Dal Singh, Vill.-Sadarpur, Sec-45, Tahsil-Dadri, Distt.-Gautam Budh Nagar PAN-AGOPC2381C	--do--	--do--
8.	1186/Del/2020	2015-16	ITO, Ward-1(4), Ghaziabad	Mohd. Noor Alam, RC-22, Rajeev Nagar, Khora Colony, Ghaziabad, Uttar Pradesh-201001. PAN-APCPA1866K	--do--	--do--
9.	1188/Del/2020	2010-11	ITO, Ward-3(1), Noida	Raj Kumar Bhati, Vill.-Luhari, Gautam Budh Nagar, Uttar Pradesh-201301. PAN-AHCPR2576D	--do--	--do--

10.	1192/Del/2020	2009-10	ITO, Ward-3(3), Noida	Satyajeet Pandey, H.No.B-179, Omaxe NRI City, Sec-Omega-2, Noida, Uttar Pradesh-201307 PAN-APZPP6148L	--do--	--do--
11.	1207/Del/2020	2010-11	ITO, Ward-3(3), Noida	Satyaveer Singh, Vill.DUriyal, Gautam Budh Nagar, Uttar Pradesh-201307. PAN-EHPRS8775N	--do--	--do--
12.	1208/Del/2020	2010-11	ITO, Ward-3(3), Noida	Sachin Kumar, Vill.-Malakpur, Greater Noida, Uttar Pradesh- 201307. PAN-AJNPK4683R	--do--	--do--
13.	1209/Del/2020	2008-09	ITO, Ward-3(5), Noida	Usha Devi, Vill-Malakpur, Gautam Budh Nagar, Uttar Pradesh-201301. PAN-CORPD2706P	--do--	--do--
14.	1210/Del/2020	2009-10	ITO, Ward-3(5), Noida	--do--	--do--	--do--
15.	1212/Del/2020	2010-11	ITO, Ward-3(4), Noida	Sunder, Vill.-Luskar, PO- Kasna, Gautam Budh Nagar, Uttar Pradesh-201308. PAN-BZFPS6182Q	--do--	--do--
16.	1213/Del/2020	2010-11	ITO, Ward-3(3), Noida	Satish Kumar, Vill.-Tilpata, Karnawas, PO- Dadri, Gautam Budh Nagar, U.P-201307. PAN-IRDPS3577J	--do--	--do--
17.	1214/Del/2020	2008-09	ITO, Ward-3(3), Noida	Sanjay Kumar, H.No.178, Gama-1, Greater Noida, U.P-201307 PAN-ADPPK1373E	--do--	--do--
18.	1215/Del/2020	2010-11	ITO, Ward-3(3), Noida	Sanjay Kumar, Vill.-Barola, Sec- 49, Noida, U.P-201301. PAN-BTHPK5639L	--do--	--do--
19.	1216/Del/2020	2014-15	ITO, Ward-3(4), Noida	Subey Singh, Vill.-Malakpur, Greater Noida, U.P-201307. PAN-EXJPS9749L	--do--	--do--
20.	1217/Del/2020	2009-10	ITO, Ward-1(5),	Indrajeet Singh, Vill.-Mohiyapur,	--do--	--do--

			Noida	Noida, U.P-201301. PAN-ACSPS5135Q		
21.	1218/Del/2020	2010-11	ITO, Ward-1(4), Noida	Gaurav Gupta, E-45, Sec-51, Noida, U.P-201301. PAN-AHLPG3287H	--do--	--do--
22.	1219/Del/2020	2015-16	ITO, Ward-1(2), Noida	Brahampal, B-26, Sec-105, Noida, U.P-201301. PAN-AGHPB4575A	--do--	--do--
23.	1220/Del/2020	2014-15	--do--	--do--	--do--	--do--
24.	1222/Del/2020	2009-10	ITO, Ward-2(5), Noida	Vimla/Bimla Yadav, 1, Navyug Market, 2 nd Floor, Ghaziabad, U.P- 201001. PAN-ASIPY5839P	--do--	--do--
25.	1224/Del/2020	2009-10	ITO, Ward-2(5), Noida	Vinoj Bhati, Vill.-Chithera, Gautam Budh Nagar, U.P-201307. PAN-CRIPB9576P	--do--	--do--
26.	1225/Del/2020	2010-11	ITO, Ward-3(3), Noida	Satyapal Chauhan, Sadarpur, Sec-45, Noida, U.P-201307. PAN-AGEPC7908D	--do--	--do--
27.	1226/Del/2020	2009-10	ITO, Ward-2(3), Noida	Noida Special Economic Zone Authority, Phase-II, Dadri Road, Noida, U.P PAN-AAALN0639A	--do--	Shri Husnain, AR
28.	1227/Del/2020	2010-11	ITO, Ward-2(3), Noida	Omveer Singh, 65, Sec-28, Gautam Budh Nagar, U.P-201301. PAN-BOZPS5086N	--do--	--do--

C.O.Nos.28/Del/2020 & Others
[In ITA Nos.6504/Del/2019 & Others]
[Assessment Years-2009-10 & Others]

Sr. Nos.	C.O No(s).	Asst. Year(s)	Appeal(s) by Appellant vs. Respondent		Revenue By	Assessee By
			Appellant	Respondent		
1.	28/Del/2020 [ITA No.6504/Del/2019]	2009-10	ITO, Ward-1(5), Noida	Jaleshwar Nath Sinha, B-147, Sec- 31, Gautam Budh Nagar, Uttar Pradesh-201301. PAN-ACSPS5135Q	Shri Sanjai Kumar Yadav, Addl.CIT, Ms. Niharika Kucchal, Advocate on behalf of Standing Counsel, Shri Zoheb Hussain	None

2.	29/Del/2020 [ITA No.6559/ Del/2019]	2010-11	ITO, Ward-2(5), Noida	Vikram Singh, C/o-Chaman Singh, B-6 (Basement), JS Arcade, Near Bikanerwala, Opp. Metro Pillar No.65, Sec-18, Noida, Gautam Budh Nagar, U.P. PAN-JMLPS3035M	--do--	--do--
3.	38/Del/2020 [ITA No.6428/ Del/2019]	2009-10	ITO, Ward-3(5), Noida	Tulsi Das, C-119, Sector-51, Nodia, Uttar Pradesh-201301. PAN-AFWPD5347Q	--do--	--do--
4.	35/Del/2020 [ITA No.6433/ Del/2019]	2011-12	ITO, Ward-2(1), Noida	Chander Yadav, Village-Sarfabbad, Near Peer Baba, Sector-73, Noida, U.P.-201301. PAN-ABMPY5452F	--do--	Shri Rahul Gupta, CA
5.	41/Del/2020 [ITA No.5870/ Del/2019]	2009-10	ITO, Ward-2(1), Noida	Kiranwati, Vill.-Nawada, Near DANKOR, Tehsil- Sadar, Gautam Budh Nagar, U.P.-201010. PAN-EUUPK1814G	--do--	None
6.	43/Del/2020 [ITA No.6557/ Del/2019]	2010-11	ITO, Ward-3(4), Noida	Seva Ram, C/o-Chaman Singh, B-6, (Basement), JS Arcade, Near Bikanerwala, Opp.Metro Pillar No.65, Sec-18, Nodia, Gautam Budh Nagar, U.P. PAN-DXBPS0766Q	--do--	--do--

Date of hearing:	10.11.2022
Date of Pronouncement:	10.11.2022

ORDER

PER KUL BHARAT, JM :

This bunch of **34** (thirty four) appeals wherein **28** (twenty eight) appeals and **06** (six) cross-objections filed by the Revenue against the orders passed by appellate authority for various Assessment Years (“AY”) mentioned hereinabove.

2. Since the issues raised in all the appeals and cross-objections filed by the Revenue are common and identical, therefore, we clubbed all of them together for the sake of brevity and convenience and disposing the same by way of this consolidated order.

I.T.A.Nos.6282/Del/2019 & Others
[Assessment Years-2015-16 & Others]

3. First, we are taking appeals filed by the Revenue wherein **ITA No.6828/Del/2019 [Assessment Year -2015-16]** is taken as a lead case. The Revenue has raised following grounds in this appeal:-

1. *“The Ld. CIT (A)-1, Noida has erred in law and on facts by deciding the appeal of the assessee without having jurisdiction over the case as the assessee in this case filed the appeal with the CIT (A)-1, Noida-whereas the same should have been filed with and decided by the jurisdictional CIT (A), Ghaziabad. Moreover, although the date of the appellate order is 28.12.2018. the same has been received in this office on 18.06.2019, after the compulsory retirement u/s FR 56(j) of Sh. S. K. Srivastava, the then CIT (A)-1, Noida and has also been uploaded on the ITBA after an inordinate delay of time. Therefore the order of the Ld. CIT (A)-1, Noida is illegal, bad in law and in violation of CBDT’s/Pr. CC1T, Kanpur order assigning jurisdiction to CIT (Appeals), Ghaziabad and CIT (Appeals)-1 & 2, Noida. Although the tax effect is below the monetary limit laid down by the CBDT for filing of second appeals, the instant case is covered by the exception clause 10 (b) of Circular No. 3/2018 dated 11th July 2018, issued by the CBDT, as it is, violative of CBDT’s notification No. 66/2014 dated 13.11.2014 r.w. order no. G-03/2014-15 dated 15.11.2014 of Ld. Pr. CCIT (CCA), Kanpur, assigning jurisdiction to CIT (A) of UP (West and Utrakhnad). Hence*

the order of the CIT (Appeals)-1, Noida is liable to be quashed/cancelled.

2. *That the Ld. CIT(A)-1, Noida has erred in law and on facts in deleting the addition of Rs. 5,57,870/- on account of disallowance of deduction u/s 80E of the I.T. Act,1961 without considering the facts brought on record.*
3. *The appellant craves to leave to modify/amend or add anyone or more grounds of appeal.”*

BRIEF FACTS OF THE CASE

4. Facts giving rise to the present appeal are that the assessee filed its return of income declaring income of Rs.9,80,950/- on 14.08.2015. The case was picked up for scrutiny assessment u/s 143(3) of the Income Tax Act, 1961 (“the Act”) and the assessment was framed vide order dated 17.10.2017. Thereby, the Assessing Officer (“AO”) made addition of Rs.5,57,870/- in respect of disallowance of deduction u/s 80E of the Act.

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

6. Aggrieved against the order of Ld.CIT(A), the Revenue is in appeal before this Tribunal.

7. The sum and substance of the grievance of the Revenue is that there is a jurisdictional defect in as much as the order dated 31.12.2018 was passed by the Ld. CIT(A)-1, Noida.

8. It is surprising to see that the Revenue itself is questioning the jurisdiction of its own Ld. CIT(A) which allegation cannot be brushed aside lightly.

9. We have heard Ld. Authorized representatives of the parties and perused the material available on record. Since the appeal has been allowed by the first appellate authority, therefore, the assessee would not have approached this Tribunal challenging the jurisdiction of the appellate authority. However, since the Revenue has filed the appeal challenging the very jurisdiction of the Ld. CIT(A), therefore, without going into the merits of the case, we deem it fit to restore the impugned order back to the file of the Ld. CIT(A) having proper jurisdiction over the assessee. In the interest of justice and fair play, the appeal of the Revenue is restored back to the file of Ld. CIT(A) to be decided afresh after affording a reasonable and adequate opportunity of being heard to the assessee. Thus, grounds raised by the Revenue are allowed for statistical purposes.

10. In the result, the appeal of the Revenue is allowed for statistical purpose.

11. The facts and issues are identical and similar in ITA Nos.

6828/Del/2019 [AY 2015-16], **1174/Del/2020** [AY 2009-10],
1175/Del/2020 [AY 2009-10], **1176/Del/2020** [AY 2009-10],
1177/Del/2020 [AY 2009-10], **1180/Del/2020** [AY 2014-15],
1183/Del/2020 [AY 2009-10], **1186/Del/2020** [AY 2015-16],
1188/Del/2020 [AY 2010-11], **1192/Del/2020** [AY 2009-10],
1207/Del/2020 [AY 2010-11], **1208/Del/2020** [AY 2010-11],
1209/Del/2020 [AY 2008-09], **1210/Del/2020** [AY 2009-10],
1212/Del/2020 [AY 2010-11], **1213/Del/2020** [AY 2010-11],
1214/Del/2020 [AY 2008-09], **1215/Del/2020** [AY 2010-11],
1216/Del/2020 [AY 2014-15], **1217/Del/2020** [AY 2009-10],

1218/Del/2020 [AY 2010-11], **1219/Del/2020** [AY 2015-16],
1220/Del/2020 [AY 2014-15], **1222/Del/2020** [AY 2009-10],
1224/Del/2020 [AY 2009-10], **1225/Del/2020** [AY 2010-11],
1226/Del/2020 [AY 2009-10], **1227/Del/2020** [AY 2010-11]

as were in **ITA No.6828/Del/2019** [AY 2015-16]. The Ld. Authorized Representatives of the parties have adopted the same arguments as were in ITA No.6828/Del/2019. Our direction in **ITA No.6828/Del/2019** [AY 2015-16] would apply *Mutatis Mutandi* in all 28 (twenty eight) appeals filed by the Revenue as well. Thus, all 28 appeals filed by the Revenue are allowed for statistical purposes.

12. **In the result, all 28 (twenty eight) appeals filed by the Revenue are allowed for statistical purposes.**

C.O.Nos.28/Del/2020 & Others
[In ITA Nos.6504/Del/2019 & Others]
[Assessment Years-2009-10 & Others]

13. Now, we are taking cross-objections filed by the Revenue wherein **C.O. No.28/Del/2020** in **ITA No.6504/Del/2019** [Assessment Year -2009-10] filed by the Revenue is taken as a lead case. The Revenue has raised following grounds in this cross-objection:-

1. *“Because Sh. S.K. Srivastava, the then CIT(A)-1, Noida had been compulsorily retired by the Government of India with effect from 11.06.2019 and accordingly, he had become functus officio w.e.f. 11.06.2019. Accordingly, any discharge of function by an officer who has become functus officio is a nullity in law and without jurisdiction.*

2. *In this regard, reliance is placed on the decision of the Hon'ble High Court of Karnataka in the case of Rudragouda v. The University of Agricultural Sciences and Ors., Writ Petition No. 3 1 734/2016 (S-RES), wherein it was held that: -*

The petitioner/officer after his retirement becomes functus officio. No officer can continue to discharge his functions subsequent to his retirement and more particularly, to take action against the subordinate officer or to seek such direction from this Court. " (emphasis added)

It is to be noted that the term functus officio has been defined to mean the following: -

Black's Law Dictionary (Sixth Edition Page 673) gives its meaning as follows: Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore, of no further force or authority.

Accordingly, it is submitted that once the then CIT(A)-Noida has been compulsorily retired i.e., with effect from 11.06.2019, any order prima facie passed by him or acted upon by him after the date of his compulsory retirement is without jurisdiction.

3. *Because a vigilance inspection for the work carried out by Sh. Sanjay Kumar Srivastava IRS (Retd.), who was posted to as CIT(A)-1 Noida with the additional charge of CIT(A)-2 Noida, prior to his compulsory retirement w.e.f 11.06.2019 was conducted on 19.06.2019 by the Vigilance Team of Income Tax (Vigilance), which revealed that orders purported to have been passed by Sh. Srivastava in the month of December, 2018 were prima-facie passed in the month of June, 2019. In majority of these orders liable to have been uploaded on the ITBA system were uploaded between 11th June to 13th June, 2019, i.e. after his demitting the office, as per the charge sheet filed by the CBI. As per the CBI's charge sheet there are also indications of falsification of records to allude towards*

dispatch of these orders on 7th June, 2019] whereas they were dispatched on 14th June, 2019 It was further revealed that 104 orders were claimed to be passed by Sh. S.K. Srivastava during December, 2018,however, many of them were uploaded to the central server using his RSA token only after his retirement.

4. *Because Ld. CIT(A)-1, Noida has committed a jurisdictional error by deciding the appeal beyond fifteen days of the last hearing in contravention of Instruction no. 20/2003 dated 23.12.2003 issued by the CBDT and the order was uploaded on the ITBA after an inordinate delay of time, as it was uploaded after he was compulsorily retired under provisions of Fundamental Rules (FR) 56(J).*
5. *Because the order of the CIT(A)-1, Noida, being a nullity in the eyes of law, may be set aside for fresh adjudication to the jurisdictional Ld. CIT(A), Noida.*
6. *Because, it is immaterial whether an order passed without jurisdiction is in favour of revenue or against it. Such an order is contrary to the administration of the Income Tax Act and it pollutes the streams of justice. Therefore, Revenue would be an aggrieved party if a Commissioner of Income Tax (Appeals) passes an order without jurisdiction and it is in the interest of the revenue as well as tax administration to ensure that orders are passed by the correct legal authority under the Act.*
7. *Because the revenue being 'State' cannot be a beneficiary of an order passed without jurisdiction by an Appellate Commissioner and therefore it is absolutely immaterial that ultimately the case was decided in favour of the revenue by the Appellate Commissioner albeit without jurisdiction.*
8. *The Revenue craves leave to modify any of the grounds above and/or to add any fresh ground or grounds as and when it is required to do so.”*

BRIEF FACTS OF THE CASE

14. Facts giving rise to the present appeal are that the assessment was originally completed u/s 144/147 of the Act on 29.11.2016 at an income of Rs.1,16,55,000/- creating a demand of Rs.1,08,39,219/-. On ground through the case records and on the basis of AIR information, the AO noticed that the assessee deposited cash of Rs.11,65,000/- in his Bank Account No.10240510933 maintained with State Bank of India (PBB), Noida, is unexplained. Thereafter, notice u/s 148 of the Act was issued to the assessee on 30.03.2016. Thereby, no compliance was made by the assessee against the notices issued u/s 148/142(1) of the Act and assessment was completed by the AO u/s 144/147 of the Act on 29.11.2016. The AO assessed the income of the assessee at Rs.1,16,55,000/- u/s 144/147 of the Act.

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

16. Aggrieved against the order of Ld.CIT(A), the Revenue filed cross-objection before this Tribunal.

17. We have heard the Ld. Authorized representatives of the parties and perused the material available on record. We find that the facts and issues are similar and identical as in **ITA No.6828/Del/2019 [AY 2015-16]**. Our direction in **ITA No.6828/Del/2019 [AY 2015-16]** would apply *Mutatis Mutandi* in this cross-objection filed by the Revenue as well. Thus, grounds raised in cross-objection filed by the Revenue are allowed for statistical purposes.

18. In the result, the cross-objection filed by the Revenue is allowed for statistical purposes.

19. The facts and issues are identical and similar in **CO Nos. 28/Del/2020 [In ITA No.6504/Del/2019] [AY 2009-10], 29/Del/2020 In ITA No.6559/Del/2019] [AY 2010-11], 38/Del/2020 [In ITA No.6428/Del/2019] [AY 2009-10], 35/Del/2020 In ITA No.6433/Del/2019] [AY 2011-12], 41/Del/2020 [In ITA No.5870/Del/2019] [AY 2009-10], 43/Del/2020 [In ITA No.6557/Del/2019] [AY 2010-11]** as were in **C.O.28/Del/2020 [In ITA No.6504/Del/2019] [AY 2009-10]** filed by the Revenue as well. The Ld. Authorized Representatives of the parties have adopted the same arguments as were in C.O. No.28/Del/2020. Therefore, our direction in **C.O.No. 28/Del/2020 [In ITA No.6504/Del/2019] [AY 2009-10]** would apply *Mutatis Mutandi* in these cross-objections filed by the Revenue as well.

20. In the result, all six (06) cross-objections filed by the Revenue are allowed for statistical purposes.

21. In the final result, all appeals and cross-objections filed by the Revenue are allowed for statistical purposes.

Order pronounced in the open Court on 10th November, 2022.

Sd/-

**(N.K.BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

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