

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.1444 & 1445/DEL/2020  
Assessment Years 2004-05 & 2005-06

ITO, Ward-1(4), Noida.	Vs.	Shri Gapumkhai Grinder Muivah through legal heir Shri Raireiwung Muivah.
TAN/PAN: AFUPM4862M		
(Appellant)		(Respondent)

Appellant by:	Shri Kumar Pranav, Sr.D.R.		
Respondent by:	None		
Date of hearing:	21	11	2022
Date of pronouncement:	21	11	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeals have been filed by the Revenue against the orders of the Commissioner of Income Tax (Appeals)-I, Noida [‘CIT(A)’ in short] dated 31.12.2018 arising from the assessment orders dated 29.02.2016 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 254 of the Income Tax Act, 1961 (the Act) concerning AYs 2004-05 & 2005-06 respectively.

2. The grounds of appeal raised by the Revenue read as under:

ITA No.1444/Del/2020 Assessment Year 2004-05

*1. The order of the CIT(A)-I, Noida being a nullity in the eyes of law, may be set aside for fresh adjudication.*

*2. Because Sh. S.K. Srivastava, the then CIT(A)-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.

3. 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. 31734/2016 (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 discharged from his office 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.

4. 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. All 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. 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.

5. 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, therefore being without jurisdiction, as it was uploaded after he was compulsorily retired under provisions of Fundamental Rules (FR) 56(J).*

6. *Because any orders, instructions or directions issued under Section 268A(1) by the Board to other income tax authorities for fixing monetary limits would not apply to orders passed without jurisdiction when the officer himself had no jurisdiction to grant relief or pass any order whatsoever.*

7. *Because the monetary limits fixed pursuant to Section 268A will only apply to orders passed by authorities with jurisdiction and not to authorities without jurisdiction. Section 268A(1) of the Act reads as follows: -*

*"Section 268A. (1) The Board may, from time to time, issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating filing of appeal or application for reference by any income-tax authority under the provisions of this Chapter"*

8. *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.*

9. *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.*

10. *The Appellant 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."*

3. It is a peculiar case where the Revenue has sought to impugn the order of the CIT(A) which has been adjudicated against the assessee and in favour of the Revenue.

4. The peculiar facts in the instant case as brought out on record on behalf of the Revenue are reproduced hereunder:

*Statement of Facts*

1. That the CBI, ACB, Ghaziabad, registered a Regular Case RC1202019A0004, U/s 120-B, 420, 468 IPC and Section 7 of PC Act, 1988 (as amended in 2018), on 4.7.2019, against Sh. S.K. Srivastava, the then Commissioner of Income Tax (Appeals)-1 Noida with additional charge of Commissioner of Income Tax (Appeals)-2 Noida, on the basis of a written complaint dated 1.7/2019 of Ms. Anuja Sarangi, Director General of Income Tax (Vig.) and Chief Vigilance Officer, Central Board of Direct Taxes, Ministry of finance, Govt, of India, New Delhi.

2. That the allegations pertain to criminal conspiracy, cheating, forgery for the purpose of cheating and blatant abuse of authority by him.

3. That searches in the case were conducted on 05.07.2019 at the residential, office premises of Sh. S.K. Srivastava and at other places by CBI. At the residential premises, he was found in possession of jewellery valued at Rs.2,47,05,926/-, Cash of Rs. 16,44,970/-, Bank Deposits of more than Rs.1.69 Crore, documents showing Bank Transfer of Rs.50 Lacs, Watches costing Rs.10 Lacs etc. Apart from this a sum of Rs.1,21,000/- was also recovered from a shop (Boutique) allegedly being run by his wife.

4. That the CBI Investigation has disclosed that the Sh. S.K. Srivastava has blatantly passed orders, favouring the assesseees (Appellants) in Income Tax Appeals which were totally outside his jurisdiction as Commissioner of Income Tax (Appeals) 1 & 2 Noida, thereby causing a loss of Rs.7,26,60,906/- to the Govt, exchequer.

5. That the jurisdiction to hear these appeals vested only with Commissioner of Income Tax (Appeals), Ghaziabad and that Sh. Sanjay Kumar Srivastava never held the charge of Commissioner of Income Tax (Appeals), Ghaziabad, nor were these cases ever assigned to him by the competent authority i.e. Principal Chief Commissioner of Income Tax, Kanpur.

6. That in certain appeals it has come to light that the appeal is shown to have been decided by the S.K. Srivastava as CIT(Appeals)-I, Noida, on 31.12.2018, whereas the notice to the

*parties (the Assessee and the Assessing Officer) U/s 250 Income Tax Act (fixing the date of hearing in the appeal as 07.01.2019) had been issued only on 27.12.2018. These notices were thereafter shown to have been dispatched on 28.12.2019. Further only the notice in respect of the Assessee was handed over to the Postal authorities for sending it through speed post on 31.12.2018. Thus Sh. S.K. Srivastava as CIT (Appeals)-I, Noida, could not have passed the order for disposal of the Appeal on 31.12.2018 at the stage when both the parties (the Assessee and the Assessing Officer) had not even got the notice to appear before him in the appeal. By allowing this appeal through clandestine means a wrongful loss of Rs.7,26,60,906/- was caused to the Government exchequer.*

7. *That in about 104 appeals decided by the Sh. S.K. Srivastava there are jurisdictional defects, he has deliberately left the order sheet portion of the appeal file blank with no details of the proceedings conducted in the case, the submissions of the parties, the last date of hearing and the final order.*

8. *That Sh. S.K. Srivastava has been compulsory retired by Government of India with effect from*

*11.6,2019.*

9. *The acts of omission and commission on the part of the S.K. Srivastava and blatant abuse of authority while holding the office of Commission of Income Tax (Appeals)-I and 2, Noida, is contained in the complaint lodged by Ms. Anuja Sarangi, Director General of Income Tax (Vig.) and CVO, CBDT, New Delhi, which forms part of the FIR.*

10. *CBI filed a charge sheet dated 14.2.2020 under sections 120B and 420 of the Indian Penal Code, 1860 as well as under section 7 of the Prevention of Corruption Act, 1988, which further reveals the offences relating abuse of the position of authority by S.K. Srivastava in passing orders as a quasi-judicial authority, and records inter-alia as follows:*

i. *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), and on the basis of such inspection, the Income Tax Department concluded that Shri. S.K. Srivastava IRS (Retd.), while posted as the CIT(A)-1 Noida with the additional charge*

*of CIT(A)-2, Noida during the period December, 2018 to 11.06.2019 indulged in acts of omission and commission adversarial to the interest of the Revenue. Further, orders reported to have been passed by Sh. Srivastava in the month of December, 2018 were prima- facie passed in the month of June, 2019. All these orders liable to have been uploaded on the ITBA system was uploaded between 11th June to 13th June, 2019, i.e, after his demitting the office. 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. Further, Sh. S.K. Srivastava passed 13 orders which were outside his jurisdiction, and 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. It is apprehended that either the orders were not passed by Sh. S.K. Srivastava during December, 2018, or if the orders were indeed passed during December, 2018 then the possibility of undue financial gains by delaying the issue of orders cannot be ruled out. It was further alleged that the role of private players like contractual engages/outsourced staff in the above activities was very evident.*

*ii. Investigation conducted has revealed that Sh. S.K. Srivastava had joined ns Commissioner of Income Tax (Appeals)-I, Noida, on 24.07.2015. On 17.10.2018 he had taken over the additional charge of Commissioner of Income tax (Appeals)-2, Noida. During the month of December, 2018 Sh. S.K. Srivastava held the charge of both the offices of Commissioner of Income Tax (Appeals)- I and 2, Noida. Both these offices are on the same floor of the Income Tax Department at A-2d, Sector- 24, Noida, U.P. Sh. S.K.Srivastava continued to hold both charges until 11.06.2019 when he was compulsorily retired from Government Services under Rule 56(J) of the Fundamental Rules. Besides the charge of Commissioner of Income tax (Appeals)-1 & 2, Noida, Sh. S.K. Srivastava never held the charge of Commissioner of Income 'tax Appeals (Ghaziabad), during the period of September, 2018 to 11th June 2019. Thus Sh. Sanjay Kumar Srivastava was a public servant as specified under the Prevention of Corruption Act.*

*iii. That, the CIT(A) discharges quasi-judicial functions and exercise powers derived from the Income tax-Act, 1961. Accordingly, the jurisdiction is assigned to any CIT(A) by an order passed under section 120 of the Income Tax Act, 1961. The Government of India, Ministry of Finance, Central Board of Direct taxes, New Delhi Notification No. 66/2014 dated*

13.11.2014, authorizes the Principal Chief Commissioner of Income Tax to issue orders in writing for the exercise of the powers and performance of functions by all or any of the income tax authorities who are subordinated to him in respect of such territorial areas as may be specified in such order. Accordingly, the territorial jurisdiction of the Principal Chief Commissioner of Income Tax, Uttar Pradesh (West) and Uttarakhand has been demarcated 'which includes the Commissioner of Income Tax (Appeals) Ghaziabad and the Commissioner of Income Tax (Appeals) 1 and 2, Noida.

iv. That, pursuant to the above notification CBDT, New Delhi, in exercise of the powers conferred under section 120 of the Income tax Act, 1961, the Chief Commissioner or Income Tax, U.P. (West) and Uttarakhand Region, Kanpur vide Order no. G- 03/2014-15 dated 15.11.2014 assigned jurisdictions to CIT(A) Ghaziabad and other CIT(A)s of U.P West and Uttarakhand, vide which the concerned CIT(A) has to exercise jurisdiction over the territory as assigned or specified by the Pr. Chief Commissioner of Income Tax, Kanpur. As per the order the appeal of all cases falling within the territorial jurisdiction of Principal Commissioner of Income tax, Ghaziabad would lie with the Commissioner of Income 'tax (Appeals), Ghaziabad, and all cases pertaining to International Taxation, falling within the jurisdiction of Commissioner of Income- tax (international Taxation)-1, Delhi would lie with Commissioner of Income Tax (Appeals)-2, Noida.

v. That all the Appeals against the orders of the Assessing Officers are E-filed (filed electronically) and are not randomly assigned by the computer system.

vi. In case any appeal is incorrectly lodged in the worklist of any Commissioner of Income Tax (Appeals), the officer can transfer the appeal to the correct Commissioner of Income Tax (Appeals).

vii. The Commissioner of Income Tax (Appeals) when he comes to know of the fact that a particular appeal has wrongly been lodged with him or that he lacks jurisdiction to try such Appeal, he can himself transfer the appeal directly to the right jurisdictional Commissioner of Income Tax (Appeals) without waiting for the parties (Assessing Officer and the Assessee), to raise the jurisdiction issue and then after hearing transfer the same.

viii. That, the Directorate of Income Tax, Organization and Management Services, Central board of Direct Taxes,

*Department of Revenue, Government of India has issued instructions/Guidelines on various matters including Appeals before the Commissioner of Income tax (Appeals) arising out of Assessment done by the Assessing Officer. These guidelines/instructions inter-alia contains the instructions/guidelines with regard to the maintenance of order-sheet in the Appeal File, the sending or mandatory information to the Assessing Officer in form ITNS 51 enclosing a copy of the appeal memo which is required he filed in and returned back to the CIT (Appeals) before he takes up the hearing, the fixation of appeals, submission of records by the Assessing Officer, the date of Appellate order, tie for passing the Appellate order, supply of Appellate orders and; regarding receipt of appellate order by the appellant.*

*ix. That without there being duly filled in Form ITNS-51 by the Assessing Officer, on record, the CIT (Appeals) cannot fix the appeal for hearing. Further the fact of receipt of Form ITNS-51 from the concerned assessing Officer is also required to be mentioned on the order sheet also. The order sheet is required to be maintained by the Commissioner of Income Tax (Appeals) himself,*

*x. That the Central Board of Direct Taxes, Ministry of Finance, Department of revenue, New Delhi has issued circulars/instructions vide instruction No. 20/2003 (F. No 279/Misc.53/2003- ITJ) dated 23.12.2003, No. 279/Misc.53/2003-ITJ dated 19.06.2015 and No. DGIT (Vigilance)/HQ/SI/Appeals/2017-18/9959 dated 08.03.2018 which inter-alia provides for mandatorily issuing the appellate orders within 15 days of the last hearing by the Commissioner of Income-Tax (Appeals), the immediate dispatch of the Appeal Orders either by registered post or through a notice server without waiting for the appellant to file an application in this regard and the prompt uploading of Appeal Orders on Income Tax Business Application (ITBA).”*

5. From the factual submission made on behalf of the assessee, it is noticed that the Revenue seeks to allege that the first appellate order has been passed by the CIT(A) although against the assessee is without jurisdiction. It is contended that the Income Tax Department being ‘State’ cannot be beneficiary of an order passed without jurisdiction and it is absolutely immaterial that ultimately the case has been decided adverse to the assessee.

It was pointed out on behalf of the Revenue that the action of the CIT(A) in the circumstances as narrated cannot be endorsed regardless of whether it operates in favour of the Revenue or against it.

6. We find force in such plea without any reservation. The order passed without jurisdiction is a nullity and thus amenable to appellate jurisdiction of Tribunal to seek remedy on such fundamental defects. This apart, we notice that the date of order of the CIT(A) is of 31.12.2018 whereas the first appellate order was communicated to the Revenue after a gap of more than five months on 23.06.2019. Ostensibly, the impugned order has not been communicated promptly, i.e., 15 days as per guidelines issued in this regard by CBDT. The CIT(A) is expected to follow the guiding principles in letter and spirit as provided in CBDT Instructions No.20/2003 dated 23.12.2003 which was reiterated vide CBDT letter F.No. 279/Misc.53/2003 ITJ dated 19.6.2015. Another communication F. No. DGIT (vig) / HQ / SF / Appeals /2017-18/9959 dated 8.3.2018 was yet again issued by CBDT to give impetus for timely dispatch of orders passed by CIT(A) to shun any suspicion about back dating and *mala fide* intent. We thus find traction in the claim of the Revenue for remitting the matter back to the CIT(A) for fresh adjudication on the ground that the impugned order has been passed by the extant CIT(A) without jurisdiction.

7. Both appeals have similar grievance and therefore both the appeals of the Revenue are decided on same terms. Both the appeals are thus restored to the file of the CIT(A). The respective

appeals before the CIT(A) by the assessee are thus revived for fresh adjudication in accordance with law.

8. In the result, both the appeals of the Revenue are allowed *ex-parte*.

**Order pronounced in the open Court on 21/11/2022.**

Sd/-

**[CHANDRA MOHAN GARG]  
JUDICIAL MEMBER**

DATED: /11/2022

*Prabhat*

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**