

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.90/Kol/2021
Assessment year: 2016-17

ITO, Ward-10(2), Kolkata.....Appellant

vs.

M/s NPS Cold Storage Pvt. Ltd.....Respondent
8, Raja Ram Mohan Roy Road,
Hakimpara Siliguri, 734001.
[PAN: AABCN5588N]

Appearances by:

Shri Sunil Surana, CA, appeared on behalf of the appellant.

Shri Vijay Kumar, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : December 01, 2022

Date of pronouncing the order : January 9, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 16.09.2020 of the Commissioner of Income Tax (Appeals)-4, Kolkata (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The Revenue is aggrieved by the action of the CIT(A) in quashing the assessment order holding the same is null and void ab initio being passed by the Assessing Officer having no jurisdiction over the case.

3. At the outset, the Id. Counsel for the assessee has submitted that the address/registered office of the assessee since beginning is situated at Hakimpara, Siliguri, West Bengal. That the Assessing

Officer at Siliguri had jurisdiction to frame the assessment. However, the notice u/s 143(2) of the Act was issued by Income Tax Officer, Ward-10(2), Kolkata which was without jurisdiction. The assessee filed objections with the Assessing Officer objecting to the jurisdiction of the Assessing Officer at Kolkata, which was not taken into consideration by the Assessing Officer and the assessment order was passed.

4. In appeal before the CIT(A), the assessee again took the objection regarding the jurisdiction of the Assessing Officer to pass the assessment order in question. The ld. CIT(A) wrote as many as three letters/reminders asking for comments of the Assessing Officer in this respect. Since no reply was received from the Assessing Officer, the ld. CIT(A) considered the above objections relating to the jurisdiction in the light of various case laws and held the assessment order as null and void being passed by the Assessing Officer having no jurisdiction over the case.

5. Before us, the ld. DR has submitted that since the name of the assessee was lying in the PAN database of Income Tax Officer, Kolkata and the assessee never informed the Assessing Officer regarding its change of address, therefore, the Income Tax Officer, Kolkata was having jurisdiction to frame the assessment. He, in this respect, has relied upon the decision of the Hon'ble Supreme Court in the case of PCIT vs. M/s I-Ven Interactive Limited, Mumbai reported in (2019) 311 CTR 165.

6. The ld. AR, on the other hand, has invited our attention to the copy of the notice issued u/s 143(2) of the Act to submit that even the ITO, Ward-10(2), Kolkata had issued notice at the Siliguri address of the assessee. The ld. Counsel for the assessee has further submitted

that the assessee was incorporated with the address at Siliguri on 20.08.1997. The assessee has filed its return of income in circle-3, Siliguri for the past and subsequent years as is evident from the ITR-V enclosed in the paper book for the past three years and subsequent two years. Further that all the business activities of the assessee are in Siliguri itself and there was absolutely no business of the assessee in Kolkata. He has further submitted that the address of the assessee as specified by the A.O in the scrutiny notice and the assessment order is that of Siliguri and therefore, there is no possible reason as to why the ITO, Ward-10(2), Kolkata would issue the notice u/s 143(2) and complete the assessment in the case of the assessee.

7. We have considered the rival contentions. Before proceeding further, it will be appropriate to refer to section 120 of the Act which, for the sake of ready reference, is reproduced as under:

“Jurisdiction of income- tax authorities

(1) Income- tax authorities shall exercise all or any of the powers and perform all or any of the functions Conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.

[Explanation.- For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1)].

(2) The directions of the Board under sub- section (1) may authorise any other income- tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income- tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub- sections (1) and (2), the Board or other income- tax authority authorised by it may have regard to any one or more of the following criteria, namely:-

(a) territorial area;

(b) persons or classes of persons;

(c) incomes or classes of income; and

(d) cases or classes of cases

.....

A perusal of the aforesaid statutory provisions would reveal that the jurisdiction of Income Tax Authorities may be fixed not only in respect of territorial area but also having regard to a person or classes of persons and income or classes of income also.

8. Since the assessee was incorporated at Siliguri and further carried on business at Siliguri only and there was never change of address, therefore, as notified by the CBDT, the jurisdiction in the case of the assessee lied with the 'Income Tax Officer' at Siliguri. There is no explanation put forth by the Department as to why the name of the assessee was lying in the PAN database of the Income Tax Officer, Ward-10(2), Kolkata. The assessee has been continuously assessed at Siliguri only. Even, when the Income Tax Officer, Ward-10(2), Kolkata issued notice u/s 143(2) of the Act, the assessee objected to his jurisdiction. Hence, the jurisdictional Assessing Officer in this case was Income Tax Officer, Siliguri. So far as the reliance of the ld. DR on the decision of the Hon'ble Supreme Court in the case of PCIT vs. M/s I-Ven Interactive Limited, Mumbai (supra) is concerned, it is to be noted that in the said case the dispute was not relating to the jurisdiction of the Assessing Officer rather the issue before the Hon'ble Supreme Court was that the notice u/s 143(2) of the Act was not

issued at the new/changed address of the assessee. The Hon'ble Supreme Court held that if the assessee would not intimate the Assessing Officer about the change of the address then under the circumstances, the Assessing Officer was justified in sending notice at the address as per PAN database. However, the case in hand is not of change of the address of the assessee. The assessee right from the very incorporation has carried on its business at Siliguri only. Even the notice has been issued to the assessee at its Siliguri address. Even the address of the assessee in the assessment order has also been mentioned of Siliguri. Therefore, the aforesaid case law cited by the Id. DR is not applicable to the facts of the present case. Rather the case is duly covered by the decision of the Jurisdictional Calcutta High Court in the case of PCIT vs. Mohan Chand Motilal Kothari & Co. in GA No.1497 of 2016, wherein, the Hon'ble High Court, in the identical facts and circumstances, has observed as under:

“A short ground is urged by the assessee in resisting the appeal being taken up on merits.

It is not in dispute that pursuant to a CBDT Notification dated July 30, 2002, the Assessing Officer exercising jurisdiction over the assessee was changed. Despite such position, the Assistant Commissioner of Income Tax-39, who had no jurisdiction over the assessee, carried an order in appeal to the Appellate Tribunal against an order passed by the Commissioner (Appeals). At the relevant time, the ITO-44 had jurisdiction over the assessee.

The appeal carried by the ACIT-39 to the Appellate Tribunal was dismissed as not competent. The order of the Appellate Tribunal was challenged by the Revenue in this Court. This Court did not interfere with the order of the Tribunal and the matter rested there without this Court's order being challenged by the Revenue before the Supreme Court. In the present case, the matter pertains to the same assessment year when the ITO-44 has preferred an appeal where the initial assessment was not done by the ITO-44 but such assessment was conducted by the ACIT-39 at a point of time when ACIT-39 lost

jurisdiction over the assessee pursuant to the said CBDT Notification of 2002.

Since there was a fundamental error, the Appellate Tribunal dismissed the appeal as incompetent since the order of the Assessing Officer who had no jurisdiction to undertake the assessment qua the assessee could never have been found to be legal or resurrected.

The objection raised by the assessee is unexceptionable. Since the order which was sought to be revived by carrying an appeal to the Appellate Tribunal in this case was itself an order without jurisdiction, there was no question of the Appellate Tribunal going into the merits of the matter or seeking to give legal support to an order that was inherently lacking in jurisdiction.

For the reasons as aforesaid, ITAT No. 228 of 2016 and GA No. 1497 of 2016 stand dismissed.

There will be no order as to costs.”

9. In view of this, we do not find any merit in the appeal of the Revenue and the same is dismissed.

10. In the result, the appeal of the Revenue is dismissed.

Kolkata, the 9th January, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]

लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य /Judicial Member

Dated: 09.01.2023.

RS

Copy of the order forwarded to:

1. ITO, Ward-10(2), Kolkata
2. M/s NPS Cold Storage Pvt. Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

I.T.A No.90/Kol/2021
Assessment year: 2016-17
M/s NPS Cold Storage Pvt. Ltd

//True copy//

By order

Assistant Registrar, Kolkata Benches