

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 5758 & 5759/Del/2019
Assessment Year: 2009-10**

Setech Eelectronics Ltd.,
49, Pushpanjali, Vikas Marg
Extn., New Delhi

PAN: AAACS1057Q
(Appellant)

Versus Income-tax Officer,
Ward 3(4), Noida.

(Respondent)

**C.O. No. 40/Del/2020
(in ITA No. 5758/Del/2019
Assessment Year: 2009-10**

Income-tax Officer,
Ward 3(4), Noida.

(Appellant)

Versus Setech Eelectronics Ltd.,
49, Pushpanjali, Vikas Marg
Extn., New Delhi

(Respondent)

Assessee by : Sh. Neelesh Kumar Jain, Ld. CA
Revenue by : Sh. Pradeep Singh Gautam, Sr. DR

Date of hearing: 01.02.2023

Date of order : 07.02.2023

ORDER

PER BENCH

ITA Nos. 5758/Del/2019 and 5759/Del/2019 by the Assessee respectively against the orders dated 29.10.2018 and 28.12.2018, whereas C.O. No. 40/Del/2020 has been preferred by the Revenue Department against the order dated 29.10.2018 impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-I, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2009-10.

2. By way of ITA No. 5758/Del/2019, the Assessee has challenged the dismissal of its appeal and affirmation of assessment order dated 21.11.2016 passed by the AO u/s. 144/148 of the Act, whereas though the Revenue is not affected by the said order, however the Revenue Department has also preferred the cross objection against the dismissal of the appeal by the Id. Commissioner on the ground of jurisdiction.

3. In brief, facts of the case are the received an information received from AIR to the effect that the Assessee had purchased an immovable property for a consideration of Rs.1.2 Crores on dated 25.04.2008 during the year under consideration, therefore, in order to verify the said transaction, the notice u/s. 133(6) of the Act was issued on 19.10.2015 to the Assessee, which remained un-complied with. Thereafter by recording the reasons the proceedings u/s. 147 of the Act have been initiated by issuing a notice dated

29.03.2016 u/s. 148 of the Act to the Assessee. But still, no compliance was made by the Assessee. Thereafter, various statutory notices have also been issued to the Assessee which also remained un-complied with. Therefore considering the peculiar facts and circumstances, the Assessing Officer made the addition of Rs.1.2 crores as unexplained investment u/s. 69 of the Act.

4. The Assessee before the Id. Commissioner challenged the said assessment order and the addition made by the Assessing Officer on the ground of jurisdiction as well as on merits mainly on the reason that the Assessee's company is assessed in New Delhi vide PAN - AAACS1057Q for the last many years, therefore, the Assessing Officer at Noida had no jurisdiction to assess the case of the Assessee.

5. The Id. Commissioner by holding that "in the instant case, the appeal of the appellant cannot be admitted because of non-compliance of the mandatory provisions of section 249(4)(b) of the IT Act, 1961 and therefore, the issue regarding merits of the case or the non-compliance of mandatory procedure by the Id. A.O. also cannot be considered in the present appeal, as legally speaking, there is case of no appeal before this office. Therefore, the present appeal cannot be admitted. For want of requisite jurisdiction, the Id. Commissioner dismissed the appeal of the Assessee and

affirmed the assessment order dated 21.11.2016. The Assessee being aggrieved is in appeal before us.

6. The Assessee challenged the impugned order on the ground of jurisdiction as well as on merits. The Revenue Department also preferred the C.O. No. 40/Del/2020, mainly on the ground that since the Id. CIT(A) Noida, who passed the impugned order was prematurely retired from service and therefore did not have any jurisdiction to pass the impugned orders thereafter as passed in these cases and therefore the impugned orders are void-ab-initio.

7. We have given thoughtful consideration to the peculiar facts and circumstances of the case. As in the instant case, the assessment order was passed u/s. 144/147 of the Act and it is the claim of the Assessee that the Assessee never received any statutory notice(s) as mentioned in the assessment order, whereas it is a fact that in the assessment order, the Assessing Officer clearly mentioned the dates of sending the notices as referred in the assessment order.

7.1 Considering the peculiar facts and circumstances, as the Assessee remained un-heard before the Assessing Officer on the point of jurisdiction as well as on merits and Assessment Order is an ex-parte order and it is an undisputed fact, as not refuted by

the Assessee, that the AO in its order mentioned that the Assessee has purchased an immovable property, i.e., A-30, Sector 16, Noida for a consideration of Rs.1.2 crores, whereas the claim of the Assessee is that the Assessee infact has sold the said property. Hence, considering the facts in totality, without going into the merits of the case and making any observation, we deem it appropriate to remit the instant case/issue to the file of the Assessing Officer who is having jurisdiction over the case of the Assessee and to pass an Assessment order afresh, suffice to say, by affording reasonable and proper opportunity of being heard to the Assessee.

8. In the result, the appeal in ITA No. 5758/Del/2019 filed by the Assessee and C.O. No. 40/Del/2020 filed by the Revenue Department stands allowed for statistical purposes.

9. Coming to ITA No. 5759/Del/2019, we observe that while passing the assessment order dated 18.11.2016 u/s. 144/147 of the Act referred to above, after making addition of Rs.1.2 crores, the Assessing Officer also initiated penalty proceedings u/s. 271(1)(c) of the Act as well and issued statutory notice u/s. 274 on dated 21.11.2016 by which the Assessee was asked to furnish explanation by 08.12.2016 as to why an order imposing penalty u/s. 271(1)© of the Act be not made. The said notice also

remained un-complied. Therefore, considering the peculiar facts of the case, the Assessing Officer imposed the penalty of Rs.40,78,800/- at the rate of 100% of the tax sought to be evaded.

9.1 The assessing being aggrieved also preferred first appeal before the Id. Commissioner who vide order dated 28.12.2018 confirmed the imposition of the penalty by dismissing the appeal of the Assessee.

9.2 As we have already remanded the quantum cases (ITA No. 5758/Del/2019 & C.O. No. 40/Del/2020), to the file of the Assessing Officer, having jurisdiction over the case of the Assessee for decision afresh, the penalty under challenge does not survive. Hence, the appeal of the Assessee stands dismissed as infructuous.

9.3 We clarify that in case the Assessing Officer by passing an assessment order afresh, made any addition then he would be at liberty to initiate the fresh penalty proceedings separately, if necessitates, as per law and this dismissal of appeal as infructuous shall not be taken as an impediment before the Assessing Officer.

10. In the result, the appeal No. 5758/Del/2019 filed by the Assessee and the Cross Objection No. 40/Del/2020 filed by the Revenue stand allowed for statistical purposes.

The appeal No. 5759/Del/2019 filed by the Assessee stands dismissed as infructuous.

Order pronounced in the open court on 07/02/2023.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

*aks/-

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER