

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.295/Del./2020
(ASSESSMENT YEAR : 2012-13)**

Passion Commodities Pvt. Ltd.,
14/79, Civil Lines,
Kanpur – 208 001 (Uttar Pradesh).
(PAN : AAECR4255P)

vs. DCIT, Central Circle 1,
Kanpur.

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rajeev Saxena, Advocate
Shri Shyam Sundar, Advocate
REVENUE BY : Shri B.K. Singh, Sr. DR

Date of Hearing : 03.04.2023
Date of Order : 13.04.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of Id. CIT (Appeals), Ghaziabad dated 26.09.2019 pertaining to AY 2012-13.

2. The grounds of appeal taken by the assessee read as under :-

“1. The Ld. Commissioner of Income Tax (Appeals) has grossly erred both in law as well as on facts in upholding the order of Assessment passed u/s 143(3) of Income Tax Act 1961 by Ld. ITO Ward - 2(1) Ghaziabad, since Ld. ITO Ward - 2(1) Ghaziabad had no jurisdiction over the assessee to assess the income, and hence the assessment framed being without jurisdiction is null and void because amongst the following:

(i) She had failed to notice that assessee called in question the jurisdiction of the AO time and again after receiving the notices.

(ii) She had also ignored that even in the order passed u/s 127(2) of the IT Act, jurisdiction of the assessee was transferred from one Ward of Kanpur to another Circle of Kanpur and so jurisdiction of ITO Ward 2(1) Ghz. was never existing.

(iii) She has also failed to appreciate that no Assessing Officer is empowered to transfer jurisdiction from one city to another city as it has to be decided by CCIT/ PCIT/ CIT and in case of any disagreement it has to be decided by CBDT.

(iv) She had totally ignored the notices issued u/s 143(2) and 142(1) by various officers at Kanpur and Ghaziabad during the same period and replies filed by the assessee.

2. That Ld. Commissioner of Income Tax (Appeals) has also erred in law as well as on facts in ignoring the evidence though admitted under rule 46A which was also examined by the AO and subsequent rejoinder filed by assessee on flimsy ground of non-production of books of account which was never asked during remand proceeding by the AO.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in confirming various additions/ disallowances made by the Ld. AO either on ad hoc basis or by not examining/enquiring the account of other electric companies who were duly been assessed under income tax and all related details were on record such as:

(i) Addition of Rs.12,29,000/- on account of unexplained Loan treated as cash credit by ignoring the running account where loans were received and paid through cheques and the balance at the year end was merely Rs.20,70,300 exactly tallying with the account of the concerned company and all details were filed despite this AO did not make any efforts during remand proceedings.

(ii) Adhoc disallowance of Rs.60,63,000/- @20% of the commission paid of Rs.3,03,15,243/- after deducting TDS and by providing PA details despite this AO did not make any efforts during remand proceedings.

(iii) Adhoc addition of Rs.88,78,000/- @20% of the total trade creditors of Rs.4,43,92,951/- whose details were furnished along with PAN and addresses were provided despite this AO did not make any efforts during remand proceedings.

(iv) Addition of Rs.7,50,000/- on account of unexplained Loan treated as cash credit by ignoring the running account where loans were received and paid through cheques and the balance at the year end was in negative of Rs.16,00,000/- as evident exactly tallying with the account of the concerned company whose all details were provided despite this AO did not make any efforts during remand proceedings.

(v) Addition of Rs.23,200/- on account of Donation debited in P&L account by Appellant. Both the lower authorities have failed to understand the nature of expense which is in the nature of customary and necessary business expense.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in remanding the additional disallowance of Rs.20,95,493/- while AO was fully aware of the evidence and did not make any comment on merits at the time of furnishing remand report where all supporting evidence was filed despite this AO did not make any efforts during remand proceedings.

5. That the order passed by Ld. Commissioner of Income Tax, is wholly unjustified and against the principles of natural justice and equity, therefore, deserves to be quashed.”

3. At the outset, in this case, Id. Counsel of the assessee challenged the jurisdiction of the AO to pass the said order. He took us to Paper Book-II - Page No.33, which was an order under section 127 (2) of the Income-tax Act, 1961 (for short 'the Act') in which the ITO who was to assess the assessee's case was mentioned. The said 127 (2) order read as under :-



GOVERNMENT OF INDIA,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
OFFICE OF THE COMMISSIONER OF INCOME TAX -II,
15/295A, VAIBHAV BUILDING, CIVIL LINES, KANPUR - 208 001
PHONE: 0512-2331544, 2305726; FAX: 0512-2331995

No. 16 /2014-15

ORDER UNDER SECTION 127(2) OF THE INCOME TAX ACT, 1961
DATED: 23 February 2015

Pursuant to a search action in the case(s) of M/s Rudra Builder Group of cases, the Commissioner of Income Tax (Central), Kanpur requested for centralization of a case which was centralized u/s 127(2) of the I.T. Act, 1961 vide this office order no. 02/2013-14 dated 09.07.2013. Further, 2 more cases were centralized vide this office order no. 14/2014-15 dated 30.01.2015. A request has been received from CIT(C), Kanpur for transfer of 2 more cases as listed in the schedule below, to DCIT/ACIT, Central Circle -I, Kanpur for coordinated post search investigation, PANs of which hitherto lie with CIT-I, Kanpur charge. Now, CIT-I, Kanpur vide letter dated 18.02.2015 has informed that both PANs have been transferred to ITO-6(4), Kanpur.

2. In view of the above facts and in exercise of the powers conferred by sub-section (2) of section 127 of the Income Tax Act, 1961 read alongwith section 127(3) of the I.T. Act, 1961 and all other powers enabling, me in this behalf, I, the Commissioner of Income Tax-II, Kanpur hereby transfer the case, particulars of which are mentioned in columns (1) to (4) of the Schedule appended below, from the Assessing Officer mentioned in column (5) to the Assessing Officer mentioned in column (6) thereof for administrative convenience, coordinated investigation and effective assessment.

SCHEDULE

S.No.	PAN	Name & address of the assessee	Status	Assessing Officer From (5)	Assessing Officer To (6)
1.	AAECR4255P	M/s Passion Commodities (P) Ltd. 12/2, 1 st Floor Sector 8, Chiranjeev Vihar Avantik, Ghaziabad	Co.	ITO-6(4) Kanpur (KNP W 56 4)	DCIT/ACIT, Central Circle- I Kanpur (DLC CC 29 1)
2.	AANCS1593C	M/s Passion Infra Promoter Ltd. 12/2, 1 st Floor Sector 8, Chiranjeev Vihar Avantik, Ghaziabad	Co.	ITO-6(4) Kanpur (KNP W 56 4)	DCIT/ACIT, Central Circle- I Kanpur (DLC CC 29 1)

The order shall be effective with immediate effect.

Sd/-
(K. M. Bali)
Commissioner of Income Tax-II,
Kanpur

4. However, Id. Counsel of the assessee pointed out that the assessment has been done by Shri Harpal Singh, Income Tax Officer, Ward 2 (1), Ghaziabad. Referring to the same, Id. Counsel of the assessee submitted that the AO passing this order has done so without jurisdiction. Ld. DR for the Revenue could not oppose the submission.

5. Upon careful consideration, we note that this issue was very much before the Id. CIT (A) but he rejected the same as the same was not challenged before the AO. In our considered view, this cannot be a ground to justify the AO's order who was not authorized to do so. Accordingly, we order that the assessment has to be quashed as order was passed by a person, who was not authorized to do so. Since we have quashed the assessment on jurisdictional ground, other issues have become infructuous.

6. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on this 13th day of April, 2023.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 13th day of April, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A), Ghaziabad.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.