

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.6814/Del/2019  
Assessment Year: 2015-16

<b>ITO Ward -2 (2) Ghaziabad</b>	<b>Vs</b>	<b>Rakesh Gupta( HUF) III-J-58, Nehru Nagar, Ghaziabad U.P. 201001 PAN No. AAOHR9383R</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

ITA No.6820/Del/2019  
Assessment Year: 2015-16

<b>ACIT Circle – 1, Ghaziabad</b>	<b>Vs</b>	<b>Mudit Kumar House No.31, Patel Nagar-III, Ghaziabad PAN No.AGFPK3998N</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

ITA No.6821/Del/2019  
Assessment Year: 2015-16

<b>ITO Ward -1 (4) Ghaziabad</b>	<b>Vs</b>	<b>Manju Gupta, J-58, Nehru Nagar-III, Ghaziabad U.P 201001 PAN No. BAQPG4864B</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Ms. Sapna Bhatia, CIT DR
Respondent by	Sh. Rajiv Khandelwal, CA

Date of hearing:	18/04/2023
Date of Pronouncement:	18/04/2023

**ORDER****PER N. K. BILLAIYA, AM:**

ITA No.6820/Del/2019, 6814/Del/2019 and 6821/Del/2019 by the revenue preferred against three separate orders of the CIT(A)-1, Noida dated 31.12.2018 pertaining to A.Y.2015-16.

2. Since common issues are taken up by the revenue in all the three appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grounds in all the three appeals read as under:-

1. *The Ld. CIT (A)-2, Noida has erred in law and 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 the jurisdictional CIT(A), Ghaziabad. Moreover, although the date of the appellate order is 31.12.2018, 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)-I, Noida and has also been uploaded on the ITBA after an inordinate delay of time. Therefore, order of Ld CIT(A)-I, Noida is illegal, bad in law and in violation 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), Ghaziabad and other CsIT(A) of UP(Weast & Uttrakhand). Although the tax effect in the case is less than the amount specified by the CBDT, the case falls in exception 10(b) of CBDT circular no. 3/2018 dated 11.07.2018.*

2. Without prejudice to the above, the Ld. CIT(A)-1, Noida has Rs. 6,13,186/- erred in law and fact in deleting the addition of Rs. 19,26,622/- on account of unexplained credit u/s 68 of the I.T. Act as well as addition u/s 69C of Rs. 57,799/-, without considering the facts brought on record. Reliance is placed on judgement of Hon'ble Delhi High Court in the case of Udit Kalra Vs ITO Ward-50(1) in ITA No. 220/2019 & CM No. 10774/2019 dated 08.03.2019 and of Hon'ble Bombay High Court(Nagpur Bench) in the case of Sanjay Bimalchand Jain Vs. Pr. CIT-1, Nagpur ( Income Tax Appeal No.18 of 2017).

3. Without prejudice to ground no.1 above, the Ld. CIT(A)-1, Noida has overlooked the fact that the name of M/s CCL International Ltd. figured in the list of penny scrips as per reports of the Investigation Wing of the department at Kolkata and that Hon'ble Madras High Court have upheld the disallowance of exemption u/s 10(38) in the case of Smt Tharakumari vs. ITO)tax case appeal no. 128 of 2019 and C.M.P. No. 3353 of 2019) where the shares of a company, in respect of which long term capital gain was claimed by the assessee as exempt, appeared in the data base of the Income Tax Department as penny stocks in tax evasion racket. Hon'ble ITAT Delhi have in their recent judgement in the case of Sh. Sanat Kumar Vs. ACIT, Circle-36(1), New Delhi(ITA No. 1881/Del/2018), Hon'ble ITAT 'E-Bench', delhi also stated that "..... no doubt assessee has meticulously completed the paper work by routing his entire investment through banking channel but the results thereof are altogether beyond human probabilities."

4. An identical quarrel arose earlier for identical reasons as mentioned in the grounds of appeal. This Tribunal vide order dated 18.01.2021 in ITA No.1185/Del/2020, 6614/Del/2019, 1228/Del/2020, 1187/Del/2020, 1179/Del/2020, 6945/Del/2019, 6823/Del/2019 and 6387/Del/2019 has extensively discussed the impugned issues and has restored the appeals to the respective jurisdictional CIT(A), Ghaziabad. The relevant findings of the coordinate Bench read as under :-

*“5. Undisputedly Sri S.K. Srivastava Ld. CIT(A)-1 Noida was having jurisdiction over appeals filed under Income Tax Act pertaining to Noida-1 and Noida-2; it is also not in dispute that CIT(A)-1, Noida was having no jurisdiction over the appeals pertaining to Ghaziabad Jurisdiction.*

*6. It is also not in dispute that Sri S.K. Srivastava got compulsorily retired with effect from 1 1.06.2019. It is also not in dispute that on the complaint filed by Ms. Anuja Sarangi, Directorate General of Income Tax (DGIT-Vigilance) FIR bearing no. RC 1202019A0004 dated 04.07.2019 was registered by Central Bureau of Investigation (CBI), Anti Corruption Branch (ACB), Ghaziabad against Sh. S.K.Srivastava then CIT(A)- 1 and 2 Noida u/s 120-B, 420, 468 IPC and Section-7 of the Prevention of Corruption Act, 1988 (as amended in 2018) for having indulged in Acts of Omission and Commission adversarial to the interest of revenue. It is also one of the allegation in the FIR that Sri S.K. Srivastava claimed to have passed 104 orders as CIT(A)-1 and CIT(A)-2, Noida during December, 2018 but prima facie passed in the Month of June, 2019. In the backdrop of the aforesaid facts and circumstances of the captioned cases the sole question arises for determination in this cases is :*

*“as to whether impugned orders passed by Ld. CIT(A)-1 and 2 Noida are illegal, bad in law and non-est having been passed without jurisdiction in violation of CBDT*

*notification and after his compulsory retirement {with effect from 11.06.2019 ?}.*

7. *So far as appeals bearing ITA No. 1185/Del/2020, A.Y.2015-16, CO No. 49/Del/2020, A.Y. 2010-11. 6623/Del/2019.A.Y. 2015-16, ITA No. 6945/Del/20, A.Y. 2009-10. CO No. 152/Del/2019, A.Y. 2009-10 are concerned they are pertaining to Ghaziabad jurisdiction and only CIT(A)- Kanpur is having the jurisdiction to try and entertain the same as per CBDT notification no. 66/2014 dated 13/11/2014 read with order no. C.C IT/CCA, Kanpur-III. It is beyond comprehension as to how and under what circumstances CIT(A)-1 Noida has dealt with and disposed of these appeals pertaining to Ghaziabad which are apparently beyond his jurisdiction.*
8. *From the copy of notification dated 13<sup>th</sup> November, 2014 issued by Central Board of Direct Taxes (CBDT) copy of order dated 15.11.2014 passed by the Chief Commissioner of Income Tax, Kanpur specifying the jurisdiction of CIT(A)s, copy of FIR No. RC 1202019A0004 dated 04.07.2019 and report on the basis of vigilance inspection qua the work and conduct of Sh.S.K. Srivastava CIT(A)-1 Noida conducted by D.G.I.T(Vigilance), New Delhi, it is proved on record that Sri S.K.Srivastava CIT(A)- 1, Noida who was compulsorily retired w.e.f 11.06.2019 and vigilance team of Income Tax conducted vigilance inspection qua his work and conduct found following illegalities and irregularities committed by him:-*

- “a. Sh.Sanjay Kumar Srivastava, IRS (Retd.) (87052) while posted as / CIT(A)-, Noida with additional charge of CIT(A)-2, Noida, prior to his compulsory retirement w.e.f 11.6,2019 indulged in acts of omission and commission adversarial to the interest of revenue.*
- b. 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.*
- c. All these orders liable 10 have been uploaded on ITBA system were uploaded between 11<sup>th</sup> June to 13<sup>th</sup> June, 2019. after his demitting the office.*
- d. There are also indications of falsification of records to allude towards dispatch of these orders on 7<sup>th</sup> June, 2019, whereas they were dispatched on 14<sup>th</sup> June, 2019.*
- e. Sh.Sanjay Kumar Srivastava passed 13 orders which were outside his jurisdiction.*
- f. It was claimed that 104 orders were passed by Sh.Sanjay Kumar Srivastava*

during December, 2018, however many of them were uploaded to the central server using his RSA token only after his retirement.

g. It is apprehended that either the orders were not passed by Sh.Sanjay Kumar 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,

h. It is apprehended that role of private players like contractual engages/outsourced staff in the above activities was very evident and requires in depth investigation.”

9. From the aforesaid illegalities and irregularities brought on record by the Vigilance Inspection Team of Income Tax Department qua the work and conduct of CIT(A)-Noida it has come on record CIT(A)-I, Noida has decided Income Tax Appeals referred to in preceding para no. 7 pertaining to Ghaziabad Jurisdiction over which he has no jurisdiction purportedly on 31.12.2018 whereas it is proved on record that all these appeals were disposed of in the month of June, 2019 after his compulsory retirement. It is also proved on record that all the impugned orders have been uploaded on ITBA system between 11<sup>th</sup> June to 13<sup>th</sup> June, 2019 after his demitting the office by Sri S.K.Srivastava, CIT(A)-1 and 2 Noida. It is also proved that he has uploaded the impugned orders to the Central Server using his RSA token only after his retirement. All these facts to go to prove that the impugned orders have been passed by Sri S.K.Srivastava CIT(A)-1 and 2 Noida after his compulsory retirement with effect from 11.06.2019, because the moment he ceases to hold his office he has become functus officio.

10. Hon'ble Supreme Court in case of *United Commercial Bank Ltd. vs. workman* 1951 SCR 380 in the identical situation held that jurisdictional defect strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of the parties.

10A. Hon'ble Supreme Court of India in case cited as *Kanwar Singh Saini vs. High Court of Delhi* held that order/ decree passed by court having no jurisdiction is a nullity by returning following findings:

“There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings

*including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. [Vide United Commercial Bank Ltd. v. Workmen, Nai Bahu v. Lala Ramnarayan, Natraj Studios (P) Ltd. v. Navrang Studios, Sardar Hasan Siddiqui v. STAT, A.R. Antulay v. R.S. Nayak Union of India v. Deoki Nandan Aggarwal, Karnal Improvement Trust v. Parkash Wantft, U.P. Rajkiya Nirman Nigam Ltd. v. Indure (P) Ltd., Slate of Gujarat v. Rajesh Kumar Chimanlal Barot, Kesar Singh v. Sadhu, Kondiba Dagadu Kadam v. Savitribai Supan Gujar and CCE v. Flock (India) (P) Ltd.]*

*11. Hon'ble Supreme Court in case of Fatma Bibi Ahmed Patel & Anrs (2008) 6 SCC 789 held that jurisdictional issue goes to the root of the matter and the entire proceedings having been initiated illegally and without jurisdiction, and thus are nullities.*

*12. In view of what has been discussed above and following the decisions rendered by Hon'ble Supreme Court in case of Fatima Bibi (supra), United Commercial Bank (supra) and Kanwar Singh Saini (supra) without entering into the merits of the captioned appeals, we are of the considered view that the impugned orders suffer from jurisdictional defect which is not curable having been passed by Ld. CIT(A)-1 and 2 Noida after his compulsory retirements with effect from 11.06.2019, when he was functus officio, are not sustainable in the eyes of law. hence, nullities. So question framed is answered in affirmative.*

*13. Consequently, impugned orders passed in the captioned appeals by CIT(A)-1 and 2 Noida are set aside to the files of the respective jurisdictional CIT(A)-1 and 2 Noida and CIT(A) Ghaziabad to decide afresh in accordance with law by providing an opportunity of being heard to the assessee / revenue. Consequently aforesaid appeals / cross objections are allowed for statistical purposes.*

*5. On finding parity in the dispute, respectfully following the decision of the coordinate Bench we set aside the captioned appeals to the files of the CIT(A) having jurisdiction over the captioned assessee's and decide the issue afresh expeditiously after affording a reasonable opportunity of being heard to the assessee.*

6. In the result, the captioned appeals are allowed for statistical purpose.

7. Decision announced in the open court in the presence of both the parties on 18.04.2023.

Sd/-

**[ANUBHAV SHARMA]**  
**JUDICIAL MEMBER**

Dated: .04.2023

\*Neha\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar  
ITAT, New Delhi