

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं .I.T.A No. 3024/Del/2017
निर्धारण वर्ष/Assessment Year: 2010-11

Shri Satya Pal, S/o. Late Maha Singh, Vill. & P.O. Nakhrola, Tehsil Manesar, Distt. Gurgaon, Haryana - 122 001.	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 4 (1) Gurgaon.
PAN No. AABPY6152A		

AND

आ.अ.सं .I.T.A No. 3022/Del/2017
निर्धारण वर्ष/Assessment Year: 2010-11

Shri Satyabir Singh, S/o. Late Maha Singh, Vill. & P.O. Nakhrola, Tehsil Manesar, Distt. Gurgaon, Haryana - 122 001.	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 4 (1) Gurgaon.
PAN No. AACPY7890A		

AND

आ.अ.सं .I.T.A No. 3023/Del/2017
निर्धारण वर्ष/Assessment Year: 2010-11

Shri Rati Ram, S/o. Late Maha Singh, Vill. & P.O. Nakhrola, Tehsil Manesar, Distt. Gurgaon, Haryana - 122 001.	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 4 (1) Gurgaon.
PAN No. AAOPY3440Q		
अपीलार्थी/ Appellants		प्रत्यर्थी/ Respondents

निर्धारितकीओरसे / Assessee by :	Shri K. Sampath, Advocate; & Shri V. Rajkumar, Adv.;
राजस्वकीओरसे / Department by :	Ms. Kajal Singh, Sr. D. R.;
सुनवाईकीतारीख/ Date of hearing :	18.04.2023
उद्घोषणाकीतारीख/Pronouncement on :	13.07.2023

आदेश / ORDER**PER C. N. PRASAD, J.M.**

1. These three appeals are filed by different assesseees of same group being brothers against the common order of the ld. Commissioner of Income Tax (Appeals)-1 [hereinafter referred to CIT (Appeals)] Gurgaon, dated 31.03.2017 for assessment year 2010-11. This batch of three appeals u/s. 253 of the Income-tax Act, 1961 (the Act) is by three brothers viz. S/Shri Satya Pal, Satyabir and Rati Ram sons of Late Maha Singh which arise out of a common Appellate order dated 31.03.2007 passed by the Ld. Commissioner of Income-tax (Appeals)-1, Gurgaon for the Assessment Year 2010-11. In all these appeals the assesseees have raised identical grounds of appeal based on similar facts. They are, therefore clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The facts of the case are taken from the file of Shri Satya Pal (ITA No. 3024/2017 and variances wherever any are separately dealt with in the relevant cases.

2. Originally the following common grounds in all these appeals except for the figures were raised:-

“1. initiating proceedings u/s 147/148 of the Income-tax Act 1961 against the Appellant without any reasonable cause:

2. in sustaining and maintaining the proceedings u/s 147/148 of the act in the subject year:

3. in completing the assessment on the basis of such wrong action u/s 143(3) of the Act:

4. in computing the income u/s 143(3) of the Act at Rs.3,23,43,523/- against the returned income of Rs.2,77,890/-:

5. in computing Long Term Capital Gain on transfer of agricultural land done in an earlier year but charged during the year by assuming the cost of acquisition and indexation cost without any material before him;

6. confirming the computation of Long Term Capital Gain and additions made to the returned income to the extent of Rs.3,20,65.633/-;

7. Not allowing claim for deduction u/s 54B & 54F of the I.T. Act 1961;

8. Charging interest u/s 234A and 234B of the Income-tax Act, 1961.”

3. At the time of hearing permission was sought to raise the following as additional grounds of appeal:

“1. in assuming jurisdiction over the case without any authority of law and in derogation of the jurisdiction as originally vested with the Assessing Officer, Salary Circle, Rewari:

2. in the proceedings u/s 147/148 being endorsed and approved by the prescribed authorities without application

of mind and in contravention of the conditionalities as applicable thereto; &

3. without prejudice in computing the long term capital gain as per circle rate prevailing during subject year instead of the actual sale consideration as received in terms of the collaboration agreement of a preceding year with the vendees."

4. Arguing for the admission of the additional grounds of appeal the Ld. Counsel for the assessee submitted that the relief as sought through the additional grounds was similar to that as had been originally raised for relief vide ground Nos. 1 and 2. It was submitted that vide ground Nos. 1 and 2 the Appellant had challenged the initiation of proceedings u/s 147/148 of the Act and had pleaded that such was without reasonable cause and which had been erroneously sustained and maintained by the authorities. It was further stated out that qua the additional grounds the relief that was sought was also with reference to the proceedings u/s 147/148 of the Act. Ld. Counsel submitted that the proceedings u/s 147/148 of the Act were initiated by an AO who was not holding jurisdiction over the Appellant and that the prescribed authorities had accorded sanction to such action of that AO without due application of mind and contrary to the conditions applicable therefor. It was further submitted that the relief as sought u/s 147/148 of the Act vide the original ground Nos. 1 & 2 and the additional grounds as now proposed for admission were for the same cause and purpose to the same extent and were similar. It was pleaded, therefore, that the additional grounds as raised virtually got subsumed into the original grounds as raised in ground Nos. 1 and 2. Ld. Counsel further stated that the additional grounds did

not involve any fresh enquiry into facts and that all the material necessary for their adjudication was already on record. In such circumstances the additional grounds were simply clarificatory and so merited admission and consideration. Per contra Ld. Sr. DR vehemently opposed the admission of the additional grounds on the reasoning that new issues were being raised in the guise of additional grounds.

5.1 We have considered the rival contentions and are of the view that the additional grounds as raised contest the jurisdiction assumed by the Assessing Authority framing the reassessment order. It is urged on behalf of the Appellant that it has been done so without the authority of law and in derogation of the jurisdiction originally vested in another Assessing Officer AO). Ground Nos. 1 and 2 as originally raised by the assessee state that the proceedings initiated u/s. 147/148 of the Act were without reasonable cause and that they have been sustained and maintained in the subject year by the lower authorities erroneously. The dispute obviously, therefore, is with reference to the authority of the Assessing Officer to initiate and maintain the proceedings u/s 147/148 of the Act. It is trite that the jurisdiction u/s147 of the Act has to be invoked after due application of mind and in conformity with the applicable conditionalities failing which the initiation would be unreasonable and unsustainable. We, therefore, hold that the additional grounds as raised are clarificatory and essentially a continuation of the original ground Nos. 1 and 2. We, therefore, admit for consideration and adjudication the additional grounds along with the original grounds 1 & 2.

5.2 The Id. Counsel submits that the relevant facts relating to the controversy in additional ground NO. 1 taken are that the assessee Shri Satya Pal Yadav was an existing assessee with PAN AACPY7890A at Delhi. The Assessing Officer acknowledges that the assessee had submitted his return for the said assessment year on 22.07.2010 with an assessable income of Rs.2,77,890/-. Shri Satya Pal was employed with the Gurugram Gramin Bank. He was drawing salary from the said employer. He had been allotted PAN: AACPY7890A. For the subject AY 2010-11 Appellant had filed a return dated 22.07.2010 with the designation of the Assessing Officer (AO) as ITO Ward 33(1), Rewari. Appellant has an order by the CPC Income-tax Department for AY 2010-11 where the income as declared has been accepted. Also Form 26-AS from the IT site has been submitted confirming the tax details.

5.3 Ignoring all these facts and the past history of the case, the ITO, Ward 4(5) Gurgaon has issued notice u/s 148 of the Income-tax Act the Act) to the assessee (page 52 of the paper book). The precursor to this notice was the satisfaction note recorded by the Assessing Officer placed at pages 53-54 of the paper book where the note mentions the status of the assessee as an individual.

5.4 It is submitted that the ITO, Ward 4(5), Gurgaon did not have jurisdiction over the Appellant. The Appellant was being assessed under the jurisdiction of the Salary Circle, ITO, Ward 33(1), Rewari. There was no order for the transfer of jurisdiction of the Appellant from the ITO, Ward 33(1), Salary Circle, Rewari, to the ITO, Ward 4(5), Gurgaon. It is submitted that on earlier occasion the Hon'ble Tribunal had directed the Department to

verify the averments of the assessee on the issue of jurisdiction and in the report dated 01.07.2022 the Ld. DR has submitted as under:-

"1. The assessee has raised the ground that the ITO Ward 4(1), Gurgaon assumed the jurisdiction without any authority of law and in derogation of the jurisdiction vested with the assessing officer, Salary Circle, Rewari. Upon the perusal of assessment record it has been observed that the Information in respect of Shri Satya Pal was available to the then Assessing Officer as NON PAN information but the address of the assessee was Village Nakhrola, Tehsil and Distt. Gurgaon which is under the jurisdiction of Gurgaon. The reasons were recorded by ITO Ward 4(5), Gurgaon and thereafter the assessee under the course of assessment proceedings submitted the Pan number of the assessee and an assessment was rightfully concluded by the jurisdiction AO i.e. IT Ward (5) Gurgaon. Subsequently the PAN is also transferred to Correct jurisdiction of ITO, Ward 4(1) Gurgaon".

5.5 Ld. Counsel submits that it is noteworthy that the Assessing Officer concedes that the correct jurisdiction was with ITO, Ward 4(1) Gurgaon and not with ITO, Ward 4(5) Gurgaon who had issued the notice u/s 148 of the Act. In any case the AO Ward 4(5) Gurgaon never had jurisdiction over the assessee.

5.6 Ld. Counsel submits that on Identical circumstances in the case of cousins of the Appellant namely S/Sh. Ram Kishan Kanwar Lal Ram Avtar and Manphool Ram Singh, who were also parties to the same land deal the Tribunal, Delhi "G" Bench has held vide order dated 10.07.2022 in ITA Nos. 3025 to 3028/Del/2017 that the assumption of jurisdiction in their cases by the ITO Gurgaon as erroneous and untenable and consequently

quashed the notices u/s 148 of the Act. While so doing the Hon'ble Tribunal relied upon an earlier order passed by Tribunal "A" Bench in ITA. Nos. 2682/Del/2018 & 2613/Del/2018 which itself relied upon the following cases:-

(i) Lt. Col. Paramjit Singh Vs. CIT [(1995) 220 ITR 446 (P&H)]

(ii) Dushyant Kr. Jain Vs. DCIT [(2016) 381 ITR 428 (Del)]

6.1 In the case of Shri Satyabir Singh Yadav, the Id. Counsel for the assessee submits that Appellant was employed with the Indian Institute of Aircraft Engineering, New Delhi. He was drawing salary from the said employer. He had been allotted PAN: AAOPY3440Q. Form 16 as certified by the employer relevant to AY 2007-08. AY 2008-09 confirm these averments. For the subject AY 2010-11 Appellant had filed a return dated 23.07.2010 with the designation of the Assessing Officer AO) as ITO Ward 48(3)/Del/W/78/3 (PB 112 to 118). Appellant also has an order by the CPC Income-tax Department for Assessment Year 2010-11 where the income as declared has been accepted.

6.2 Ld. Counsel submits that ignoring all these facts and the past history of the case, the ITO, Ward 4(5) Gurgaon, has issued notice under section 148 of the Income-tax Act (the Act) to the assessee (page 81 of the paper book). The precursor to this notice was the satisfaction note recorded by the AO placed at pages 82-83 of the paper book where the note mentions the status of the assessee as an individual.

6.3 Ld. Counsel submits that the ITO, Ward 4(5) Gurgaon, did not have jurisdiction over the Appellant. The Appellant was being assessed under the jurisdiction of the Salary Circle, ITO, Ward 48(3). There was no order for the transfer of jurisdiction of the Appellant from the ITO, Word 48(31) Salary Circle to the ITO, Ward 4(5), Gurgaon.

7.1 In the case of Shri Rati Ram, the ld. Counsel for the assessee submits that Appellant was an employee of Haryana Vidyut Nigam Ltd. He had been allotted PAN: AABPY6152A. Appellant was a regular assessee with the ITO, Salary Circle Ward 6, Gurugram where he had submitted his returns for assessment for AY 2008-09, 2009-10 & 2010-11. Copies of the acknowledgements for filing the return are placed at pages 102 onwards.

7.2 Ld. Counsel submits that ignoring these facts and the past history of the case, the ITO, Ward 3(4) Gurgaon has issued notice u/s 148 of the Income-tax Act the Act) to the assessee (page 53 of the paper book). The precursor to this notice was the satisfaction note recorded by that Assessing Officer placed at pages 54-55 of the paper book where it mentions the status of the assessee as an individual.

7.3 Ld. Counsel submits that the ITO, Ward 3(4), Gurgaon did not have jurisdiction over the Appellant. The Appellant was being assessed under the jurisdiction of the Salary Circle, ITO. Ward 6. There was no order for the transfer of jurisdiction of the Appellant from the ITO, Ward 6, Gurugram, to the ITO, Ward 3(4), Gurgaon. The Hon'ble Tribunal had directed the Department to

verify the averments of the assessee on the issue of jurisdiction. In the report dated 01.07.2022 the Ld. DR has not submitted any comments regarding this appellant although he had sent his comments with regard to his brothers Satyabir and Satya Pal who were in appeal on the same issue.

8. On the other hand, the ld. DR placed the report sent by the Income Tax Officer, Ward 4(1), Gurgaon, on the jurisdiction of the assessee who asserted that the Income Tax Officer, Ward 3(4) Gurgaon had only jurisdiction over the assessee. The ld. DR strongly supported the order of the Assessing Officer and submitted that the jurisdiction for re-opening the assessee's case is only with the Income Tax Officer, Ward 3(4) Gurgaon and the Assessing Officer has rightly issued notice under section 148 of the Act. The ld. DR further submits that the assessee is raising the jurisdiction ground for the first time before the Tribunal. The same is inadmissible. In reply the ld. Counsel for the assessee submits that the objection as raised by the ld. DR is erroneous and against law and procedure inasmuch as the objection to the authority and jurisdiction of a designated authority can be raised at any stage of the proceedings and most certainly in appeal as ruled by the apex court in the case of Indian Bank Vs. Manilal Govindji Khona [(2015) 3 SCC 712].

9. Heard rival submissions perused the orders of the authorities below. We find that the assessee Shri Satya Pal Yadav was an employee of Gurugram Gramin Bank and drawing salary filed his return of income for the assessment year 2010-11 on 22.07.2010 before the Income Tax Officer, Ward 33 (1), Rewari with PAN

AACPY7890A. The assessee Shri Satyabir Singh Yadav was an employee of Indian Institute of Air-craft Engineering, New Delhi and was drawing salary from the employer. Form 16 certified by the employer relevant for the assessment year 2007-08 confirmed these averments. For the assessment year 2010-11 the assessee filed return of income on 23.07.2010 before Income Tax Officer, Ward 48(3) New Delhi with PAN AAOPY3440Q. An intimation was also passed under section 143(1) of the Act processing the return accepting the income returned. In the case of the assessee, Shri Rati Ram was an employee of Haryana Vidyut Nigam Ltd., filed return of income. In the assessment years 2008-09, 2009-10 and 2010-11 with Income Tax Officer, Salary Ward 6, Gurgaon, with PAN AABPY6152A. These three assesseees were filing returns in the salary circle as they were employees with Gurugram Gramin Bank, Indian Institute of Air-craft Engineering and Haryana Vidyut Nigam Ltd. respectively. It is the contention of the assessee that Income Tax Officer, Ward 4 (5) Gurgaon who had issued notice under section 148 of the Act for re-opening of assessment of the assesseees have no jurisdiction though the assesseees were being assessed under the jurisdiction of Salary Circle. It was also the contention that there was no order under section 127 of the Act for the transfer of the jurisdiction of the assesseees from Income Tax Officer, Salary Circle to Income Tax Officer, Ward 4(5), Gurgaon.

10. We also observe that the report sent by Income Tax Officer, Ward 4(5) Gurgaon in respect of jurisdiction in the case of Shri Satya Pal, the Income Tax Officer observed as under:-

“1. The assessee has raised the ground that the ITO Ward 4(1), Gurgaon assumed the jurisdiction without any authority of law and in derogation of the jurisdiction as vested with the assessing officer, Salary Circle, Rewari. Upon the perusal of assessment records, it has been observed that the Information in respect of Sh. Satya Pal was available to the then AO as NON PAN information but the address of the assessee was Village Nakhrola, Tehsil and Distt. Gurgaon which is under the jurisdiction of Gurgaon. The reasons were recorded by ITO Ward 4(5) Gurgaon and thereafter the assessee during the course of assessment proceedings submitted the PAN number of the assessee and the assessment was rightfully concluded by the jurisdiction AO i.e. ITO, Ward 4(5), Gurgaon. Subsequently the PAN is also transferred to Correct jurisdiction of ITO Ward 4(1), Gurgaon.”

11. As could be seen from the above report that the Income Tax Officer, Ward 4(1) asserts that the Income Tax Officer, Ward 4(5) Gurgaon had the jurisdiction over the assessee. It was also stated that subsequently the PAN is also transferred to the correct jurisdiction of the Income Tax Officer, Ward 4(1) Gurgaon. The report submitted by the Income Tax Officer, Ward 4(1) is silent no transfer order was passed under section 127 of the Act, if any.

12. The principle that the Assessing Officer alone who was holding the original jurisdiction over the assessee, who could issue notice under section 148 of the Act has been considered by the Hon'ble Punjab & Haryana High Court in the case of Lt. Col. Paramjeet Singh Vs. CIT [(1996) 220 ITR 446] wherein the Hon'ble High Court held as under:-

“4. We have heard the counsel for the parties and in the normal course we would have accepted the preliminary objection raised by the department and directed the petitioner to raise all the pleas before the ITO but keeping in view the fact that the present is a case where there is total lack of jurisdiction in respondent No2, we are interfering in the matter. There is no gainsaying the fact that the petitioner was posted at Pune when he was in the service of the Army and for the assessment year in question he filed his return of income with the ITO there and the same stands assessed. The proceedings had been completed and the tax found payable had been deposited/ accounted for. Thereafter, if the assessment proceedings are to be re-opened or if the income for the relevant assessment year is to be reassessed it is the ITO who assessed the same in the first instance alone has the jurisdiction to proceed in the matter under section 147 read with section 148 unless the case has been transferred by a competent authority to another Assessing Officer under section 127 of the Act and in that event the latter will have jurisdiction to proceed.

It is clear that in the absence of any transfer order no Assessing Officer other than the one who initiated the proceedings or completed the assessment shall have jurisdiction to continue with the proceedings or even to re-open a concluded assessment.” (Underlining ours)

13. Similarly in the case of Dushyant Kr. Jain Vs. CIT [(2016) 381 ITR 428 (Del.)] the Hon’ble Delhi High Court held as under:-

“16. The reasons given by the Department in its counter affidavit do not in any way explain the patent illegality in invoking the powers under Section 148 of the Act for reopening the assessment of the Assessee for AY 2007-08. The mere fact that the definition of an Assessing Officer in terms of Section 2[7-A) of the Act al includes a DCIT and other superior officers or an ITO of some other ward who may be vested with the relevant jurisdiction by virtue of orders issued under Section 120 (1) or Section 120 (2) of the Act will not make a difference to the above legal position. The reason is not far to seek. It is only the Assessing Officer who has issued the

original assessment order dated 13th April 2009 for AY 2007-08 under Section 143 (3) of the Act who is empowered to exercise powers under Section 147/148 to re-open the assessment. This is because he alone would be in a position to form reasons to believe that some income of that particular AY has escaped assessment. This again cannot be based on a mere change of opinion. Further, in terms of Section 151 of the Act such a move will have to have the prior approval of the CIT. Under the scheme of the Act, if a superior officer forms an opinion that the original assessment order is prejudicial to the interests of the Revenue, recourse can be had to Section 263 of the Act. In any event the question of an ITO who is not the AO who passed the original assessment order under Section 143 (3) of the Act for particular AY, exercising the powers under Sections 147/148 of the Act to re-open that assessment does not arise.” (Underlining ours)

14. We also observe that an identical issue where the Gurgaon Income Tax Officer had remotely and erroneously assumed jurisdiction over the cases of other co-owners and had initiated and concluded re-assessments against them came up for hearing before the Tribunal in the batch of cases and the Tribunal held that the assumption of jurisdiction by the Gurgaon Income Tax Officer was improper incorrect and invalid by order dated 8.08.2019 in the case of Attar Singh & Others Vs. ITO in ITA. No. 2682/Del/2018 wherein the Tribunal held as under:-

31. So far as the argument of the Revenue that the assessee has not raised any objection to the jurisdiction within the prescribed time period is concerned we find merit in the argument of the Idcounsel that the issue to lack of jurisdiction can be raised at any stage in a case where the return has been filed in response to notice u/s 148/158BC/153A We find the Hon'ble Bombay High Court in the case of Mavany Brothers vsCIT (supra) while adjudicating an identical issue has observed as under:-

"13 We have considered the rival contentions. The jurisdiction under Section 147/148 of the Act is an extraordinary jurisdiction and can only be exercised when condition precedent as provided in Sections 147/148 of the Act are satisfied. It is the appellant's case that the aforesaid conditions are not satisfied inasmuch as in the absence of the Assessing Officer having the original return of income available it would not be possible for him to have a reasonable belief that income chargeable to tax has escaped assessment. This issue of jurisdiction according to the respondent - Revenue could only have been raised before the Assessing Officer and not having been raised before him, the appellant had waived its rights to raise the same. The appellant having submitted to the jurisdiction of the Assessing Officer cannot now challenge the same. This is not entirely correct. It is well settled that mere acquiescence will not give jurisdiction to an authority who has no jurisdiction. In fact this Court in CIT V/sITSC reported in 365 ITR 87 has held that mere participation by a party in proceedings without jurisdiction will not vest/confer jurisdiction on the authority. Reason to believe that income chargeable to tax has escaped assessment is a jurisdictional fact and only on its satisfaction does the Assessing Officer acquire jurisdiction to issue notice. Thus this lack of satisfaction of jurisdictional fact can never confer jurisdiction and an objection to it can be raised at any time even in appeal proceedings. The mere fact that no objection is taken before the Assessing Officer would not by itself bestow jurisdiction as the Assessing Officer. Such an objection can be taken in appeal also. Moreover the Apex Court in its recent decision in Kanwar Singh Saini V/s. High Court Of Delhi reported in 2012(4) SCC 307 has held that it is settled position that conferment of jurisdiction is a legislative function and cannot be conferred by consent of petitioner. An issue of jurisdiction can be raised at any time even in appeal or execution. Reliance in this regard could usefully be made to Indian Bank v/s Manilal Govindji Khona reported in 2015 (3) SCC 712. Paras 22 of the said judgment read as under:

"22. In Sushil Kumar Mehta case [Sushil Kumar Mehta Vs. Gobind Ram Bohra, (1990) 1 SCC 193] this Court has elaborately considered the relevant factual and legal aspect

of the case and has laid down the law at para 10 after referring to its earlier decision of a four-Judge Bench of this Court speaking through Venkatarama Ayyar Jin Kiran Singh Vs. Chaman Paswan [AIR 1954 SC 340: (1955) 1 SCR 117] which would be worthwhile to be extracted as under: (Sushil Kumar Mehta case [Sushil Kumar Mehta Vs. Gobind Ram Bohra (1990) 1 SCC 193], SCC p.199).

6"10.... 6. ... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non iudice, and that its judgment and decree would be nullities. (Kiran Singh case [AIR 1954 SC 340: (1955) 1 SCR 117], AIR p. 342, para 6)"

Thus, it is open to the petitioner to raise the issue of jurisdiction before the appellate authorities."

32. In view of the above discussion and considering the fact that the assessee was employed with Delhi Police and was regularly filing his return of income at Delhi under ITO, Ward 64(3) [earlier ITO, Ward 40(3)] and since this fact was known to the ITO at Gurgaon, therefore in absence of any transfer of jurisdiction u/s 127, we hold that the ITO, Gurgaon has no jurisdiction over the assessee. Therefore, respectfully following the decision of the Hon'ble Punjab & Haryana High Court, which is the jurisdictional High Court in view of the assessment order being passed by the ITO at Gurgaon we hold that the Assessing Officer, Gurgaon had no jurisdiction over the assessee to issue notice u/s 148 and consequently pass the order u/s 147/143(3). Therefore, the notice issued u/s 148 is quashed. Since the reopening is quashed the subsequent orders passed on account of such reopening are also quashed.

33. So far as the decisions of the Hon'ble Delhi High Court relied upon by the ld. DR are concerned these decisions in our opinion are not applicable to the facts of the present case. In the case of Abhishek Jain (supra) we find the Assessing Officer Noida had issued notice u/s 148 on the basis of deposits made in cash in ICICI Bank, Noida. The fact that this assessee was regularly assessed in Delhi was not intimated to the Assessing Officer at Noida and the assessee had not mentioned his PAN in the ICICI Bank and the address of the assessee was also in Noida. After the completion of the time barring period which is 31st March 2016 the assessee intimated on 19th May 2016 that he had been regularly assessed in Delhi. Under these circumstances, the Hon'ble Delhi High Court held that it was mala fide on the part of the assessee not to intimate prior to 31.03.2016 and the assessee was waiting for time limitation to expire and, therefore the Hon'ble High Court held that in terms of section 124(3)(b), the jurisdiction of an Assessing Officer cannot be called in question by an assessee after the expiry of one month from the date on which he was served with a notice for reopening of assessment u/s 148. However, in the instant case, the assessee had enclosed the copy of return filed with the Assessing Officer of Delhi with his PAN and acknowledgement number. It was in the knowledge of the Assessing Officer of Gurgaon that the assessee is in employment of Delhi Police and his PAN is linked with ITO of Delhi. Further, there was ample time available before the Assessing Officer for verification and consequential issue of notice by the Assessing Officer of correct jurisdiction and no mala fide intention can be attributed to the present assessee.

34. Similarly, in the case of S.S. Ahluwalia (supra) is concerned, in that case also the respondent assessee was assessed at Delhi from 1980-81 to 1983-84. From the assessment year 1984-85 to 1987-88, he was filing the return at Dimapur. The case of the assessee was reopened u/s 148 by the ACIT, Investigation, Delhi on the basis of certain CBI search. When the question of jurisdiction issue came before the Hon'ble High Court the Hon'ble High Court held that in case the assessee shifts his residence or place of business or work, etc, the Assessing Officer of the place where the assessee has shifted or otherwise will have jurisdiction and it is not necessary that in such case an order u/s 127 is required to be passed. While going through para 51 of the order, it shows that

at clause 8 of para 51, there was exchange of correspondence between the ITO of Delhi and ITO of Dimapur and ITO Dimapur considered and accepted that for assessment year 1984-85 to 1987-88, the Assessing Officer at Delhi had jurisdiction to initiate and complete the assessment proceedings. Similarly order u/s 127 of the Act was passed and the case was transferred to ITO, Ward 20, New Delhi. Thus, the case of S.S. Ahluwalia (supra) cannot be equated with that of the assessee. In any case, since the Assessing Officer of Gurgaon has passed the assessment order, who falls under the jurisdiction of Punjab & Haryana High Court, therefore, the decision of Hon'ble Punjab & Haryana High Court will prevail over the decision of the Hon'ble Delhi High Court. If the assessment proceedings already completed by Assessing Officer are to be reopened or if the income for the relevant assessment year is to be reassessed, it is the ITO who assessed the same in the first instance has the jurisdiction to proceed in the matter u/s 147 read with section 148 unless the case has been transferred by a competent authority to another Assessing Officer u/s 127 and, in that event, latter will have jurisdiction to proceed. Thus, in the absence of any transfer order, no other Assessing Officer than the one who initiated the proceedings or completed the assessment shall have jurisdiction to continue with the proceedings or even to reopen a concluded assessment. Since in the instant case the assessee was regularly filing his return with ITO at Delhi and since no transfer order u/s 127 of the IT Act, 1961 was passed transferring the case to ITO, Gurugram, therefore, only the ITO, Delhi had jurisdiction to issue notice u/s 147 and the Income Tax Officer, Gurugram has no jurisdiction to issue notice u/s 148 to the assessee.

35. In view of the above discussion, we hold that the notice issued by the Assessing Officer at Gurgaon is void ab initio on account of lack of jurisdiction. Therefore the proceedings are quashed. Since the assessee succeeds on this legal ground the various other grounds on merit are not being adjudicated being academic in nature. Since the legal ground raised by the assessee challenging the reassessment proceedings are decided in favour of the assessee, the grounds raised by the Revenue in its appeal become infructuous and the same is accordingly dismissed.”

15. Similarly the co-ordinate bench of the Delhi Tribunal in the case of Shri Ram Kishan & Other Vs. ITO in ITA. No. 3025/Del/2017 dated 10.03.2022 held as under:-

“17. We have heard the rival contentions and have gone through the impugned orders and the other material to which our attention was drawn. We find that the Appellant was employed in the Army as a consequence of which he was being assessed by the Salary Circle AO holding jurisdiction over OR's (Other Ranks) of the Army Medical Core with PAN No. AQAPK7840G. A perusal of Form 26-AS as filed on behalf of the Appellant shows that he was subjected to TDS on salary u/s 192 of the Act. Accordingly the Appellant was under the jurisdiction and authority of the Salary Circle, AO, In-charge of Other Ranks of the Army Personnel. If at all any action had to be taken against the Appellant for any alleged escapement of income then it was for the Army Salary Circle AO holding authority over the Appellant who could have done so. Clearly the Income-tax Officer, Ward 3(5) Gurugram could not have interfered in the matter with a section 148 notice unless the case had been duly transferred to him. It is now well settled that it is only the AO holding charge over an assessee for assessment purposes who could issue a notice for reassessment. In other words, no AO, other than the assessee's own AO, could issue a notice for reassessment. The ITO Ward 3(5), Gurugram has issued the notice u/s 148 of the Act to the Appellant on 30.03.2015 after having recorded a satisfaction as to the alleged escapement of income of the Appellant. The ITO Ward 3(5) Gurugram does not seem to have made any inquiry or the relevant issues before issuing a notice u/s 148 of the Act to the Appellant. No material in this behalf has been brought before us by the Department. The High Court of Punjab & Haryana in Lt. Col. Paramjeet Singh vs. CIT (1996) 220 ITR 446 has ruled that if the assessment proceedings of an assessee is to be reopened or if the income for the relevant assessment year is to be reassessed, it is the Income-tax Officer who could assess the same in the first instance who has jurisdiction to proceed in the matter u/s 147 read with Section 148 of the Act, unless of course the case had been transferred by a competent authority to another AO u/s 127 of the Act. No such transfer order u/s 127 of the Act has been produced before us to

validate the jurisdiction as assumed by the ITO, Ward 3(5), Gurugram. It is thus clear that the assumption of jurisdiction to reassess the Appellant by the Gurugram AO is irregular and fallacious. In a similar situation the Delhi Bench of the Income-tax Appellate Tribunal in the case of Attar Singh & Ors. ITA No, 2682/Del/2018 dated 08.08.2019 has held that the assumption of jurisdiction by a different AO at Gurugram who was other than the AO holding jurisdiction over the assessee for the relevant year was invalid. Respectfully following that order and with facts being similar we hold that the assumption of jurisdiction by the ITO, Ward 3(5), Gurugram in the case of the Appellant is erroneous, illegal and void.”

16. In the cases before us we find that Shri Satya Pal was employed in Gurugram Gramin Bank was regularly filing returns before the Income Tax Officer, Ward 33(1) Rewari, and was assessed by Income Tax Officer, Ward 33(1) Rewari and Shri Satyabir Singh Yadav was employed with Indian Institute of Air-craft Engineering, New Delhi was regularly filing returns before the Income Tax Officer, Ward 48(3), New Delhi, and Shri Rati Ram, who was employed with Haryana Vidyut Nigam Ltd. was regularly filing returns with Income Tax Officer, Salary Circle Ward 6, Gurgaon and was assessed by Income Tax Officer, Salary Circle Ward 6, Gurgaon. There is nothing on record to suggest that there was a transfer order passed by the Revenue transferring the cases to Income Tax Officer, Ward 3(4) Gurgaon. Therefore, the Income Tax Officer, Ward 4(5) Gurgaon, has no jurisdiction over the assessee. In the circumstances, issue of notice under section 148 of the Act by the Income Tax Officer, Ward 3(4) Gurgaon and consequent assessment made under section 143(3) read with section 147 of the Act is void and bad in law. Thus, we quash the re-assessment order passed by

the Income Tax Officer, Ward 3(4) for the assessment year 2010-11 in all these three cases.

17. As we have quashed the re-assessment order passed under section 143(3) read with section 147 of the Act on legal ground, we are not inclined to go into the merits of the addition made in all these three cases as it would be of only academic at this juncture.

18. In the result all the three appeals of the assesseees are partly allowed, as indicated above.

Order pronounced in the open court on : 13/07/2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 13/07/2023.

MEHTA

Copy forwarded to :

1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	10.07.2023
Date on which the typed draft is placed before the dictating member	12.07.2023
Date on which the typed draft is placed before the other member	13.07.2023
Date on which the approved draft comes to the Sr. PS/ PS	13.07.2023
Date on which the fair order is placed before the dictating member for pronouncement	13.07.2023
Date on which the fair order comes back to the Sr. PS/ PS	13.07.2023
Date on which the final order is uploaded on the website	13.07.2023
Date on which the file goes to the Bench Clerk	13.07.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	