

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

Sl. No	ITA/CO No(s)	Assessment Year(s)	Appeal(s) by	
			Appellant	Respondent
1.	ITA No.1746/Del/2020	2014-15	ACIT Circle – 2(1), Ghaziabad, UP	Shri Brijesh Singh Rawat 603, Millenia Emerald Heights, Ramprastha Greens, Sector – 7, Vaishali, Ghaziabad.
2.	CO No.124/Del/2022 (in ITA No.1746/Del/2020)	-do-	Shri Brijesh Singh Rawat	DCIT Circle – 2(1), Ghaziabad, UP
3.	ITA No.2096/Del/2022	-do-	-do-	DCIT Circle – 1 Ghaziabad, UP

Assessee by	Shri Bhimanshu Kansal, Adv.
Revenue by	Shri Kanav Bali, Sr. D.R.

Date of hearing:	25.09.2023
Date of Pronouncement:	25.09.2023

ORDER

PER BENCH :

The captioned have been filed by the assessee as well as Revenue for Assessment Year (A.Y.) 2014-15 in question:

Sr. Nos.	ITA/CO Nos.	CIT(A) Order dated	Assessment Order dated	Remarks
1.	ITA No.1746/Del/2020	CIT(A)-1, Noida order dated 28.06.2018	Penalty Order dated 27.06.2017	Penalty order under Section 271(1)(c) of the I.T. Act, 1961
2.	CO No.124/Del/2022 (in ITA No.1746/Del/2020)	-do-	-NA-	CIT(A) order Under Section 250 of the I. T. Act, 1961
3.	ITA No.2069/Del/2022	-do-	Penalty Order dated 27.06.2017	Penalty order under Section 271(1)(c) of the I.T. Act, 1961

2. When the matter was called for hearing, the Learned DR for the Revenue submitted at the outset that both the appeals of the Revenue and assessee and also Cross Objection of the assessee against the Revenue appeal arises from the First Appellate order passed by the CIT(A) dated 28.06.2018 against the penalty order passed under Section 271(1)(c) of the Act for A.Y. 2014-15 in question. In this regard, it was submitted that it is case of the Revenue that the First Appellate order passed by CIT(A)-1, Noida is without jurisdiction vested with the incumbent CIT(A). It was submitted that it is immaterial whether an order passed without jurisdiction is in favour of the Revenue or against it, when such order passed without necessary jurisdiction is contrary to the administration of the Income Tax Act and such unauthorized order seeks to pollute the streams of justice. Thus, in such instances, where the CIT(A) has passed order without jurisdiction, the Revenue would always be an aggrieved party. It is in the interest of the Revenue as well as tax administration to ensure that orders are passed by the correct legal authority under the Act. The Learned DR submitted that Revenue being 'State' cannot be beneficiary of an order passed without jurisdiction by an Appellate Commissioner. It was submitted that the incumbent CIT(A), Noida was not holding the charge of the appropriate CIT(A), Ghaziabad at the relevant time in June, 2018 when the impugned order is shown to have been passed nor was this case ever assigned to him by the competent authority. Consequently, such First Appellate order under challenge in the captioned appeals is illegal, bad in law and totally *non-est* being passed without jurisdiction. The learned DR for the Revenue thus urged that, the First Appellate order being *non-est*, be quashed summarily and the whole proceedings may be restored to the CIT(A) for fresh adjudication in accordance with law.

3. We find force in such plea of the Revenue without any reservations. It is trite law that want of jurisdiction goes to the root of a matter and an order

passed without jurisdiction is *non-est* in the eyes of law. Therefore, it follows that if an authority lacks jurisdiction, the whole proceedings initiated before it suffers from the vice of *coram non-judice* and is *non-est* in the eyes of law. The order passed without jurisdiction is thus a nullity and cannot be taken cognizance in law.

4. Coupled with this, we also simultaneously notice that the date of order of the CIT(A) is 28.06.2018 whereas the First Appellate order has been communicated to the assessee after whopping gap of nearly 2 years on 26.05.2020. Ostensibly, the impugned order has not been communicated promptly, i.e., 15 days as per guidelines issued in this regard by CBDT. The CIT(A) is expected to follow the guiding principles in letter and spirit as provided in CBDT Instructions No.20/2003 dated 23.12.2003 which was reiterated vide CBDT letter. F. No.279/Misc.53/2003 ITJ dated 19.06.2015. Another communication F. No. DGIT (vig) / HQ / SF / Appeals / 2017-18/9959 dated 08.03.2018 was yet again issued by CBDT to give impetus for timely dispatch of orders passed by CIT(A) to shun any suspicion about back dating and *mala fide* intent.

5. We thus find traction in the claim of the Revenue for remitting all the appeal back to the CIT(A) for fresh adjudication on twin grounds firstly, the impugned First Appellate order passed by the extant CIT(A) is without jurisdiction and secondly, the order has been communicated to assessee and CIT after an inordinate delay and thus offends the broad guidelines issued for this purpose.

6. All the issues before the First Appellate Authority are thus stands revived for fresh adjudication in accordance with law.

7. In the result, all the respective appeals of the assessee and Revenue are allowed for statistical purposes.

Order was pronounced in the open Court on 25/09/2023.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: 25/09/2023

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

Assistant Registrar
ITAT, New Delhi