

IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA BENCH 'C' KOLKATA

**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos. 690 & 691/Kol/2023
Assessment Year: 2015-16 & 2016-17**

Jodhpur Estate 24/33/13, Joy Chand Road, Khagra- 742103, West Bengal PAN: AAJFJ 4751 A (Appellant)	Vs.	DCIT, Circle-42, Murshidabad (Respondent)
---	-----	---

Present for:

Appellant by : Shri K.M. Roy, AR
Respondent by : Shri Kallol Mistry, JCIT

Date of Hearing : 06.09.2023
Date of Pronouncement : 16.10.2023

ORDER

PER SONJOY SARMA, JM:

Both the appeals are filed by the assessee by challenging two separate orders passed by Id. CIT(A), NFAC dated 15.06.2023 for A.Y. 2015-16 & 2016-17 respectively by raising common grounds of appeal for both the assessment year which are as under:

"i. That the assessment order is not sustainable in the eyes of law as no notice u/s 143(2) issued by the authority completing the assessment and the authority issuing the notice did not possess the jurisdiction.

ii. That even otherwise transfer of case during pendency of proceedings in the absence of order u/s 127 is illegal and there cannot be a suo moto transfer by AO.

iii. That application of section 43CA of the Income Tax Act, 1961 without prejudice to above is misconceived since agreement of sale was entered prior to applicability of the provision itself by the Finance Act, 2013 w.e.f. A.Y. 2014-15.

iv. That the appellant reserves the right to raise additional grounds."

2. First, we take up ITA No. 690/Kol/2023 in which the brief facts of the case are that the assessee filed its return for A.Y. 2015-16 by declaring income of Rs. 16,38,830/-. The case of the assessee was selected under CASS followed by notices issued u/s 143(3) and 142(1) of the Act and in compliance to the notices, the ld. AR appeared before the AO from time to time. The ld. AO while framing the assessment proceeding observed that assessee firm had sold 31 numbers of flat/shops to different customers amounting to Rs. 4,78,23,369/-. However as per sale deed the value of property in question determined by the stamp duty authority was Rs. 6,52,96,309/-. Accordingly, the ld. AO found that difference of Rs. 1,74,72,940/- was under assessed in the hands of the assessee. The ld. AO after receiving the necessary objection from the assessee in this context reference was made to Departmental Valuation Officer for determination of the fair market value of property on 07.11.2017. However, before passing assessment order, ld. AO did not receive any such report from the DVO and accordingly difference amount of Rs. 1,74,72,940/- added to the income of the assessee by invoking the provision of section 50C r.w.s. 43CA of the Act.

3. Aggrieved by the order of assessing officer, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Dissatisfied with the above order, assessee is in appeal before the Tribunal raising multiple grounds of appeal. The first two issues raised by the assessee challenging the validity of notice

issued u/s 143(2) of the Act by the ld. AO and also challenging the validity of the assessment order in absence of any effective order passed u/s 127 of the Act and prayed for set aside the order of authorities below as it was illegal and liable to be set aside. On this issue, ld. AR contended that as per CBDT instruction No. 1/2011 dated 31.01.2011, it is stated that in case of non-corporate cases return above the income of 15 lacs, pecuniary jurisdiction lies before ACIT/DCIT in mofussil area. The assessee firm carries out its business in Berhampore which is a mufussil area. Therefore, the jurisdiction lies with ACIT/DCIT and the case of the assessee for scrutiny u/s 143(2) was with DCIT/ACIT. He further contended that in the present case of assessee, the ld. AO did not follow the instruction of CBDT and issued notice without having his jurisdiction over the assessee. In such a situation, the notice is bad in law and void ab initio. On this issue, he relied on the decision of co-ordinate bench of Kolkata in Anil Kumar Khetawat ITA No. 1136/Kol/2019 vide order dated 26.05.2022 the tribunal had quashed the assessment order where the ld. AO did not follow the guidelines laid down by CBDT. He prayed before the bench by stating that in present case also ld. AO himself as accepted that jurisdiction lies with ACIT based upon the pecuniary limits and it is well within the knowledge of the AO as on the date of issuance of notice. Since it has been manually generated and returned income was very much apparent as on date. In such situation, the ld. AO also accepted the fact that jurisdiction is with ACIT by stating in the transfer memos in the case of assessee and there was no order u/s 127 of the Act which is necessary and such power can be exercised by PCIT and in the present case the suo

moto transfer of the case from the AO to ACIT has no legal stand. Therefore, he prayed before the bench to set aside the order passed by the authorities below on the legal issue itself.

5. On the other hand, ld. DR submitted that in the present case the jurisdiction of assessee was with ITO, Ward-42(3), Murshidabad by virtue of PAN jurisdiction and for this reason return of the assessee for A.Y. 2015-16 featured in the list of CASS of ITO, Ward-42(3), Murshidabad for selection of scrutiny. He further stated that section 143(2) states about issuance of notice by assessing officer and not by ITO or ACIT. It is also stated that no notice u/s 143(2) shall be served on the assessee after the expiry of 6 months from the end of the F.Y. in which return was furnished. In present case of the assessee, the notice u/s 143(2) had to be served on the assessee on 30.09.2019 by the assessing officer having jurisdiction over the assessee. In present case, notice u/s 143(2) was served on 29.07.2023 by the ITO, Ward-42(3), Murshidabad. The scrutiny in the instant case had to be initiated by issuance of notice u/s 143(2) within 30.09.2016 for the assessment year in question failing which the selection would have been barred by limitation. Moreover, the transfer of PAN jurisdiction from one officer to another involved some internal procedure which takes time. He further stated that in following manner:

“(e) As per section 119 of the Income-tax Act'1961 Board has issued instructions to subordinate authorities regarding income limits for assigning cases to DC/AC/ITO's vide Instruction No. 1/2011 [F.NO. 187/12/2010-IT(A-I)] dated 31-01-2011. In the said instruction the monetary limit has been assigned for ITO/ACIT for completion of scrutiny and accordingly non corporate cases declaring return income above Rs. 15 Lakhs in non-metro charges were assigned to the ACITs. In the present

case, the assessee's case has been transferred from ITO, Ward-42(3), Murshidabad to ACIT Circle 42, Murshidabad by the virtue of the above circular of the Board. Thus, the change of jurisdiction of Assessing Officers is within the same territorial jurisdiction of Income Tax Officer and the ACIT due to change in the monitory limit of declared return income.

(f) Assigning of jurisdiction of income tax authorities over assesses, is an internal arrangement of the Department and is subject to re-orientation according to need and evolving situation. Jurisdiction orders are framed keeping in mind the territorial location of taxpayer, classes or types of taxpayers and total income declared in Returns. In this regard CBDT issues instructions from time to time for internal management of the Department. The transfer of jurisdiction of an assessee between two Department officers involve procedural formalities guided by internal instructions. The ITO followed the Instruction No. 1/2011 Date 31/1/2011 for the law for protecting the interest of Revenue. He discharged the obligation of an Assessing Officer having jurisdiction over the assessee. The ACIT after having received the case on transfer is not required to issue a notice u/s. 143(2) again, Notice u/s 143(2) unlike notice u/s 142(1) can be issued only once for initiating a scrutiny proceeding within the time limit provided in the Act, and thus the ACIT Murshidabad was not required to issue a notice u/s. 143(2).

(g) Reference may kindly be made to the provision of section 124 sub section 3(a) which clearly states that "no objection" regarding the jurisdiction can be raised by the Assessee after completion of the Assessment. The Assessee has never questioned on the jurisdiction of the Assessing Officer in the course of Assessment proceedings nor this ground was taken by him during the course of appeal proceedings before the CIT(A). Hence the ground of appeal raised now may kindly be dismissed. In this context, reference may kindly be made to the decision of Honble Supreme Court in the case of DCIT(Exemption) Vs. Kalinga Institute of Industrial Technology | (2023) 151 taxmann.com.434(SC)/(2023)293 taxmann 493(SC)/(2023) 454 ITR 582(SC) dated 01-05-2023 - wherein the Hon'ble High Court set aside the notice issued under section 143(2) in case of Assessee on the ground that jurisdiction Officer had not adjudicated upon returns as jurisdiction had been changed after returns were filed, since records revealed that Assessee had participated pursuant to notice issued u/s 142(1) and had not questioned jurisdiction of the Assessing Officer, Hon'ble Supreme Court held that in such case order of the High Court could not be sustained copy of the order is enclosed herewith for kind reference enclosed as Annexure A".

6. We after considering the submission of the parties and going through the material available on record, we notice that the present issues are covered against the assessee in view of the Hon'ble Supreme Court judgment in the case of Kalinga Institute of Industrial Technology (supra) where the Hon'ble Supreme Court held that when assessee had participated pursuant to the notice issued u/s 142(1) and had not questioned the jurisdiction of the assessing officer as per section 124(3)(a) of the I.T. Act precludes the assessee from questioning the jurisdiction of the assessing officer. While going through the present facts of the case and issue involved, we find that assessee has never raised any question before the AO challenging the jurisdiction of AO within 30 days of receipt of notice u/s 142(1) of the Act as well as transfer of jurisdiction u/s 127 of the Act. In such circumstances both the grounds taken by the assessee has no merit, therefore, the grounds taken by the assessee are hereby dismissed.

7. Ground no. 3 which relates to applicability of section 43CA of the Act since the agreement of sale was entered by the assessee prior to applicability of provision as introduced by Finance Act, 2013 w.e.f. A.Y. 2014-15. Therefore, the alleged addition made by the AO cannot be sustained any more. The ld. AR on this issue submitted that amendment of increasing safe harbor limit from 5% to 10% was brought in by the Finance Act, 2020 had to be read retrospectively being clarificatory or curative in nature based on proposition of law laid down in Maria Fernandes Cheryl vs ITO (2021) 187 ITD 738 (Mum) and he prayed before the bench by applying the above proposition where difference valuation declared

and decided by DVO is less than 10% of declared value, no addition is warranted. He, therefore, prayed that the sale of transaction have been analysis to identify such cases where there is a difference of 10% or more of declared value. In this regard, the ld. AO has submitted a detailed analysis before the bench and relevant extract of the same is produced hereunder:

Summary of the DVO Report

Sl No	Property details	declared value	value taken by DVO	Difference	Difference%
1	DEBDAL MUKHERJEE	13,80,000	13,80,000	-	0.00
2	SRIHARI GHOSH	13,80,000	13,80,000	-	0.00
3	UJJWAL KANTI BANERJEE	18,80,000	20,14,264	1,34,264	7.14
4	MADHUSUDAN SAHA AND URMILA SAHA	18,36,000	18,36,000	-	0.00
5	MEGHDUT SAHA	7,22,000	14,35,190	7,13,190	98.78
6	DR DIPESH KUMAR MONDOL	8,00,000	8,22,168	22,168	2.77
7	KLUSHUM MONDOL	12,00,000	22,62,840	10,62,840	88.57
8	SANJIB ROY	17,30,000	17,86,665	56,665	3.28
9	SABITA DALUI	12,80,000	14,57,090	1,77,090	13.84
10	JAGAT JYOTI BANERJEE AND SUBHRA BANERJEE	18,00,000	18,33,350	33,350	1.85
11	NEPAL CHANDRA MAITY	23,05,000	23,05,000	-	0.00
12	PRAMIT ROY CHOWDHURY	19,00,000	19,00,000	-	0.00
13	MADHAB GHOSH	14,73,500	16,26,655	1,53,155	10.39
14	PROBHAKAR MONDOL	17,58,050	18,19,900	61,850	3.52
15	TRIGUNA GAS GANGULY	14,00,000	14,00,000	-	0.00
16	SUBHANKAR DAS AND SAUMYA DUTTA	18,40,000	18,40,000	-	0.00
17	SUROJIT GHOSH	15,55,000	15,66,047	11,047	0.71
18	TAPAN KUMAR MUKHERJEE AND MANJU MUKHERJEE	17,70,000	18,80,937	1,10,937	6.27
19	DALIM KUMAR GHOSH AND PINKI GHOSH	17,20,000	18,04,848	84,848	4.93
20	NIVEDITA PRAMANIK	18,14,800	19,60,302	1,45,502	8.02
21	MADHABI CHATTERJEE	13,80,000	13,80,000	-	0.00
22	SHOUVIK GUPTA AND SUCHANDRA GUPTA SAHA	21,00,000	21,00,000	-	0.00
23	TUSHAR KANTI PRAMANIK AND SUPRIYA PRAMANIK	14,78,500	15,95,200	1,16,700	7.89
24	DWARKA PRASAD SHARMA AND SANTOSH DEVI SHARMA	17,09,000	21,50,660	4,41,660	25.84
25	RITESH SOMANI AND KAMALA SOMANI	17,09,000	21,50,660	4,41,660	25.84
26	RAJESH KUMAR SURANA	19,37,700	23,48,302	4,10,602	21.19
27	NAGENDRA PROSAD PANDEY	12,16,950	14,63,407	2,46,457	20.25
28	SANJOY KUMAR AND SOURABH KUMAR JAIN	12,60,000	13,72,820	1,12,820	8.95
29	PRODIP KUMAR SAHA	8,00,000	10,40,818	2,40,818	30.10
30	ANIL MAITRA	15,00,000	15,12,924	12,924	0.86
31	MOUSUMI DHAR	9,00,000	12,51,711	3,51,711	39.08
	TOTAL	4,75,35,500	5,26,77,758	51,42,258	

Summary of cases where difference is more than 10%

Sl No	Property details	declared value	value taken by DVO	Difference	Difference%
1	MEGHDUT SAHA	7,22,000	14,35,190	7,13,190	98.78
2	KUSHUM MONDOL	12,00,000	22,62,840	10,62,840	88.57
3	SABITA DALUI	12,80,000	14,57,090	1,77,090	13.84
4	MADHAB GHOSH	14,73,500	16,26,655	1,53,155	10.39
5	DWARKA PRASAD SHARMA AND SANTOSH DEVI SHARMA	17,09,000	21,50,660	4,41,660	25.84
6	RITESH SOMANI AND KAMALA SOMANI	17,09,000	21,50,660	4,41,660	25.84
7	RAJESH KUMAR SURANA	19,37,700	23,48,302	4,10,602	21.19
8	NAGENDRA PROSAD PANDEY	12,16,950	14,63,407	2,46,457	20.25
9	PRODIP KUMAR SAHA	8,00,000	10,40,818	2,40,818	30.10
10	MOUSUMI DHAR	9,00,000	12,51,711	3,51,711	39.08
	TOTAL	1,29,48,150	1,71,87,333	42,39,183	

8. He further contended that from the detailed submission as submitted by the assessee it is clear that Rs. 42,39,183/- can be taken as difference between the agreement value find out by DVO and value declared by assessee prayed before the bench that only Rs. 42,39,183/- may be considered as addition in the hands of assessee.

9. We after hearing the rival submission of the parties and going through the facts of the cases and also considering the documents furnished by the AR of the assessee. We find that in the instant case dispute is regarding the valuation of impugned sold out units as determined by the AO in terms of value determined by the stamp duty authority. However, when the impugned order was passed by the ld. CIT(A) did not consider the DVO's report as available with him while passing the impugned order, we feel it necessary to remand back the instant issue to the file of AO with the direction to reconsider the valuation report furnished by DVO by applying proposition of law as laid down in the case of Maria Fernandes Cheryl vs ITO (supra) and also considering the documents as well as necessary submission made by the assessee before him and it is also directed that while doing so the ld. AO should give opportunity of being heard to the assessee. In terms of above, the instant issue is hereby allowed for statistical purposes.

10. Similarly in ITA No. 691/Kol/2023, the ld. AR prayed before the bench that DVO's report in the case of assessee was furnished beyond the limitation period as prescribed under the law, therefore, the DVO's report cannot be considered for the purpose

of assessing the income of the assessee. While going through the impugned order, we notice that DVO's report was never taking into consideration for the purpose of assessing the income of the assessee by the authority below and while going to the facts and circumstances of the case, we find that present issue involved in this appeal is similar to the decision in ITA No. 690/Kol/2023 would apply mutantis mutandis. Accordingly, we set aside the matter to the file of AO with a direction to decide the issue afresh.

11. In the result, both the appeals of the assessee are hereby allowed for statistical purposes.

Order pronounced in the open court on 16.10.2023

Sd/-

**(MANISH BORAD)
ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 16.10.2023
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Jodhpur Estate.
2. The Respondent: DCIT, Circle-42, Murshidabad.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata