

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A': NEW DELHI
BEFORE SHRI G. S. PANNU, HON'BLE VICE PRESIDENT

AND

SHRI CHALLAN NAGENDRA PRASAD, HON'BLE JUDICIAL MEMBER

ITA No. 2042/Del/2016
&
ITA No. 2171/Del/2018
[Assessment Year: 2011-12]

Shri Abid Ali Khan, S/o Mohd. Ali Khan, Prop. M/s All India Traders, C/o Vineet Garg, Advocate, 203, Skipper Corner, 88, Nehru Place, New Delhi – 110 019	Vs	Income Tax Officer, Ward 3(1), Bulandshahr (U.P.)
PAN-(ADLPK3005F)		
Appellant		Respondent

Assessee by	Sh. K.P. Garg, CA
Revenue by	Ms. Sapna Bhatia, CIT(DR)

Date of Hearing	28.11.2023
Date of Pronouncement	28.11.2023

ORDER

PER G.S. PANNU, VP

The captioned two appeals have been preferred by the Assessee in relation to assessment year 2011-12. The first appeal in ITA No. 2042/Del/2016, is directed against the order passed by the PCIT, Ghaziabad u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.03.2016 whereas the

second Appeal in ITA No. 2171/Del/2018 is directed against the order of the CIT(A), Aligarh dated 06.12.2017, which in- turn has arisen from an order passed by ITO, Ward 3(1), Bulandshahr u/s. 143(3)/263 of the Act dated 26.12.2016, being an order passed consequent to the order of the PCIT, Ghaziabad (Supra).

2. It was a common point between the parties that the appeal in ITA No. 2042/Del/2016, which seeks to assail the invoking of revisionary jurisdiction u/s. 263 of the Act by the PCIT, Ghaziabad be taken as the lead case.

3. Both parties have been heard at some length. In deference to the commonality of stand of both sides, the appeal is being disposed-off on the preliminary issue itself. Thus, we make note hereinafter the facts necessary for the purpose of passing the instant order. The assessee before us is an individual, engaged in the business of trading of ferrous and non-ferrous of iron & steel etc., metal and copper wire/rods/electronic item and plastic PP EQU etc. with the principal place of business at Shahdara, Delhi. For the Assessment Year 2011-12, the assessee filed a return of income on 31.03.2012 declaring taxable income at NIL which was subject to scrutiny assessment by the JCIT, Range, Bulandshahr in terms of an order passed under section 143(3) of the Act dated 14.03.2014. In the said assessment, the return of income filed by the assessee was examined alongwith the books of accounts, other details filed and the AO disallowed a amount of Rs. 17,03,733/- representing loss on cancellation of orders which was, appearing in the Profit and Loss Account of M/s All India Traders, a proprietorship concern

of the assessee. Accordingly, the income was assessed at Rs. 17,03,730/- as against the returned income of NIL in the assessment finalized u/s 143(3) of the Act on 14.03.2014 (supra) by JCIT, Range, Bulandshahr.

4. Subsequently, the PCIT, Ghazibad issued a notice on 23.03.2015 in pursuance to section 263 of the Act seeking to hold that the assessment order dated 14.03.2014 (supra) was erroneous and pre-judicial to the interests of the Revenue so as to cancel or modify the same in terms of section 263 of the Act. In the said show cause notice, a copy of which has been placed in the Paper Book at page 86-87, the PCIT, Ghaziabad has noticed three points, namely, firstly that assessee had disclosed income of Rs. 2,22,79,641/- which was set off against the earlier year's losses. As per the PCIT, Ghaziabad the AO did not verify the carry forward losses as claimed by the assessee from the assessment records/ orders passed for assessment years 2008-09, 2009-10 & 2010-11. In particular, it was noticed that the assessment for the immediately preceding assessment year of 2010-11 was completed under section 143(3) of the Act on 25.03.2013 at an income of Rs. 17,65,12,565/- after adjusting all carried forward loses of earlier years and therefore, there did not remain any carry forward loss to be set-off against the income for the instant assessment year; secondly, the assessee had introduced fresh capital of Rs. 54,69,47,360/- in one of the his proprietary concern, namely, Himachal Trading Company for which proper examination of source was not done by the AO in light of the fact that in the earlier assessment year 2010-11, fresh capital introduced of

Rs. 10,54,85,151/- by the assessee was found unexplained by the AO. The PCIT, Ghaziabad noticed that the AO had neither made any enquiry nor applied his mind on the issue of introduction of fresh capital; thirdly, that the assessee had shown a net profit of Rs.2,22,79,641/- on a total turnover of Rs. 80,61,65,797/- giving a net profit percentage of 2.76%. As per the PCIT, Ghaziabad the AO neither examined nor applied his mind to the profitability either in the same trade of the assessee or otherwise. On the above three issues, PCIT, Ghaziabad show caused the assessee as to why the assessment order dated 14.03.2014 (supra) may not be considered as erroneous and prejudicial to the interests of the revenue so as to cancel or modify the same in terms of section 263 of the Act.

4.1 The record of proceedings show that the assessee resisted the action of the PCIT Ghaziabad by raising written arguments on more than one occasion. The PCIT, Ghaziabad considered the submissions as well as the record of assessment proceedings and finally held that the assessment order dated 14.03.2014 (supra) was erroneous in so far as it was prejudicial to the interests of revenue and the same was set aside with the directions to the AO to pass a fresh order *denovo* after examining the case properly and considering all the evidence available on record or that may be produced/ furnished by the Assessee.

5. Before us, the Id. Representative for the assessee has raised multiple grounds challenging the action of the PCIT, Ghaziabad on points of law as well as on facts. One of the preliminary point

sought to be made out is manifested in Ground of Appeal Nos. 1 & 4, which, we reproduce hereinafter:-

- "1. *The assessee Abid Ali Khan is an NRI and CIT Ghaziabad has no jurisdiction on NRI and foreign citizens in UP and NCR. Accordingly, his order u/s. 263 is without jurisdiction.*
4. *The Id. CIT has erred on facts and in law in not disposing of specifically the objection of the assessee that neither the AO had jurisdiction on the assessee nor he has the jurisdiction on the same and the order passed without specifically rejecting the objection of the assessee be declared as null and void as not in compliance with the settled law."*

6. Elaborating the aforesaid Grounds, the Ld. Representative for the assessee pointed out that subsequent to the passing of assessment order dated 14.03.2014 (supra), the CBDT vide Notification dated 03.11.2014 in exercise of powers conferred by sub-sections (1) and (2) of section 120 of the Act had revised the jurisdiction of the field formations, and qua the instant, it is sought to be pointed that the assessee was a non-resident within the meaning of Act during the previous year relevant to the assessment year under consideration and in terms of the aforesaid CBDT notification, PCIT, Ghaziabad had no jurisdiction over the assessee at the time of issuance of notice u/s. 263 of the Act on 23.03.2015 (supra). The Ld. Representative pointed out that this objection was raised before the PCIT, Ghaziabad vide submissions dated 01.03.2016, a copy of which has been placed in the Paper Book at pages 1-6. According to the Ld. Representative the said aspect has not been addressed by the PCIT, Ghaziabad in as much as the Notification dated 03.11.2014 (supra) and the consequent

notification implied that the jurisdiction with regard to the non-resident assesseees was transferred from PCIT of UP and allotted to PCIT (International Taxation), Delhi and similarly that of the AO was transferred to DCIT (International Taxation), Noida.

7. Ostensibly, the existence of valid jurisdictional fact goes to the root of the matter, and is *sine qua non* for exercise of power by an authority constituted by law. The significance and import of existence or non-existence of a jurisdictional fact has been highlighted by the Hon'ble Supreme Court in the case of Arun Kumar & Others vs. Union of India reported in [2006] 286 ITR 89 (SC) in the following words:-

"A "jurisdictional fact" is a fact which must exist before a Court, Tribunal or an Authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a Court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon

itself jurisdiction which it otherwise does not possess.

In Halsbury's Laws of England, it has been stated; "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive".

7.1 From the above decision, it is quite clear that existence of a jurisdictional fact is *sine qua non* for the exercise of power and that in the present case the PCIT, Ghaziabad, being a quasi judicial authority ought to have decided the issue of jurisdiction at the threshold, especially in the face of the specific objection raised by the assessee before him. It cannot be countenanced that a quasi-judicial authority proceeds to exercise its power without deciding the point of jurisdiction, once it is raised before it.

8. The Ld. CIT(DR) appearing before us, agreed with the proposition that the income tax authorities are required to exercise their power as per the jurisdiction conferred by the statute. On this aspect, a perusal of the record shows that the impugned aspect of

lack of jurisdiction was indeed raised before the PCIT, Ghaziabad during the course of proceedings before him.

9. The Ld. Representative for the assessee submitted that the assessee would be satisfied, if the matter is remanded back to the file of the PCIT, Ghaziabad to decide the issue of jurisdiction at the threshold and thereafter proceed as per law.

10. When the aforesaid plea of the Learned Representative was put to the Ld. CIT(DR), she had no objection to the matter being sent back to the PCIT, Ghaziabad, and her only plea was that the matter be set-aside to PCIT, Ghaziabad without any fetters.

11 In view of the aforesaid convergence of the stand of both the sides for remanding the matter to the PCIT, Ghaziabad, we deem it fit and proper to set-aside the impugned order of the PCIT, Ghaziabad and restore the matter back to his file for passing an order afresh in all issues, including on the preliminary issue raised by the assessee based on the Notification of the CBDT dated 03.11.2014 (supra) qua the issuance of show cause notice dated 23.03.2015 (supra). Needless to mention, PCIT, Ghaziabad shall allow the assessee a reasonable opportunity of being heard in the matter and thereafter pass a speaking order, in accordance with law.

12. In the result, the instant appeal of the assessee is disposed of without addressing any of the issue on merits of the dispute.

13. So far as the appeal of the assessee in ITA No. 2171./Del/2018 is concerned, the same emanates from the

assessment made by the ITO, Ward3(1), Bulandhshahr consequent to the order of the PCIT, Ghaziabad dated 30.03.2016 (supra). Since the order of the PCIT, Ghaziabad dated 30.03.2016 (supra) has been set-aside in the foregoing paragraphs, the assessment order dated 26.12.2016 is rendered infructuous and is hereby set-aside.

14. Resultantly, the captioned appeals are allowed for statistical purposes, as above.

The above order was dictated and pronounced in the Open Court in the presence of the Ld. Representatives of both the parties, today i.e. 28.11.2023.

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
VICE PRESIDENT

"SRBhatnagar"

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi