

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA NO. 3224/MUM/2023 : **A.Y : 2017-18**

Jeeri Keerthana Reddy
382, 1st Cross Road, Koramangala
4th Block, Bengaluru – 560 008.
PAN : ALLPJ0661L (Appellant)

Vs. Income Tax Officer,
Ward 19(2)(4),
Mumbai (Respondent)

Appellant by : **Shri Vijay Mehta &
Shri Ashutosh R Patare**
Respondent by : **Smt. Vranda U. Matkari**
Date of Hearing : **16/11/2023**
Date of Pronouncement : **15/01/2024**

ORDER

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

This is an appeal by the assessee challenging the order dated 09.08.2023 passed by the Commissioner of Income Tax (Appeal) (in short 'CIT(A)') which in turn arose out of order dated 21.12.2019 passed by the Assessing Officer (in short 'AO') in respect of assessment year 2017-18.

2. The brief facts are that the return of income was e-filed by the assessee on 04.08.2017, declaring a total income of Rs.17,04,650/-. The return of income was duly processed under Section 143(1) of the Income Tax Act, 1961 (in short

'the Act'). It appears that the case was selected under CASS for limited scrutiny assessment to verify (i) deduction towards Capital Gains, and (ii) investment in immovable property. Accordingly, a notice under Section 143(2) of the Act was issued on 04.09.2018, which was duly served on the assessee. In response thereto, the assessee submitted the details online. It may be mentioned that the assessee, *inter alia*, raised an issue about the territorial jurisdiction of the Assessing Officer, namely the Income Tax Officer, Ward 19(2)(4), Mumbai (in short 'ITO') on the ground that the assessee was a resident and was carrying on business/profession at Bengaluru, Karnataka. Thus, placing reliance on the provisions of Section 120 r.w.s 124 of the Act, it was claimed that the AO in this case would lack territorial jurisdiction. Be that as it may, the AO notwithstanding the objection as to jurisdiction, completed the e-assessment as per assessment order dated 21.12.2019.

3. Feeling aggrieved, the assessee carried the matter in appeal before the CIT(A), again raising the ground as to want of territorial jurisdiction with the AO. The CIT(A) by the impugned order dated 09.08.2023 has partly allowed the appeal directing the AO to allow exemption under Section 54 of the Act for one residential house and recalculate the taxable income accordingly.

4. Insofar as ground nos. 1 & 2 raised before the CIT(A) pertaining to lack of territorial jurisdiction with the AO, the CIT(A) has observed thus in para 5 of the impugned order :-

“Grounds 1 to 2 is against the assessment order stating that it is bad in law. Specific grounds have been taken by the assessee on each of the additions and the same are disposed of in this order in above paragraphs. The sum total of the order on the said grounds amounts to disposal of this ground and hence this ground does not call for any separate adjudication.”

5. Feeling aggrieved by the refusal by the CIT(A) to uphold the ground of lack of jurisdiction with the AO, as also on other grounds, the assessee is in appeal before us.

6. We have heard the parties. The parties have also filed written submissions. We have gone through the same and the record.

7. The learned counsel for the appellant referring to ground nos. 1 & 2 of the appeal has submitted that the CIT(A) was in error in refusing to uphold the ground of lack of territorial jurisdiction with the AO. It is submitted that the CIT(A) ought to have held that the notice issued by the AO under Section 143(2) of the Act and the consequent assessment order passed under Section 143(3) of the Act are without jurisdiction as per the provisions of Section 120 r.w.s. 124 of the Act. The learned counsel has taken us through the notice and the records in order to submit that the assessee is a resident of Bengaluru where she is carrying on her profession. He submitted that the assessee was residing in Mumbai from

2008 to 2012 as the father of the assessee was in Government service at Mumbai. It is submitted that the assessee had filed his first return of income in assessment year 2016-17 as prior thereto the assessee had no taxable income. It is submitted that in the notice under Section 143(2) of the Act, address of the assessee is shown at Bengaluru and once the aspect about the residence of assessee was pointed out and a ground about lack of territorial jurisdiction was raised, it was required to be appropriately addressed to and decided, which has not been done. On behalf of the assessee, reliance was placed on certain orders passed by this Tribunal as well as decisions of various High Courts and, in particular, the order passed by the Pune Bench of this Tribunal in *Capstone Securities Analysis Pvt. Ltd. vs. Dy. Commissioner of Income Tax, Circle-1(1), Pune [2017] 85 taxmann.com 270 (Pune – Trib.)* which has been confirmed by the Hon'ble Bombay High Court in *Principal Commissioner of Income Tax vs Capstone Securities Analysis Pvt. Ltd. [2023] 457 ITR 775 (Bombay)*.

8. The learned CIT-DR has submitted that PAN of the assessee was transferred/migrated to Bangalore on 26.02.2021 and current jurisdiction over the assessee lies with ITO Ward (2)(2)(5) at Bangalore. Insofar as the objection raised by assessee on territorial jurisdiction of the AO is concerned, it is submitted that the AO vide letter dated 18.11.2019 had intimated appellant that proposal for migration of her PAN has been forwarded to the Principal

Commissioner of Income Tax ('Pr. CIT' for short) and the PAN could be migrated only after an order is passed by the Pr. CIT, which has been done on 26.02.2021. The learned CIT-DR has also pointed that in the return of income filed by the assessee, the designation of the AO was shown as Ward 19(2)(4), Mumbai and thus, the assessee could not have raised objection to the territorial jurisdiction of the AO.

9. The learned counsel for the assessee, in reply, has submitted that strictly the migration of PAN and/or change of address in the record has no relevance to the territorial jurisdiction of AO, which is governed by the place where the assessee ordinarily resides or carries on business/profession. Insofar as mentioning of AO as Ward 19(2)(4), Mumbai is concerned, it is submitted that the said field in the return of income is auto-filled by the system on the basis of PAN and there is no voluntary act contemplated at the instance of the assessee while filling-up the said field. It is pointed out that it is not disputed that the assessee was residing as well as carrying on her profession at Bangalore and thus, assumption of jurisdiction by the AO at Mumbai was invalid.

10. We have considered the rival submissions. At the outset, it may be mentioned that the parties have confined their arguments to the issue of territorial jurisdiction of AO which are reflected in ground nos. 1 and 2. The parties have not adverted to merits of the matter and, therefore, we are only

dealing with the ground of territorial jurisdiction of AO and the consequence thereof, if the assumption of jurisdiction is invalid.

11. Material facts in this case are not in dispute, apart from being matters of record. It is undisputed that the assessee had obtained her PAN from Mumbai where she was residing from 2008 to 2012 as her father was a Central Government employee, then posted in Mumbai. According to assessee, she initially migrated to New Delhi in the year 2012 and then to Bangalore in the year 2015 on account of her marriage. She is a practising lawyer practising at Bangalore. It is also a matter of record that the first return of income was filed by the appellant relevant to assessment year 2016-17, as according to her, in the prior years she had no taxable income. The assessment which is subject matter of challenge in this appeal is for assessment year 2017-18. It is further undisputed that the assessee upon receipt of notice under Section 143(2) of the Act had raised an objection to the territorial jurisdiction of AO within 30 days as mandated by Section 124(3) of the said Act. The record further discloses that she had also made request for change of address/migration of PAN to Bangalore on the basis of her residence/place of profession. The address was changed in the records prior to passing of the assessment order and subsequent thereto, the PAN has been migrated on 26.02.2021. The record also discloses that notices were served to the appellant on her Bangalore address. Thus, for all practical

purposes, it is not in dispute that at the time when the impugned action was taken and the assessment order was passed, the appellant was residing and was carrying on her profession at Bangalore. The question is whether the AO at Mumbai could have assumed jurisdiction in the matter ?

12. The jurisdiction of various income tax authorities has to be reckoned on the basis of statutory provisions, which confer such jurisdiction; both territorial, pecuniary or otherwise. Sub-section (1) of Section 120 of the Act provides that income tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred or assigned to them under the Act, in accordance with such directions as the Central Board of Direct Taxes ('Board' for short) may issue from time to time. Section 124 of the Act thereafter becomes relevant for the purpose which pertains to the jurisdiction of AO and it reads thus (to the extent relevant) :-

"124. (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area."

(Emphasis supplied)

13. It can thus be seen that by virtue of any direction or order issued under Sub-section (1) or (2) of Section 120 of the Act, the AO has been vested with jurisdiction over an area within the limits of which the assessee is carrying on business or profession and in respect of any other person residing within the said area. Thus, a conjoint reading of Sections 120 and 124(1) of the Act, with the directions or orders issued by the Board, would indicate that the territorial jurisdiction of the AO is determined on the basis of place where the assessee resides and/or carries on his business or profession. As per notification (copy of which is produced on record at page 114 of the paper book), the jurisdiction of ITO Ward 19(2)(4), Mumbai as notified under Section 120 of the Act extends to Ward D of the Municipal Corporation of Greater Mumbai, excepting the areas set out in the said notification. We, therefore, find that the AO of Ward 19(2)(4), Mumbai lacked territorial jurisdiction to pass the impugned assessment order. As noticed earlier, it is not in dispute that such an objection was raised within the stipulated time and was not dealt with by the AO.

14. A perusal of para 5 of the order of CIT(A) would also go to show that CIT(A) has not dealt with this aspect, inasmuch as ground nos. 1 and 2 were separate and distinct grounds, than those on merits and thus, the disposal of the grounds on merits cannot “amount to disposal” of grounds nos. 1 and 2 as held by the CIT(A).

15. In the view which we are inclined to take, it is not necessary to multiply authorities on the point. However, a brief reference can be made to the decision of Hon'ble Madras High Court in *Abdul Azeez Haroon vs DCIT (IT) [2020] 115 taxmann.com 289 (Madras)* and the decision of Pune Bench of this Tribunal in *Capstone Securities Analysis Pvt. Ltd. vs. Dy. Commissioner of Income Tax, Circle-1(1), Pune [2017] 85 taxmann.com 270 (Pune – Trib.) (supra)* which has been confirmed by the Hon'ble Bombay High Court in *Principal Commissioner of Income Tax vs Capstone Securities Analysis Pvt. Ltd. [2023] 457 ITR 775 (Bombay) (supra)*.

16. In the case of Abdul Azeez Haroon (*supra*), the assessee was a non-resident Indian. After the assessment was completed in respect of the relevant year, Commissioner (International Taxation) issued a reopening notice against the assessee at his address at Madurai (Tamil Nadu). The assessee contended that he was residing at Madurai prior to period relating to assessment year 2011-12 and admittedly no return of income was filed by him during his stay at Madurai as he had no taxable income during that period. From assessment year 2010-11 assessee had shifted to Shimoga (Karnataka) where he was carrying on business and thus, the return of income from assessment year 2012-13 onwards were filed at Shimoga. The Hon'ble Madras High Court after considering

notification dated 15.11.2014 in the context of facts of the case found that the appropriate officer to assess the petitioner was the officer at Shimoga.

17. In *Capstone Securities Analysis Pvt. Ltd. (supra)* the assessee-company had originally filed its return of income at Mumbai. After shifting of its registered office from Mumbai to Pune, it sought transfer of jurisdiction of AO from Mumbai to Pune, which was purportedly transferred under the order of the competent authority on 14.11.2014. Consequent to the said order, CIT(A) vide order dated 19.12.2014 had transferred the jurisdiction of assessee-company from Mumbai to Pune.

18. In that case, on behalf of the assessee, validity of the assessment order was challenged on the ground that it was passed after the jurisdiction of the AO was transferred by the competent authority from Mumbai to Pune, which objection has been upheld by this Tribunal, which order came to be confirmed by the Hon'ble Bombay High Court in *Principal Commissioner of Income Tax vs Capstone Securities Analysis Pvt. Ltd. [2023] 457 ITR 775 (Bombay) (supra)*.

19. It is trite that an order which is passed without jurisdiction (which is an issue which goes to the root of the matter) is *non est* in the eyes of law. Considering the fact that at the time of assessment, the appellant-assessee was residing and carrying on her profession at Bangalore, the assumption of

jurisdiction by the AO at Mumbai was invalid. The change of address in the records and/or migration of PAN are not strictly relevant in the matter where the jurisdiction is governed by the statutory provisions as contained in Section 120 read with Section 124 of the Act and the notification issued by the Board.

20. Thus, in our opinion, the appeal has to succeed on ground nos. 1 and 2 alone. The appeal accordingly stands allowed as aforesaid.

Order pronounced in the open court on 15/01/2024.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Mumbai; Dated : 15/01/2024

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai