

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA

[Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 2339/Kol/2019
Assessment Year : 2012-13

Somnath Saha (PAN:ASDPS 9918 G)	Vs.	ITO, Ward-38(4), Midnapur
Appellant		Respondent

Date of Hearing	23.02.2024
Date of Pronouncement	23.02.2024
For the Appellant	Shri Mahadev Ghosh , A.R
For the Respondent	Shri P.P. Barman, Addl. CIT, Sr. D.R

ORDER

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)- 11, Kolkata [hereinafter referred to as ‘Ld. CIT(A)’] dated 30.09.2019 for the assessment year 2012-13.

2. The assessee has raised a legal issue before us that the order passed by the AO is without jurisdiction as no valid notice u/s 148 was issued by the AO who was having the jurisdiction. The assessment framed was also assailed to be invalid as the order u/s 127(1) of the Act passed by the ld. PCIT transferring the case to ITO, Ward-38(4), Midnapur is itself bad in law.

3. Facts in brief are that the ITO , Ward-2(3), Cuttack re-opened the assessment u/s 147 of the Act on 30.03.2018 by issuing notice u/s 148 of the Act which was served on the assessee on 31.03.2018. A copy of the notice is available at page 8 of the paper book. Pertinent to state that the assessee has shifted from Cuttack address to Village-Nischindapur, Post-Ghatal, P.S-Ghatal, Paschim Medinipur-721212 w.e.f AY 2015-16 and copiers of income tax return filed for A.Y. 2015-16 & A.Y. 2016-17 are

placed at page 16-17 of PB. The Id Counsel for the assessee referred to Board Circular being No. 50/2014 dated 22.10.2014 w.e.f 15.11.2014 copy of which available is filed at page 9 and submitted that the said circular provides that the jurisdiction of AO would be decided by the address in the case of individual assessee. The Ld. A.R submitted that thereafter the PCIT, Cuttack vide order dated 14.09.2018 passed u/s 127(1) of the Act transferred the case from ITO, Ward-2(3), Cuttack to ITO, Ward-38(4), Midnapur, a copy of which is placed at page 23 of the PB. The Ld. Counsel for the assessee also stated that the said order is null and void as the PCIT has no jurisdiction to pass the order for the reason that the provision of Section 127(1) of the Act deal with only for transferring the cases within his jurisdiction and not outside.

4. The Ld. A.R pointed out that the said order should pass u/s 127(2) of the Act which provides for transferring the case outside other than his jurisdiction. The Ld. A.R therefore submitted that order passed by ITO, Ward-38(4), Midnapur on the basis of said transfer order passed u/s 127(1) of the Act dated 14.09.2018 is invalid and void ab-initio as ITO, Ward-38(4), Midnapur has not been transferred / conferred jurisdiction through invalid order which is ab-initio as it was not passed u/s 127(2) of the Act. The Ld. A.R drew our attention to the fact that the change in PAN qua the address of the assessee have already been taken place on the date of issuing of notice u/s 148 by drawing our attention to the fact that the assessee has already been started filing in return with ITO, Ward-38(4), Midnapur under PAN address. The Ld. A.R also placed before us a copy of print out taken from E-filing portal of Income Tax which is available in the file.

5. After hearing the rival contentions and perusing the material on record. We find that during the year the assessee has sold immovable property on 16.11.2011 for a consideration of Rs. 1,37,00,000/- which was brought on 30.04.2008 for Rs.29,30,000/-. The indexed cost of acquisition of the said property worked out at Rs.39,51,976/- resulting into a long term capital gain of Rs. 97,48,025/- however the assessee has not filed any return of income during the instant assessment year thereby not offering the long term capital gain for taxation. The ITO, Ward-2(3), Cuttack

issued notice u/s 148 of the Act dated 30.03.2018 which was also served on the assessee. Thereafter the file/assessment record of the assessee was transferred from ITO, Ward-2(3), Cuttack on 23.09.2018 through speed post to ITO, Ward-38(4), Midnapore (WBGW-178-4 by Id PCIT Cuttack while PAN jurisdiction of the assessee was already transferred on 15.09.2018. The assessee did not comply with the said notice issued u/s 148 of the Act by not filing any return of income. In the past , the assessee has been filing the returns of income till AY 2010-11 with the ITO, Ward-2(3), Cuttack however did not file any returns of income from AY 2011-12 to 2014-15. The assessee filed return of income for A.Y. 2015-16 & A.Y. 2016-17 with Midnapore address a copy of which is filed at page 16 &17 of the PB. We note that ITO, Ward-2(3), Cuttack after receiving information from DIT(Investigation), Bhubaneswar that about the escapement of long term capital gain, re-opened the assessment of the assessee u/s 147 of the Act by issuing notice u/s 148 of the Act. We also note that the Id. PCIT, Cuttack passed an order u/s 127(1) of the Act dated 14.09.2018 transferring the jurisdiction from ITO, Ward-2(3), Cuttack to ITO, Ward-38(4), Midnapore (WBGW-178-4) and further stated that the order shall come into effect from 14.09.2018. Now the legal issue raised by the assessee before us is that whether ITO, Ward-38(4), Midnapore, who passed the assessment order dated 20.12.2018 assessing the income at Rs. 97,48,024/-, did not have valid jurisdiction to frame the assessment because of the fact that the order passed by Id. PCIT, Cuttack u/s 127(1) dated 14.02.2018 was invalid and void ab initio as the PCIT have no powers u/s 127(1) of the Act to transfer the jurisdiction outside his jurisdiction. In other words , the Id PCIT could have transferred the case from one AO to another within his jurisdiction by passing the administrative order u/s 127(1) of the Act and not to the AO who falls under the jurisdiction of another PCIT.

6. Thus we find merit in the contentions of the assessee that the order passed u/s 127(1) of the Act is invalid ad void *ab initio* on the ground of lack of jurisdiction u/s 127(1) of the Act from AO from his jurisdiction to another AO in a different jurisdiction. The ITO, Ward-38(4), Midnapore (WBGW-178-4) falls under the

jurisdiction of Id PCIT, Kolkata-13. For the sake of ready reference the provisions of section 127(1) of the Act are extracted below:-

“127(1)The principal Director General or Director General or Principal Commissioner or Commissioner may after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.”

7. Thus it is abundantly clear from the perusal of the provisions of section 127(1) of the Act that it authorizes the Id. PCIT to transfer cases from AO to another AO within his jurisdiction. We have also perused the provisions of Section 127(2) of the Act which deals with the transferring of cases from AO falling under jurisdiction by the PCIT to the AO falling under the different jurisdiction of another PCIT. The Id DR submitted that the transferring of cases from one jurisdiction to another is internal matter and assessee has no locus standie to question the same. The Ld. DR has also filed written submissions, which has been duly taken into consideration. We are of the considered view that the Act expressly provides the manner of exercising jurisdictions by Id PCIT.

8. We have also perused the notification no.50/2014 dated 22.10.2014 which provides that w.e.f. 15.11.2014, the jurisdiction of the individual assessee would be on the basis of address of the assessee. Therefore the jurisdiction of the assessee was with ITO, Ward-38(4), Midnapore (WBGW-178-4) however the said ITO has not issued any notice u/s 148 of the Act. The ITO, Ward-2(3), Cuttack has issued notice u/s 148 of the Act on 30.03.2018 mentioning the address of the assessee as”Somnath Saha, Village Noschindipur P.O. Ghatal, P.S Ghatal, Paschim Medinipur-721212 West Bench which in our opinion is without jurisdiction as the assessee has been filing the returns of income w.e.f. A.Y. 2015-16 in Midnapure address the proof where has been filed on page no 16 and 17 of the PB. Accordingly we hold that the notice u/s 148 of the Act was not validly issued and on this count even the assessment needs to be annulled.

9. Considering these facts of the case, we are of the view that the assessment as framed by ITO, Ward-38(4), Midnapur is without jurisdiction and cannot be sustained. Therefore the appellate order holding that the order u/s 127(1) of the Act was correctly passed by the PCIT dated 14.09.2011 is also not sustainable in the eyes of law. Accordingly we quash the assessment framed by the AO as without jurisdiction.

10. Since we have allowed the appeal of the assessee on legal and jurisdictional issue, the grounds raised on merit are not being adjudicated at this stage and left open to be decided at later date if need arises for the same.

11. In the result, appeal of the assessee is allowed on legal issue.

Order is pronounced in the open court on 23rd February, 2024.

Sd/-
(Rajpal Yadav)
Vice-President

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 23rd February, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Somnath Saha, C/o Mahadev Ghosh, Advocate, BF-199, Salt Lake City, Sector-I, Kolkata
2. Respondent – ITO, Ward-38(4), Midnapur
3. Ld. CIT(A)- 11, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata