

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.3033/Del/2017

निर्धारणवर्ष/Assessment Year: 2010-11

Vijay Pal, S/o Late Sh. Manohar Lal, Village & P.O. Nakhrola, Tehsil Manesar, Gurgaon. PAN No.ANVPP7279G	<u>बनाम</u> Vs.	ITO, Ward-4(4), Gurgaon.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A No.3031/Del/2017

निर्धारणवर्ष/Assessment Year: 2010-11

Raj Singh, S/o Late Sh. Manohar Lal, Village & P.O. Nakhrola, Tehsil Manesar, Gurgaon. PAN No.BJDPS1075G	<u>बनाम</u> Vs.	ITO, Ward-3(3), Gurgaon.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

आ.अ.सं./I.T.A No.3032/Del/2017

निर्धारणवर्ष/Assessment Year: 2010-11

Hariom, S/o Late Sh. Manohar Lal, Village & P.O. Nakhrola, Tehsil Manesar, Gurgaon. PAN No.AFUPH1298A	<u>बनाम</u> Vs.	ITO Ward-2(1), Gurgaon.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri K. Sampath, Adv. & Shri V. Rajakumar, Adv.
Revenue by	Shri Sandeep Kumar Mishra, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	12.12.2023
उद्घोषणाकीतारीख/Pronouncement on	07.03.2024

आदेश /ORDER

PER C.N. PRASAD, J.M.

These three appeals are filed by different Assesseees of the same group being brothers against the common order of the Ld. Commissioner of Income-tax (Appeals)-1, Gurgaon [hereinafter referred to as CIT (Appeals)] dated 31.03.2017 for A.Y. 2010-11. In all of these appeals, Assesseees have raised grounds of appeal based on similar facts. They are, therefore, clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. Originally the following common grounds were raised in all these appeals except for the figures:-

“That on the facts and in the circumstances of the case and in the law the Ld. CIT(A) erred in confirming the following actions of the Assessing Officer:-

- 1. Initiating proceedings u/s 147/148 of the Income-tax Act, 1961 against the Appellant without any reasonable cause;*
- 2. In sustaining and maintaining the proceedings u/s 147/148 of the Act in the subject year;*
- 3. In completing the assessment on the basis of such wrong action u/s 143(3) of the Act;*

4. *In computing the income u/s 143(3) of the Act at Rs.1,93,97,499/- against the returned income of Rs.1,59,170/-;*
5. *In computing Lon Term Capital on transfer of agricultural land done in an earlier year but charged during the year by assuming the cost of acquisition and indexation cost without any material before him;*
6. *Confirming the computation of Long Term Capital Gain and additions made to the returned income to the extent of Rs.1,92,38,329/-;*
7. *Not allowing claim for deduction u/s 54B & 54F of the I.T. Act, 1961;*
8. *Charging interest u/s 234A and 234B of the Income-tax Act, 1961.*

All the above actions being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.”

3. At the time of hearing permission was sought to raise the following additional grounds of appeal:-

“Permission is respectfully sought for raising the following grounds as additional grounds of appeal:

1. *in assuming jurisdiction over the case without any authority of law and in derogation of the jurisdiction as originally vested with the Assessing Officer, Salary Circle, Pathankot;*
2. *in the proceedings u/s 147/148 being endorsed and approved by the prescribed authorities without application of mind and in contravention of the conditionalities as applicable thereto;*
3. *without prejudice in computing the long term capital gain as per circle rate prevailing during subject year instead of the actual sale consideration as received in terms of the*

collaboration agreement of a preceding year with the vendees.

The above grounds were not taken up originally in the memo of Appeal because of an inadvertent omission. No extensive enquiry of a factual nature is necessary, and it is, therefore, submitted that additional grounds supra may kindly be admitted and adjudicated upon.”

4. We first take up the facts from the case of the assessee Shri Vijay Pal in ITA No. 3033/Del/17 and variances wherever any are separately dealt with in the other relevant cases.

5. Arguing for the admission of additional grounds of appeal the Ld. Counsel for the Assessee submitted that the relief as sought through the additional grounds was similar to the grounds originally raised for relief in the Appeal Memo vide Ground Nos. 1 and 2. It was submitted that originally vide Ground Nos. 1 and 2 the Appellant had challenged the initiation of proceedings u/s. 147/148 of the Act and had pleaded and that it was without reasonable cause and which had been erroneously sustained and maintained by the Authorities. It was further stated that qua the additional grounds the relief that was sought was also with reference to the same proceedings u/s. 147/148 of the Act. Ld. Counsel submitted that the proceedings u/s. 147/148 of the Act were initiated by an Assessing Officer (AO) who was not holding jurisdiction over the Appellant and the prescribed authorities had accorded sanction to

such action of that AO without due application of mind and contrary to the conditions applicable therefore. It was further submitted that the relief as sought u/s. 147/148 of the Act vide the original ground Nos. 1 and 2 and the additional grounds as now proposed for admission were for the same cause and purpose and to the same extent and were similar. It was pleaded, therefore, that the additional grounds as raised virtually got subsumed into the original ground as raised in Ground Nos. 1 and 2. Ld. Counsel further stated that the additional grounds did not involve any fresh enquiry into the facts and that all the material necessary for their adjudication were also on record. In such circumstances it is submitted the additional ground was simply clarificatory which merited admission, consideration and adjudication.

6. Per contra Ld. Sr. DR vehemently opposed the admission of additional grounds on the reasoning that new issues were being raised in the guise of additional grounds by the Assesseees.

7. We have considered the rival contentions and are of the view that the additional grounds as raised by the Appellant contest the jurisdiction assumed by the Assessing Authority for framing the reassessment order. It is urged on behalf of the Appellant that it has been done so without the authority of law and in derogation of the

jurisdiction originally vested in another AO. Ground Nos. 1 and 2 as originally raised by the Assessee state that the proceedings initiated u/s. 147/148 of the Act were without reasonable cause and they have been and sustained in the subject year by the lower authorities erroneously. The dispute obviously, therefore, is with reference to the authority of the AO to initiate and maintain the proceedings u/s. 147/148 of the Act. It is trite that the jurisdiction u/s. 147 of the Act has to be invoked after due application of mind and in conformity with the applicable conditionalities failing which the initiation would be unreasonable and unsustainable. We, therefore, hold that the additional grounds as raised are clarificatory and are essentially a continuation of the original Ground Nos. 1 and 2. We, therefore, admit for consideration and adjudication the additional grounds with the original Ground Nos. 1 and 2.

8. The Ld. Counsel submits that the relevant facts relating to the controversy on the Additional Ground No.1 taken are that the Assessee Sh. Vijay Pal was an existing Assessee with PAN No. ANVPP7279G. He was employed in the Army and was being assessed by the AO incharge of assessment of Army Personnel at HQ Squadron, 68 ARMD. REGT. Assessee has filed Form 26-AS from the

IT site in respect of the AYs 2009-10, 2010-11, 2011-12 etc. to show that the factum of his jurisdiction with AO at the HQ Squadron, 68 ARMD. REGT. Ignoring these basic facts, the ITO, Ward 4(5), Gurgaon issued notice u/s. 148 of the Act to him on 31.03.2015 (placed at page 79 of the Paper Book). The precursor to this notice was the satisfaction note recorded by the AO on 30.03.2015 (placed at pages 80-81 of the Paper Book), where the note mentions the status of the Assessee as an Individual.

9. The Ld. Counsel further submitted that the ITO, Ward 4(5), Gurgaon did not have jurisdiction over the Appellant. The Appellant was always under the jurisdiction of the Salary Circle ITO, HQ Squadron, 68 ARMD. REGT. There was no order for the transfer of jurisdiction of the Appellant from the ITO Salary Circle to the ITO, Ward 4(5), Gurgaon. Ld. Counsel drew our attention to the observation of the AO in the assessment order to the effect that the AO Ward 4(5), Gurgaon was not vested with the jurisdiction over the Assessee and that vide office letter No. 2337 dated 22.07.2015 the case was placed under the charge of the Jurisdictional AO Ward 4(4), Gurgaon. Therefore it is the contention of Ld. Counsel that the ITO Ward 4(5), Gurgaon, who had issued notice u/s. 148 of the Act, never had jurisdiction over the Assessee.

10. Ld. Counsel further submits that under identical circumstances in the case of the cousins of the Appellant namely Sh. Ram Kishan, Sh. Kanwar Lal, Sh. Ram Avtar and Sh. Manphool Ram Singh, who all were also parties to the same land deal, the Tribunal Delhi "G" Bench has held vide order dated 19.07.2022 in ITA Nos. 3025-3028/Del/2017 that the assumption of jurisdiction in their cases by the ITO Gurgaon was erroneous and untenable and has consequently quashed the notice u/s. 148 of the Act. Ld, counsel submitted that while doing so the Hon'ble Tribunal relied upon an earlier order passed by the Tribunal "A" Bench in ITA Nos. 2682/Del/2018 and 2913/Del/2018 dated 08.08.2019 which relied upon the decisions of Hon'ble Panjab & Harya High Court in the case of Lt. Col. Paramjeet Singh vs. CIT (240 ITR 446) and the decision of Hon'ble Delhi High Court in the case of Dushyant Kumar Jain vs. DCIT (381 ITR 428) and- quashed the notices issued u/s. 148 of the Act. It is submitted that subsequently the Delhi Bench of the Tribunal had, in the cases of other cousins of the Assessee namely Sh. Satya Pal, Sh. Satyabir Singh and Sh. Rati Ram, in ITA Nos. 3024, 3022 and 3023/Del/2017 vide order dated 13.07.2023 following the above cited precedents quashed the notice u/s. 148 of the Act in those cases as well.

11. In the case of Sh. Raj Singh the Ld. Counsel for the Assessee submitted that the Appellant was employed with FCC Rico Ltd. His case was under the charge of AO, Ward 49(1), Salary Circle, Delhi. He was drawing salary from the said employer. He was allotted PAN No. BJDPS1075G and copies of Form 26-AS and 12BA for the FY 2012-13 are placed on record. For the year under consideration Assessee had filed return declaring an income of Rs.1,40,460/- which had been subjected to assessment u/s. 143(1) of the Act.

11.1 Ld. Counsel submits that ignoring these facts and the past history of the case, ITO, Ward 3(5), Gurgaon has issued notice u/s. 148 of the Act dated 30.03.2015 (placed at page 63 of the Paper Book). After recording the satisfaction for the reopening of the case on 30.03.2015 (placed at pages 64 and 65 of the Paper Book), the satisfaction note mentions the status of the Assessee as an Individual. Ld. Counsel further submits that the ITO, Ward 3(5), Gurgaon did not have jurisdiction over the Appellant. The Appellant was being assessed under the jurisdiction of Ward 49(1) Salary Circle, Delhi. There was no order for transfer of jurisdiction of the Appellant from the ITO, Ward 49(1) Salary Circle, Delhi to the ITO, Ward 3(5), Gurgaon. Ld. Counsel further submitted that even the AO, Ward 3(5), Gurgaon did not hold jurisdiction over the Assessee

and that it was the AO, Ward 3(3), Gurgaon who on transfer of the case from the AO, Ward 3(5), Gurgaon carried out the impugned reassessment.

12. In the case of Sh. Hari Om, Ld. Counsel for the Assessee submitted that Appellant was issued notice u/s. 148 of the Act by the Income-tax Officer, Ward 2(5), Gurgaon on 30.03.2015 (placed at page 62 of the Paper Book). The satisfaction note dated 30.03.2015 marking the Assessee as an Individual is placed at pages 63 to 65 of the Paper Book. The Assessee Shri Hari Om was in employment at New Delhi with Narang International Hotels Private Ltd. He was under the jurisdiction of Salary Circle ITO incharge of his employer's salary cases in Delhi. Certificate from the employer for his employment with them between 01.05.1985 to 02.02.2014 i.e. upto his date of retirement has been filed and are at pages 30 to 32 of the Paper Book.

12.1 Ld. Counsel submits that ignoring these facts and the past history of the case the ITO, Ward 2(5), Gurgaon issued notice u/s. 148 of the Act in his status as an Individual. Ld. Counsel submits that the ITO, Ward 2(5), Gurgaon did not have jurisdiction over the Appellant. The Appellant was under the jurisdiction of the ITO Salary Circle Delhi. There was no order of transfer of jurisdiction of

the Appellant from his ITO Salary Circle Delhi to ITO, Ward 2(5), Gurgaon.

13. Ld. Counsel for the Assessee filed detailed written submissions in this regard in the case of these three Appellants viz. Sh. Vijay Pal, Sh. Raj Singh and Sh. Hari Om accompanied by the respective Form 26AS, assessment orders, employment certificates etc.

14. On the other hand, the Ld. DR strongly supported the order of the AO. Ld. DR submitted that the jurisdiction for the reopening of the cases were with the respective ITOs at Gurgaon and those AO's at Gurgaon had therefore, rightly issued notices u/s. 148 of the Act. All those notices were valid. The Assessee had not declared the income from the sale of rights to transfer land running into crores. The Ld. DR further submitted that since the Assessee was raising the jurisdictional ground for the first time before the Tribunal, it was inadmissible because the Assessee had attended the proceedings before their respective AOs. The objection as to the status mentioned in the proceedings under Sec.148 of the Act was not raised before the Ld. CIT (A). It was only after a consideration of the arguments of the Assessee that the Ld. CIT (A) had upheld the validity of the proceedings u/s. 147/148 of the Act. There was no dispute on the point that the income/profit arose out

of the sale of land at Gurugram. The territorial jurisdiction of the AO's could not be altered by the mere filing of Form 26-AS by the Assesseees. The lands sold were at Gurugram and the Assesseees were also residents of Gurugram and so they had to yield to the jurisdiction of the AO's at Gurugram. In the circumstances it was urged by the ld. DR not to admit the additional evidence submitted by the Assesseees. Ld. DR also dealt with the various facets of Sec.120(5) and Secs. 124(3) & 124(5) of the Act to urge that the jurisdiction was indeed with the AO's at Gurugram. Ld. DR filed written submissions in counter to the submissions made by the Ld. AR. It is stated that the Assesseees never raised any objection towards assumptions of jurisdiction at the time of assessment. Ld. DR cited the decision of the Hon'ble Delhi High Court in *Abhishek Jain vs. ITO* (405 ITR 1) in support of his arguments to say that the assumption of jurisdiction by the AOs at Gurgaon was quite in order and beyond reproach.

15. In rejoinder Ld. Counsel for the Assesseees submitted that the distribution of jurisdiction among the administrative authorities was not limited to territory alone but it also depended on the nature of income. Salary cases were invariably under the charge of the ITO incharge of the employer's location. He cited the decision of the

jurisdictional High Court in Lt. Col. Paramjeet Singh (supra) as an authority for the proposition that cases in the charge of Salary Circle could be placed under the charge of another ITO only after a specific transfer order is passed by the Authority concerned. Ld. Counsel further urged that this decision of the jurisdictional High Court was binding. In the face of the jurisdictional Court's decision any other decision of another Court at a different place was superfluous and inapplicable. According to the Ld. Counsel the decision of the case of Abhishek Jain supra was even otherwise distinguishable on facts and inapplicable to the facts of the subject cases, in as much as, the Assessee in that case had voluntarily acquiesced to the jurisdiction of the Assessing Authority though it was objected to by him earlier.

16. Heard rival submissions, perused the order of the Authorities below. We find that the Assessee Sh. Vijay Pal was employed in the Army and was under the charge of Salary Circle ITO at HQ Squadron, 68 ARMD. REGT. with PAN number ANVPP7279G. In proof of these submissions Form 26-AS of the Assessee for the AYs 2009-10, 2010-11 and 2011-12 has been placed on record. The Assessee Sh. Raj Singh was an employee of FCC Rico Ltd. whose case was under the charge of the AO, Ward 49(1), Salary Circle, Delhi. He was allotted

PAN number BJDPS1075G. Form 26-AS and Form 12BA for the FY 2012-13 have been placed on record to support these facts. The Assessee Sh. Hari Om was employed with Narang International Hotels Private Ltd. and was under the charge of the Salary Circle ITO Incharge of the Companies Employees since 1985. Sh. Hari Om had Pan number AFUPH1298A. Certificates of the employer to this effect have been placed in proof of these averments. It is the contention of the Assesseees that the ITOs at Gurgaon who had issued notices to these Assesseees u/s. 148 of the Act for reopening their assessments did not have any jurisdiction over them for they were under the charge of the Salary Circle AOs. It was also the Ld. AR's contention that in none of these cases there was an order u/s. 127 of the Act for the transfer or jurisdiction of the Assessee from the respective ITO Salary Circle to the respective ITOs at Gurgaon. The submissions made on behalf of the Assesseees have not been controverted by the Department.

17. We also observed from the assessment order of Sh. Vijay Pal that the case was transferred from the office of the ITO, Ward 4(5), Gurgaon who had issued the notice u/s. 148 of the Act to the ITO, Ward 4(4), Gurgaon vide their office letter No. 2337 dated 22.07.2015. Similarly we observed from the assessment order of Sh.

Hari Om that his case was transferred from ITO, Ward 2(5), Gurgaon who had issued the notice u/s. 148 of the Act to the AO, Ward 2(1), Gurgaon. In this way the AOs issuing the notice u/s. 148 of the Act in both these cases did so lacking jurisdiction.

18. The principle that the Assessing Officer alone who was holding the original jurisdiction over the assessee, who could issue notice under section 148 of the Act has been considered by the Hon'ble Punjab & Haryana High Court in the case of Lt. Col. Paramjeet Singh vs. CIT [(1996) 220 ITR 446] wherein the Hon'ble High Court held as under:-

“4. We have heard the counsel for the parties and in the normal course we would have accepted the preliminary objection raised by the department and directed the petitioner to raise all the pleas before the ITO but keeping in view the fact that the present is a case where there is total lack of jurisdiction in respondent No.2, we are interfering in the matter. There is no gainsaying the fact that the petitioner was posted at Pune when he was in the service of the Army and for the assessment year in question he filed his return of income with the ITO there and the same stands assessed. The proceedings had been completed and the tax found payable had been deposited / accounted for. Thereafter, if the assessment proceedings are to be re-opened or if the income for the relevant assessment year is to be reassessed it is the ITO who assessed the same in the first instance alone has the jurisdiction to proceed in the matter under section 147 read with section 148 unless the case has been transferred by a competent authority to another Assessing Officer under section 127 of the Act and in that event the latter will have jurisdiction to proceed.”

It is clear that in the absence of any transfer order no Assessing Officer other than the one who initiated the proceedings or completed the assessment shall have jurisdiction to continue with the proceedings or even to re-open a concluded assessment.”

19. Similarly in the case of Dushyant Kr. Jain Vs. CIT [(2016) 381 ITR 428 (Del.)] the Hon’ble Delhi High Court held as under:-

“16. The reasons given by the Department in its counter affidavit do not in any way explain the patent illegality in invoking the powers under Section 148 of the Act for reopening the assessment of the Assessee for AY 2007-08. The mere fact that the definition of an Assessing Officer in terms of Section 2(7-A) of the Act al includes a DCIT and other superior officers or an ITO of some other ward who may be vested with the relevant jurisdiction by virtue of orders issued under Section 120(1) or Section 120(2) of the Act will not make a difference to the above legal position. The reason is not far to seek. It is only the Assessing Officer who has issued the original assessment order dated 13th April 2009 for AY 2007-08 under Section 143(3) of the Act who is empowered to exercise powers under Section 147/148 to re-open the assessment. This is because he alone would be in a position to form reasons to believe that some income of that particular AY has escaped assessment. This again cannot be based on a mere change of opinion. Further, in terms of Section 151 of the Act such a move will have to have the prior approval of the CIT. Under the scheme of the Act, if a superior officer forms an opinion that the original assessment order is prejudicial to the interests of the Revenue, recourse can be had to Section 263b of the Act. In any event the question of an ITO who is not the AO who passed the original assessment order under Section 143(3) of the Act for particular AY, exercising the powers under Sections 147/148 of the Act to re-open that assessment does not arise.”

20. We also observe that an identical issue where the Gurgaon Income Tax Officer had remotely and erroneously assumed

jurisdiction over the cases of other co-owners and had initiated and concluded re-assessments against them came up for hearing before the Tribunal in the batch of cases and the Tribunal held that the assumption of jurisdiction by the Gurgaon Income Tax Officer was improper, incorrect and invalid by order dated 08.08.2019 in the case of Attar Singh & Others Vs. ITO in ITA No. 2682/Del/2018 wherein the Tribunal held as under:-

“31. So far as the argument of the Revenue that the assessee has not raised any objection to the jurisdiction within the prescribed time period is concerned we find merit in the argument of the Ld. Counsel that the issue to lack of jurisdiction can be raised at any stage in a case where the return has been filed in response to notice u/s 148 / 158BC / 153A. We find the Hon’ble Bombay High Court in the case of Mavany Brothers vs. CIT (supra) while adjudicating an identical issue has observed as under:-

13. We have considered the rival contentions. The jurisdiction under Section 147 / 148 of the Act is an extraordinary jurisdiction and can only be exercised when condition precedent as provided in Sections 147/148 of the Act are satisfied. It is the appellant’s case that the aforesaid conditions are not satisfied in as much as in the absence of the Assessing Officer having the original return of income available it would not be possible for him to have a reasonable belief that income chargeable to tax has escaped assessment. This issue of jurisdiction according to the respondent - Revenue could only have been raised before the Assessing Officer and not having been raised before him, the appellant had waived its rights to raise the same. The appellant having submitted to the jurisdiction of the Assessing Officer cannot now challenge the same. This is entirely correct. It is well settled that mere acquiescence will not give

jurisdiction to an authority who has no jurisdiction. In fact this Court in CIT vs. ITSC reported in 365 ITR 87 has held that mere participation by a party in proceedings without jurisdiction will not vest / confer jurisdiction on the authority. Reason to believe that income chargeable to tax has escaped assessment is a jurisdictional fact and only on its satisfaction does the Assessing Officer acquire jurisdiction to issue notice. Thus this lack of satisfaction of jurisdictional fact can never confer jurisdiction and an objection to it can be raised at any time even in appeal proceedings. The mere fact that no objection is taken before the Assessing Officer would not by itself bestow jurisdiction as the Assessing Officer. Such an objection can be taken in appeal also. Moreover the Apex Court in its recent decision in Kanwar Singh Saini vs. High Court of Delhi reported in 2012(4) SCC 307 has held that it is settled position that conferment of jurisdiction is a legislative function and cannot be conferred by consent of petitioner. An issue of jurisdiction can be raised at any time even in appeal or execution. Reliance in this regard could usefully be made to Indian Bank vs. Manilal Govindji Khona reported in 2015(3) SCC 712. Paras 22 of the said judgment read as under:

22. In Sushil Kumar Mehta case [Sushil Kumar Mehta vs. Gobind Ram Bohra, (1990) 1 SCC 193] this Court has elaborately considered the relevant factual and legal aspect of the case and has laid down the law at para 10 after referring to its earlier decision of a four-Judge Bench of this Court speaking through Venkatarama Ayyar Jin Kiran Singh vs. Chaman Paswan [AIR 1954 SC 340: (1955) 1 SCR 117] which would be worthwhile to be extracted as under: (Sushil Kumar Mehta case [Sushil Kumar Mehta vs. Gobind Ram Bohra (1990) 1 SCC 193], SCC p.199).

6”10....6....It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether it is in respect of the

subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to the determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non iudice, and that its judgment and decree would be nullities. (Kiran Singh case [AIR 1954 SC 340: (1955) 1 SCR 117], AIR p. 342, para 6)

Thus, it is open to the petitioner to raise the issue of jurisdiction before the appellate authorities.

32. In view of the above discussion and considering the fact that the assessee was employed with Delhi Police and was regularly filing his return of income at Delhi under ITO, Ward 64(3) [earlier ITO, Ward 40(3)] and since this fact was known to the ITO at Gurgaon, therefore in absence of any transfer of jurisdiction u/s 127, we hold that the ITO, Gurgaon has no jurisdiction over the assessee. Therefore, respectfully following the decision of the Hon'ble Punjab & Haryana High Court, which is the jurisdictional High Court in view of the assessment order being passed by the ITO at Gurgaon we hold that the Assessing Officer, Gurgaon had no jurisdiction over the assessee to issue notice u/s 148 and consequently pass the order u/s 147/143(3). Therefore, the notice issued u/s 148 is quashed. Since the reopening is quashed the subsequent orders passed on account of such reopening are also quashed.

33. So far as the decisions of the Hon'ble Delhi High Court relied upon by the Ld. DR are concerned these decisions in our opinion are not applicable to the facts of the present case. In the case of Abhishek Jain (supra) we find the Assessing Officer Noida had issued notice u/s 148 on the basis of deposits made in cash in ICICI Bank, Noida. The fact that this assessee was regularly assessed in Delhi was not intimated to the Assessing Officer at Noida and the assessee had not mentioned his PAN in the ICICI Bank and the address of the assessee was also in Noida. After the completion of the time barring period which is 31st March 2016 the assessee intimated on 19th

May 2016 that he had been regularly assessed in Delhi. Under these circumstances, the Hon'ble Delhi High Court held that it was mala fide on the part of the assessee not to intimate period to 31.03.2016 and the assessee was waiting for time limitation to expire and, therefore the Hon'ble High Court held that in terms of section 124(3)(b), the jurisdiction of an Assessing Officer cannot be called in question by an assessee after the expiry of one month from the date on which he was served with a notice for reopening of assessment u/s 148. However, in the instant case, the assessee had enclosed the copy of return filed with the Assessing Officer of Delhi with his PAN and acknowledgement number. It was in the knowledge of the Assessing Officer of Gurgaon that the assessee is in employment of Delhi Police and his PAN is linked with ITO of Delhi. Further, there was ample time available before the Assessing Officer for verification and consequential issue of notice by the Assessing Officer of correct jurisdiction and no mala fide intention can be attributed to the present assessee.

34. Similarly, in the case of S.S. Ahluwalia (supra) is concerned, in that case also the respondent assessee was assessed at Delhi from 1980-81 to 1983-84. From the assessment year 1984-85 to 1987-88, he was filing the return at Dimapur. The case of the assessee was reopened u/s 148 by the ACIT, Investigation, Delhi on the basis of certain CBI search. When the question of jurisdiction issue came before the Hon'ble High Court the Hon'ble High Court held that in case the assessee shifts his residence or place of business or work, etc, the Assessing Officer of the place where the assessee has shifted or otherwise will have jurisdiction and it is not necessary that in such case an order u/s 127 is required to be passed. While going through para 51 of the order, it shows that at clause 8 of para 51, there was exchange of correspondence between the ITO of Delhi and ITO of Dimapur and ITO Dimapur considered and accepted that for assessment year 1984-85 to 1987-88, the Assessing Officer at Delhi had jurisdiction to initiate and complete the assessment proceedings. Similarly order u/s 127 of the Act was passed and the case was transferred to ITO, Ward 20, New Delhi. Thus, the case of S.S.Ahluwalia

(supra) cannot be equated with that of the assessee. In any case, since the Assessing Officer of Gurgaon has passed the assessment order, who falls under the jurisdiction of Punjab & Haryana High Court, therefore, the decision of Hon'ble Punjab & Haryana High Court will prevail over the decision of the Hon'ble Delhi High Court. If the assessment proceedings already completed by Assessing Officer are to be reopened or if the income for the relevant assessment year is to be reassessed, it is the ITO who assessed the same in the first instance has the jurisdiction to proceed in the matter u/s 147 read with section 148 unless the case has been transferred by a competent authority to another Assessing Officer u/s 127 and, in that event, latter will have jurisdiction to proceed. Thus, in the absence of any transfer order, no other Assessing Officer than the one who initiated the proceedings or completed the assessment shall have jurisdiction to continue with the proceedings or even to reopen a concluded assessment. Since in the instant case the assessee was regularly filing his return with ITO at Delhi and since no transfer order u/s 127 of the IT Act, 1961 was passed transferring the case ITO, Gurugram, therefore, only the ITO, Delhi had jurisdiction to issue notice u/s 147 and the Income Tax Officer, Gurugram has no jurisdiction to issue notice u/s 148 to the assessee.

35. In view of the above discussion, we hold that the notice issued by the Assessing Officer at Gurgaon is void ab initio on account of lack of jurisdiction. Therefore the proceedings are quashed. Since the assessee succeeds on this legal ground the various other grounds on merit are not being adjudicated being academic in nature. Since the legal ground raised by the assessee challenging the reassessment proceedings are decided in favour of the assessee, the grounds raised by the Revenue in its appeal become infructuous and the same is accordingly dismissed.”

21. Similarly the co-ordinate bench of the Delhi Tribunal in the case of Shri Ram Kishan & Other vs. ITO in ITA No. 3025/Del/2017 dated 10.03.2022 held as under:-

“17. We have heard the rival contentions and have gone through the impugned orders and the other material to which our attention was drawn. We find that the Appellant was employed in the Army as a consequence of which he was being assessed by the Salary Circle AO holding jurisdiction over OR’s (Other Ranks) of the Army Medical Core with PAN No. AQAPK7840G. A perusal of Form 26-AS as filed on behalf of the Appellant shows that he was subjected to TDS on salary u/s 192 of the Act. Accordingly the Appellant was under the jurisdiction and authority of the Salary Circle, AO, In-charge of Other Ranks of the Army Personnel. If at all any action had to be taken against the Appellant for any alleged escapement of income then it was for the Army Salary Circle AO holding authority over the Appellant who could have done so. Clearly the Income-tax Officer, Ward 3(5) Gurugram could not have interfered in the matter with a section 148 notice unless the case had been duly transferred to him. It is now well settled that it is only the AO holding charge over an assessee for assessment purposes who could issue a notice for assessment. In other words, no AO, other than the assessee’s own AO, could issued a notice for reassessment. The ITO Ward 3(5), Gurugram has issued the notice u/s 148 of the Act to the Appellant on 30.03.2015 after having recorded a satisfaction as to the alleged escapement of income of the Appellant. The ITO Ward 3(5) Gurugram does not seem to have made any inquiry or the relevant issues before issuing a notice u/s 148 of the Act to the Appellant. No material in this behalf has been brought before us by the Department. The High Court of Punjab & Haryana in Lt. Col. Paramjeet Singh vs. Cit (1996) 220 ITR 446 has ruled that if the assessment proceedings of an assessee is to be reopened or if the income for the relevant assessment year is to be reassessed, it is the Income-tax Officer who

could assess the same in the first instance who has jurisdiction to proceed in the matter u/s 147 read with Section 148 of the Act, unless of course the case had been transferred by a competent authority to another AO u/s 127 of the Act. No such transfer order u/s 127 of the Act has been produced before us to validate the jurisdiction as assumed by the ITO, Ward 3(5), Gurugram. It is thus clear that the assumption of jurisdiction to reassess the Appellant by the Gurugram AO is irregular and fallacious. In a similar situation the Delhi Bench of the Income-tax Appellate Tribunal in the case of Attar Singh & Ors. ITA No. 2682/Del/2018 dated 08.08.2019 has held that the assumption of jurisdiction by a different AO at Gurugram who was other than the AO holding jurisdiction over the assessee for the relevant year was invalid. Respectfully following that order and with facts being similar we hold that the assumption of jurisdiction by the ITO, Ward 3(5), Gurugram in the case of the Appellant is erroneous, illegal and void.”

22. Further the Co-ordinate Bench of the Tribunal (comprising both of us) in the case of Sh. Satya Pal, Sh. Satyabir Singh and Sh. Rati Ram had held as under:-

“16. In the cases before us we find that Shri Satya Pal was employed in Gurugram Gramin Bank was regularly filing returns before the Income Tax Officer, Ward 33(1) Rewari, and was assessed by Income Tax Officer, Ward 33(1) Rewari and Shri Satyabir Singh Yadav was employed with Indian Institute of Air-craft Engineering, New Delhi was regularly filing returns before the Income Tax Officer, Ward 48(3), New Delhi and Shri Rati Ram, who was employed with Haryana Vidyut Nigam Ltd. was regularly filing returns with Income Tax officer, Salary Circle Ward 6, Gurgaon and was assessed by Income Tax officer, Salary Circle Ward 6, Gurgaon. There is nothing on record to suggest that there was a transfer order passed by the Revenue transferring the cases to Income Tax Officer, Ward 3(4) Gurgaon. Therefore, the Income

Tax Officer, Ward 4(5) Gurgaon, has no jurisdiction over the assessees. In the circumstances, issue of notice under section 148 of the Act by the Income Tax Officer, Ward 3(4) Gurgaon and consequent assessment made under section 143(3) read with section 147 of the Act is void and bad in law. Thus, we quash the re-assessment order passed by the Income Tax Officer, Ward 3(4) for the assessment year 2010-11 in all these three cases.”

23. In the cases before us we find that Sh. Vijay Pal was employed in the Army and Sh. Raj Singh was employed with a private company. Sh. Hari Om was employed in a hotel in Delhi. They were all under the jurisdiction of the respective Salary Circle Officers. There was no transfer order passed in their cases from the respective Salary Circles to the AOs at Gurgaon. None such is claimed on behalf of the Department. Apparently the Income-tax Officers at Gurgaon issuing the notices u/s. 148 of the Act did not hold any valid jurisdiction or authority over these Assessees. Therefore, respectfully following the orders of Co-ordinate Benches of the Tribunal cited hereinbefore we hold that the notices u/s. 148 of the Act issued by the AO's at Gurgaon are void and bad in law. Consequently the assessments made by them u/s. 143(3) r.w.s. 147 of the Act are void being bad in law and resultantly the reassessment orders are quashed and the appeals of the Assessees are allowed.

24. Having quashed the reassessment orders on point of assumption of jurisdiction of assessing officer in reopening the assessments by issue of notice u/s 148 of the Act on lack of jurisdiction, the decision on merits of the case is not warranted and only academic at this stage. Ordered accordingly.

25. In the result, appeals of the assessee are partly allowed as indicated above.

Order pronounced in the open court on 07/03/2024

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 07/03/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi