

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' : NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.3604/DEL/2019
(Assessment Year: 2015-16)**

Pushpa Gupta,
TG-6/8A, Sun City, Sector 54,
Gurgaon (Haryana).

vs. ITO, Ward 3 (3),
Gurgaon.

(PAN : AEVPG2170E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vijay Singla, CA
Ms. Airik Singla, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 10.04.2024
Date of Order : 18.04.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)-1, Gurgaon dated 29.03.2019 for the assessment year 2015-16.

2. Assessee has taken Grounds of appeal which read as under :-

“1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition made by the AO on account amount received on sale of shares of Rs.32,68,500/- treating the same as unexplained credits u/s 68 read with section 115BBE of the Income tax Act.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition made by AO holding the Long Term Capital gain declared by the assessee, to be not genuine.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the assessee bringing on record all evidences and material to prove the genuineness of the transaction.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the sale and purchase transactions having been done through proper banking channels and as per the rules and regulations of the Stock Exchange.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition by misinterpreting the financials of the companies whose shares were sold by the assessee.

7. On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the above addition by indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption.

8. On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the above addition despite the fact that the addition is made by the AO relying on the report of the investigation wing without application of his own mind.

9(i) On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition made by AO despite the same having been made on the basis of material collected at the back of the assessee without giving it an opportunity to rebut the same.

(ii) That the above said addition has been confirmed despite the same having been made on the basis of statement recorded without giving assessee an opportunity to cross examine.

10. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of exemption claimed by assessee u/s 10(38) of Rs.32,68,500/- treating the same as unexplained credits without there being any basis for the same.

11. On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in rejecting the contention of the assessee that the order has been passed by the AO without affording adequate opportunity of being heard to the assessee.”

3. The assessee has also raised additional grounds which read as under :-

“1. That in the facts and circumstances of the case, the Ld. AO issuing notice u/s 143(2) of the Act did not have valid jurisdiction over the case,

hence the notice is bad in law and the assessment order passed on the basis of such notice is bad in law and should be quashed/cancelled.

2. That in the facts and circumstances of the case, the assessment order was passed without service/issuance within LIMITATION PERIOD of any valid notice u/s 143(2) of the Act and therefore the assessment order passed is bad in law and should be quashed.”

4. Upon careful consideration, we note that the additional grounds raised are having legal issue and go to the root of the matter at the touchstone of the case of NTPC Ltd. vs. CIT, (1998) 229 ITR 0383 (SC), hence we admit the aforesaid grounds.

5. In respect of the additional grounds, ld. Counsel made following submissions :-

“ Ld DR vide Letter No 1393 dt 23-02-2023, along with written submissions dt 20-03-2023 submitted the comments on Additional Ground of Appeal, from which it was clear that AO Ward 58(2)-New Delhi issued Notice dt 28-07-2016 u/s 143(2) and later on Ld AO Ward 3(3) issued Notice dt 28-07-2016 u/s 143(2). Both of the notices were duly attended by the AR of the assessee.

8) Vide email dated 11-05-2023, Ld AO confirmed that, no order was passed by a competent authority transferring jurisdiction of this case from ITO 58(2) New Delhi to erstwhile ITO Ward 3(3) Gurgaon.

9) Ld Assistant Director (Systems)(ITBA) vide email dated July-10, 2023 further confirmed that "no remark in the ITBA database for the transfer of PAN-AEVPG2170E from ITO 58(2), New Delhi to ITO Ward 3(3) Gurgaon {now merged with ITO Ward 3(.1), Gurgaon dated 19-08-2017.

10) Assessment records were perused which transpired that there is no noting by the Assessing Officer, Ward 58(2), Delhi regarding transfer of case to the Assessing Officer, Ward-3(3), Gurugram.

11) Ld DR vide submissions dated 19-09-2023 stated that no objection within one month as per Sec 124 has been made by the assessee during assessment proceedings, thus Sec 292BB will support the case of Revenue.

12) AR of the appellant submitted, that by placing reliance on ITO vs Almak Finance P Ltd ITA-4504/Del/2017 dt 14-10-2020, stated that when

the authority does not have jurisdiction over the assessee, the act done by such authority is bad in law and is void ab initio. Thus not disputing the jurisdiction u/s 124(3); right to challenge the jurisdiction will not be lost forever. Thus the defect is not curable u/s 292B/292BB.

13) AR of the appellant submitted written submission on 14-02-2023 and placed Reliance on following

- Hon'ble SC in the case of CIT vs Hotel Blue Moon (2010) 321 ITR 362 (SC)
- Hon'ble ITAT Kolkatta - ITA-2456/Kol/2019 Pronounced on 10-03-2021 = Shivam Dhatu Udyog Ltd vs DCIT-Kolkata
- Hon'ble ITAT Chandigarh -ITA-1163/Chd/2018 Pronounced on 01-08-2019 = H P Singh & Ors vs ITO Mohali
- Hon'ble Punjab & Haryana High Court in the case of CIT vs Norton Motors (2005) 275 ITR 595 (P&H)
- Hon'ble ITAT Mumbai-ITA-3599/Mum/2016 Pronounced on 20-12-2017 = Tiny Girl Clothing Co P Ltd vs DCIT, Mumbai
- Hon'ble ITAT Delhi-ITA-6793/Del/2018, Pronounced on 16-03-2021, Sajan Kumar Jain vs DCIT-Delhi
- Hon'ble ITAT Mumbai-ITA-3769/Mum/2016, Pronounced on 15-06-2018 = Mehta Emporium Jewellers vs ITO-Mumbai
- Bombay High Court in the case of ACIT vs Geno Pharmaceuticals Ltd-32 Taxmann.com 162
- Hon'ble Delhi High Court in the case of PCIT vs Silver Line - 65 Taxmann.com 137
- Hon'ble ITAT Delhi-ITA-3729/Del/2012 Pronounced on 08-03-2018 ITO vs NVS Builders P Ltd
- Hon'ble ITAT-Delhi- ITA-6290/Del/2017 Pronounced on 13-03-2018 = ITO vs Neeraj Goel
- Hon'ble ITAT-Delhi-ITA- 4944/Del/2018 Pronounced on 07-01-2022= ACIT vs P & R Infraprojects Ltd.”

6. I have heard both the parties and perused the records. I find that it is nowhere disputed by the Revenue that the notices issued in this regard were from non-jurisdiction AO. Only defence made out by the Revenue is that there was no objection within one month as per section 124 of the Income-tax Act, 1961 (for short 'the Act') made by the assessee during assessment proceedings, thus section 292BB supports the case of the Revenue. I find myself in agreement with the submissions of the Id. Counsel for the assessee

wherein by placing reliance upon the case of ITO vs. Almak Finance P. Ltd. in ITA No.4504/Del/2017 dated 14.10.2020, it was held that when authorities have no jurisdiction over the assessee, the act done by such authority is bad in law and void ab initio. Thus, it is the claim of the assessee that by not disputing jurisdiction u/s 124 (3) of the Act, right to challenge the jurisdiction will not be lost forever, thus the defect is not curable u/s 292B & 292BB. I find myself in agreement with the above said submission, hence I hold that AO did not have jurisdiction and accordingly, the assessment order is liable to be quashed as such. Therefore, by holding that notices were issued from non-jurisdictional AO, the assessment order is hereby quashed.

7. Since we have quashed the assessment order, adjudication of merits of the case is only of academic interest, hence we are not engaging into the same.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 18th day of April, 2024.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 18th day of April, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-1, Gurgaon.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**