

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

**BEFORE,  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.6815/Del/2019  
(ASSESSMENT YEAR 20215-16)**

ITO Ward-2(3) Kamla Nehru Nagar, CGO Complex-2, Ghaziabad <b>PAN:- AAJPG2872M</b>	Vs.	Shalini Gupta Vijay Mandi, Muradnagar, Ghaziabad, Uttar Pradesh
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Akhilesh Kumar, Adv & Sh. Vipin Garg, Adv
Respondent by	Shri Anuj Garg, Sr. DR

Date of Hearing	09/05/2024
Date of Pronouncement	16/05/2024

**ORDER**

**PER YOGESH KUMAR U.S.JM:**

This appeal is filed by the Revenue against the order of Commissioner of Income Tax Appeals-1 Noida ('Ld. CIT(A)' for short), dated 31/12/2018 for the Assessment Year 2015-16.

2. The Grounds of Appeal are as under:-

*“1. The Ld. CIT (A)-1, Noida has erred in law and facts by deciding the appeal of the assessee without having jurisdiction over the case as the assessee in this case filed the appeal with the CIT(A)-1, Noida whereas the same should have been filed with the jurisdictional CIT(A), Ghaziabad. Moreover, although the date of the appellate order is 31.12.2018, the same has been received in this office on 18.06.2019, after the compulsory retirement u/s FR 56(j) of Sh. S.K. Srivastava, the then CIT(A)-1, Noida and has also been uploaded on the ITBA after an inordinate delay of time. Therefore, order of Ld. CIT(A)-1, Noida is illegal, bad in law and in violation of CBDT's notification no. 66/2014 dated 13.11.2014 r.w. order no. G-03/2014-15 dated 15.11.2014 of Ld. Pr.CCIT(CCA), Kanpur, assigning jurisdiction to CIT(A), Ghaziabad and other CsIT(A) of UP(Weast & Utrakhand).*

*2. Without prejudice to the above, the Ld. CIT(A)-1, Noida has Rs. 17,05,198 erred in law and fact in deleting the addition of Rs. 55,11,173/- on account of unexplained investment u/s 69 of the I.T. Act without considering the facts brought on record. Reliance is placed on judgment of Hon'ble Delhi High Court in the case of Udit Kalra Vs ITO, Ward-50(1) in ITA No. 220/2019 & CM No. 10774/2019 dated 08.03.2019 and of Hon'ble Bombay High Court(Nagpur Bench) in the case of Sanjay Bimalchand Jain Vs. Pr.CIT-1, Nagpur( Income Tax Appeal No. 18 of 2017).*

*3. Without prejudice to ground no.1 above, the Ld. CIT(A)-1, Noida has overlooked the fact that the name of M/s HPC Biosciences Ltd. figured in the list of penny scrips as per reports of the Investigation Wing of the department at Kolkata and that Hon'ble Madras High Court have upheld the disallowance of exemption u/s 10(38) in the case of Smt. Tharakumari vs. ITO) tax case appeal no. 128 of 2019 and C.M.P. No. 3353 of 2019) where the shares of a*

*company, in respect of which long term capital gain was claimed by the assessee as exempt, appeared in the data base of the Income Tax Department as penny stocks in tax evasion racket. Hon'ble ITAT Delhi have in their recent judgment in the case of Sh. Sanat Kumar Vs. ACIT, Circle-36(1), New Delhi(ITA No. 1881/Del/2018), Hon'ble ITAT 'E-Bench', Delhi also stated that "... ..no doubt assessee has meticulously completed the paper work by routing his entire investment through banking channel but the results thereof are altogether beyond human probabilities."."*

3. The assessee filed return of income of Rs. 3,06,600/- which was processed u/s 143(1) of the Income Tax Act, 1961 ('Act' for short). The case was selected for scrutiny through CASS, an assessment order came to be passed u/s 143(3) of the Act on 28/12/2017 by assessing the income of the assessee at Rs. 58,17,773/- by making addition of Rs. 55,11,173/-. As against the assessment order dated 28/12/2017 passed by the ITO , Ward 2(3), Ghaziabad the assessee preferred an Appeal before the CIT(A)-Noida though the Jurisdiction for filing the Appeal lies with CIT(A) – Ghaziabad. An order came to be passed by the CIT(A)-1, Noida on 31/12/2018, wherein the Appeal filed by the assessee has been allowed by deleting the addition made by the A.O. Aggrieved by the impugned order of the Ld. CIT(A)-1 Noida, the Department of Revenue preferred the present Appeal by challenging the

jurisdiction of the CIT(A)-Noida to pass order u/s 250 of the Act on the grounds mentioned above.

4. The Ld. Departmental Representative submitted that the assessee filed an Appeal before the CIT(A)-Noida though the proper jurisdiction lies before the CIT(A)-Ghaziabad as the assessment order has been passed by the ITO, Ward-2(3), Ghaziabad. The Ld. Departmental Representative further submitted that the order impugned passed by the Ld. CIT(A), Noida without jurisdiction, therefore, the CBDT Circular 3/2018 dated 11/07/2018 prescribing the monetary limit to file the Appeal is not applicable for the present Appeal, therefore, relying on the various Judgments, sought for remanding the matter to the file of the CIT(A)-Ghaziabad which is having the proper jurisdictional to adjudicate the Appeal of the Assessee afresh.

5. Per contra, the Assessee's Representative vehemently submitted that as per Circular No. 3/2018 dated 11/07/2018 issued by the CBDT, the present Appeal is not maintainable as the tax effect is below the monitory limit to file the Appeal before the

Tribunal as prescribed in the said Circular. The Ld. Counsel has relied on following Judicial pronouncements:

a) Order in ITA No. 366/Del/2017 dt 30.09.2019 of the Delhi Bench of the Tribunal (ACIT Vs Harvinder Singh Jaggi)

(b) Order in MA No. 104 & 118/2020 dated 16.09.2022 of the Delhi Bench of the Tribunal (ACIT Vs. Rupendra Kumar Varshney & Richa Varshney)

(c) Order in MA No. 117/2020 dt. 02.11.2023 of the Delhi Bench of the Tribunal (ITO Vs. Vikas Mittal)

6. We have heard both the parties and perused the material available on record. In the present case, the assessment order came to be passed u/s 143(3) of the Act for Assessment Year 2015-16 by making an addition of Rs. 55,11,173/- u/s 69 of the on account of unexplained investment. It is pertinent to note that the assessment order has been passed by the Office of the Income Tax Officer, Ward 2(3), Ghaziabad and the Jurisdictional CIT(A) for the said A.O. is CIT(A) Ghaziabad. The assessee should have filed the Appeal challenging the Assessment Order before the CIT(A)-Ghaziabad, but the assessee opted to file the Appeal before the CIT(A)-1, Noida. As per the CBDT Notification No. 66/2014 dated

13/11/2014 read with Order No. G-03/2014-15 dated 15/11/2014 on Pr. CCIT (CCA)-Kanpur, the Jurisdiction for the first appeal, in the present case, lies to CIT(A)-Ghaziabad. Contrary to the above Notification and the Order, the Ld. CIT(A) at Noida, passed the order impugned without their being jurisdiction to do so. It is well settled law that an order passed by a Court or Tribunal or Authority having no jurisdiction is nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon. By considering the said well settled principal we are of the opinion that the Circular No. 3/2018 dated 11<sup>th</sup> July, 2018 issued by the CBDT is applicable only when the Revenue Authority passes the order having the proper jurisdiction and the said Circular is not applicable not applicable to the cases where the Authority passes the order by exercising wrong jurisdiction.

7. The Ld. Counsel for the assessee cited certain judicial pronouncement to argue that the Appeal deserves to be dismissed following the CBDT Circular No. 3/2018 dated 11/07/2018 as the Appeal of the Revenue is having low tax effect. We do not find merit in the contentions of the Assessee's Representative as the above

orders relied by the Assessee's Representative are distinguishable as the above Orders have been passed taking into consideration of only 'monetary limit' of the Appeal and the 'lack of jurisdiction' was not at all an issue which has been to be considered thereon. In so far as the order relied by the Assessee's Representative in MA No. 117/2020 dated 02/11/2023 in the case of Vikas Mittal, while disposing the M.A., the Coordinate Bench of the Tribunal in Paragraph 4 observed as under:-

*"..... We also see no merit in the other aspect of the plea that first appellate order passed being without jurisdiction, the MA would lie on such inherent jurisdictional defect. This is for the simple reason that such aspect can be examined only at the time of hearing of the substantive appeal of the Revenue."*

Even the above order of the Tribunal will not come of the rescue to the assessee, since the Bench thereon specifically observed that the '*Jurisdictional defect can be seen only at the time of hearing of the substantive Appeal*'. Since we are deciding the substantive Appeal, we can always go into the defect of jurisdiction of the Ld. CIT(A). Thus, the judicial pronouncements relied by the Assessee's

Representative are not applicable to the present case and some are distinguishable.

8. Considering the above facts and circumstances and taking into account that the Ld. CIT(A) –Noida has passed the impugned order in the first appeal having no jurisdiction and the same is nullity in the eyes of law, we are of the considered opinion that the Circular No. 3/2018 dated 11/07/2018 is not applicable to the present case. Therefore, the impugned order of the Ld. CIT(A) Noida is hereby set aside and the matter is remanded to the file of Ld. CIT(A)-Ghaziabad to adjudicated the Appeal afresh in accordance with law. Needless to say, the Assessee shall be provided opportunity of being heard.

9. In the result, the appeal of the Revenue is allowed for statistical purpose.

Order pronounced in open Court on 16<sup>th</sup> MAY, 2024

Sd/-

**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 16/05/2024

*R.N, Sr.ps*

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI