

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : G : NEW DELHI

BEFORE SHRI S. RIFAUZ RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.617/Del/2024
Assessment Year: 2013-14

Sapna Rastogi,
C/o Kapil Goel, Advocate,
F-26/124, Sector-7,
Rohini,
Delhi – 110 085.

Vs Income Tax Officer,
Ward – 1(2)(5),
Meerut.

PAN: AETPR1493R

(Appellant)

(Respondent)

Assessee by	: Shri Sandeep Goel, Advocate
Revenue by	: Shri Anuj Garg, Sr. DR
Date of Hearing	: 04.07.2024
Date of Pronouncement	: 28.08.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the order dated 11.01.2024 of the National Faceless Appeal Centre, Delhi (hereinafter referred as NFAC or Ld. 'FAA') in Appeal No.NFAC/2012-13/10153323 arising out of the appeal before it against the order dated 30.03.2022 passed u/s 147 r.w.s.

144B of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the National Faceless Assessment Centre, Delhi (hereinafter referred to as the AO).

2. On hearing both the sides, it comes up that amongst other grounds, the assessee has raised ground No.1 with sub-grounds on the basis that the initiation of proceedings by issuance of notice u/s 148 of the Act, dated 30.03.2021 is illegal inasmuch as the notice has been issued by Income-tax Officer, Ward-1(2)(5), Meerut who did not have the requisite jurisdiction on pecuniary basis and in support reference is invited to CBDT Instruction No.01/2011 dated 31.08.2011. The ld. counsel for the assessee has submitted that the powers to be exercised were quasi judicial powers and since without having jurisdiction the notice was issued by the Revenue officer, who did not have pecuniary jurisdiction, the assessment order is *void ab initio*.

3. The ld. DR, however, countered this by submitting that as the assessee has participated in the assessment proceedings, objections cannot be raised at this stage. In this context, the ld. DR has relied the judgements of the Hon'ble Gujarat High Court in the case of *PCIT vs. Sagar Developers, (2016) 72 taxmann.com 321 (Gujarat)*; the Hon'ble Supreme Court in the case of *Home Finders Housing Ltd. vs. ITO, (2018) 94 taxmann.com 84 (SC)*; the Hon'ble Delhi High Court in the case of *Abhishek Jain vs. ITO, (2018) 94 taxmann.com 355 (Delhi)*

4. It was also contended that each year is separate and distinct year and only because the earlier year's assessment was conducted in the jurisdiction of another AO, the present assessment is not invalid. The ld. DR has also drawn our attention to a letter dated 26.06.2024 by which the AO, ACIT, Circle 1(1)(1), Meerut has submitted a report and we consider it relevant to reproduce the report here itself and hereinbelow:-

“2. The assessee has filed her return of income on 07.07.2013 at total income of Rs.18,85,550/-. The assessee's name was identified as potential case with the case type High Risk CRIU/VRU Information under "Priority 1" on Verification Module' of insight portal stating that assessee has given no treatment to the alleged profit earned on the sale of shares of TTK Prestige Ltd, amounting to Rs.3,51,90,000/-. Accordingly, the provisions of section 147 of I.T. Act were invoked after obtaining the approval u/s 151 of the I.T. Act. 1961 and notice u/s 148 dated 30.03.2021 was issued by ITO Ward 1(2)(5), Meerut. On the basis of above, the FAO, completed assessment u/s 147 read with section 144B of the I.T. Act, 1961 on 30.03.2022 at total income of Rs. 3,77,41,558/- after making addition of Rs. 3,58,56,008/- as unaccounted money. Subsequently, the PAN of the assessee has been transferred to ACIT Circle-1(1)(1), Meerut on 15.05.2024 from ITO, Ward-1(2)(5), Meerut, as per CBDT Instruction No. 1/2011, dated 31.01.2011, vide which jurisdiction of non-corporate returns above Rs.15 Lacs lies with ACIT/DCIT and upto Rs. 15 Lacs lies with ITO.

3. The Hon'ble ITAT has directed to send report regarding the correctness of jurisdiction of the Officer, issuing notice u/s 148 by ITO Ward 1(2)(5), Meerut. No internal orders were made for transfer of PAN within the PCIT charge. The assessee did not raise any objection regarding the jurisdiction of Circle/Ward during the assessment proceedings.

4. The assessee raised an objection against the re-opening of assessment u/s 147 for A.Y. 2013-14. According to the ITBA systems, letter dated 30.12.2021 is an Order disposing of the objection raised against the re-opening of assessment u/s 147 for A.Y. 2013-14, which is draft letter approved by the Range-Assessment Unit. Submitted for kind perusal and necessary action.”

5. We have given thoughtful consideration to the matter on record and the submissions. The assessee had filed a return of income on 07.07.2013 declaring the total income at Rs.18,85,550/-. The assessee is an individual and, taking into consideration Instruction No.01/2011 available at page 245 of the paper book, for non-corporate returns in case of non-metro cities (*mofussil areas*), the returns above Rs.15 lakhs have to be assessed by the officers of the rank of Assistant Commissioners/Deputy Commissioners. The report which is filed by the AO dated 26.06.2024 and reproduced above categorically mentions the fact that it is only on 15.05.2024, the PAN of the assessee has been transferred to ACIT, Circle 1(1)(1), Meerut, from ITO, Ward 1(2)(5), Meerut, as per CBDT Instruction No.05/2011 dated 31.01.2011 vide which jurisdiction of non-corporate returns above Rs.15 lakhs lies with ACIT/DCIT and upto Rs.15 lakhs lies with ITO.

5.1 Now, admittedly, the notice u/s 148 dated 30.03.2021, copy of which is placed at page 7 of the paper book, is issued by ITO, Ward-1(2)(5), Meerut. Thus, certainly, this Revenue Officer did not have the pecuniary jurisdiction as vested by the Board vide CBDT Instructions No.01/2011 dated 31.03.2011.

5.2 In this context, the coordinate Bench order in the case of ***J. Mitra & Brothers vs. ACIT, ITA No.3643/Del/2023 decided on 10.04.2024*** has been relied by the Id. AR wherein the coordinate Bench, relying another decision in the case of ***Kelvin International vs. DCIT, ITA No.5363/Del/2017, order dated 22.12.2023***, has held that the exercise of jurisdiction of Revenue Officer who

did not have the jurisdiction given by the CBDT Instructions cannot be sustained and the assessment order is vitiated. The Hon'ble Allahabad High Court in the case of *PCIT-II, Lucknow vs. Mohd. Rizwan, Proprietor M/s M.R. Garments, in ITA No.1000/2015, order dated 30.03.2017* has examined this aspect on the basis of numerous judicial pronouncements and while considering the question, if the notice u/s 148 of the Act, issued by an authority not having jurisdiction, would be valid by referring to section 292BB of the Act, has held that jurisdiction can neither be waived nor created even by consent and even by submitting to jurisdiction, an assessee cannot confer upon any jurisdictional authority, some which he lack inherently. The Hon'ble Allahabad High Court has decided this issue against the Revenue holding that notice u/s 148 is not a procedural subject, but, a jurisdictional one as it is a condition precedent for initiation of proceedings. This judicial pronouncement squarely covers the issue in favour of the assessee.

5.3 The judgments which the ld. DR has relied when taken into consideration, are not applicable to the facts and circumstances as the judgements in the cases of *Home Finders Housing Ltd. (supra)* and *Sagar Developers (supra)* are in the context of the non-disposal of the objections and the judgement in the cases of *Abhishek Jain (supra)* and *S.S. Ahluwalia (supra)* are primarily concerned with territorial jurisdiction in regard to which there may be instance of concurrent jurisdiction of the two assessing officers. However, the case before us concerns the pecuniary jurisdiction vested by the

Board and if that is not complied, the invoking of jurisdiction is vitiated and, consequently, the assessment order is vitiated. The ground No.1 with sub-grounds in regard to this issue are sustained.

6. In the result, the appeal of the assessee is allowed and the assessment order is quashed.

Order pronounced in the open court on 28.08.2024.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 28th August, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi