

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH

BEFORE: SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND SHRI PARESH M. JOSHI, JUDICIAL MEMBER,

आयकर अपील सं./ITA No. 280/CHD/2021

निर्धारण वर्ष /Assessment Year : 2012-13

Smt. Arunjeet Kaur, House No.1111, Sector 39-B, Chandigarh.	Vs	The ITO, Ward 4(5), Chandigarh.
स्थायीलेखासं./PAN /TAN No:AGOPK7387G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, CA &
Ms. Shruti Khandelwal, Advocate
राजस्व की ओर से/Revenue by : Shri Vivek Vardhan, JCIT, Sr.DR
तारीख/Date of Hearing : 24.10.2024
उदघोषणा की तारीख/Date of Pronouncement : 18.12.2024

PHYSICAL HEARING

आदेश/ORDER

PER PARESH M. JOSHI, JM

This is an appeal filed by the assessee as and by way of second appeal under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the Act) before this Tribunal. The relevant assessment year is 2012-13 and the corresponding previous year period is from 01.04.2011 to 31.02.2012. The assessee is aggrieved by the order bearing No.ITBA/NFAC/S/250/2021-22/1034889518(1) dated 16.08.2021 passed by Id. CIT(A)

which is hereinafter referred to as the **“Impugned order”** passed under Section 250 of the Act in an appeal preferred under Section 246A of the Act.

2. **Factual Matrix**

2.1 That basis certain information that the assessee had purchased immovable property for a total consideration of Rs.59,40,000/- during the assessment year 2012-13 a notice under Section 148 of the Act was issued to the assessee by revenue on 27.03.2019 i.e., by the ITO, Ward II(5), Muktsar after obtaining prior approval of PCIT, Bathinda. The said notice was served upon the assessee on 28.03.2019 and so also by Speed Post on 29.03.2019.

2.2 That the counsel of the assessee vide his letter which was received in the office of the ITO, Ward-II(5), Muktsar on 22.04.2019 submitted copy of return of assessment year 2012-13 which was filed by the assessee on 13.10.2012 and requested that the proceedings be transferred to the ITO 5(1) Chandigarh who has jurisdiction over the case. That thereafter the assessee herself wrote a letter to the ITO II(5), Muktsar received

on 02.05.2019 requesting transfer of her case to ITO 5(1) Chandigarh who was having jurisdiction over the case. Accordingly, on 15.05.2019 the case was transferred from ITO Ward-II(5), Muktsar to the ITO, Ward 4(1) Chandigarh as per the jurisdiction.

2.3 That thereafter on 17.05.2019, the assessee filed her reply in which she submitted the manual return for an income of Rs.7820/- wherein sum of Rs.3,48,500/- was declared as agriculture income thereby requesting that the return of income may kindly be treated to have been filed in response to Notice under Section 148.

2.4 That thereafter, notice under Section 143(2) and 142(1) alongwith questionnaire was issued on 11.07.2019 and that the same was served upon the assessee on 12.07.2019. Thereafter, notice(s) under Section 142(1) were issued to the assessee from time to time manually as well as through ITBA Portal.

2.5 That in response to the notice(s) supra, the counsel of the assessee Shri Jasjeet Singh, Advocate filed reply on 16.09.2019 alongwith the relevant documents. In the

reply, it was stated that the assessee's husband Shri Jaspal Singh had transferred an agriculture land measuring 72 Kanal in village Alamwala Distt. Malout to assessee, Stamp Duty, value of which was **Rs.59,40,000/-** as per **Sale Deed**. The assessee further submitted that **no money was exchanged between Shri Jaspal Singh and Smt. Arunjeet Kaur (assessee) at the time of registration of Sale Deed.**

2.6 That Shri Jaspal Singh had registered attorney of the land of Mrs. Balbir Kaur i.e., Father's real sister (Bua) of Shri Jaspal Singh and it was her wish that the land in question be transferred to her nephew (Shri Jaspal Singh) during her life time as per the custom in Punjab wherein the land given to daughters by parents ultimately goes to the family.

2.7 That at the time of transfer of land on the basis of Power of Attorney of Mrs. Balbir Kaur, Shri Jaspal Singh used Mrs. Balbir Kaur's Attorney and then transferred the land to his wife Mrs. Arunjeet Kaur and that no money was exchanged between Smt. Arunjeet Kaur and

Shri Jaspal Singh. In support of his contention, the assessee filed the affidavit of Mehma Singh (Numberdar), Jagir Singh (witness), Ms. Jaspal Kaur D/o Mrs. Balbir Kaur (Bua), Shri Raminderpal Singh, S/o Late Mrs. Balbir Kaur, Shri Surinder Pal Singh S/o late Smt. BalbirKaur during the course of the assessment proceedings. At the time of assessment proceedings, Death Certificate of Smt.BalbirKaur was produced evidencing that she died on 10.02.2019. The assessee also placed on record Bank Account statement of Shri Raminderpal Singh, Ms. Jaspal and Ms. Arunjeet.

2.8 That thereafter, in compliance to notice under Section 142(1) dated 15.10.2019, the assessee has also provided the information and again stated that no money was exchanged between Shri Jaspal Singh, GPA Holder of Smt. Balbir Kaur and Smt. Arunjeet Kaur. Later on, the assessee filed her reply through e-mail dated 23.10.2019 on the remaining queries as called for vide notice under Section 142(1) dated 11.07.2019.

2.9 That as per the Sale Deed dated 07.07.2011 registered before Sub Registrar, Malout, the transactions were made amounting to Rs.59,40,000/-. Hence, assessee required to provide the source of payment of Rs.59,40,000/- with the documentary evidence. Accordingly, Show Cause Notice dated 30.10.2019 was issued to the assessee fixing the case for 05.11.2019. The relevant part of the Show Cause Notice is reproduced below :

“This is withreference to pending assessment proceedings in your case. As per information available with the department, it has gathered that you had purchased property from Smt. Balbir Kaur D/o Smt. Bagawidowof Kishan Singh R/o Village Gadadobh, Tehsil- Abhor, Distt. Firozpur for an amount of Rs. 59,40,000/-. You have not provided any source for the said payment till date. Vide your replies submitted to this office, you have mentioned that no money was exchanged between Sh. Jaspal Singh.(power of attorney holder of Smt. Balbir Kaur) and you for agriculture land measuring 72 Kanal in village AlamwalaDistt. Malout during the year under consideration. In your reply you have further mentioned that it was a custom in Punjab that whenever land is given to daughters by parents, ultimately it goes to the family. You have further stated that Sh. Jaspal Singh used Mrs. Balbir Kaur's attorney and transfer land to you as your husband, Sh. Jaspal Singh, could not transfer land to himself being power of attorney holder. As per copy of registry dated 08.07.2011 it has specifically been mentioned that an amount of Rs. 59,40,000/- was paid by you for purchase of 72 Kanal property. Accordingly, your contention that no money was exchanged during transfer of land, is not acceptable. If Smt. Balbir Kaur intends to transfer her land to her nephew Sh. Jaspal Singh Sekhon, then there were other options also i.e. by way of gift or transferred her land directly to Sh. Jaspal Singh Sekhon, her nephew. Hence your reply is not acceptable. You are once again requested to furnish the documentary evidence regarding source of the payment amounting to Rs. 59,40,000/-for purchase of property during the year under consideration, in the absence of which please show cause why the same should not be added back to your income. Your reply in this regard should reach in this office by 05.11.2019.”

2.10 That no reply has been filed by the assessee till date. It seems that the assessee has nothing to say on this issue and have no documentary evidence to substantiate the source of payment of Rs.59,40,000/- for the purchase of land mentioned supra from Shri Jaspal Singh, GPA holder of Mrs. Balbir Kaur.

2.11 That as per sale deed it is clearly mentioned that payment is exchanged between Sh. Jaspal Singh as GPA of Mrs. Balbir Kaur and Mrs. Arunieet Kaur. Hence assessee was required to explain the source of Rs. 59,40,000/-. For this, show cause notice dated 30.10.2019 was issued to assessee to furnish source of payment of Rs. 59,40,000/- paid by the assessee for purchase of 72 Kanal property, fixing the case for 05.11.2019 but no reply was filed by the assessee.

2.12 Earlier, in her reply, the assessee had denied any exchange of payment in the sale deed and provided the affidavits of witness and legal heirs of Mrs. Balbir Kaur as evidence, However it is pertinent to mention here that the sale deed is the registered document duly registered with the

Sub Registrar which is more reliable as compare to the other documents provided by the assessee. So on rely upon the sale deed produced before the undersigned, it is confirmed that Rs. 59,40,000/- was exchanged between Smt. Arunjeet Kaur and Mrs. Balbir Kaur through GPA Mr. Jaspal Singh. Moreover as per the wording of the registry it is clearly mentioned that for the household needs, Mrs. Balbir Kaur had sold the land and received Rs. 59,40,000/- before registered sale deed through Sh. Jaspal Singh GPA holder. Furthermore as per the registered sale deed Smt. Balbir Kaur will be fully liable for any defect, possession etc. of the land sold. Now the question arises, if no payment was exchanged between the two parties, i.e. Seller and Purchaser, than how Mrs. Balbir Kaur can take the responsibility for any defect, possession of property etc. From this it is clearly established that payments were exchanged and Smt. Arunjeet Kaur had paid Rs. 59,40,000 to Sh. Jaspal Singh GPA holder of Mrs. Balbir Kaur, as Sh. Jaspal Singh also confirmed that he had received the payment in the Sale Deed. It is very strange to note that the both the parties including witness who signed the document before the Sub Registrar in which it has been

mentioned that an amount of Rs.59,40,000/- was exchanged for the purchase of property, have now taken the plea that no money was exchanged between the buyer and seller.

2.13 That it is pertinent to mention here that, in this case, the sale deed reflected the payment of sale consideration of Rs.59,40,000/-. The sale deed executed was duly registered before the Registration Authority. The affidavit filed by the assessee from the witnesses and other persons is merely a self-servicing document. No credence can be made to it. It is an admitted fact that the assessee became owner of the impugned agricultural property by virtue of sale deed and not by Gift Deed. Since, it is a sale deed it requires to be considered as sale deed only and not as a Gift deed. When we consider sale deed as sale deed, the consideration reflected in the sale deed which is accepted by the Registration Authority for the purpose of Stamp Duty, the value mentioned therein is relevant. In the present case, sale deed reflected consideration of Rs.59,40,000/-. Further the assessee's sale deed cannot be executed between the seller and the assessee without consideration and there is no dispute regarding genuineness of the agreement during the

course of assessment proceeding. The sale deed was entered between the seller Sh. Jaspal Singh, GPA holder of Smt. Balbir Kaur, and the assessee at their free will and at their choice. Now the assessee is telling that there is no passing of consideration of Rs. 59,40,000/-and consideration noted in the sale deed have no value. The argument of the assessee is absurdly wrong argument for which no credence should be given and the AO has no right to vary the terms of the contract between the parties and in the same way, the assessee has no right to change the contents of the sale deed, which were already executed and reached finality with the intention to reduce its tax liability. Hence, the consideration mentioned in the sale deed to be considered as sale consideration passed between these two parties and required to be assessed as unexplained investment of the assessee, since the assessee has not explained the source of investment. Accordingly, the amount of Rs.59,40,000/- is now added back to the income of the assessee being unexplained investment.

2.14 Reliance is also placed on the judgement of Sh. Paramjit Singh Versus 1TO passed on Feb. 10, 2010,

[2010] 323 ITR 588 (P& H), wherein the Punjab & Haryana High Court decided the issue in favour of the Revenue. The portion of the order of the Hon'ble High Court is reproduced below:

"4. We have thoughtfully considered the submissions made by the learned Counsel and are of the view that they do not warrant acceptance. There is well known principle that no oral evidence is admissible once the document contains all the terms and conditions. Sections 91 and 92 of the Indian Evidence Act, 1872 (for brevity 'the 1872 Act') incorporate the aforesaid principle. According to Section 91 of the Act when terms of a contracts, grants or other dispositions of property has been reduced to the form of a documents then no evidence is permissible to be given in proof of any such terms of such grant or disposition of the property except the document itself or the secondary evidence thereof. According to Section 92 of the 1872 Act once the document is tendered in evidence and proved as per the requirements of Section 91 then no evidence of any oral agreement or statement would be admissible as between the parties to any such instrument for the purposes of contradicting, varying, adding to or subtracting from its terms. According to illustration 'b' to Section 92 if there is absolute agreement in writing between the parties where one has to pay the other a principal sum by specified date then the oral agreement that the money was not to be paid till the specified date cannot be proved. Therefore, it follows that no oral agreement contradicting/varying the terms of a document could be offered. Once the aforesaid principal is clear then ostensible sale consideration disclosed in the sale deed dated 24.9.2002 (A.7) has to be accepted and it cannot be contradicted by adducing any oral evidence. Therefore, the order of the Tribunal does not suffer from any legal infirmity in reaching to the conclusion that the amount shown in the registered sale deed was received by the vendors and deserves to be added to the gross income of the assessee-appellant.

5. For the reason afore mentioned this appeal fails and the same is dismissed."

2.15 That the ld. AO by an order of assessment dated 13.11.2019 under Section 143(3) r.w.s. 147 of the Act has quantified and determined the total taxable income as Rs.59,47,820/- + Rs.3,48,500/-. The core addition is

of Rs.59,40,000/-. It is made by ITO, Ward 4(5), Chandigarh.

3. That the assessee being aggrieved by the aforesaid assessment order dated 13.11.2019 prefers first appeal under Section 246A of the Act before Id. CIT(A) who by the impugned order has dismissed the appeal.

4. The assessee being aggrieved by the impugned order has preferred second appeal before this Tribunal and inter-alia has raised following grounds of appeal in Form 36, which are as under :

“1. That on the facts, circumstances and legal position of the case, the Worthy CIT(A), NFAC in Appeal No.CIT(A), Chandigarh-2/ 10409/2019-20 dated 16.08.2021 has erred in passing that order in contravention of the provisions of Section 250(6) of the Income Tax Act, 1961.

2. That on the facts, circumstances and legal position of the case, the Worthy OT(A) has erred in confirming the action of Ld. AO wherein he has erred initiating, continuing and then concluding the impugned assessment u/s 143(3) r.w.s. 147 of the Act.

3. That on the facts, circumstances and legal position of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO wherein he made addition of Rs. 59,40,000/- on account of alleged unexplained investment in purchase of agricultural land even when:

3.1. The appellant never paid any single penny for the property ;

3.2. It was a gift of agricultural land by appellant's husband (Sh. Jaspal Singh) GPA holder of Smt. Balbir Kaur to the appellant ;

3.3. The amount of Rs. 59,40,000/- in sale deed was mentioned just because of stamp duty purposes ;

3.4 *Since no money was exchanged in this transaction, the transfer of land was not a sale transaction.*

4. *That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same."*

4.1 The assessee vide her application dated 22.04.2024 has raised following additional grounds of appeal as legal grounds :

1. *That on facts, circumstances and legal position of the case, Ld. AO, Ward-4(5), Chandigarh wrongly assumed jurisdiction over the appellant without a valid order under Section 127, therefore order under Section 147 passed by ld. AO is without jurisdiction and bad in law.*

2. *That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO of reopening the assessment proceedings u/s 148 even when there existed no tangible material evidence on the basis on which addition has been sustained.*

3. *That on law, facts and circumstances of the case, the impugned assessment order passed u/s 147 deserves to be quashed since the statutory and mandatory approval for re-opening the assessment required u/s 151 was illegal.*

5. **Record of Hearing**

5.1 The hearing in the matter took place before this Tribunal on 24.10.2024 when both the parties i.e. ld. DR for and on behalf of the Revenue and ld. AR for and on behalf of the assessee appeared before us in support of their respective contentions. Both the parties were given equal opportunity and were treated equally.

5.2 The following Paper Book/documents are placed on record of this Tribunal by ld. AR for and on behalf of the assessee :

- i) Paper Book under cover of letter dated 04.03.2022 containing pages from Page No.1 to 46.
- ii) Paper Book under cover of letter dated 08.08.2023 which is compilation of judgements from pages 1 to 75.
- iii) Paper Book under cover of letter dated 10.01.2024 containing further compilation of judgements from pages 76 to 111.
- iv) Paper Book under cover of letter dated 24.10.2024 containing yet another compilation of judgements from pages 112 to 167.
- v) Paper Book Volume II under cover of letter dated 10.01.2024 containing pages 47 to 91.
- vi) Synopsis cum written arguments under cover of letter dated 27.10.2024 from pages 1 to 35.
- vii) A compilation of judgements from pages 36 to 199.

5.3 Per contra, the ld. DR has placed on record of this Tribunal vide letter dated 04.03.2022 a Paper Book containing pages 1 to 81. Copy of SC judgement in case of DCIT (Exemptions) Vs Kalinga Institute of Industrial Technologies page 1-2. A letter dated 25.04.2024

enclosing copy of reply of ITO Ward 2(1) Chandigarh and other papers pages 1 to 8.

5.4 The ld. AR for and on behalf of the assessee inter alia has raised certain legal objections which goes to the root of the matter. The ld. AR has placed reliance on Section 127 of the Act to contend that ld. AO i.e. ITO Ward 4(5) Chandigarh wrongly assumed the jurisdiction in passing the assessment order under Section 143(3) r.w.s. 147 of the Act dated 13.11.2019 without a valid order under Section 127, therefore the assessment order dated 13.11.2019 is without jurisdiction and bad in law. It was contended that the assessee received from her husband an agriculture land vide Sale Deed dated 07.07.2011. The land is situated at village Alamwala, Tehsil Malout, Punjab and it falls in the territorial area of ITO Muktsar, Ward 11(5). Assessee is regularly filing her ITR declaring agriculture income as her only source of income and petty amount of bank interest income which is less than Rs.10,000/- PA. She is permanent resident of Chandigarh at House No.1111, Sector 39B, Chandigarh for last more than 20 years and that she has

been filing her ITRs mentioning this address only. Further, all her proofs like Aadhar Card mentions this address only. The Revenue has filed the PAN jurisdiction history of the assessee and all this shows movement from one AO to another but within Chandigarh only from the year 2008 till date. Notice under Section 148 is dated 27.03.2019 which is issued by Shri LokeshSoni, Income Tax Officer, WardII(5), Muktsar wherein it is stated that her income for 2012-13 has escaped assessment within the meaning of Section 147 of the Act and therefore, it is proposed to assess the income for the said assessment year and for that purpose, she is required to delivery to ld. AO within 30 days from date of service, a return of income in prescribed form for the said assessment year. It is averred therein that notice is issued after obtaining necessary satisfaction of the Principal Commissioner of income Tax, Bathinda. The assessee vide letters received by office of ITO, Ward 11(5) on 22.04.2019 and 02.05.2019 brings it to his notice that she is assessed by ITO 5(1), Chandigarh and attaches her return for assessment year 2012-13 and requests that the

proceedings initiated under Section 148 be transferred to ITO 5(1) Chandigarh who is having jurisdiction over the case. That by letter dated 15.05.2019 ITO Ward-II(5), Muktsar addressed a letter to ITO Ward 4(1) Chandigarh bringing it to his notice under caption - Transfer of Scrutiny Case that case of the assessee is pending for scrutiny under Section 147 and assessee has filed request letter to transfer her case to your goodself, therefore, the assessment record is being transferred to your good office for further necessary action at your end. Thereafter, ITO Ward 4(1) Chandigarh by letter dated 20/21.05.2019 addressed to ITO, Ward 4(5) Chandigarh under caption - Transfer of scrutiny case brings it to his notice that a scrutiny case in respect of Smt. Arunjeet Kaur (assessee) for assessment year 2012-13 is received from ITO, Ward II(5) Muktsar and as per address at the ITO, the territorial jurisdiction lies with your ward. Therefore, the assessment folder is transferred to you for necessary action at your end. Thereafter ITO Ward 4(5) Chandigarh issues notice to assessee by notice dated 11.07.2019 under Section 142(1) of the Income Tax Act,

1961. Thereafter, assessment order dated 13.11.2019 is made.

5.5 Basis above, it is now contended that **the movement of file from one officer to another and then to another was without any order under Section 127** and infact, the Revenue in their own submission has admitted that no such order was passed since in their opinion, no such order under Section 127 was required in this case. It was contended that objection with regard to jurisdiction of ITO, Muktsar within 30 days of issuance of notice under Section 148 dated 27.03.2019 is well within the time prescribed in Section 124(3). Reliance was placed on Sudhir Kumar V/s ITO (Raipur ITAT) 158RPR/2017 dated 17.10.2022 wherein it was held that intimating the non jurisdictional AO about correct jurisdiction amounts to filing of objection as is contemplated under Section 124(3).

5.6 It was also contended that ld. AO i.e., ITO Ward 4(5) Chandigarh totally lacked in jurisdiction to pass the assessment order dated 13.11.2019 under Section 143(3)

r.w.s. 147 of the Act as there was no order on record recording the transfer. Order/letter dated 20/21.05.2019 cannot be construed as order within the meaning of Section 127 of the Act as it is not by competent authority/proper person/officer. Reliance is placed on the order of ITAT Raipur Bench in case of Sarita Jain Vs ITO, ITA No. 260/RPR/2023 dated 24.06.2024. (Raipur ITAT). Reliance was also placed in case of Order of ITAT in case of Rina Hodwani (ITA No.111/RPR/2024) (Raipur ITAT) to demonstrate that order under Section 127 is must in law. Framing assessment order dated 13.11.2019 without there being a valid transfer order within the meaning of Section 127 is bad in law.

5.7 It was also contended that it is not a case where objection against assumption of jurisdiction by non-jurisdictional officer u/s 148 was not filed. It was actually filed as already stated above. Further not only the Ld. ITO Muktsar considered this as objection but also acted there-upon by handing over the file to ITO Chandigarh. Had he not considered the objection, he

would have continued with the proceedings himself. Even in the letter dated 15.05.2019 where he is handing over the file to ITO Chandigarh, he specifically mentions the request letter of assessee. Therefore, the objection u/s 124(3) was on record. However, the Ld. AO, Muktsar erred here also. Once objection on jurisdiction was filed by assessee, as per s. 124(2), the AO, as per s. 124(4), had no choice but to refer the matter to the jurisdictional Commissioner for appropriate directions u/s 124(2) and then the Commissioner or Chief Commissioner was to decide about the correct jurisdiction and if required, to initiate proceedings u/s 127 for transfer of jurisdiction from earlier AO to the new proposed AO. However, in this case none of this activity was ever done by the Ld. AO and also not even by the jurisdictional PCIT **which is in complete violation of Sec 124(2) and also of Section 127**. Therefore, the notice u/s 148 issued by Non-jurisdictional Officer at ITO, Muktsar deserves to be quashed.

5.8 It was further contended that ITO, Muktsar functions under the **jurisdiction of PCIT, Bathinda and**

CCIT Amritsar whereas ITO, Chandigarh functions under PCIT-2, Chandigarh and PCCIT, Chandigarh. This shows that the AO at Muktsar and AO at Chandigarh functions under different Superiors and further the cities of both the AOs are also different and almost 250 kms apart. Therefore, as mandated u/s 127(1)/(2), before transferring the file from AO Muktsar to Chandigarh, assessee must have been issued show-cause notice for transfer of proceedings by PCIT, Bhatinda and after considering the reply of assessee, appropriate order u/s 127 should have been passed for transferring the jurisdiction to ITO, Chandigarh, But none of this was ever done and AO himself assumed the powers u/s 127 of PCIT and without any show-cause and proceedings u/s 127, he himself transferred the file to ITO, Chandigarh. It is also pertinent to mention here that though assessee requested to transfer the file to Chandigarh since she is residing in Chandigarh, but never gave any undertaking to the **AO to not follow the procedure u/s 127 and/or s. 124(2). Further, the request letter of assessee could not have been taken**

in a manner by the AO that it would give him powers of PCIT u/s 127 and absolve him of his duties u/s 124(2). Therefore, the transfer of file by AO himself without conduct of any proceedings u/s 127 by PCIT was bad in law, hence, **the subsequent AOs have received illegal jurisdiction and illegally, conducted the proceedings and hence the impugned assessment order deserves to be quashed.** A simple letter regarding transfer of files from one AO to another will not automatically mean that jurisdiction is transferred. Reliance was placed on the decision of Delhi High Court Order in case of Sunworld Infrastructure Pvt. Ltd. WP No.1741/2015. Reliance was placed on ITAT Delhi order in case of **ITO Vs Krishna Kumar Gupta reported in 16 DTR 1.**

5.9 It was also contended that further ITO, Muktsar handed over the file to ITO Ward 4(1), Chandigarh without any proceedings u/s 127. Same is the case in the handing over the file by ITO, Ward 4(1) to ITO Ward 4(5), Chandigarh without any order u/s 127. **Further, even as per department's own submission at DPB-2**

Page 8 on PAN history, ITO Ward 4(5) got PAN of assessee on 11.10.2019 whereas he issued notice u/s 143(2) on 12.07.2019. This also shows that on date of issuance of statutory notice u/s 143(2), the ITO, Ward 4(5), Chandigarh, who ultimately passed the impugned assessment order, on the strength of said notice u/s 143(2), did not have valid jurisdiction, which he got much later by transfer of PAN, but without any order u/s 127. Therefore, not just the jurisdiction of ITO, Ward 4(5), Chandigarh is bad but also that the notice u/s 143(2) issued by him is illegal since without having jurisdiction on that date and hence the entire proceedings and the impugned assessment order deserves to be quashed. Reliance was placed on order of ITAT Raipur in case of L L Logistics Pvt. Ltd. Vs. ITO, ITA No. 384/RPR/2024 (Raipur ITAT) dated 21.10.2024.

5.10 It was finally contended on issue of transfer under Section 127 of the Act that the transfer of jurisdiction from ITO, Muktsar to ITO, 4(1), Chandigarh and then to ITO, 4(5), Chandigarh is bad.

Further, the notice u/s 143(2) by ITO, 4(5) Chandigarh is also bad since he did not have jurisdiction on the date of issuance of notice u/s 143(2) and also, he assumed jurisdiction without any order u/s 127. Therefore, the proceedings as well as impugned order deserves to be quashed.

5.11 It was next contended by the ld. AR that for purposes of proceedings under Section 147/148 the reasons recorded are **undated**. Reliance was placed on the judgement of Hon'ble Punjab & Haryana High Court in case of PCIT Vs Prahlad Singh (P&H HC) (ITA 91 of 2009) wherein the re-assessment was quashed as reasons recorded were **not dated**.

5.12 It was next contended by the ld. AR that the approval granted by PCIT, Bhatinda under Section 151 of the Act is mechanical in nature. He has simply put his signature on already typed material. It was contended that such type of approval are mechanical, casual ritualistic and hence not in terms of Section 151 and basis such type of reasons, the entire assessment order

deserves to be quashed. Reliance was placed on judgement of Hon'ble Delhi High Court in case of Capital Broadways Pvt. Ltd. Vs ITO (WP No.4303/2017 dated 03.10.2024).

5.13 It was also contended that from the 'Reasons recorded' it is clear that they are solely on receipt of information from Tehsildar about purchase of property and further that assessee is not filing ITR and that she did not mention PAN while getting the Purchase Deed executed. Reliance was placed on Karnataka High Court judgement in case of Wilfred D' Souza Vs ITO reported in 114 CCH 167.

5.14 The ld. AR contended that not even a single query letter was issued by AO to the assessee before issuance of notice under Section 148. Had he issued that enquiry notice before starting 148 proceedings, perhaps the issue of jurisdiction as well as source of purchase of property would have become clear to him. In result and in process, there is action under Section 148 basis receipt of information from Tehsildar, incorrect fact of filing of ITR.

Reliance was placed on Hon'ble P&H High Court in case of CIT Vs Paramjit Kaur 311 ITR 38.

5.15 Per contra, during the course of the hearing, the ld. DR for and on behalf of the Revenue inter alia has contended before us that basis written submissions which we reproduce below :

Brief facts of the case are that the assessee is an individual, who filed her ITR for A.Y. 2012-13 on 13.10.2012, declaring total income at Rs. 7,820/- besides agricultural income of Rs. 3,48,500/-. During the F.Y 2011-12 relevant to A.Y 2012-13, assessee has purchased immovable property measuring 72 Kanal in village Alamwala, Distt. Malout for a total consideration of Rs. 59,40,000/- from Smt. Balbir Kaur D/o Smt. Bagawd/o Sh. Kishan Singh R/o Village Gadadobh, Tehsil Abhor, Distt. Ferozepur. The assessee had not furnished her PAN detail to the Tehsildar, Malout, while purchasing property and the name of the assessee was listed in the Non-PAN (purchase of property exceeding Rs. 30 lakhs) cases. Based on this information the Assessing Officer applied his mind and conducted further enquiries whereby it was noticed that this transaction was not reflected in the ITR filed by the assessee in A.Y 2012-13.

On the basis of the above, proceedings u/s 147 of the Income Tax Act, 1961 were reopened/initiated in this case by the ITO, W-II(5), Muktsar. As per jurisdiction, the case was transferred to the office of the ITO, 4(1), Chandigarh on 15.08.2019 and after that the same was transferred to the O/o ITO, W-4(5), Chandigarh who has completed the assessment proceedings u/s 143(3)/147 on 13.11.2019 at a total Income of Rs. 59,47,820/-. An addition of Rs. 59,40,000/- was made on account of unexplained investment in the purchase of property during the A.Y 2012-13.

2. The Assessing Officer has reopened the case u/s 147 of I.T. Act, 1961 after obtaining the necessary approval from the office of the Worthy Pr. Commissioner of Income Tax, Bathinda and after following the due procedure as prescribed in the I.T. Act, 1961. Relevant facts with regard to the reopening proceedings viz-a-viz

issuance and service of Notice u/s 148 of the I.T. Act, 1961 are discussed as under in order to prove that due procedure was followed by the Assessing Officer in initiating the proceedings u/s 147 of the I.T. Act, 1961 :-

(i) Before issuance of Notice u/s 148 of the I.T. Act, 1961 proper reasons for initiating proceedings u/s 147 of the I.T. Act, 1961 were duly recorded by the Assessing Officer, i.e. Income Tax Officer, Ward-2(5) Muktsar which are placed at page 10 of the Paper Book.

(ii) The necessary approval, before the issue of Notice u/s 148 was duly obtained in writing from the office of the Pr. Commissioner of Income Tax, Bathinda vide letter F.No. Pr.CIT/BTI/Tech/4/2018-19/3752 dated 26.03.2019. The necessary evidence of the approval obtained in the requisite proforma is placed at page numbers 11-14 of the Paper Book.

(iii) Notice u/s 148 of I.T. Act, 1961 was issued by Income Tax Officer, Ward-II(5), Muktsar on 27.03.2019. The said notice was duly served upon the assessee through notice server on 28.03.2019 as well as by SpeedPost on 29.03.2019 which are placed at page 15-16 of the Paper Book.

(iv) In compliance of notice u/s 148 of I.T. Act 1961, the assessee had submitted copy of her ITR for the A.Y. 2012-13 filed on 13.10.2012 in response to notice u/s 148 of the Act. Thereafter, notice u/s 143(2) and 142(1) of the Income Tax Act, 1961 along with questionnaire was issued on 11.07.2019 which was duly served upon the assessee through Notice server on 12.07.2019, which is placed at page 17-18 of the Paper Book.

3. Aggrieved with the order of the Assessing Officers, the assessee filed an appeal before the Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi. The NFAC, Delhi in appellate order u/s 250 of I.T. Act 1961 bearing DIN & Order No. ITBA/NFAC/S/250/2021-22/1034889,518(l) dated 16.08.2021 has dismissed the appeal of the assessee.

4. Against the order dated 16.08.2021 of the Ld. CIT(Appeals) NFAC, Delhi, the assessee has filed second appeal on 13.10.2021 before the Hon'ble ITAT, Chandigarh with following Grounds of Appeal, which are discussed as under:

1. "That on the facts, circumstances and legal position of the case, the Worthy CIT(A), NFAC in appellate order dated 16.08.2021 has erred in passing that order in contravention of the provisions of Section 250(6) of I.T. Act 1961."

The ground of appeal No. 1 is general in nature.

2. *"That on the facts, circumstances and legal position of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO wherein he has erred initiating, continuing and then concluding the impugned assessment u/s 143(3) rws 147 of the Act."*

5. *With regard to Ground of appeal No'. 2, relating to reopening of the assessment u/s 147 of the Income Tax Act 1961, it is observed that Assessing Officer has duly examined the material/information available on record and after recording his satisfaction, reopening proceedings were initiated as per the provision of the Income-Tax Act 1961. The discussion made in para 1 & 2 above are relevant herewith. This Ground of Appeal is factually incorrect, as proper reasons for initiating proceedings u/s 147 of the I.T. Act, 1961 were duly recorded by the Assessing Officer i.e. Income Tax Officer, Ward 11(5) Muktsarand after approval of the competent authority re-assessment was finalized. In this regard, reliance is placed on the following cases:*

1. *ACIT vs M/s Kisco Casting (P) Ltd., ITA No. 685/CHD/2011, wherein it was held by the Hon'ble ITAT, Chandigarh Bench that:*

"where the information is factual and not false one and the same has merely been communicated to the AO, he would be within his statutory right to invoke the provisions of Section 147 read with section 148 of the Act".

2. *Rajat Export Import India Pvt. Ltd. vs ITO wherein it was held by the Hon'ble High Court of Delhi that:*

"it is also well settled that at the stage, that is at the stage when reasons are recorded for reopening the assessment, the Assessing Officer is not required to build a fool proof or a fort like case for making addition to the assessee's income, all that he is required at that stage is to form a prima facie opinion or belief that income has escaped assessment."

Copy of the above two judgments is placed at pages 19-56 of the paperbook.

During the course of re-assessment proceedings due opportunities were given to the assessee for furnishing information, details of which are as under :-

1. *Notice u/s 142(1) of the I.T. Act, 1961 dated 11.07.2019 was issued for furnishing information by 17.07.2019.*

II. Notice u/s 142(1) of the I.T.Act, 1961 dated 02.08.2019 was issued for 09.08.2019.

III. Notice u/s 142(1) of the I.T.Act, 1961 dated 29.08.2019 was issued for 06.09.2019.

IV. Notice u/s 142(1) of the I.T.Act, 1961 dated 15.10.2019 was issued for 18.10.2019.

V. Show Cause notice dated 30.10.2019 was issued to the assessee for compliance by 05.11.2019.

Copy of notices issued u/s 142(1)/show-cause notice issued are placed at pages 57-63 of the paper book.

6. From the above it is evident that the Assessing Officer has not only given proper opportunities to the assessee during the assessment proceedings rather show cause was duly issued before the completion of the re-assessment. In view of the same there is no error on the part of the Assessing Officer in initiating, continuing & concluding the assessment proceedings u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961. Hence the ground of appeal raised by the assessee is not acceptable.

GoA 3-"That on the facts, circumstances and legal position of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO wherein he made addition of Rs. 59,40,000/- on account of alleged unexplained investment in purchase of agricultural land even when:

3.1 The appellant never paid any single penny for the property.

3.2 It was a gift of agricultural land by appellant's husband (Sh. Jaspal Singh) GPA holder of Smt. Balbir Kaur to the appellant.

3.3 The amount of Rs. 59,40,000/- in sale deed was mentioned just because of stamp duty purposes.

3.4 Since no money was exchanged in this transaction, the transfer of land was not a sale transaction."

7. With regard to Ground of appeal No. 3, relating to confirming the addition of Rs. 59,40,000/- made by the AO on account of alleged unexplained investment in purchase of agricultural land it is evident from the assessment made by the AO that the assessee had purchased an immovable property vide sale deed dated 07.07.2011 for total consideration of Rs. 59,40,000/-. The plea of the assessee was that the entire transaction merely took place because of family settlement and her (assessee's) name was only used for namesake, she never paid any money for purchase of land in question. The assessee further submitted that land belonged to

Late Smt. Balbir Kaur, who in her lifetime issued GPA to Sh. Jaspal Singh (husband of the appellant) and no money was exchanged between Sh. Jaspal Singh, Smt. Balbir Kaur and the assessee Smt. Arunjeet Kaur. However, the AO was not convinced with the assessee's explanation. A show-cause notice dated 30.10.2019 was issued to the assessee to explain the source of payment of Rs. 59,40,000/- as mentioned in the sale deed dated 07.07.2011. The assessee did not file any reply in response to the show-cause notice. The AO mentioned in the assessment order that the sale deed is the registered document, wherein, it is clearly mentioned that the assessee had paid Rs. 59,40,000/- to Sh. Jaspal Singh GPA holder of Late Smt. Balbir Kaur. When Smt. Balbir Kaur in her lifetime issued a General Power of Attorney dated 09.02.2010 in favour of her nephew Sh. Jaspal Singh, then what was the need to transfer this property again in the name of wife of Sh. Jaspal Singh. Vide GPA dated 09.02.2010, Sh. Jaspal Singh got only right to negotiate and sell this property on behalf of Smt. Balbir Kaur and he did not get ownership of the said land, that proves that the actual owner till the execution of sale deed dated 07.07.2011 was Smt. Balbir Kaur. As regards the assessee's claim, that Smt. Balbir Kaur wanted to transfer this land to Sh. Jaspal Singh, if that was her will, she could have transferred this land by way of gift deed in favour of Sh. Jaspal Singh instead of just issuing a GPA in his favour. Otherwise also, the assessee had not produced any will of Smt. Balbir Kaur establishing that the land in dispute was to be transferred to Sh. Jaspal Singh. Therefore, the Ground of Appeal raised by the assessee is not acceptable.

7.1 As regard the Ground of Appeal No. 3.1 and 3.4 on assessee's claim that the assessee never paid any single penny for the property and that no money was exchanged amongst Smt. Balbir Kaur, Sh. Jaspal Singh or Smt. Arunjeet Kaur (the assessee), the AO in his assessment order has mentioned that it is clearly mentioned in the sale deed that Rs. 59,40,000/- was exchanged between Smt. Arunjeet Kaur and Smt. Balbir Kaur through GPA holder Sh. Jaspal Singh. Smt. Balbir Kaur had sold the land and received Rs. 59,40,000/- as per registered sale deed through Sh. Jaspal Singh, GPA holder. This only goes to establish that money was exchanged between Smt. Balbir Kaur and the assessee Smt. Arunjeet Kaur. Therefore, this Ground of Appeal is not acceptable. Thus, this ground of appeal of the assessee may kindly be dismissed.

7.2 As regard the Ground of Appeal No. 3.2 on assessee's claim that it was a gift of agricultural land by assessee's husband (Sh. Jaspal Singh) GPA holder of Smt. Balbir Kaur to the assessee, no documentary evidence such as gift deed has been produced by the

assessee to prove the statement. Therefore, this Ground of Appeal is not acceptable and may kindly be dismissed.

7.3 As regard the Ground of Appeal No. 3.3 on assessee's claim that Rs. 59,40,000/- was only mentioned in the sale deed for stamp duty purpose, law does not require from the parties to accept stamp duty value as sale/purchase consideration. The sale/purchase would be the value which negotiates between the seller and purchaser party. Both the parties had right to write or incorporate a clause mentioning that no money is being exchanged on this transfer and value mentioned in the sale deed is for stamp duty purpose only. But no such clause has been incorporated by the parties. That again goes to establish that certainly money was exchanged between the parties. Ld. CIT(A) has relied on the decision of Hon'ble P&H High Court in the case of Sh. Paramjit Singh vs. ITO(2010) 323 ITR 588. The fact of present case is almost identical to that of the case of Paramjit Singh. The facts of the case were that there was a sale deed executed by the assessee's uncles in his favour whereby certain ancestral land was transferred to the assessee, said sale deed reflected payment of sale consideration which was accepted by the registration authority for the purpose of stamp duty, the assessee, however claimed that his uncles had executed sale deed without any consideration and the value of the land mentioned in the sale deed was only the reserve price fixed by the Government for charging stamp duty, the Assessing Officer, however, held that the sale consideration reflected in the sale deed was to be added to the income of the assessee as unexplained investment. On appeal to the Commissioner (Appeals), the assessee filed affidavits by the vendors wherein they stated that no sale consideration had passed hands and they had relinquished their share in the landed property; and that the object of executing sale deed was only to handover landed property to the assessee as they were well-settled in the UK since 1960s and 1970s. The Commissioner (Appeals) accepted the version of the assessee and deleted addition made by the Assessing Officer. On the revenue's appeal, the Tribunal upset the order of the Commissioner (Appeals) and restored the order of the Assessing Officer. On further appeal to P&H High Court, the Hon'ble Court held as under:

"It is a well-known principle that no oral evidence is admissible once the document contains all the terms and conditions. Section 91 and 92 of the Indian Evidence Act, 1872 incorporate the aforesaid principle. According to section 91, when terms of a contract, grants or other dispositions of property have been reduced to the form of documents, then no evidence is permissible to be given in proof of any such terms of such grant or disposition

of the property except the document itself or the secondary evidence thereof. According to section 92, once the document is tendered in evidence and proved as per the requirements of section 91, then no evidence of any oral agreement of statement would be admissible as between the parties to any such instrument for the purposes of contradicting, varying, adding to or subtracting from its terms. Therefore, it follows that no oral agreement contradicting/varying the terms of a document can be offered. Once the aforesaid principal is clear, then in the instant case, ostensible sale consideration disclosed in the sale deed had to be accepted and it could not be contradicted by adducing any oral evidence. Therefore, the order to the Tribunal did not suffer from any legal infirmity in reaching to the conclusion that the amount shown in the registered sale deed was received by the vendors and deserved to be added to the gross income of the assessee. [Para4]"

Copy of the judgment is placed at Pages 64-70 of the Paper Book. Reliance is also placed on the case of Mahendri Devi vs. ITO [2017] 88 taxmann.com 29 (Delhi-Trib.) wherein the Hon'ble SMC Bench held that when assessee claimed that as per family settlement, property was transferred in her name without monetary consideration but sale deed clearly showed that assessee had paid consideration in cash, said investment of assessee be treated as unexplained investment. In the said judgment, the Hon'ble Tribunal held that when sale deed on record which clearly shows that assessee has paid consideration to the seller/vendor in cash, therefore, subsequent affidavits of deed writer, vendor and witnesses to the sale deed are not relevant and are clearly after thought and have been rightly rejected by the authorities below. Copy of the judgement is placed at pages 71-81 of the Paper Book.

In the instant case, the appellant's claim is only backed by oral statement of its own that in the said transaction of property, no money has been exchanged whereas there is sufficient material which establishes that the value recorded in the document was exchanged between the seller and the purchaser.

8. *In view of the above, it is prayed that the order of the Ld. Commissioner of Income Tax (Appeals) may kindly be upheld and appeal of the assessee may kindly be dismissed."*

The ld. DR vide her letter dated 25.04.2024 has placed on record of this Tribunal a letter dated 24.04.2024 of ITO, Ward 2(1) Chandigarh wherein following is stated:



भारत सरकार / Govt. of India

आयकर विभाग / Income Tax Department

कार्यालय, आयकर अधिकारी, वार्ड 2(1), आयकर भवन, चौथी मंजिल, कमरा नं. 423, सेक्टर 17ई, चण्डीगढ़।

O/o the Income Tax Officer, Ward 2(1), Azvakar Bhawan, 4th Floor, Room No. 423, Sector-17E, Chandigarh.

F. No. ITO/W-2(1)/CHD/2024-25/ 112

Dated 24.04.2024

To

The Income Tax Officer (HQ)
O/o the Commissioner of Income Tax (DR)-2,
ITAT, Chandigarh

Sir,

Subject: Appeal Before Hon'ble ITAT, Chandigarh in the case of Smt. Arunjeet Kaur, # 1111, Sector-39B, Chandigarh (AGOPK7387G) Vs. ITO, Ward 4(5), Chandigarh in ITA No. 280/Chd/2021 for A.Y. 2012-13- Reg-

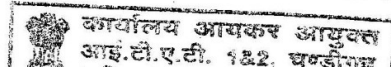
Kindly refer to your Office letter F.No.CIT(DR)-2/ITAT/Chd/2023-24/1029 dated - 07.03.2024 on the above subject.

2. In this regard it is submitted that the case of the assessee was selected for scrutiny as a NON PAN Case for reason and information of purchase of immovable Property of Rs. 59,40,000/- on 07.05.2011, wherein the address was given as - Arunjeet Kaur, Village- Lambi, Tehsil Malout. As no PAN was mentioned in the information, therefore jurisdiction was taken as per address of the assessee which was with ITO, Ward II(5), Muktsar.

3. Thereafter, Notice u/s 148 of Income Tax Act, 1961 dated 27.03.2019 (without mentioning any PAN) was served to the assessee on the address as below:

Smt Arunjeet Kaur
W/o Sh. Jaspal Singh
Village: Allamwala
Tehsil Malout

4. In response to above said Notice assessee vide letter dated 22.04.2019 and then 02.05.2019 requested to transfer of her case to ITO, Ward 5(1) Chandigarh who is having jurisdiction over the case. Assessee also mentioned the PAN in both the letters i.e. AGOPK 7387G. (copy of letters enclosed)



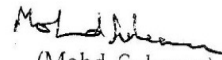
5. On the request of the assessee, the record and proceedings in the case were transferred to ITO, Ward 4(1), Chandigarh who was the custodian of the PAN vide letter No. ITO/W-II(5)/59 dated 15.05.2019. However, as per the address of the assessee the jurisdiction was with the ITO, Ward 4(5), Chandigarh. Therefore the record and proceedings were transferred by ITO, Ward 4(1), Chandigarh to ITO, Ward 4(5) Chandigarh vide letter F.No. ITO/W-4(1)/2019-20/806 dated 21.05.2019.

6. In view of the above it is derived that the PAN was always in the jurisdiction of Pr. CIT-Chandigarh and has never been transferred out or transferred in from any other place therefore No Order u/s 127 of Income Tax Act, 1961 was required to be passed in this case. Therefore as the PAN was not transferred to, from one PCIT Charge to another PCIT Charge, no order u/s 127 of Income Tax Act, 1961 was required to be passed.

7. Jurisdiction was taken as a NON PAN Case, first by ITO, Ward II(5), Muktsar as per address of the assessee mentioned in the information / document of purchase of immovable property and thereafter case was transferred to Chandigarh on the request of the assessee also as PAN/ address jurisdiction of the case. Jurisdictional History of PAN as per ITBA System is enclosed herewith.


Submitted for kind perusal and further necessary action.

Yours faithfully,


(Mohd. Suleman)

ITO, Ward 2(1), Chandigarh

Copy for kind information to :
The Addl. CIT, Range-1, Chandigarh


(Mohd. Suleman)
ITO, Ward 2(1), Chandigarh

5.16 The ld. DR has placed reliance on the judgement of the Hon'ble Supreme Court reported in (2023) 151 taxmann.com 434 (S.C.) in case of Dy. CIT (E) V/s Kalinga Institute of Industrial Technology.


6. **Findings and Conclusions**

6.1 We now have to decide legality, validity and propriety of the impugned order.

6.2 We at the outset and at the threshold deal with the legal issues which are now urged before us in view of **the judgement of Hon'ble Apex Court in case of NTPC Vs CIT reported in (1998) 229 ITR 383 wherein it has been held that question of law arising from the facts found by the Income Tax Authorities and having a bearing on tax liability of the assessee even if raised for the first time before Tribunal, this Tribunal has jurisdiction in law to decide such question by virtue of power conferred on us by virtue of Section 254 of the Act. The legal questions which are now raised before us arise out of facts found by ld. AO and ld. CIT(A).**

6.3 We first deal with the legal question whether transfer of case by Income Tax Officer, Ward 4(1) Chandigarh to the Income Tax Officer, Ward 4(5) Chandigarh by virtue of letter dated 20/21.05.2019 and prior to that by ITO Ward-II(5), Muktsar to ITO Ward 4(1) Chandigarh by letter dated 15.05.2019 is in accordance with the provision of Section 127 of the Act ?

The contents of the aforesaid letter is reproduced below :


 GOVERNMENT OF INDIA
 MINISTRY OF FINANCE,
 INCOME TAX DEPARTMENT
 Office of the Income Tax officer, Ward-II(5),
 BSNL Building, Railway Road, Muktsar, Ph. 01633-261680

No. ITO/W-II(5)/ 59 Dated 15th May, 2019.

To

Income Tax Officer,
Ward 4(1),
Chandigarh.

Sir,

Sub:- Transfer of Scrutiny Case - Regarding -

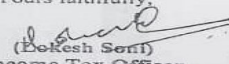
Please refer to the above subject

2.1 In this regard it is submitted that the below mentioned cases pending for scrutiny u/s 147, assessee has filed request letter to transfer her case to your good self. Therefore the assessment record is being transferred to your good office for further necessary action at your end.

Sr. No.	PAN	Name & address of Assessee	A.Y
1	AGOPK7387G	SMT. ARUNJEET KAUR W/O SH. JASPAL SINGH VILLAGE ALLAMWALA, TEHSIL MALOUT	2012-13

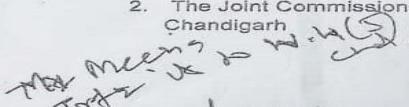
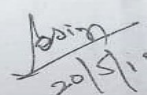
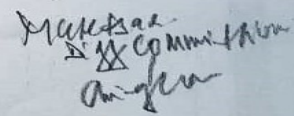
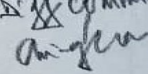
2.2 This case is barred by time limitation on 31.12.2019.

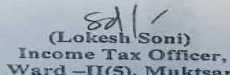
3. Please acknowledge the receipt.

Yours faithfully,

(Lokesh Soni)
Income Tax Officer,
Ward -II(5), Muktsar.

Encl:- Assessment record 1 Vol.

1. The Joint Commissioner of Income Tax, Range-II, Bathinda for information.
2. The Joint Commissioner of Income Tax, 6th floor, Room No.611,Sec-17E, Chandigarh.


 (Lokesh Soni)
 Income Tax Officer,
 Ward -II(5), Muktsar.

F-.NO: ITO/W-4(1)/2019-20/806

Dated: 20/21.05.2019

To,

The Income Tax Officer,
Ward- 4(5), Chandigarh.

Madam,

Sub: Transfer of Scrutiny Case- Regarding-
Please refer to the subject cited above.

In this regard, it is submitted that scrutiny case in respect of Smt. Arujneet Kaur S/o Sh. Japal Singh for the A.Y 2012-13 received from Income Tax Officer, Ward-II(5), Muktsar. As per address at the ITR, the territorial jurisdiction lies with your ward. Therefore, the assessment folder is transferred to you for necessary action at your end. This is time barring case. Time barring date is 31.12.2019.

Yours faithfully,

Sd/-

(Balraj Singh)

Income Tax

Office

Encl: As above Ward4(1), Chandigarh

Copy to:-

1. The Joint Commissioner of Income Tax, Range-II, Bathinda for information.
2. The Joint Commissioner of Income Tax, Range-4, Chandigarh.
3. The Income Tax Officer, Ward-II(5), Muktsar w.r.t. your office letter No. 59 dated 15.05.2019 on the subject cited above.

(Balraj Singh)

Income Tax

Office

Ward 4(1), Chandigarh.

Prior to the issue of above letters, the assessee vide her counsel letter addressed to **ITO, Ward 11(5) Muktsar**

received by him on 22.04.2019 had written as under :

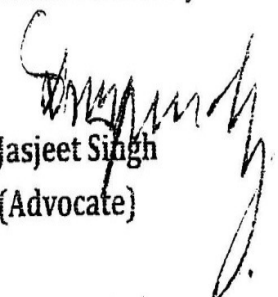
Income Tax Officer
Wards II (5), Muktsar

Dear Sir,

Reg: Smt. Arunjeet Kaur w/o Mr. Jaspal Singh s/o Mr. Chand Singh village Allamwala, Tehsil Malot, now house no. 1111 sector 39 B, PAN No. AGOPK7387G. Mobile no. 9814709199

Please refer to your notice in above case. In this regard it is informed that assessee is being assessed by Income Tax Officer 5(1) Chandigarh. Copy of ITR return of a/y 2012-13 is attached. It is requested proceeding initiated u/s 148 be transferred to Income Tax Officer 5(1) Chandigarh who is having jurisdiction over the case.

Thanking You
Yours Faithfully


Jasjeet Singh
(Advocate)

22 APR 2019

And by letter received by ITO, Ward II(5) Muktsar on 02.05.2019 had written as under :

INCOME TAX OFFICER

WARD II (5), MUKTSAR

DEAR SIR,

REG: Smt. Arunjeet Kaur w/o Mr. Jaspal Singh s/o Mr. Chand Singh village Alamwala, Tehsil Malout, now house no. 1111 sector 39 B, PAN NO AGOPK7387G.

Please refer to your notice in above case. In this regard it is informed that I (Arunjeet kaur) am being assessed by Income Tax office 5 (1) Chandigarh. Copy of ITR return of a/y 2012 -13 is attached. It is requested proceeding initiated u/s 148 be transferred to Income Tax officer 5(1) Chandigarh who is having jurisdiction over the case.

Thanking you

Yours Faithfully

Arunjeet Kaur
Arunjeet Kaur
Mob: 9814709199



6.4 We say that Section 127 of the Act deals with power to transfer cases which we reproduce as below :

[Power to transfer cases

127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner 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.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal

Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,-

(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred 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, pass the order;

(b) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation. In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

6.5 A bare simple perusal of the above Section makes it crystal clear that power to transfer cases is conferred on few senior officers of the Department of Income Tax i.e. PDGIT or DGIT or PCCIT, or CCIT or PCIT or CIT and that too 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**. Section 127(1) thus deals with transfer of case **within jurisdiction** to Assessing Officers subordinate to such senior officers but they **should be well within their jurisdiction**.

6.6 In cases where the Assessing Officer or Assessing Officers **from whom** the case is to be transferred and the Assessing Officer or Assessing Officers to **whom the case** is to be transferred **are not subordinate to the same** PDGIT or DGIT or PCCIT or CCIT or PCIT or CIT :-

(a) Where the PDGIT or DGIT or PCCIT or CCIT or PCIT or CIT **to whom** such Assessing Officers are subordinate **are in agreement** then the PDGIT or DGIT or PCCIT or CCIT or PCIT or CIT from whose jurisdiction

the case is to be transferred 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, **pass the order.**

(b). If above senior officers are **not in agreement** the order transferring the case may be passed by Board or any officer as aforesaid as board may in official gazette **authorize** in this behalf.

Section 127(2) thus deals with a transfer of case outside jurisdiction subject to agreement/concurrence of concerned jurisdictional superior officer and in event of **not in agreement/no concurrence, by such superior officer** then the power is vested to Board or such senior officer authorized by Board by notification in official gazette.

6.7 By virtue of 127(3) provisions of Section 127(1) and (2) **shall not apply** for opportunity only where transfer is from one AO to any other AO where offices of all such AO are situated in **same city, locality or place.**

6.8 It is also required to be noted and appreciated that transfer of a case under sub Section (1) and (2) may be made **at any stage of the proceedings** and shall not render necessary the re-issue of any notice already issued by AO or AOs **from whom the case is transferred.**

6.9 We note that with regard to applicability of Section 127, the ld. DR has contended that PAN was always in the jurisdiction of **PCCIT Chandigarh** and has never been transferred out or transferred in from any other place, therefore, no order under Section 127 of the Income Tax Act, 1961 was required to be passed in this case. Therefore, as the PAN was not transferred to from one PCIT charge to another PCIT charge, no order under Section 127 of the Income Tax Act, 1961 was required to be passed. The initial jurisdiction was taken as Non PAN case first by ITO, Ward II(5) Muktsar as per address of the assessee mentioned in the information/document of purchase of immovable property and thereafter, the case was transferred to Chandigarh on the request of the

assessee. [letter of DR dated 25.04.2024 DPB II Page 2&3].

6.10 We also note that in synopsis filed, it is averred that she is regularly filing her ITR. She is permanent resident of Chandigarh at House No.1111, Sector 39-B, Chandigarh, for past more than 20 years and she had been filing her ITRs mentioning **this address only**. Further, all her proofs like Aadhar Card also mentions this address only. It is also averred basis PAN history of the assessee that all movement from one AO to another AO has taken place within Chandigarh only from the **year 2008 till date**.

6.11 We are of the considered view that the stipulation that a PAN is mandatory for transaction involving purchase of land underscores a crucial regulatory measure. This requirement is rooted in the imperative to curb instances of land fraud and the creation of counterfoil arrangements thus bolstering the transparency and integrity of property transaction. PAN serves as a critical element in the documentation of such

transactions. This measure acts as a deterrent against fraudulent practices and ensure that the financial aspects of land dealings are appropriately recorded and monitored. The rationale behind this mandate lies in the recognition that land transactions often involves substantial financial transactions. By linking these land transactions to PAN numbers, the authorities aim to create a tenable and verifiable record of such dealings. This not only facilitates effective monitoring by tax authorities but also acts as a safeguard against illicit practices such as land fraud and the creation of fraudulent property arrangements. Therefore, to control any fraudulence as well as widen tax base PAN is must. Hence, any property/dealing exceeding Rs.10 lakh is just not possible without seller and buyer quoting their PAN cards. In realm of property transactions both buyer and seller are obligated to furnish their PAN card numbers. This step ensures a transparent and tenable record of financial involvement in property dealings ensuring the identity of parties involved is a foundational step in property registration in process. PAN ensures to

authenticate the individuals participating in transactions contributing to the overall legitimacy and security of process. Witness identification proof, PAN are foundation for property transactions. It aids property/land in question.

6.12 Cash transactions are often used to evade taxes as they are hard to trace compared to digital transactions. Transaction more than a specified amount without PAN ID declaration comes under this.

6.13 We after analyzing the aforesaid are of the considered view that in law power to transfer the case under Section 127 is conferred upon the senior functionaries of the income Tax Department i.e. PDGIT or DGIT or PCCIT or CCIT or PCIT or CIT in a prescribed manner. In the instant case, power is exercised by ITO Ward-II(5), Muktsar vide letter dated 15.05.2019 (supra) and later by ITO Ward 4(1) Chandigarh. The case was finally transferred to ITO Ward 4(5) Chandigarh vide letter dated 20/21-05-2019 (supra). We, therefore, hold that prescribed authority i.e. senior officers of the

Department of Income Tax has not exercised the power of transfer within the meaning of Section 127 consequently the issue of transfer **even though triggered at the instance of assessee by letter dated 22.04.2019** (supra) and by letter dated 02.05.2019 (supra) ought to have gone through the **rigors of 127 of the Act as powers are conferred on superior officers. We hold that while the transfer is effected as per say of the assessee, it lacks statutory teeth and assessee has rightly agitated the same before us as and by way of a legal issue.** We also hold that assessee issues comes within the mischief of word 'case' as notice under Section 148 dated 27.03.2019 was issued to assessee by ITO Ward-II, Muktsar wherein there was a **direction to deliver a return** of income for **assessment year 2012-13** [page 15 of synopsis Paper Book]. Further the **expression 'case'** appearing in Explanation to S. 127 is word of wide connotation in a sense that it includes all proceedings under this Act which may pending, commenced, completed on or after the date of such order or direction in respect of any year.

6.14 Basis above, we hold that letter of transfer dated 15.05.2019 and 20/21.05.2019 even though is as per assessee's letters dated 22.04.2019 and 02.05.2019 to correct and competent Assessing Officer who has finally passed the impugned assessment order dated 13.11.2019 lacks statutory compliance under Section 127. **We simultaneously hold that by virtue of provision contained in Section 139A(5)(c) read with Rule 114B it was just incumbent upon the assessee to have disclosed her PAN number while executing the purchase transaction of immovable property. Failure to do so after all is subject to 272B of the Act and other serious legal consequences.** We further hold that immediately after receipt of statutory notice under Section 148 of the Act assessee has rightly set in motion appropriate Section of law relating to transfer of cases and it was **the duty of ITO Muktsar to have brought the same** to the notice of his superior officers to set in motion provisions of Section 127 **which unfortunately has not happened.** Consequently there is no valid order of transfer under Section 127 **which law of the land**

contemplates in transfer of cases. We have no hesitation to hold that both ITO, Ward II (5), Muktsar by letter dated 15.05.2019 (supra) and ITO Ward-4(1) Chandigarh usurped the power of their senior officers superior in rank, by transferring the case of the assessee **in a manner not known to law.** It is transfer of **case simplicitor** and not a **transfer of case as per provisions of Section 127 of the Act.** If transfer of a **case simplicitor as has happened in the present appeal then there would be enough leeway in the hand of each and every assessing officer to effect the transfer of case from one to another within or outside jurisdiction by keeping superior officers (of the Department of Income Tax who have been given express power by the statute) both within and outside their jurisdiction in dark.** The assessee herein had triggered the process of transfer by raising the objection and never had restrained the assessing officer to follow the due process of law under **section 127 of the Income Tax Act, 1961.** We concur with the order of ITAT Raipur Bench in ITA No. 158/RPR/2017

dated 17.10.2022 in case of Sushil Kumar Agarwal Vs ITO, in case of Sarita Jain V/s ITO ITA No.260/RPR/2023 dated 24.06.29024 Raipur ITAT and in case of Rina Kodwani in ITA No.111/RPR/2024 (Raipur ITAT) wherein it has been held that for transfer of a case there has to be a valid order of transfer as per Section 127 of the Act. No valid order of transfer is produced before us. Consequently transfer to ITO Ward 4(5) Chandigarh is bad in law and we hold that since assessment order impugned in this appeal is not as per Section 127 **protection of Section 127(4) is not available to the Revenue.** Consequently notice under Section 148 is bad in law which was issued by ITO Muktsar on 27.03.2019. No fresh notice was issued by ITO Ward 4(5) Chandigarh under Section 148. Consequently all subsequent proceedings are bad in law and illegal. Had there been a valid order of transfer within the meaning of Section 127 perhaps the Revenue would have got protection of section 127(4) of the Income Tax Act, 1961.

6.15 Since we are declaring notice under Section 148 dated 27.03.2019 by ITO Muktsar as invalid and there was no fresh notice under Section 148 by ITO Ward 4(5) Chandigarh, the assessment order is void *ab-initio* even though notice under Section 143(2) dated 11.07.2019 and notice under Section 142(1) dated 11.07.2019 was issued by him. Nobody prevented him from issuing a valid notice under Section 148 afresh nor was there any legal embargo.

6.16 We are at pains to state that the ITO, Ward-2 (5), Muktsar even though expressly requested by two letters (*supra*) that the case be transferred from Muktsar to ITO, Ward-4 (1) Chandigarh and later it was further transferred by him to ITO, Ward-4(5) Chandigarh, slept on the legal procedure to be followed and assumed power / usurped the power which are expressly conferred by the Section 127 only on the superior Officers of Department of Income Tax. The assessee on receipt of notice under section 148 from ITO, Muktsar Ward -II(5) raised the issue of transfer of his case to Chandigarh at the earliest possible opportunity as she was assessed at

Chandigarh since decades and instead of following the due process of law the AO at Muktsar himself assumed the jurisdiction under section 127 and so also AO Ward-4(1) Chandigarh as if they are superior officers of Department of Income Tax who have been expressly given powers under section 127. It is this aspect of the case which the assessee now say is illegal and bad in law and that we concur with the contention of the Ld. AR. We hold that even though the transfer of case was made at the instance of the assessee to AO at Chandigarh but in fact there is no valid order of transfer within the meaning of Section 127. The assessee had simply triggered the due process of law on transfer of case by writing two letters (supra) and it was upto the Ld. AO at Muktsar to have set in motion the due process of law under section 127 but he choose not to do so for reasons best known to him. On this limited aspect we notice an imminent danger in such type of transfers of cases as letter and spirit of law is not followed. And such type of action on part of AO if not curtail by us would lead to usurpation of power leading to chaos in tax

administration as AO's at tip of objection would transfer the cases on their own from one AO to another AO on their own choosing by treating them to be superior Officers of Income Tax Department. In this regard we rely upon the decision of ITAT, Raipur in case of Shri Narendra Kumar Dubey Vs. ACIT, Circle-1(1), Raipur in ITA No. 92/RPR/2024 dt. 28/06/2024 wherein in para 13 the following conclusion and observation are as under:

13. Respectfully following the interpretation of law by Hon'ble Apex Court, Hon'ble Calcutta High Court and the view taken by ITAT, Raipur (supra), it is the mandate of law that for transfer of case from one Assessing Officer to another (whether with or without concurrent jurisdiction) having offices situated in the same city, locality or place, an order of transfer u/s 127(1) is prerequisite. In the present case before us, admittedly, the requisite order u/s 127(1) of the Act, was not passed, whereas the case of the assessee was transfer from ITO-1(2) to ACIT, Circle-1(1) without instructions of the competent authority by way of an order u/s 127, placed the Ld. AO in a position wherein, he was devoid of valid assumption of jurisdiction to frame the assessment in the case of present assessee u/s 143(3) of the Act, thus, in terms of aforesaid observations, the assessment framed by Ld. ACIT, Circle-1(1), de hors valid assumption of jurisdiction is liable to be quashed, thus, we direct to do so.

Since we are setting aside the impugned order as the very foundational impugned assessment order is void *abi-nitio* we are not examining all other legal contentions and so also other contentions canvassed before us.

ORDER

6.17. The impugned order is set aside and appeal of the assessee is allowed.

Order pronounced on 18.12.2024.

Sd/-

Sd/-

**(VIKRAM SINGH YADAV)
ACCOUNTANTMEMBER**

**(PARESH M. JOSHI)
JUDICIAL MEMBER**

“Poonam”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar

