

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

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3836/Del/2019  
(ASSESSMENT YEAR: 2015-16)

Sumita Singhal 149, Tarun Enclave, Pitampura, New Delhi-110034. PAN:ACOPS9544H <b>(Appellant)</b>	Vs.	Income Tax Officer, Ward-17(4), New Delhi. <b>(Respondent)</b>
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Assessee by	Shri R.R. Singla, CA
Department by	Shri Narpal Singh, Sr. DR

Date of hearing	23.06.2025
Date of pronouncement	10.09.2025

**ORDER**

**PER MANISH AGARWAL, AM:**

This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals)-6, Delhi [ 'CIT(A)' in short] in appeal No. CIT(A)-Delhi-6/10307/2017-18 dated 14.03.2018 passed u/s 250 of the Income Tax Act, 1961 (the Act) for Assessment Year 2017-18 arising out of the order passed u/s 143(3) of the Act dated 27.12.2017.

2. Brief facts of the case are that assessee is an individual and filed her return of income on 30.01.2016 declaring total income of Rs.5,05,360/- with ITO Ward-40(1), Delhi. Notice u/s 143(2) was issued on 29.07.2016 by the same Assessing Officer. Thereafter, another notice issued u/s 143(2) was issued on 08.09.2016 by the ITO, Ward-71(2), New Delhi. On 04.09.2017 the notice u/s 143(2) was issued by ITO, Ward No.17(4), New Delhi. The assessment was completed u/s 143(3) by the ITO, Ward-17(4), wherein the total income of the assessee was assessed at Rs.49,65,760/- after making additions of Rs.42,48,000/- by holding the long term capital gain as bogus and further addition of Rs.2,12,400/- was made as unexplained expenditure

for obtaining such bogus capital gain. In first appeal, the appeal of the assessee dismissed by Ld. CIT(A).

3. Aggrieved by the said order, the assessee is in appeal before the Tribunal by taking the following grounds of appeal:

*"1. The Ld. CIT(A) has erred in law and on facts by upholding the assessment framed by the ld. AO i.e. ITO, Ward 17(4) assuming the jurisdiction.*

- (a) on transfer of case without following set of procedure prescribed by law.*
- (b) by issuing a time barred notice u/s 143(2) of the Act.*

*2. The Ld. CIT(a) has erred in law and facts while upholding the assessment on the basis of a statement confrontation/cross examination of the which was not allowed to the assessee.*

*3. The Id. CIT(A) has erred in law and on facts while upholding the additions made by invoking the provisions of section 68 of the Income Tax Act.*

*4 The Id. CIT(A) has erred in law and facts while upholding the additions and in ignoring the merger approval of the Hon'ble High Court and documentary evidences including the identity of the creditor and confirmation from the creditor furnished by the assessee.*

*5. The ld. CIT(A) has erred in law and facts while ignoring the fact that the very basis of the assessment order i.e. order of SEBI (pages 15 to 25 of the Assessment order) was already revoked by SEBI vide order dated 21.09.2017.*

*6. The Id. CIT(A) has erred in law and facts while upholding the addition of gross sale value of shares as undisclosed income and ignoring the cost of purchase and selling expenses and thus framing the assessment without application of mind.*

*7. The Id. CIT(A) has erred in law and on facts while upholding the addition of Rs.2,12,400/- based on whims and surmises of the Id. AO.*

*8. The Id. CIT(A) has erred in law and on facts while dismissing the ground of appeal raised by the assessee against invocation of provisions of section 115BBE of the Act.*

*9. The Assessee may please be allowed to add, alter, amend its ground of appeal at any time before or during the course of hearing of the appeal."*

4. Ground of appeal No.1 is with respect to the issue of notice u/s 143(2) barred by limitations and completion of assessment by the Assessing Officer based on such barred notice issued u/s 143(2) is bad in law. Assessee further challenged the assessment order being passed by the AO without jurisdiction.

5. As observed above, in the instant case, the return of income was filed by the assessee with the Assessing Officer, Ward 40(1), on 30.01.2016. Thereafter, first notice for scrutiny u/s 143(2) was issued by the same AO on 29.07.2016. Thereafter, again a fresh notice u/s 143(2) of the Act was issued on 08.09.2016 by ITO Ward-71(1), New Delhi. Lastly, 3<sup>rd</sup> Notice u/s 143(2) of

the Act was issued by the ITO, Ward 17(4), New Delhi on 04.09.2017. It is submitted by Ld. AR that assessment u/s 143(3) of the Act was completed by the Assessing Officer i.e. the ITO, Ward 17(4), New Delhi on 27.12.2017 on the basis of the notice issued u/s 143(2) on 29.07.2016 which is apparent from the observations made in para-1 of the assessment order. The Ld. AR submits that there was no order of transfer of jurisdiction from ITO, Ward 40(1), Delhi to ITO, Ward 17(4), New Delhi and, therefore, the order passed by the ITO, Ward 17(4) on the basis of the notice issued u/s 143(2) on 29.07.2016 by the ITO, Ward 40(1), New Delhi is without jurisdiction. He further submits that if the notice issued by ITO, Ward 17(4) dated 04.09.2017 would be taken as notice issued for acquiring jurisdiction in the case of assessee for Assessment Year 2015-16, said notice is barred by limitation as it was issued beyond the statutory time provided, therefore, consequent assessment proceedings deserves to be held bad in law. He placed reliance on the following judgments:

- (i) *Sunworld Infrastructure Pvt. Ltd. vs. ITO, Ward 24(3), Delhi in W.P.C 1741/2015 & CM No.3112/Del/2015 judgment dated 05.03.2015 (Delhi HC).*
- (ii) *Cabbana Infrastructure Pvt. Ltd. vs. DCIT (ITA No.183 and 526/Asr/2017)*
- (iii) *Harvinder Singh Jaggi vs. ACIT (2016) 157 ITD (Delhi-Trib.) ITA 672/Del/2013.*
- (iv) *ACIT vs. Smt. Haridener Sachdev (ITA No.207/Del/2010 and ITA No.4776/Del/2009, ITAT Delhi).*

6. On the other hand, Ld. Sr. DR vehemently supports the orders of the lower authorities and submits that the Ld. CIT(A) has dealt this issue wherein Ld. CIT(A) observed that the jurisdiction was lies with the AO who had passed the assessment order and the notice u/s 143(2) for scrutiny for the first time was issued by the Assessing Officer with whom the return of income was filed by the assessee. Only due to transfer of case to the correct jurisdiction, the AO having jurisdiction had issued the notice u/s 143(2) on the change of office to regularize the proceedings which cannot be treated as defective/ barred by limitations. He, therefore, submits that there is no error in the notice issued u/s 143(2) of the Act and, accordingly, the assessment order passed by the ITO, Ward-17(4) was well within the jurisdiction of AO. He prayed accordingly.

7. Heard both the parties and perused the materials available on record. From the perusal of the assessment order, it is seen that the proceedings were

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taken up by the AO on the basis of notice issued u/s 143(2) of the Act dated 29.07.2016 issued by ITO, Ward 40(1), Delhi, copy of the same is placed in the PB -21 filed by the assessee. Thereafter, another notice u/s 143(2) of the Act was issued by the ITO, Ward-71(2), Delhi on 08.09.2016 which is placed at pages 22 of the paper book. Thereafter, the third notice was issued on 04.09.2017 by the ITO, Ward 17(4), New Delhi. However, as observed above, the AO i.e. ITO, Ward 17(4), Delhi in para 1 of the assessment referred to the only notice issued u/s 143(2) of the Act dt. 29.7.2016, which admittedly was issued by ITO ward 40(1) Delhi and the jurisdiction was assumed through this notice only and entire assessment proceedings were continued and completed by placing reliance on the notice issued u/s 143(2) on 29.07.2016 by ITO, Ward-40(1), Delhi.

8. Similar issue has been decided by the Co-ordinate Bench of the Tribunal in ITA No.5786/Del/2018 in the case of Gaurav Singhal vs. ITO, wherein the Co-ordinate Bench vide its order dated 29.01.2025 under identical circumstances held that the order passed on the basis of notice issued u/s 143(3) by the Assessing Officer who was not having the jurisdiction over the assessee is barred by jurisdiction and other notice of the same AO who passed the assessment order at a later stage beyond the statutory time is barred by limitations and quashed the entire assessment proceedings. The relevant observations of the Co-ordinate Bench are as under:

*"11. We have heard the rival submissions and have perused the relevant material on record. On careful consideration of the facts and submissions, we find that in the judgment of the Hon'ble High Court of Delhi in the case of Abhishek Jain [supra], relied upon by the Id. CIT(A)/ld. DR, there can be two or even more Assessing Officers u/s 120 of the Act having jurisdiction over an assessee based on his business or residence or other details. However, the issue in the present appeal is whether an Assessing Officer can pass an assessment order in the case of an assessee on the basis of notice u/s 143(2) of the Act issued by another Assessing Officer, without assuming jurisdiction under section 127(2) of the Act.*

*12. We find from the factual matrix of the case that the Assessee filed his Return of income for AY 2014-15 at Rs. 4,55,610/- vide return dated 21-02-2015 with Income Tax Office, Ward 40(1), Delhi. Thereafter, the Income Tax Officer, Ward 40(1), Delhi issued and served notice u/s 143(2) dated 18-09-2015 to the assessee. Soon thereafter, notice u/s 143(2) dated 22.09.2015 was also received from Income Tax Officer, Ward 71(2), Delhi. Assessee further received notices u/s 142(1) dated 29.4.2016, 17.5.2016 and 10.6.2016 from ITO Ward 71(2) and the assessee attended assessment proceedings on various dates.*

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13. Subsequently vide transfer memo dated 28-06-2016, records were transferred by ITO Ward 71(2) to ITO Ward 71(5), Delhi. Again the ITO Ward 71(5), Delhi issued notice u/s 143(2) dated 29.6.2016 and dated 6.7.2016 and were replied by the assessee. Meanwhile, the Income Tax Officer, Ward 71 (5) again transferred the records to ITO Ward 17(4) by a suo moto transfer memo. Thereafter, the Income Tax Officer, Ward 17(4), Delhi issued a notice u/s 143(2) dated 22.07.2016 and finally framed the assessment on 28.12.2016.

14. We find that the ITO 71(2) validly issued the notice u/s 143(2) within time period allowed. However, the notice u/s 143(2) issued by the ITO 17(4), who finally framed the assessment u/s 143(3), was not valid as the same was issued beyond the prescribed time period. In such a situation, we are called upon to adjudicate whether the ITO 17(4) can pass an assessment order on the strength of valid notice u/s 143(2) issued by ITO 71(2), without assuming a valid jurisdiction over the assessee u/s 127(2). The Id. DR has not been able to controvert the submission of the assessee that no order u/s 127 was passed/issued for transferring the jurisdiction from ITO 71 (5) to ITO Ward 17(4). The Id DR also could not place any material/evidence on record to show that the ITO 17(4) assumed jurisdiction u/s 120 on the basis of the residence or place of business of the assessee.

15. In similar facts, the ITAT decided in the case of Sangeeta Wahi (supra) and the case of Pushpa Gupta (supra) relied upon by the assessee, that without a valid assumption of jurisdictional u/s 127, the assessment order would be rendered illegal and invalid. The reliance on the case of Ashwani Kumar is misplaced as the same dealt with a situation where notice u/s 143(2) was not issued. The case of Abhishek Jain (supra) relied upon by the Id. DR are distinguishable from the facts of the instant case. In that case, the assessee had raised objections over the jurisdiction of the AO issuing notice i.e. ITO ward (1)(1), Noida and asked to transfer his case to Delhi, which is not in the present case. The case of the assessee is supported by the decision of Hon'ble Delhi High Court in the case of S K Industries (supra) where the court held that assessment order is unsustainable in law since it was passed without the AO having jurisdiction over the assessee issuing notice u/s 143(2) within prescribed time limit.

16. In view of the above, we are of the considered view that the ITO 17(4) passed the assessment order without validly assuming jurisdiction u/s 127(2) rendering the assessment made u/s 143(3) by ITO 17(4) liable to be quashed and the same is hereby quashed. We allow the ground no 1 of the appeal of the assessee on jurisdiction. Since we have decided the appeal on technical ground, we do not dwell into the merits of the case.”

9. On perusal of the facts of the aforesaid case of Gaurav Singhal, we find that the facts of the instant case are identical where the assessment order was passed on the basis of notice/s 143(2) of the Act was issued by the Assessing Officer who was not having jurisdiction over the assessee and the notice u/s 143(2) issued by the Assessing Officer who completed the assessment was barred by limitation. In view of these facts, in the instant case also the assessment order passed u/s 27.12.2017 on the basis of notice u/s 143(2) issued by other AO without validly assuming jurisdiction u/s 127(2) of the Act is bad in law and same is hereby quashed. Further the notice issued us/ 143(2) by the AO who had completed the assessment is issued after the expiry of the statutory time allowed for issue of notice u/s

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143(2) of the Act, thus the said notice issued on 04.09.2017 by ITO wards 17(4) New Delhi who passed the assessment order is barred by limitation and therefore, consequent order passed is hereby quashed on this score also. The ground of appeal No.1 of the assessee is allowed.

10. Since, we have allowed the assessee's legal ground No.1. and remaining grounds of appeal become academic.

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

Order pronounced in the open Court on 10.09.2025.

Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

Sd/-  
**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**

Dated: 10.09.2025.

PK/Sr. Ps

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

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