



आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA Nos. 505 to 509/JP/2025
निर्धारण वर्ष/Assessment Years : 2015-16, 2016-17, 2018-19, 2020-21 & 2021-22

Sonu Dusad 72 First Floor New Rajdhani Enclave, Vikas Marg, Delhi	बनाम Vs.	DCIT, Central Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BEPPD9765M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Mukesh Soni, Adv.
राजस्व की ओर से / Revenue by : Mrs. Anita Rinesh, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 17/09/2025
उदघोषणा की तारीख / Date of Pronouncement: 12/11/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The details of the five separate orders which are under challenge
before this tribunal are as under :

Sr. No.	ITA No.	Assessment Year	Date on which the Impugned order was passed by the Commissioner of Income Tax, Appeals-4, Jaipur [CIT(A)]	Date and section under which the assessment order was passed by DCIT, Central Circle-1, Jaipur
1	505/JP/2025	2015-16	16.01.2025	153 r.w.s. 144 dt.18.03.2024

2	506/JP/2025	2016-17	16.01.2025	153 r.w.s. 144 dt. 19.03.2024
3	507/JP/2025	2018-19	16.01.2025	153 r.w.s. 144 dt. 13.03.2024
4	508/JP/2025	2020-21	16.01.2025	153 r.w.s. 144 dt. 19.03.2024
5	509/JP/2025	2021-22	16.01.2025	153 r.w.s. 144 dt. 13.03.2024

2. Since the issues involved in these appeals in ITA Nos. 505 to 509/JP/2025 for A.Ys 2015-16, 2016-17, 2018-19, 2020-21 & 2021-22 are inter related, identical on facts and are almost common, except the difference in figure disputed in each appeal, therefore, these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order. As agreed between the parties matter in ITA No. 505/JP/2025 taken as a lead case for discussions for the purpose of the present discussions, the facts, arguments are taken from that folder.

3. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal for assessment year 2015-16 in ITA No. 505/JP/2025 on the following grounds;

“1. Under the facts and the circumstances of the case and in law, the Order dated 16.01.2025 passed by the Learned Commissioner of Income Tax (Appeal), [hereinafter referred to as “Ld. CIT (A)”] u/s 250 of the Income Tax Act, 1961 [“the Act”] is perverse, arbitrary and bad in law.

2. Under the facts and circumstances of the case and in law, the Ld. CIT (A) is not justified in observing and giving impugned finding on merits of the case while dismissing the appeal at threshold on the grounds of delay.
3. Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not deciding the residential status of the assessee despite the fact that various documentary evidences were submitted to prove that the assessee is non-resident and thereby erred in upholding the action of Ld. AO.
4. Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in
 - a. stating that Appellant has took substantial time and adjournments during the appeal proceedings.
 - b. in dismissing the appeal by not condoning the delay in filing appeal and thereby dismissing the appeal in limine.
 - c. In not following the directions of Hon'ble High Court in Civil Writ 10173/2024.
 - d. In dismissing the appeal at threshold after hearing the appeal on merit as well as on legal points
 - e. in giving factually incorrect or inconsistent finding or observations in the Impugned order.
5. Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in
 - a. in disputing the date of receipt of assessment order by the Assessee, despite the fact that no proof of service, if any, to Assessee of Impugned Assessment Order, were brought on record by Ld. AO.
 - b. in not appreciating the duly acknowledged copy of the proof of service placed on record by Assessee.
6. Under the facts and circumstance of the case and in law, the Ld. CIT(A) has erred in not upholding the Impugned Assessment order as impugned notice issued u/s 153C of the Act was without jurisdiction and bad in law and without any satisfaction note as required u/s 153C of the Act
7. Under the facts and circumstances of the case and in law, the CIT(A) was not justified in upholding the action of Ld. AO in not complying with the provisions of Section 144C of the Act, thereby violating the due procedure of the law.
8. Under the facts and circumstances of the case and in law, the order of Ld. CIT(A) is bad in law because impugned Assessment order passed u/s 153C of the Act is barred by limitation and also without requisite approval u/s 153D of the Act
9. Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in holding that on money of Rs. 1,42,50,000/- was paid by Assessee.

10. Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in confirming the impugned addition of Rs. 78,63,150/- u/s 69 of the Act

11. Under the facts and circumstance of the case and in law, Ld. CIT (A) erred in upholding the taxing impugned addition made u/s 115BBE of the Act.

12. Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in not adjudicating the ground of initiating penalty u/s 271(1)(c) of the Act

13. The appellant craves leave to add, amend, alter, revise and modify any of the grounds of appeal on, before or in the course of hearing of the appeal.

4. Succinctly, the facts as culled out from the records are that a Search & Seizure action u/s 132 of the Income Tax Act, 1961 [for short Act] was conducted in the various cases of "OM KOTHARI group" of Jaipur on 13.07.2020. During the search proceedings at the residential premises of key persons of this group i.e. Shri C.P. Kothari, Shri Sunil Kothari, Shri Vishal Kothari at Jaipur and Delhi, various incriminating documents were found as well as mobile phones and other digital devices were also found and seized. Imaging of these mobile phones, laptops and personal computers were done by the computer experts. Statements of these persons were also recorded. Also statement of Shri Vimal Jain s/o Late Shri Padam Chand Jain, the Accountant of the group at Jaipur (one of the key employee of Om Kothari Group) was recorded. These incriminating materials / documents/ data reflect that the group along with other persons / associates is engaged in the business of real estate and was carrying out

transactions of unaccounted receipt on sale of flats in "PALLACIA" project. The documents and data so found and seized pertain to the assessee and these have a bearing on the determination of total income of the present assessee.

Thus, after recording satisfaction as per prerequisite condition laid down in provisions of section 153C of the Act, notice was issued on 31.03.2023 by the Income Tax Officer, Ward-1(3), Jaipur, which was duly served upon the assessee through e-filing portal. However, no return of income was filed by the assessee till date on which the impugned assessment order was passed. Consequent upon the order u/s 127 of the Act passed by the Pr. Commissioner of Income Tax-1, Jaipur vide order no. dated 26.09.2023 and the case was transferred to DCIT, Central Circle-1, Jaipur and he passed the assessment order on 18.03.2024. Statutory notices as required under the Act were issued from time to time. The assessee made her reply stating she has no liability for filing income tax return being Non-Resident Indian and she has no income which accrue or arise in India.

In the search & seizure operation under section 132(1) of the Act, as carried out on 13.07.2020 in the case of "Om Kothari Group" of Jaipur various incriminating documents and digital data was found and seized.

Digital data in the form of whatsapp chats, mobile images etc. were also extracted from the mobile phone of key persons of this group, which also contain the noting of unaccounted cash transactions of receipts and payments related to the flats sold in project naming "Pallacia", Jaipur. Based on the data extracted from the computer and mobiles etc. which was in large number (discussed in subsequent part of this order), it can be proved beyond doubt that the M/s Om Metal Consortium Pvt Ltd was regularly indulged in taking cash against the sale of flats at "Pallaica" from the outside parties. The actual rate of these flats, sold to parties, seems to be much higher than what is shown in the books of accounts. The difference is obviously taken in cash by the assessee group against the sale of these flats, which is evidenced from various documents/chats/images found during search. Since, these amounts are paid in cash therefore, that part remains unaccounted and the same is not offered for taxation by the buyers. Based on these evidences in form of whatsapp chats retrieved from the mobile device of Shri Vishal Kothari have been presented, pertaining to unaccounted cash investments made by various buyers in the Pallacia project. A selection of these messages is provided below for substantiating our claim that "on money" has been received in sale of flats on "Pallacia Project".

Based on the records available Id. AO noted that the assessee Smt. Sonu Dusad purchased a Flat no. E-41 in the project "Pallacia" admeasuring 4750 sq.ft.. Initially, the Flat No. E-41, in the said project having 4750 Sq. Ft. area, was booked in the name of the Shri Nitin Dusad who is husband of the assessee Smt. Sonu Dusad for a total purchase consideration of Rs. 5,70,00,000/- (4750 x 12000) and she has paid cash as 'On money' as ascertained from various whatsapp chats and images. At S. No. 21 on Page-1 of the list is having entry in the name of "Nitin Dusad" and on the left side the rate of flat 9000 + 3000 is recorded. However, the registry of the said flat has been ultimately done in the name of Ms. Sonu Dusad. This shows that Rs. 9000/- per square feet rate was paid through cheque and Rs. 3000/- per square feet was paid in cash. This evidence shows that Ms Sonu Dusad paid an On Money of Rs. 1,42,50,000 (4750*3000) for acquisition of impugned flat. Accordingly, On Money payment of Rs. 1,42,50,000/- was paid by the assessee was paid by the assessee.

As there was no response upon the issuance of various notices issued by the Id. AO he recorded that he left with no option but to complete the assessment by invoking the provision of section 144 of the Act to the best of judgment based on the details available on record.

As noted, the Id. AO determined the on-money payment of Rs. 1,42,50,000/- the same was bifurcated according to the percentage completion of the project and the year wise addition made is tabulated herein below :

Assessment Year	Stage of Completion	Total On Money paid by assessee	Total On Money on basis of completion stage (3X2)	Addition already made in previous year	Total On Money recognized for the Year (4-5)	
1	2	3	4	5	6	
2015-16	55.18%	14250000	7863150		7863150	
2016-17	59.34%		8455950	7863150	592800	
2017-18	61.72%		8795100	8455950	339150	
2018-19	70.02%		9977850	8795100	1182750	
2019-20	68.03% (due to escalation of cost estimation of the project)					
2020-21	77.61%			9694275	9977850	0
2021-22	83.74% (Taken as 100%)*			11059425	9977850	1081575
				14250000	11059425	3190575

Ld. AO while making the addition noted that the amount paid through banking channel was also found verifiable from the bank entries dated 30.05.2023, 25.05.2014, 30.11.20.5 12.04.2017 & 30.06.2017. Hence, he inferred that the data recovered from the whatsapp chats during the search cannot be doubted, as this is having details of both cash and cheque payments and if the cheque entries are verifiable then the other component

of 'cash' in the whatsapp chats is also established. These evidences clearly show that significant part of the total consideration is being paid in cash. Hence, this can be inferred that the data recovered from the whatsapp chats/images during the search cannot be doubted, as this is having details of cash payments. These evidences clearly established that significant part of the total consideration is being paid in cash. Thus, it can be concluded that the assessee paid Rs 78,63,150/- in cash over and above the transaction made through banking channel. Therefore, the cash payment of Rs 78,63,150/- is being treated as undisclosed investment u/s 69 of the Act and to be taxed as per the provision of section 115BBE of the Act and added to the total income of the assessee.

5. In the meantime, since the assessee was NRI and no valid notice was physical served and there was issue of jurisdiction of the cases also as advised by the local counsel the assessee filed a writ petition before our Rajasthan High Court. The relevant part of the direction given by our High Court reads as follows:

3. There is no doubt in the eventuality of the petitioner filing an appeal accompanied by the application for condonation of delay, the same would be considered in accordance with the law, sympathetically.

4. The Commissioner (Appeals) shall make an endeavour to decide the appeal as expeditiously as possible in the facts of the case but not later than six months from the date of receipt of a certified copy of this order”

6. Following the direction in writ petition the assessee filed an appeal before the Id. CIT(A) against the order of assessment passed against her but while dealing with the appeal of the assessee and he has not considered the aspect of the delay sympathetically and dismissed the appeal of the assessee by not condoning the delay. The relevant finding of the Id. CIT(A) on the issue is reiterated here in below:

B. As per the Income Tax Act, the appeal is to be filed within 30 days of the service of the assessment order. However the appeal has been filed after the expiry of this period. The appellant has submitted that she is a citizen of Hong Kong and an OCI card holder and non-resident. The Applicant had no income assessable within the territory of India for the relevant assessment year.

The appellant has stated that after getting advice from her legal advisors the most suitable suggested course of action was to file a Writ Petition against impugned proceedings. Accordingly, a writ petition accordingly was filed before the Hon'ble High Court of Rajasthan, Bench at Jaipur. The Hon'ble High Court has passed the order dated 05.07.2024 in the writ petition filed by the appellant.

B.1 As the appellant had approached the Hon'ble High Court by filing the writ petition against the assessment order, thus on the issue of condonation of delay in filing the appeal, the number of days which shall stand excluded upfront in computing the delay in filing of the appeal are as under:-

Assessment Year	Date of filing of Writ Petition	Date of final Order in the Writ Petition	Number of Days to be Excluded
2015-16	03.06.2024	05.07.2024	32
2016-17	31.05.2024	05.07.2024	35
2018-19	03.06.2024	05.07.2024	32
2020-21	03.06.2024	05.07.2024	32
2021-22	03.06.2024	05.07.2024	32

C. The appellant has claimed that the assessment order was served on the appellant on the date of 18.04.2024.

Assessment Year	Date of assessment order	Date of Service of Assessment Order as claimed by the appellant
2015-16	18.03.2024	18.04.2024
2016-17	19.03.2024	18.04.2024
2018-19	13.03.2024	18.04.2024
2020-21	19.03.2024	18.04.2024
2021-22	19.03.2024	18.04.2024

The date of service is claimed after a long period from the date of assessment order and which is apparently abnormal. Further, there are multiple years involved and the DIN is also issued through the system which is sent to the assessee through email. The order of one year or two years might get delayed or lost or unserved but here the appellant is claiming that the order for none of the five years and which are passed on different dates, was received which is very unprobable. Considering this position the appellant was required to substantiate this claim with the supporting material and or evidences. However, in this regard,

In view of the directions of the Hon'ble High Court, taking a sympathetic view of the matter, in the calculation of the delay the period from the date of assessment order till the date of 18.04.2024 is hereby condoned by treating the date of service of the order as the same as is claimed by the appellant. The appellant gets a relief of 30 to 36 days depending upon the year involved a under:-

Assessment Year	Date of assessment order	Date of Service of Assessment Order as per appellant	Days condoned to the appellant on the above issue
2015-16	18.03.2024	18.04.2024	31
2016-17	19.03.2024	18.04.2024	30
2018-19	13.03.2024	18.04.2024	36

2020-21	19.03.2024	18.04.2024	30
2021-22	19.03.2024	18.04.2024	30

In view of the above, the period or the number of days attributable to the appellant are worked out as under:-

Assessment Year	Date of assessment order	Date of filing of appeal	Total Days from the date of assessment order (from date in col. B to date in col. C)	Number of Days Excluded pertaining to the period of the pendency of the writ petition (as above)	Number of days condoned on the issue of date of service of assessment order as discussed above	Remaining Days attributable to the filing of appeal (G = D - E - F)
A	B	C	D	E	F	G
2015-16	18.03.2024	02.08.2024	137	32	31	74
2016-17	19.03.2024	02.08.2024	136	35	30	71
2018-19	13.03.2024	02.08.2024	142	32	36	74
2020-21	19.03.2024	02.08.2024	136	32	30	74
2021-22	19.03.2024	02.08.2024	136	32	30	74

The appellant, as per dates as per her own submissions, even after the exclusions as discussed above, has taken 71 number of days in total to file the appeal for the AY 2016-17 and even more days in other years, whereas the time allowed as per the Income Tax Act is 30 days.

Further the appellant has given two reasons:-

- (i) the appellant being non-resident took time to engage an A/R or lawyer
- (ii) the delay occurred due to filing of writ petition

The discussion on the factual correctness of these claims and the applicability from the condonation perspective is as under.

D. Also in the present case the appellant was aware that the time limit to decide the present appeal is on the basis of the date of the receipt of the order of the Hon'ble High Court. The date of the order in the writ petition is 05.07.2024 and the appeal has been filed by the appellant on the date of 02.08.2024. The appellant took 28 days in filing the appeal even after the date of order in writ

petition whereas the time limit to decide the appeal had already started and even knowingly this well, the appellant apparently did not act in a bonafide manner as she did not file the appeal at the earliest after the order in the writ petition.

In full bench judgment of the Hon'ble Patna High Court in AIR 1996 Patna 58 (Commissioner of Wealth-tax vs. Jagdish Prasad Choudhary), in Paragraph 31, it was inter alia held as under:-

x

x

x

x

A party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. [Hon'ble Supreme Court in CIT v. Durga Prasad More [1971] 82 ITR 540]. An appellant is to explain the delay w.r.t. the period of the delay in chronological manner. It is possible that a genuine and bonafide reason explains part of the delay but that does not entitle the assessee for condonation of full delay period. The reasons for delay on which delay can be condoned cannot be mere the factors contributing or leading to the inconvenience to the appellant. Thus for the condonation of the delay an assessee is required to show those factors which prohibited or which prevented the appellant from filing the appeal can be considered. The appellant has not shown any such reason which prevented her from filing the appeal in time. The appellant has also not shown that the delay is due to bonafide reasons and not for other reasons. The appellant has "failed to show that he has acted bona fide and had taken all possible steps within his power and control to file the appeal without unnecessary delay".

As held by the Hon'ble Supreme Court in judgement dated 08.01.2025, in the case of H. Guruswamy & Ors. (supra) that question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. And that concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation. Further as held by the Hon'ble Supreme Court, while considering the plea for condonation of delay, the court must not start with the merits of the main matter.

In view of the above detailed discussion, the appeal cannot be admitted due to the delay (even after condoning part of the delay as discussed in Issue:1 above) and being out of period of limitation and the same is hereby not admitted and is

dismissed in-limine. Accordingly the grounds of appeal are not required to be taken upon merits.

5. In the result, the appeal of the appellant is dismissed.

7. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds raised by the assessee, Id. AR of the assessee, has filed the written submissions which reads as follows :

“SYNOPSIS OF ARGUMENTS TAKEN DURING HEARING ON 17.09.2025.

1. The Appellant is a citizen of Hong Kong and an OCI card holder and non-resident since past several years. The Appellant was born and brought up in state of Delhi and post her marriage, she permanently settled out of India and her children were also born out of India (birth certificate available on Page no. 48 and 49 of the Common Paper Book-I). The Appellant has registered PAN address based in Delhi as evident by her passport and PAN records (available on Page no. 42 to 44 and 45 to 47 of the CPB - I respectively).

2. The Appellant had no income assessable within the territory of India for the relevant assessment years 2015-16, 2016-17, 2018-19, 2020-21 and 2021-22, hence has not filed her Income Tax return for the relevant assessment years.

A. Impugned Notice issued u/s 153C of the Act by ITO Ward 1(3), Jaipur and subsequent proceedings thereto is without territorial jurisdiction.

3. The very issuance of the impugned notice dated 31.02.2023 u/s 153C of the Act addressed at “*Sonu Dusad, 72 First Floor New Rajdhani Enclave, Vikas Marg Delhi 11092, Delhi, India*” (available on Page no. 153 of the CPB-I) is without jurisdiction on the face of it as the said notice was issued by the ITO WD 1(3), JPR having no jurisdiction over the Appellant as the Appellant has her registered address in Delhi in India and the PAN of the Appellant is also registered in Delhi only.

4. Moreover, all communication/notices to the Appellant have been issued bearing Delhi Address only. Despite this fact, the impugned proceedings against the Appellant were taken by the income tax authorities located in Jaipur which is without authority of law, without jurisdiction and admittedly without any order u/s 127 of the Act transferring jurisdiction from state of Delhi to Jaipur, Rajasthan. The fact of passing no order u/s 127 of the Act is even admittedly accepted by the Ld. DR during hearing that there exists no order transferring jurisdiction from Delhi to Jaipur, though the said order, if any, was asked to be placed on record after granting multiple opportunity of being heard.

5. In the impugned assessment order also, the reference is allegedly mentioned of transferring of jurisdiction from ITO Ward 1(3), Jaipur to DCIT Centre Circle, 1, Jaipur, however, there is no reference of any order u/s 127 of the Act transferring jurisdiction u/s 127 from Delhi to Jaipur and basis thereof.

6. Since there is no valid order u/s 127 of the Act transferring the jurisdiction upon the Ld. ITO Ward 1(3), Jaipur, therefore, very issuance of notice u/s 153C of the Act is bad in law and without jurisdiction, therefore, these proceedings may kindly be quashed on this very jurisdictional error going to the root of the impugned proceedings.

B. Impugned assessment order was passed without following the procedure u/s 144C of the Act

7. The impugned assessment order u/s 153C of the Act, dated 18.03.2024 was passed by the Ld. AO without passing any draft assessment order which is an essential requirement enumerated u/s 144C of the Act., The Section 144C requires that final assessment order against a Non-resident Assessee must be preceded by a draft assessment order if the Assessing Officer proposes to make any variation in income that is prejudicial or adverse to the interest of the eligible Assessee. Hence, the impugned order is without jurisdiction and void ab initio.

8. It is evident from the assessment note sheet available on Page no. 1 to 4 of the paper book, provided by the Ld. DR on 24.09.2025, that no valid assessment order has been passed by the Ld. AO on 18.03.2024, as only "doc file" without any DIN or signature is allegedly passed by Ld. AO without any order number or DIN number.

9. It is undisputed fact that Appellant is Non-resident as per the facts placed on record and even as per the findings of the Ld. CIT(A) in its order in Para No. E1 on Page no. 25, wherein it was stated that "*The appellant is an NRI and*

residing abroad and the communication must have taken place through written electronic mediums like emails etc.". Thus, when this factual foundation that Appellant is non-resident is undisputed, then on this ground also there lies no jurisdiction to issue notice u/s 153C of the Act by Ld. ITO Ward (1)3, Jaipur. Moreover the action of passing the impugned assessment order dated 18.03.2024 without following the procedure u/s 144C of the Act, mandatorily requiring passing of draft assessment order in the case of the non-resident, itself renders the impugned assessment order bad in law.

10. In this context, reference is invited to provisions of Section 144C of the Act:

Section 144C - Reference to dispute resolution panel.

(1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation which is prejudicial to the interest of such assessee.

(15) For the purposes of this section, —

(b) "eligible assessee" means, —

(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

(ii) any non-resident not being a company, or any foreign company:

11. From the bare reading of the above-mentioned provisions of Section 144C, it is evident that the Assessing Officer must forward a draft of the proposed assessment order to the eligible assessee if any variation in income is proposed that is prejudicial to the Assessee's interest. This section applies to non-residents. However, in the present case, the Ld. DCIT failed to comply with the mandatory requirement enumerated u/s 144C of the Act. Hence, the impugned assessment order may kindly be set aside.

12. In support of the same, the reliance is placed on following judicial precedents:

GE Oil and Gas India Private Ltd vs ACIT 436 ITR 168 (Madras)

DCIT Circle 2 Jaipur V. M/s Jaipur Rugs Company Pvt. Ltd. ITA 1084/JP/2016

Principal Commissioner of Income Tax-4 vs Headstrong Services India Pvt Ltd
197 DTR 329 /318 CTR 369 (Delhi)

SHL India (P.) Ltd v. Dy. CIT [2021] 128 taxmann.com 426 (Bom.)

C. The Ld. CIT(A) has erred in dismissing the Appeal on the ground of condonation of delay:

13. The impugned assessment order u/s 153C, dated 18.03.2024, was received by the Appellant on 18.04.2024 after making application on 12.04.2024 (available on Page no. 80-82 of the CPB-I). Upon consulting with legal advisors in relation to proceeding initiated without jurisdiction, it was suggested to Appellant that the most appropriate course of action was to file a Writ Petition against the impugned proceedings before the Hon'ble High Court of Rajasthan, Bench at Jaipur, as no other efficacious remedy was available and the proceeding u/s 153C were perse without jurisdiction on the ground of lack of jurisdiction u/s 153C of the Act.

14. Subsequently, a writ petition (enclosed as Annexure-1) was filed before the Hon'ble High Court of Rajasthan, Bench at Jaipur. The Hon'ble High Court decided the matter on 05.07.2024 in Civil Writ No. 10173/2024, holding as follows (PB No. 13-14 of CPB-I) :

"3. There is no doubt in the eventuality of the petitioner filing an appeal accompanied by the application for condonation of delay, the same would be considered in accordance with the law, sympathetically.

4. The Commissioner (Appeals) shall make an endeavor to decide the appeal as expeditiously as possible in the facts of the case but not later than six months from the date of receipt of a certified copy of this order."

15. Since, the Hon'ble High Court was sub-judice with impugned proceedings and consequential assessment order, the time limit to appeal against the Order u/s 153C of the Act has lapsed during the intervening period. Accordingly, these circumstances (including the circumstances duly mentioned in application for condonation of delay) have prevented the Appellant from timely filing of the appeal before the Ld. Commissioner of Income Tax (Appeals), Jaipur.

16. In view of the directions given by the Hon'ble High Court, the Appellant has filed appeal before the Ld. CIT (A) on 02.08.2024, accompanied with an application for condonation of delay (available on Page no. 8 to 12 of the CPB-1). The said Appeal was dismissed by the Ld. CIT (A) on the ground of condonation of delay only, despite giving adverse findings on merits of the case after holding that the Appellant is non-resident.

17. There had been plausible reasons as duly explained in condonation of delay application of the Appellant for filing the appeal on 02.08.2024 (within 30 days of receiving direction of Hon'ble High Court). Thus, the Ld. CIT(A) was not justified in dismissing the appeal at threshold, more particularly in a case, where there is lack of jurisdiction under the law. Thus, it is prayed that appeal of the Appellant be allowed on the legal issue of lack of jurisdiction itself after passing appropriate order of condonation the delay in filing the appeal before the Ld. CIT(A).

D. Rebuttal and factual clarification on the Arguments of the Ld. DR taken during hearing and submission on merits of the case

18. The Ld. DR during the hearing has alleged misrepresentation of the facts by the Appellant, which is specifically denied. The Ld. DR has rather misinterpreted the law as well as factual position placed on the record and accordingly, made incorrect allegations which are rebutted as follows:

S No.	Arguments of Ld. DR	Counter Argument on behalf of the Appellant
1.	The Ld. DR in her arguments stated that the Appellant has not provided her details for service of notices and orders or for further communication.	The allegation made by the Ld. DR is false and totally baseless as it is for the first time that the Appellant become aware of the impugned assessment proceedings initiated by the Ld. ITO Ward 1(3), only after the physical service of notice dated 17.10.2023 issued u/s 142(1) of the Act at her mother in law's residence in Jaipur. Thereafter, on perusal of the income tax portal the Appellant came to know that some proceedings were initiated in her case and impugned notice dated 31.03.2023 issued u/s 153C of the Act. Thereafter, the Appellant duly responded and objected vide its reply dated 18.11.2023, duly informed that the Appellant held an NRI status and is NRI since 2002 and is a citizen of Hong Kong. The copy of the reply dated 18.11.2023 is available at Page no. 21 to 22 of the CPB-II. The copy of the screen shot of the income tax portal is available at Page no. 20 of the CBP-II and
2.	The Ld. DR contended that the Appellant has not asked or requested for information / data.	This allegation is false and totally baseless as the Appellant vide its reply cum objections dated 01.02.2024 and 09.02.2024 (available at Page no. 29 to 31 and 37 to 41 of the CPB-II) filed in response to the impugned show cause notices dated 29.01.2024 and 01.02.2024 respectively, requested the Ld. AO for providing the satisfaction note recorded u/s 153C of the Act by

		the AO of the searched person, satisfaction note recorded by the Ld. AO, any order or notice passed for transfer of jurisdiction of Appellant, material relied upon against the Appellant and approval form any competent authority for invoking jurisdiction u/s 153C of the Act. Thus, the allegation made by the Ld. DR is factually, misconceived and incorrect.
3.	The Ld. DR in her arguments referred some loose sheet or loose paper, falsely alleging that the Appellant name is appearing in it and relied upon some statement.	The Ld. DR misinterpreted and misled the Hon'ble Bench as it is clearly evident from the alleged loose sheet or loose paper available on Page no. 3, 4, 5 and 6 of the impugned assessment order dated 18.03.2024, that the Appellant name is not appearing in the said loose sheet or loose paper. Moreover, said loose sheet or loose paper despite being not in handwriting of the Appellant and found/written/extracted from unknown and unauthenticated source lacks any evidentiary value and does not implicate the Appellant. The same are not corroborated and lacks any evidentiary value or authenticity as the same being extracted from some unknown/unauthenticated digital device. No certificate of authenticity which is an essential requirement for admissibility of electronic record as per Section 63 of the Bharatiya Sakshya Adhinyam, 2023 has been brought on record. Thus, loose papers or digital extract printout or their contents are unreliable and cannot be basis for making addition in hands of the Appellant. Further, the statement relied upon against the Appellant available at Page no. 10 to 15 of the impugned assessment order dated 18.03.2024, is not at all relevant in the present case as no name of the Appellant has been mentioned in the said statement and admittedly no nexus of Appellant with the alleged third party (whose identity itself is also not established) has been established. These statements were not recorded in the case of the Appellant rather these were recorded in the case of some other person with whom Appellant has no nexus or connection. The further reliance is placed on written submission placed on record including Para No. 75-77, 92, 102-111, 112-126, PB No. 116-117, 126-127, 133-139, 140-145 of CPB-I. .
4.	The Ld. DR contented that the	It is clarified that Appellant received assessment

	impugned order was served at the Delhi address of the Appellant and received unserved.	order on 18.04.2024 only. Admittedly, the Ld. DCIT issued the impugned order at the Delhi address which itself support the contention of the Appellant, that Ld. AO lacked jurisdiction. The Appellant vide its replies filed during assessment proceedings, duly informed about the communication address in Jaipur, however, notices/orders were sent/issued mentioning Delhi address, so the reasons of non-receipt of the same is very much evident from the action of the Ld. AO. Accordingly, the Appellant was justified in raising objections to the jurisdiction within the reasonable time when it came to knowledge of the Appellant about the impugned proceedings..
5.	The Ld. DR contended that the Appellant has not raised any objections regarding the jurisdiction.	<p>This allegation is false and baseless as the Appellant vide its reply cum objections dated 18.11.2023, 01.02.2024 and 09.02.2024 (available at Page no. 21-22, 29 to 31 and 37 to 41 of the CPB-II) duly brought on record the fact of non-residential status and her various objections as follows:</p> <ol style="list-style-type: none"> That the entire impugned assessment proceedings are without jurisdiction. That the Appellant is not a citizen of India and has no income generated in India during the relevant assessment years. That as per PAN, the jurisdiction over the Appellant lies in Delhi instead of Jaipur. That no order transferring jurisdiction u/s 127 of the Act was provided to the Appellant. That the notices served by the Ld. AO, not received by the Appellant. That the impugned proceedings are barred by limitation being opened beyond six proceeding assessment years. <p>Further reliance is placed on para no. 60 to 64 of the Written Submissions filed by the Appellant available at page no. 106-109 of CPB-I).</p>

19. The Ld. AO has made estimated addition of Rs. 1.42 Crore across various assessment year, which is evident from page no. 22-23 of AO Order for AY 2015-

16. It is submitted that the addition is not sustainable on the face of it as it is estimated addition and percentage completion method has been applied in case of buyer, whereas as per the accounting norms such estimations are even if made are made in the case of constructions contractors only. Thus, the very basis of making impugned addition on estimate basis, itself establishes that addition is not sustainable as the same is made on assumption, presumption and estimation only. The Appellant further places reliance on its written submission placed on record at page no. 129-145, 146-151 of CPB-I.

20. Without prejudice to the arguments taken herein above, it is further argued that the Ld. AO submitted a case compilation before the Hon'ble Bench which includes copies of judicial pronouncement sourced from unreliable and unidentified sources, which should be disregarded at threshold. No nexus of the various case law with the case of the Appellant is established, however, during hearing one judgment in the case of DCIT vs. Kalinga Institute of Industrial Technology (Page No. 101-102) was stressed upon, which is specifically distinguished and countered as under:

21. In the case of Deputy Commissioner of Income-tax (Exemption) v. Kalinga Institute of Industrial Technology (on Page no. 101 to 102) as relied upon by the Ld. DR, it was held that objections to jurisdiction were not entertained being time barred because the Assessee in that case failed to timely challenge the jurisdiction as per Section 124(3)(a) of the Act. However, the said judgment is not applicable in the present case.

22. In the present case, the very initiation of the impugned assessment proceedings is without jurisdiction as the Ld. ITO Ward 1(2), Jaipur as well as Ld. DCIT lacks any jurisdiction over the Appellant as it is undisputed that the Appellant is an NRI, thus, only the International Wing, ITO Central has jurisdiction over the Appellant, Even otherwise, as per PAN address, the jurisdiction lied with the Delhi Authorities only. Therefore, in the present case, there is complete absence of jurisdiction in violation of CBDT guidelines or direction as issued u/s 120 of the Act.

23. Further, according to Section 124(3)(c) of the Act, the Assessee has the right to object to the jurisdiction at any time within one month from the date the notice under Section 153C of the Act is served to the Assessee. In the present case notice u/s 153C of the Act dated 31.03.2023 was served on the Appellant on 17.10.2023 (when the Appellant came to know of the present proceedings). Prior to this, the Appellant was unaware of any proceedings initiated by the Ld.

AO against her. As a measure of compliance and for further communication, the Appellant provided her communication address and fact that she is non-resident. The Appellant duly replied and filed objections vide reply dated 18.11.2023 (available on Page no. 21 of the CPB-II), wherein the Appellant brought on record that the Appellant is non-resident of India since the year 2002 and is currently the citizen of Hong Kong. The said factual information and objections is brought on record well within the reasonable time of acquiring knowledge of impugned proceeding. Moreover, technically it is undisputed fact that Ld. AO did not had locus standi as per the face of the impugned notice u/s 153C of the Act, which was not complied with. The non-compliance amounts to the objections to the impugned proceeding itself, which objections was well before the Ld. ITO Ward (1)(3), Jaipur in 30 days, as per the version of the Ld. DR.

24. Even otherwise, the reference to Section 124(3) on the ground of time-limit is also misconceived and misinterpreted. The Section 124(3) does not rescue the complete absence of jurisdiction, to invoke Section 124(3) of the Act, it must be first satisfied that there was jurisdiction as per Section 120 r.w.s. Section 124(1) of the Act before Section 124(3) of the Act is applied, because Section 124(3) of the Act provides limitation for jurisdiction which was assigned as per Section 120(2) and which is to be challenged. Thus, the complete absence of jurisdiction is not protected by Section 124(3) of the Act. Therefore, the provision of Section 124(3) of the Act is also inapplicable in the instance case, thus, the argument made by the Ld. DR is rebutted and against the law. Thus, the case law relied upon by the Ld. DR is clearly distinguishable and not applicable as the facts and circumstances differ significantly.

25. The Ld. DR has misinterpreted the factual and legal position and misled the Hon'ble Bench by relying on judicial pronouncements that are neither identical nor similar to the case of the Appellant and rather given in some commercial disputes between the parties and even not in the context of Income Tax Law. Therefore, various other judicial precedents relied upon are required to be discarded at threshold.

26. Without prejudice to this contention, the Appellant specifically rebuts the other judicial pronouncements placed on record by Ld. DR (though not argued by her during hearing before Hon'ble Bench) as follows:

27. In the case of Commissioner of Income-tax v. Gujarat Electricity Board (on Page No. 1 to 2 of the Department Case Compilation) relied upon by department, the issue addressed by the Hon'ble Apex Court was whether it is permissible for

the Revenue to issue an intimation under section 143(1)(a) of the Income-tax Act after a notice for regular assessment has been issued under section 143(2) of the Income-tax Act, 1961. This issue is entirely distinct from the facts and circumstances of the present case, as there is no issue regarding the issuance of an intimation under section 143(1)(a) of the Act after issuing a notice under section 143(2) of the Act. Thus, the case law allegedly placed on record has clearly distinguishable and no applicable to present case.

28. Similarly, in the case of Khatau Junkar Ltd. And Another v. K.S. Pathania And Another (on Page no. 3 to 18 of the Department Case Compilation) and Gujarat Poly-Avx Electronics Ltd. v. Deputy Commissioner of Income-tax (on Page no. 19 to 26 of the Department Case Compilation), the issue addressed by the Hon'ble High Courts pertained to the scope of adjustments permissible under section 143(1)(a), which are entirely different from the facts and circumstances of the present case. The issue of adjustment under section 143(1) is not the issue before the Hon'ble Bench in the present appeals.

29. Further, in the case of S.P. Chengalvaraya Naidu Vs. Jagannath (on Page no. 27 to 31 of the Department Case Compilation), the issue addressed by the Hon'ble Apex Court relates to fraud committed by some person who obtained the preliminary decree by playing fraud on the Court. This issue is entirely distinct from the facts and circumstances of the present case, as there is no issue relating to any fraud committed by any person. Similarly, in the following cases:

- A.V. Papayya Sastry and Ors. Vs. Government of A.P. and Ors. (on Page no. 32 to 47 of the Department Case Compilation),
- K.D. Sharma Vs. Steel Authority of India Ltd. and Ors. (on Page no. 48 to 61 of the Department Case Compilation),
- Dalip Singh Vs. State of U.P. and Ors. (on Page no. 62 to 70 of the Department Case Compilation), and
- S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Ors. (on Page no. 93 to 100 of the Department Case Compilation)

the issue addressed by the Hon'ble Apex Court related to the fraud in respect of commercial disputes between two parties which is not at all similar and identical to the factual matrix of the present case.

30. In the case of Arjun Singh vs. Mahindra Kumar & Ors. (on Page no. 71 to 92 of the Department Case Compilation), the primary issue involved in the Supreme Court was "whether the rejection of an application made by a defendant

under Order IX, Rule 7 of the Civil Procedure Code (CPC) to set aside an ex parte order operates as res judicata (a legal bar) to preclude the defendant from raising the same facts in a subsequent application under Order IX, Rule 13 of the CPC to set aside the final ex parte decree". Thus, said issue is not in hand before the Hon'ble Tribunal, thus, case law is clearly distinguishable.

31. Thus, the various case laws relied upon by department are clearly distinguishable, more particularly, the same are not in context of the Income tax law or any provision thereof, hence these judgments are wholly irrelevant and requested to be disregarded at threshold.

In view of the above, it is prayed:

- a. To declare the impugned notice u/s 153C of the Act bad in law;
- b. Quash the impugned assessment order 18.03.2024 passed u/s 153C of the Act;
- c. Allow the appeal of the Appellant;
- d. To grant any other relief, as it may be deemed fit, in the case of the Appellant."

8. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

Sr. No	Document Title	Page No.
1.	Copy of computation of total income	1
2.	Copy of Form 26AS	2-5
3.	Copy of Passport and OCI Card	6-9
4.	127 Order dated 27.09.2023	10-11
5.	Notice u/s 153C issued, reopening the assessment in case of the Appellant for AY 2015-16 dated 31.03.2023.	12
6.	Notice/s 142(1) of the IT Act dated 13.06.2023	13-15

7.	Physical service of a notice u/s 142(1) of the IT Act was made to the address of the mother-in-law of the Appellant, in Jaipur dated 17.10.2023	16-19
8.	Appellant updated her details on the web-portal of the Department dated 17.11.2023	20
9.	Appellant reply dated 18.11.2023 against the notice dated 17.10.2023	21-22
10.	Copy of Bank Account Opened on 27.02.2020	23
11.	DCIT Circle -1 Jaipur issued a show cause notice dated 18.12.2023	24
12.	DCIT Circle -1 Jaipur issued the Show Cause Notice upon the Appellant dated 29.01.2024	25-28
13.	Appellant reply dated 01.02.2024 to the Show Cause Notice dated 29.01.2024	29-31
14.	DCIT Circle -1 Jaipur issued the Second SCN dated 01.02.2024	32-36
15.	Appellant reply dated 09.02.2024 to the Second SCN	37-41
16.	ACIT Circle -1 Jaipur issued another notice u/s 142 dated 14.02.2024 asking the Appellant to furnish the remaining details	42-44
17.	Appellant reply dated 17.02.2024 to the notice dated 14.02.2024	45-49
18.	Ld. DCIT disposed the objections raised by the Appellant by issue letter dated 06.03.2024	50-51
19.	An undated and 'DRAFT' assessment order was uploaded on the web-portal, passed by the DCIT Circle -1 Jaipur	52-71
20.	Copy of Notice dated 23.10.2024 issued to the Appellant along with	72-74

	Copy of remand report submitted by the Ld. AO on the additional evidence.	75-87
21.	Copy of Reply dated 29.10.2024 filed against the remand report of the Ld. AO dated 23.10.2024.	88-98
22.	Copy of Satisfaction note dated 25.01.2023 received on 09.12.2024.	99-103
23.	Copy of objections dated 12.12.2024 filed in response to satisfaction note dated 25.01.2023.	104-112

Sr. No	Document Title	Page No.
1.	Copy of Reply dated 12.04.2024, requesting the Ld. AO for providing the certified copy of the assessment order and demand notice.	1
2.	Copy of Notice dated 24.09.2024.	2-5
3.	Copy of Reply dated 01.10.2024 filed in response to the Notice dated 24.09.2024 along with	6-7
	Copy of Application for condonation of delay dated 26.07.2024 and	8-12
	Copy of the Hon'ble High Court Order.	13-14
4.	Copy of Reply dated 10.10.2024 submitting the details of the Writ Petition filed by the Appellant as extracted from the official website of the Hon'ble High Court.	15-21
5.	Copy of Application dated 10.10.2024 for additional evidence.	22-34
6.	Copy of Notice dated 09.12.2024.	35-37

7.	Copy of Reply dated 13.12.2024 filed in response to Notice dated 09.12.2024 along with	38-41
	Copies of passports for arrival and departure.	42-49
	Details of the Stay of the Appellant in India along with the copy of complete passport.	50-70
8.	Copy of Reply dated 31.12.2024 in response to letter dated 26.12.2024 along with	71-73
	Request letter dated 12.04.2024.	74
	Demand Notice.	75
	Email from CA confirming receipt.	76
9.	Copy of Notice dated 02.01.2025.	77-79
10.	Copy of Reply dated 08.01.2025 filed in response to Notice dated 02.01.2025 along with Proof of service of assessment order.	80
11.	Copy of reply letter dated 08.01.2025 filed with Ld. AO along with acknowledgment.	81-82
12.	Copy of written submissions filed before the Hon'ble CIT (Appeal).	83-152
13.	Copy of Notice dated 31.03.2023 issued u/s 153C.	153-157
14.	Copy of Order dated 27.09.2023 issued u/s 127.	158-159

9. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee considering the

condonation petition so filed after having filed the writ petition before the Rajasthan High Court the Id. CIT(A) ought to have consider the peition for condonation of delay.

The entire proceeding are without territorial jurisdiction and without following the mandatory statutory process. The Id. CIT(A) while having entertained the appeal and having raised several queries on the merits of the dispute on the various date of hearing was not justified in dismissing the appeal on the grounds of delay in filling the appeal before him and has erred in not dealing with the merits of the disputes. The assessee made application for condonation delay wherein the assessee primarily contended that if the period since the order was received by the assessee till the date of receipt of the order of the Hon'ble High Court then technically there is no delay in filling the present appeal before him. The Id. AR of the assessee drawn our attention to the finding of the our High Court wherein the assessee was given liberty to file the appeal before the Commissioner of Income Tax and Hon'ble High Court also directed to decide the appeal within six months. The assessee within 30 days from the receipt of the order of the High Court filed the appeal before the Id. CIT(A) which was dismissed on the ground that delay was not explained by the assessee and there was no reasonable cause. He also submitted that the whole

proceeding is without any jurisdiction as the ITO, ward 1(3), Jaipur having no territorial jurisdiction upon the assessee issued the notice u/s. 153C of the Act and there upon the order was framed being without jurisdiction the assessee appeal has merits and thereby the delay whatsoever is required to be condone in the interest of the justice considering the fact that the assessee being NRI and has not regular presence in India. He also submitted that the Id. AO passing the order having aware that the assessee is NRI the draft order is required to be issued which was not passed and thereby the provision of making the assessment in the case of NRI is violated by the Id. AO if the draft order was issued then the assessee has remedy to file objection before the Dispute Resolution Panel.

10. On 10.07.2025 the Id. DR submitted that the case of the shows non compliance before the Id. AO and she has not filed the appeal in time before the Id. CIT(A) and thereby she supported the finding recorded in the order of the Id. CIT(A). So as it relates to the merits of the dispute is concerned she sought time. As regards the contention of the assessee for order u/s. 127 of the Act for transferring the case from Delhi to Jaipur she submitted that she has requested the DG system to provide the correct details and thereby in the interest of justice time was given to Id. DR.

Thereafter Id. DR from time filed the submission and sought time for the status report. Finally on 17.09.2025 she admitted that she was unable to provide that order. The written submission so filed in support of the revenue's contention reads as under ;

Misrepresentation of Facts before the Ld. CIT(A) and Legal Position on Section 127

I. Preliminary Objection – Absence of a Specific Prayer

1. The Revenue respectfully submits that the assessee's appeal is defective for want of a clear prayer/relief. Order XLI Rule 1 CPC and Rule 8 of the ITAT Rules contemplate not only grounds but also the relief sought.
2. In the absence of a precise prayer, the Department is left to speculate—whether the assessee seeks condonation, contests limitation, or challenges the Ld. CIT(A)'s finding of misrepresentation.
3. The Hon'ble Tribunal may, therefore, direct the assessee to first state the precise relief before arguments are advanced on merits.

II. Misrepresentation of Facts in Condonation of Delay

In the matter of: Assessee's plea for condonation of delay and reliance on misquoted Rajasthan High Court order dated 05.07.2024

1. Chronology:
 - o Assessment order received: 18.04.2024(as per assessee version)
 - o Limitation expired: 18.05.2024
 - o Writ filed: 12.06.2024 (after limitation)
2. Consequently, the writ could not have caused the delay. Indeed, the Hon'ble Rajasthan High Court's order dated 05.07.2024 records that "*the limitation for filing appeal has expired.*"
3. The Ld. CIT(A) has also noted this. The assessee has not discharged the burden of showing any error in that recording and assessee not offered any explanation before the Ld. CIT(A).
4. Before the Hon'ble Bench also no reason for misquoting the HRHC judgment has been explained by the assessee. Hence, the plea taken before the appellate authority was misleading.

III. Revenue's Prayer on Maintainability and Condonation

1. Introductory Submission

The Revenue respectfully submits that the assessee's plea for condonation of delay is devoid of merit. The assessee has relied upon a misquoted and misleading version of the Hon'ble Rajasthan High Court's order dated 05.07.2024. The said order, in fact, records that "*the limitation for filing appeal has expired.*" By attempting to suggest otherwise, the assessee has misrepresented facts before the appellate authority as well as before this Hon'ble Bench.

2. Findings of the High Court

- The Hon'ble Rajasthan High Court, while disposing of the writ petition, clearly recorded that limitation for filing appeal had already expired.
- Liberty was only granted to file an appeal in accordance with law; no benefit of limitation was extended.
- Thus, the pendency or disposal of writ could not have caused any suspension or extension of the limitation period.

3. Conduct of the Assessee

- The assessee has misquoted the High Court order and advanced a plea contrary to the judicial record.
- Before the Ld. CIT(A), no explanation was furnished for this misrepresentation.
- Before this Hon'ble Tribunal also, no reason has been shown for misquoting the Rajasthan High Court judgment.
- Such conduct is neither bona fide nor inadvertent; rather, it amounts to misleading the judicial forum.

4. Legal Position

(a) Fraud and Misrepresentation Vitiates Proceedings

- *S.P. Chengalvaraya Naidu v. Jagannath* (1994) 1 SCC 1 (SC) – A litigant who misrepresents or suppresses material facts is not entitled to any relief (Paper Book Page No. 1 to 6).

- *A.V. Papayya Sastry v. Govt. of A.P.* (2007) 4 SCC 221 – Fraud or misrepresentation renders proceedings a nullity; fraud and justice cannot co-exist (Paper Book Page No. 7 to 21).

(b) Burden of Proof in Delay Condonation

- *Esha Bhattacharjee v. Raghunathpur Nafar Academy* (2013) 12 SCC 649 – Applicant must approach with clean hands and show bona fide reasons; suppression disentitles relief (Paper Book Page No.22 to 32).
- *Collector, Land Acquisition v. Mst. Katiji* (1987) 167 ITR 471 (SC) – Liberal approach applies only when sufficient cause is shown truthfully (Paper Book Page No. 33 to 35).

(c) Discretion is Equitable and Cannot be Misused

- *Union of India v. Ashok Kumar* (2005) 8 SCC 760 – Discretion to condone delay cannot be exercised in favour of a party acting dishonestly (Paper Book Page No. 36 to 44).
- *Lachhman Dass v. Jagat Ram* (2007) 10 SCC 448 – A party misleading the court cannot claim equitable relief (Paper Book Page No. 45 to 50).

5. Application to Present Case

- The assessee has not discharged the burden of showing any “sufficient cause” under Section 5 of the Limitation Act.
- On the contrary, the assessee has attempted to misrepresent the High Court’s order.
- Condonation of delay is a matter of judicial discretion; and where misrepresentation exists, the same cannot be exercised in favour of the assessee.

6. Prayer In light of the above, it is respectfully prayed that the assessee’s plea for condonation of delay be rejected, as:

1. The Hon’ble Rajasthan High Court itself recorded that limitation had expired.
2. The assessee has misrepresented this order before the appellate authority.
3. No explanation has been furnished for such conduct.
4. Judicial precedents unequivocally hold that misrepresentation disentitles a party from equitable relief.

5. The assessee has shifted burden on pendency of writ before the Rajasthan High Court in delay of filing Appeal before the Ld. CIT(A) in place of placing genuine reason before the Ld. CIT(A) .

Accordingly, the appeal deserves to be dismissed in limine as barred by limitation. In view of the above, the Revenue most respectfully prays that the Hon'ble Tribunal:

1. The appeal may be held defective and non-maintainable in absence of a clear prayer; or
2. Hold the appeal non-maintainable for want of a specific prayer; or
3. Direct the assessee to disclose the precise relief claimed so the Revenue can respond without uncertainty; and
4. Decide condonation as a preliminary issue, noting the assessee's misrepresentation and failure to show "sufficient cause."
5. The assessee has not explained for misquoting of Hon'ble Rajasthan High Court's Order for ground of condonation of delay before the Ld. CIT(A) and hence failed to prove the findings to prove Ld. CIT(A) on same.

Additional Submission

It is respectfully submitted that in the present case the assessee was represented by an Authorised Representative who is himself a High Court practitioner. The expectation of candour and accuracy is, therefore, much higher. In spite of this, a clear misrepresentation of the Hon'ble Rajasthan High Court's order dated 05.07.2024 has been made. Such conduct cannot be brushed aside as inadvertence; it constitutes a serious abuse of process.

Final Prayer

In view of the above, the Revenue most respectfully prays that this Hon'ble Tribunal may:

1. Hold that the appeal is barred by limitation and liable to be dismissed in limine.
2. Alternatively, hold the appeal defective/non-maintainable in absence of a clear prayer.
3. Direct the assessee to disclose the precise relief claimed before the appeal is heard further.
4. Decide condonation first as a preliminary issue, noting the misrepresentation and failure to show sufficient cause.

5. Specifically record in the order that the assessee, despite being represented by a High Court practitioner, misrepresented the findings of the Hon'ble Rajasthan High Court, which is a serious matter undermining the sanctity of judicial proceedings.

Procedural Request – Adjournment/Long Date

1. The Bench directed the Revenue to place on record the Section 127 notice. The DR office, being a representative forum, does not hold the original assessment records and depends on the AOs concerned.
2. Requisitions have been formally made to the AO(s); communication copy is enclosed (Paper Book 2 Page No. 1)
3. Revenue prays for a long date to place the factual report and the Section 127 notice on record, in the interest of complete justice.

Without Prejudice – Legal Position on Section 127 respectfully submits as under

IV. Principles Governing Section 127 Transfers

- Administrative nature: Transfer under Section 127 is an administrative measure for efficient and coordinated tax administration. Courts do not interfere unless mala fides, jurisdictional error, or demonstrable prejudice is shown.
- Notice, reasons, hearing (wherever possible): Outside intra-city transfers covered by the proviso, reasons must be recorded and communicated, and a reasonable opportunity afforded.
- No vested right to a particular AO: An assessee cannot choose the Assessing Officer; inconvenience alone does not vitiate a transfer.

Key authorities:

- *Ajantha Industries v. CBDT* (1976) 102 ITR 281 (SC) — reasons must be recorded and communicated. (Paper Book 1 Page No. 51 to 56) the reasons were communicated while passing order u/s 127 by the department and assessee made no compliance of the same. It is a case as per assessee the PAN was transferred from Delhi to Jaipur without her knowledge but when order u/s 127 was passed for centralization of the case from Jurisdictional Assessing Officer to DCIT, Central and communicated to assessee and thus assessee had an opportunity to object the centralization and also may had requested to transfer back its case to Delhi. But no such efforts were made by the assessee hence it can be sum up –

i) The assessee is claiming that he she was a non resident

- ii)* The assessee is objecting transfer of PAN from Delhi to Jaipur.
- iii)* Assessee is claiming that there is a violation of principal of Natural Justice as her address was of Delhi.
- iv)* Assessee is stating that reason of transfer of PAN from Delhi to Jaipur was not communicated to her.

The fact and rebuttal are as under:-

- i)* As per record, assessee never filed her ITR so her status was not available with the Revenue even during the proceedings u/s 153C assessee never came forward to intimate the department about her Residential Status. It was the burden of the assessee to cooperate the department in providing the basic information and at least about her status. Till date nothing has been submitted by the assessee before the AO for verification of her claim of being Non-Resident. Reliance is placed on judgement of Supreme Court of India in the case of Commissioner of Income-tax v. Paville Projects (P.) Ltd. [2023] 149 taxmann.com 115 (SC)/[2023] 293 Taxman 38 (SC)/[2023] 453 ITR 447 (SC)[06-04-2023], for revenue loss being assessee's claim that the order was erroneous or prejudicial to the Revenue. Assessee failed to sustain this that order of Ld. Assessing Officer and CIT(A) was erroneous and prejudicial to assessee. But on the other hand not assessing the true income and non-corporation by the assessee is in this case violation of Principal of Natural Justice of the Revenue for proper analyzation of facts and submission. The assessee was even not able to point out that no opportunity was provided to her so that she can object the proceedings.
- ii)* The PAN of the assessee was transferred from Delhi to Jaipur on consequence of Search proceedings in the case of Om group as the documents related with the assessee were found. Further as per the documents the assessee had made investment in the property which was under the jurisdiction of the ITO 1(2) and later on communication u/s 127 was made with the assessee but no response from the side of the assessee. The assessee had an opportunity for more than 1 year to raise the issue for transfer of PAN but assessee had not objected. The transfer was neither arbitrary or perverse or mala fide. The assessee have to prove that there was no meaningful opportunity was provided. The transfer of the case from one ITO to another is for public interest only. The assessee failed to prove that in faceless era what was her right which has been ignored by the department when, she was having facility to respond the proceedings sitting anywhere across the world.
- iii)* Assessee was NRI and according to her shifting the case from Delhi to Jaipur was violation of principal of natural justice. In this regard, the transfer of

Pan from Delhi to Jaipur was not prejudicial to as the assessee was not residing in India.

iv) The assessee plea that PAN transfer from Delhi to Jaipur was violation of principal of Natural Justice holds no water as the notices issued after the transfer such as 153C, 142(1), 127, VC hearing and SCN all over through digital media only. Section 127 was introduced by the legislature to protect the right of the assessee specially considering the INCONVENIENCE CAUSED IN APPEARING BEFORE THE ASSESSING OFFICER IS DIFFICULT FROM ONE STATION TO ANOTHER THAT CONSUMES TIME INFRASTRUCTURE AND OTHER INCONVENIENCE IN SUBMISSION AND REPLY. The second violation of right of assessee was difficulty in engaging the counsel of other station and handover the papers in physical form for argument. In this case, the assessee was non resident and no physical hearing was called by the Assessing Officer and due to digital Assessment Proceedings including filing of response, ITR, communication and video conference this right of the assessee has not been violated. The assessee must prove that what was the loss/violation of her right. The third reason as there is no violation in respect of monetary loss of the Assessee, as the entire Assessment Proceedings are without human interference and through electronic media. The assessee have to prove that what inconvenience or loss was suffered by her due to Pan transfer from Delhi to Jaipur and her non-cooperation though out the Assessment Proceedings including the objection of jurisdiction.

The Revenue respectfully submits that Section 127 must not be read in isolation. The section 124 has the same path that goes with Section 127 and Hon'ble SC in the case of GKN and Driveshaft has given clear findings in the cases where assessee is not satisfied with the notices issued by the department. The assessee has to prove violation of principal of natural justice including any loss caused to her especially her right of hearing/production of evidence/submission/objection and violation of any other right of her.

- Kashiram Aggarwalla v. Union of India & Others AIR 1965 SC 1028 (Paper Book Page No. 57 to 64)

Ratio of the Case

- The Supreme Court upheld the validity of transfer of an income-tax case under the then Section 5(7A) of the 1922 Act (which corresponds to present Section 127 of the 1961 Act).
- It held that the transfer of a case from one ITO to another is an administrative order made for proper administration of the Act.

- The Court clarified that such transfer orders do not affect the inherent jurisdiction of the officer and are not justiciable unless mala fides or clear prejudice is shown.
- *Pannalal Binjraj v. Union of India* (1957) 31 ITR 565 (SC) — inconvenience is not a ground; remedy lies against abusive exercise, not the provision.
- *Aamby Valley Ltd. v. CIT* (Bom HC) — wide discretion for “better administration”; not to be disturbed unless arbitrary/perverse/mala fide; assessee cannot choose AO.
- *Vishal Kumar v. CIT* (Del HC) — once notice and opportunity are given, no prejudice arises merely from transfer.
- *Genus Electrotech Ltd. v. UOI* (Guj HC) — the hearing must be meaningful; otherwise the opportunity becomes an empty formality.

V. Faceless e-Assessment – Territorial Inconvenience Is Irrelevant

- The Faceless Scheme ensures end-to-end digital interaction. Personal appearance, travel, or location is immaterial.
- *Ashapura Enterprises v. PCIT* (Guj HC) — with e-communication of returns/notices/questionnaires/responses, pleas of location-based inconvenience “do not hold any water.”
- Thus, in faceless proceedings, physical distance causes no prejudice. Only demonstrable prejudice (not mere hardship) can invalidate a transfer.

VI. Facts of the Present Case – Full Compliance and No Prejudice

- A detailed show-cause under Section 127(1) was issued, recording valid reasons for centralization.
- Reasonable opportunity was given; the assessee chose not to respond.
- Reasons and communications were through the digital platform; all subsequent proceedings (u/s 153C, 142(1), VC hearing, SCN) were on the designated email with mandatory DIN; no physical interface.
- The assessee is a non-resident; change of station causes no inconvenience in the faceless regime.
- The assessee never objected under Section 124(2); did not honor the discipline laid down in GKN Driveshafts regarding objections.
- PAN transfer (Delhi→Jaipur) per se is not prejudicial: the property linked to search is in Jaipur; the main group stood centralized at Jaipur; 153C issued by the jurisdictional AO.

- Non-appearance and non-objection: A Section 127 notice was served; if the assessee perceived prejudice, she ought to have objected then. Silence amounts to acceptance.
 - *J.R. Tania Charitable Trust v. DCIT* (Raj HC) — where notice warned that non-response would be treated as “no objection,” silence led the Court to presume no objection and uphold transfer (Paper Book 1 Page No. 129 to 143).
 - *Vishal Darshanlal Talreja v. PCIT* (Guj HC, 2025) — similar facts; vague inconvenience pleas rejected; transfer upheld (Paper Book 143 to 156).

Duty to cooperate: ITAT Jaipur in *Pankaj Mani Kulshreshtha v. ITO* (27.03.2025) (Paper Book 177 to 191) reiterated that it is the bounden duty of the assessee to appear before statutory authorities; repeated non- Revenue respectfully submits that-

- The assessee was throughout aware of the proceedings, but not participated in hearings, and though full opportunity to represent the case. No prejudice has been demonstrated.
- Assessee was a non-resident and hence change of station show no mis-connivence
- The assessee has not objected the proceedings as per section 124(2)
- The assessee has not respected dither findings as held in GKN Drive Shaft of the Hon'ble Apex Court
- The assessee has filed WRIT before the Hon'ble Rajasthan High Court after assessment order but synopsis has not been submitted before the ITAT and also not before the Ld. CIT(A).

The Faceless e-Assessment Scheme, announced in the 2019 Budget by FM Nirmala Sitharaman and rolled out in October 2019, aims to conduct income tax assessments entirely through non-physical, online interaction.

Impact on Assessee

Since all interactions are electronic, there is no requirement for personal appearance, no additional travel cost, and no inconvenience related to location. The taxpayer can respond from anywhere, including from abroad, making physical distance or city boundaries irrelevant. The absence of personal meetings also removes scope for harassment or bias.

Stand Taken

The faceless e-assessment is inherently non-physical and online in nature. Therefore, there is no prejudice to the assessee, nor any adverse effect on their ability to appear, incur costs, or manage convenience. The process is designed for transparency, efficiency, and taxpayer convenience, aligning with the objective of a fair and harassment-free tax administration.

How it Works

- The National e-Assessment Centre (NEC) in Delhi is the single communication point for taxpayers and assessment units.
- NEC issues notices under Section 143(2) and allocates cases to assessment units through an automated system, ensuring anonymity and eliminating personal interface.
- The process replaces territorial jurisdiction with dynamic jurisdiction, so the assessee is unaware of the officer's identity or location.
- The assessee has never filed ITR in INDIA.
- The property in the name of assessee as per search was found in Jaipur,
- The main group was centralised at Jaipur and 153C was issued by the jurisdictional AO
- All the correspondence including notice under section 153C, 127 order, 142(1), video conference, show cause were online on designated mail id.
- DIN was mandatory,
- No human /physical interface,
- 127 order was communicate to assessee but she raised no objection,
- No compliance throughout the hearing, so failed to prove any inconvenience or difficulty in representing the case,
- Filed to prove any PREJUDICE,
- Any violation of Principle of Natural Justice,
- Only objection that her PAN was transferred from Delhi to Jaipur without her knowledge,

NON Appearance and not objecting Before the AO

Notice under section 153C was issued to assessee she must have objected at that time, that transfer is prejudice to her. But she made no response. When no objection is filled it is an acceptance only.

The Hon'ble Gujrat High Court at Ahmedabad R/SLP/1841 OF 2025 in the case of Vishal Darshanlal Talreja V/S PCIT, Vadodara 1 (Paper Book 1, Page No 94 to 99) and another's, Hon'ble Justice Bhargava D. Karia and Hon'ble Justice

D.N.Ray vide order dated 03/03/2025 has held similar issue same is reproduced for ready reference of the Hon'ble Bench-

"25. In case of Asharapura Enterprise v.

NEUTRAL CITATION C/SCA/1841/2025 ORDER DATED: 03/03/2025 undefined
The Principal Commissioner of Income Tax -

1 (judgment dated 10.03.2021 passed in Special Civil Application No.20409 of 2019 and other allied matters), the coordinate Bench of this court while considering the provisions of section 127 of the Act, referring to decisions of various other Hon'ble High Courts as well as Hon'ble Supreme Court as well as decision of this Court in case of Genus Electrotech Ltd. v.

Union of India and others reported in (2018) 402 ITR 221 has observed as under:

"27 We have already noted the reasons for the transfer of assessment. We may refer to a decision rendered by a Coordinate Bench of this Court in the case of Shree Ram Vessel Scrap P. Ltd. vs. Commissioner of Income-tax, reported in (2013) 355 ITR 255 (Guj), wherein this Court had upheld the stance of the Revenue that for effective and coordinative investigation, if otherwise established on the record, the same can be a good NEUTRAL CITATION C/SCA/1841/2025 ORDER DATED: 03/03/2025 undefined ground for transfer of a case. It was observed as under:

"20. Section 127 of the Act, as already noticed, pertains to power to transfer cases. Sub-

Commissioner after giving the assessee a reasonable opportunity of being heard wherever it is possible to do so and after recording his reasons, transfer any case from one more or more Assessing Officers subordinate to him to any other Assessing Officer or Assessing Officers also subordinate to him. Likewise, under sub-section (2) of Section 127 after following similar procedural requirements, it is open for the Director General, Chief Commissioner or Commissioner to transfer a case from one Assessing Officer to another who is not subordinate to him in agreement with the authority to whom he may be subordinate. Sub-section (3) of Section 127 provides that nothing contained in sub-section (1) or subsection (2) shall be deemed to require giving of any such opportunity where the transfer is from any Assessing Officer NEUTRAL CITATION C/SCA/1841/2025 ORDER DATED: 03/03/2025 undefined to another and offices of all such officers are situated in the same city, locality or place. Sub-section (4) of Section 127 provides that 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-issuance of any notice already issued by the Assessing Officer from whom the case is transferred.

21. Exercise of power under sub-section (1) and subsection (2) of the Act comes with certain procedural requirements namely, of granting a reasonable opportunity of being heard in the matter wherever it is possible to do so, of recording of reasons for passing such order and as provided by the Supreme Court in *Ajanta Industries* (supra) communicating such reasons also to the assessee. Subject to fulfilment of such procedural requirements, the authority under Section 127 enjoys considerable discretion while exercising the power contained in sub-section (1) or subsection (2) thereof. Such discretion of course has to be exercised for achieving the NEUTRAL CITATION C/SCA/1841/2025 ORDER DATED: 03/03/2025 undefined public purpose and not for any arbitrary or irrelevant consideration. On the other hand, it can also be seen that transfer of a pending case from one Assessing Officer to another outside of a city, locality or place is likely to cause considerable inconvenience to an assessee.

Therefore, even though an assessee may not have a vested right to insist that his assessment be completed only at one place or by a particular Assessing Officer, nevertheless, the reasons for transfer must be weighty enough to offset against such personal inconvenience of an assessee. In exercise of power under Section 127 thus we are concerned with larger public interest on one hand and personal inconvenience on the other. However, as long as such powers are exercised bona fide, for public purpose and in the interest of Revenue, the role of the Court to dissect such reasons and to come to a different conclusion would be extremely limited. It is by now well settled that judicial review against the administrative order in exercise of writ jurisdiction, the Court is concerned with the NEUTRAL CITATION C/SCA/1841/2025 ORDER DATED: 03/03/2025 undefined decision making process and not the final decision itself.

authority to transfer the case can be stated to be wholly irrelevant or arbitrary, the Court would not interfere with such reasons. Of course an order of such nature can and need to be quashed if it is demonstrated that same is passed either without jurisdiction or is actuated by mala fide either in fact or in law."

28 In the case of *Aamby Valley Ltd. vs. Commissioner of Income-tax*, reported in (2014) 41 taxmann.com 15 (Bombay), a Division Bench of the Bombay High Court held as under :

"8. We have considered the submissions. The power to transfer cases under Section 127 of the Act is to be undoubtedly exercised after following the principles of natural justice. However, the discretion of the authority to transfer a case has to be examined on the touchstone of the same not being arbitrary and/or perverse and/or mala fide. If there are reasons in NEUTRAL CITATION C/SCA/1841/2025 ORDER DATED: 03/03/2025 undefined the impugned order which indicates due application of mind to reach a view to transfer a case from one jurisdiction to another, then this Court will not interfere with the discretion of the administrative authority who transfers the case. This discretion is vested by the Act in high ranking officers viz. Commissioner of Income Tax and the necessity to transfer a case from the jurisdiction of one officer to another officer for better administration of the Act could be diverse and impossible to enumerate. It is for the above reason that Section 127 of the Act has not limited the exercise of jurisdiction by specifying any circumstances before the authority can exercise his powers to transfer the case. One more fact which cannot be lost sight of is that an assessee cannot choose his Assessing Officer and, therefore, if the transfer order does indicate some valid reasons to justify the transfer and such reasons are neither perverse or arbitrary or mala fide this Court would not interfere with the reasonable exercise of discretion."

NEUTRAL CITATION C/SCA/1841/2025 ORDER DATED: 03/03/2025 undefined 29 The Delhi High Court, in the case of Vishal Kumar vs. Commissioner of Income, reported in (2014) 44 taxmann.com 180 (Delhi), held as under :

"10. The assessee also has the opportunity to present his case and be subject to a regular assessment, in front of the Assessing Officer to whom jurisdiction has been transferred. No prejudice is caused by the mere fact of a Section 127 order, such that detailed reasons and specific grounds are required to be provided, as the petitioner today argues. Equally, the show-cause notice dated 9.10.2013 granted the petitioner in this case an opportunity of being heard. No oral representation was made by the petitioner on that date, nor was any request for another date made to the Commissioner. Written objections, however, were preferred, which were considered and disposed off by the impugned notice in this case. The argument, thus, that no chance to effectively represent the case was provided has no merit."

30 In Pannalal Binraj vs. Union NEUTRAL CITATION C/SCA/1841/2025 ORDER DATED: 03/03/2025 undefined of India, reported in (1957) 31 ITR 565, the Supreme Court observed while upholding the power of transfer that, inconvenience to the assessee or likelihood of misuse of the provision could not be a ground to declare the said provision to be void, but if there was abuse of the power, appropriate remedy could be taken. The relevant observations reads thus :

"It follows, therefore, that Section 5(7A) of the Act is not violative of Article 14 of the Constitution and also does not impose any unreasonable restriction on the fundamental

right to carry on trade or business enshrined in Article 19(1) (g) of the Constitution. If there is any abuse of power it can be remedied by appropriate action either under Article 226 or under Article 32 of the Constitution and what can be struck down is not the provision contained in Section 5(7A) of the Act but the order passed thereunder which may be mala fide or violative of these fundamental rights. This challenge of the vires of Section 5(7A) of the Act, therefore, fails."

31 We may also refer to the instructions issued by the CBDT NEUTRAL CITATION C/SCA/1841/2025 ORDER DATED: 03/03/2025 undefined dated 18th September 2020, more particularly, clause 2(vi) thereof:

"All cases selected u/s 133A of the Act (excluding International Taxation) having impounded material will be transferred to the Central Charges vide order u/s 127 of the Act and the cases having no impounded material will be handled by the ReACs. The survey reports shall be uploaded on ITBA by the jurisdictional charges."

26. Considering the position of law as discussed above and the reasons recorded by the respondent no.1, the contention raised on behalf of the petitioner that impugned notice dated 21.12.2024 and order dated 02.01.2025 being corrigendum notice and order containing further details is without jurisdiction, is not tenable as the same are in continuation of order dated 29.11.2023 so as to comply with the NEUTRAL CITATION C/SCA/1841/2025 ORDER DATED: 03/03/2025 undefined provisions of the Act to provide opportunity of hearing to the petitioner.

It is not in dispute that the petitioner has not filed any reply to the notice dated 21.12.2024 and now it is contended that the petitioner did not file reply as the said corrigendum notice referred to details relied upon to transfer case. Such approach of the petitioner cannot be accepted to quash the impugned order.

27. In view of the provisions of section 127 of the Act and conspectus of law enumerated here in above, power of transfer of case of the petitioner cannot be said to have been exercised without jurisdiction or contrary to the material on record to justify such action. We are therefore of the view that we should not interfere with the impugned corrigendum NEUTRAL CITATION C/SCA/1841/2025 ORDER DATED: 03/03/2025 undefined order of transfer passed by respondent no.1 under section 127(2) of the Act.

28. Petition, therefore, fails and is accordingly rejected. No order as to costs."

It was the bounded duty of the assessee to appear before the statutory authorities as and when called for.

It is respectfully submitted that assessee has to appear before the authority to explain her stands as held *J. R. Tantia Charitable Trust vs. Deputy Commissioner of Income Tax & Ors.* (Rajasthan High Court, Jodhpur, Paper Book 1, Page No. 129 to 142) dated 14 October 2011, as reproduced from the court's judgment transcript:

"19. In the present case, nothing of this sort invokes the good conscience of this Court for exercising its wide discretionary powers under Articles 226 and 227 of the Constitution of India for quashing of the impugned notice under Section 153A of the Income Tax Act. In the considered opinion of this Court, it would be premature to quash such a notice at this stage, especially when objections of the assessee in this regard (vide Annex-8 and 9) are yet to be decided and the petitioner has made a prayer to this effect also in the writ petition.

20. On account of an interim order granted by a coordinate bench of this Court on 26.10.2010 in the present case, the proceedings against the petitioner-Trust in pursuance of the impugned notice dated 24.08.2009 under Section 153A and consequential notices under Section 142(1) of the Act were stayed, since the Revenue asked for some time to produce the relevant record, but it was not so produced, and thus proceedings are apparently not continued under the orders of this Court for last about one year. By not allowing Revenue authorities to even proceed with the matter in pursuance of the impugned notice under Section 153A of the Act, particularly even to decide the objections of the petitioner itself, does not subserve the object of these provisions enacted to prevent black money and bringing the same to book by framing assessments against not only persons searched but other persons against whom material is found during such search.

21. The interest of justice would be served by now directing the respondents to decide the objections of the petitioner-Trust within one month from today and allow the assessee-Trust to proceed further in the matter.

22. Accordingly, this writ petition is found to be premature as far as challenge to notice under Section 153A of the Act is concerned. The interim order dated 26.10.2010 is vacated. The order under Section 127 of the Act dated 07.07.2009 is upheld. The respondent No.1, Assistant Commissioner may decide the objections of the assessee-Trust in pursuance of notice Annex-5 dated 24.08.2009 within one month from today and the assessee-Trust will be free to proceed further in accordance with law.

23. The writ petition is accordingly dismissed. Costs easy.

(DR. VINEET KOTHARI), J."

Same view has been taken by Hon'ble Bench, ITAT Jaipur in the recent Judgment of Pankaj Mani Kulshreshtha, Jaipur vs Ito, Ward-3(5), Jaipur on 27 March, 2025, has held that-

"It was the bounded duty of the assessee to appear before the statutory authorities as and when called for"

"3.6. We have heard both the parties and perused the materials available on record. It is noted that the AO made two additions in the hands of the assessee amounting to Rs.15,98,818/- as trading addition and Rs.6,80,800/- as unexplained cash deposit treating it as deemed income u/s 69A of the Act. However, in first appeal, the Id. CIT(A) has dismissed the appeal of the assessee confirming the action of the AO as no controverting material was supplied by the assessee in spite of providing various opportunities. It is also noted from the submissions of the Id. AR of the assessee wherein he prayed that in order to render substantial justice to the assessee, the case may be restored to the file of the AO. The Sh. Panka Mani Khulshrestha vs. ITO Bench noted that it is an admitted fact that the assessee is ex-parte before the AO and also before the Id. CIT(A). Therefore, he could not put forth his defence. It was the bounded duty of the assessee to appear before the statutory authorities as and when called for. It is noticed that various opportunities were provided to the assessee for settling the issue but the assessee remained lethargic and unserious in pursuing his case. However, we are of the view that lis between the parties has to be decided on merits so that nobody's rights could be scuttled down without providing opportunity of being heard to the assessee. Hence, the matter is restored to the file of the AO to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings. Thus the appeal of the assessee is allowed for statistical purposes."

VII. Conclusion

- The assessee's silence to the Section 127 notice issued by the Central wing, Jaipur is deemed acceptance (*J.R. Tantia Charitable Trust*).
- The transfer is a lawful administrative act within the Commissioner's discretion (*Pannalal Binraj; Kashiram Aggarwalla*).
- Procedural safeguards were satisfied: notice, opportunity, and communication of reasons (*Ajantha Industries; Genus Electrotech*).
- Under the faceless regime, territorial inconvenience is illusory (*Ashapura Enterprises*).
- The challenge to the Section 127 order, therefore, deserves rejection.

Reliefs prayed (without prejudice to the preliminary objection):

1. The assessee's failure for not putting any counter or rebuttal of the finding of Ld. CIT (A) that why she misquoted the judgement of Hon'ble Rajasthan High Court that delay was due to the reason that writ was pending before the Hon'ble Rajasthan High Court though this fact was incorrect and elaborate finding has been given by Ld. CIT (A) and assessee squarely failed to counter that before the Hon'ble Bench, ITAT Jaipur.
2. Hold the appeal non-maintainable for want of a specific prayer; or direct the assessee to state the exact relief first.
3. Decide condonation as a threshold issue; record that the assessee misrepresented facts and failed to show sufficient cause.
4. On merits, uphold the transfer under Section 127 and dismiss the challenge.
5. The Revenue requests that the above submission may be taken on record as a part of hearing while deciding the Appeal of the Assessee in issue of transfer o case u/s 127 vis-à-vis misrepresentation of facts before Hon'ble ITAT and CIT(A) w.r.t. delay.
6. On merit of addition as assessee has not argued the revenue reserves the right to submit the same in addition to above.

Submitted Respectfully on behalf of the Revenue

Ld. DR relied upon the following decision :

S.No.	Particulars
1	Commissioner of Income-tax v. Gujarat electricity Board [2003] 129 Taxman 65 (SC)
2	Khatau Junkar Ltd. v. K. S. Pathania [1992] 61 TAXMAN 157
3	Gujarat Poly-Avx Electronics Ltd.v.Deputy Commissioner of Income-Tax [1996] 89 taxmann 634
4	S.P. Chengalvaraya Naidu vs Jagannath
5	The Deputy Commissioner of Income Tax vs Kalinga Institute of Industrial

Ld. DR filed paper book containing the following documents;

S. No.	Assessment year wise details	Page no.
1	Letter of CIT(A) AY2015-16 for calling of remand report	1

2	Reply of assessee for AY2015-16 regarding writ petitions filed.	2-3
3	Application of assessee for AY2016-17 regarding additional evidence filed before CIT(A).	4-16
4	Reply of assessee for AY2016-17 regarding writ petitions filed.	17-18
5	Assessee's letter for certified copy of assessment order	19
6	Remand report in the case of Sonu Dusad	20-29
7	Sonu dusad deed	30
8	Letter of CIT(A) AY2015-16 for calling of remand report	31
9	Application of assessee for AY2016-17 regarding additional evidence filed before CIT(A).	32
10	Application for admitting additional evidence under rule 46A	33-44
11	Reply of assessee for AY2018-19 regarding writ petitions filed.	45-46
12	Letter of CIT(A) AY2018-19 for calling of remand report	47
13	Reply of assessee for AY2018-19 regarding additional evidence filed before CIT(A).	48
14	Reply of assessee for A. Y 2018-19 regarding additional evidence filed before CIT(A)	49-60
15	Application of assessee for A.Y 2018-19 regarding additional evidence filed before CIT(A)	61
16	Application of assessee for A.Y 2020-21 regarding additional evidence filed before CIT(A)	62

S. No.	Assessment year wise details	Page no.
A	2015-16	
	Assessment notesheet	1-4
	Notice u/s 153C dated 31/3/23	5
	Notice u/s 142(1) dated 13/6/23	6-8
	Notice u/s 142(1) dated 17/10/23	9-12
	Show cause notice dated 18/12/23	13
	PROCEEDINGS UNDER SECTION 127	14-15
	Show cause notice dated 29/01/24	16-19
	Notice u/s 142(1) dated 14/02/24	20-22
	Pr.CIT ORDER	23
	2015-16 Replies of the assessee	
	Reply dated 3/11/23	24

	Reply dated 18-11-23	25-26
	Reply dated 01-02-24	27-29
	Reply dated 17-02-24	30-34
B	2016-17	
	Assessment notesheet	35-38
	Notice u/s 153C dated 31/3/23	39
	Notice u/s 142(1) dated 13/6/23	40-42
	Notice u/s 142(1) dated 17/10/23	43-46
	Show cause notice dated 18/12/23	47
	Show cause notice dated 29/01/24	48-51
	Show cause notice dated 01/02/24	52-56
	Notice u/s 142(1) dated 14/02/24	57-59
	2016-17 Replies of the assessee	
	Reply dated 3/11/23	60
	Reply dated 18-11-23	61-62
	Reply dated 01-02-24	63-65
	Reply dated 17-02-24	66-70
	Bank statement	71
C	2018-19	
	Assessment notesheet	72-75
	Notice u/s 153C dated 31/3/23	76
	Notice u/s 142(1) dated 13/6/23	77-79
	Intimation	80
	Notice u/s 142(1) dated 17/10/23	81-84
	Show cause notice dated 18/12/23	85
	Show cause notice dated 31/01/24	86-89
	Show cause notice dated 01/02/24	90-94
	Notice u/s 142(1) dated 14/02/24	95-97

	2018-19 Replies of the assessee	
	Reply dated 01-02-24	98-100
	Reply dated 17-02-24	101-105
	Bank statement	106

S. No.	Case Name & Citation	Page no.
1	S.P. Chengalvaraya Naidu v. Jagannath (1994) 1 SCC 1	1-6
2	A.V. Papayya Sastry v. Govt. of A.P. (2007) 4 SCC 221	7-21
3	Esha Bhattacharjee v. Raghunathpur Nafar Academy (2013) 12 SCC 649	22-32
4	Collector, Land Acquisition v. Mst. Katiji (1987) 167 ITR 471	33-35
5	Union of India v. Ashok Kumar (2005) 8 SCC 760	36-44
6	Lachhman Dass v. Jagat Ram (2007) 10 SCC 448	45-50
7	Ajantha Industries v. CBDT (1976) 102 ITR 281	51-56
8	Kashiram Aggarwalla v. Union of India & Others AIR 1965 SC 1028	57-64
9	Pannalal Binjraj v. Union of India (1957) 31 ITR 565	65-92
10	Aamby Valley Ltd. v. CIT (2014) 41 taxmann.com 15	93
11	Vishal Kumar v. CIT (2014) 44 taxmann.com 180	94-99
12	Genus Electrotech Ltd. v. Union of India (2018) 402 ITR 221	100-108
13	Ashapura Enterprises v. PCIT (2021) 129 taxmann.com 458	109-128

14	J.R. Tantia Charitable Trust v. DCIT (Raj HC, Jodhpur)	129-142
15	Vishal Darshanlal Talreja v. PCIT R/SCA/1841/2025	143-156
16	Shree Ram Vessel Scrap P. Ltd. v. CIT (2013) 355 ITR 255	157-176
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12	Genus Electrotech Ltd. v. Union of India (2018) 402 ITR 221	100-108
13	Ashapura Enterprises v. PCIT (2021) 129 taxmann.com 458	109-128
14	J.R. Tantia Charitable Trust v. DCIT (Raj HC, Jodhpur)	129-142
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4	Rajesh Mahajan v. CIT (2010) 320 ITR 74	41-44
5	Arti Ship Breaking v. DIT (2010) 189 Taxman 50	45-49
6	Vrajlal Manilal & Co. v. CIT (1973) 92 ITR 287	50-56

11. On 17.09.2025 when confronted to the Id. DR on the issue that all the notices, correspondence and even address in Form no. 26AS shows the address of the assessee at Delhi then how the Notice u/s. 153C was issued by the Income Tax Officer, Ward 1(3), Jaipur and whether any PAN transfer request was made to Delhi PCIT or that of the Id.AO and any order u/s. 127 of the Act transferring the jurisdiction was made or not. On that Id. DR fairly admitted that no such order is available on record vide hearing dated 17.09.2025 even after sufficient time was given to place on record the correct fact about the jurisdiction issued raised by the assessee. But at the same time she has stated 127 order for transferring the case from ITO, Ward 1(3) to DCIT, Central Circle-1, Jaipur is available on record. In support of the jurisdiction issue, she relied upon the decision of the Apex Court in the case of DCIT vs. Kalinga Institute of Industrial Technology. On the aspect of the delay and jurisdictional issue she has filed case law compilation. As regards the delay petition wherein the assessee contended that the order was not serviced to the assessee but the assessee filed writ petition based on the same order. The order was served to the assessee but the same was returned by the postal authority with a remark no such person. The delay before the Id. CIT(A) was not explained properly and thereby the action of the Id. CIT(A) in dismissing the appeal of the assessee

is correct and Id. CIT(A) has passed a detailed order relying on the various decisions. The service of the order in faceless regime also no responsibility of the revenue and thereby the contention of the assessee about the filling the appeal with a substantial delay should not condoned as the assessee never informed the correct address to the revenue.

12. In the rejoinder Id. AR of the assessee submitted that Id. DR fairly admitted that there is order u/s 127 for transferring the case from Delhi to ITO, Ward 1(3), Jaipur and thereby the issue of notice u/s. 153C lac jurisdictions and when there is no transfer order. Even on the merits of the dispute the name of his husband is appearing for the alleged payment of cash and in that case how the same can be added as unexplained investment u/s. 69 of the Act in the case of the assessee.

13. We have heard the rival contentions and perused the material placed on record. Ground no 1 raised being general in nature does not require our finding. Ground no. 2 to 5 though shows the grievance on the various aspect of the case arising from the order of the Id. CIT(A) but it all relates to the decision of the Id. CIT(A) in condoning the delay in filling the appeal by the assessee before him. So it would be appropriate to deal all these

grounds together. The brief facts related to the dispute are that the Id. CIT(A) noted that the assessee appellant has filed by the appeal after the statutory time limit as prescribed under the Act. The assessee contended that she being OCI card holder and non-resident and she has not income chargeable to tax in India. She has as the

Date of assessment order	18.03.2024
Date of filling the Appeal before the Id. CIT(A)	02.08.2024
Date of writ petition before our Rajasthan High Court	31.05.2024/03.06.2024
Date of downloading of the order of the Hon'ble Rajasthan High Court	23.07.2024

After going through the above dates we also would like to reiterate herein below the finding of our High Court in the write petition filed by the assessee;

1. Learned counsel for the petitioner after arguing at some length is not pressing the petition with liberty to file appeal. The prayer made is that the limitation for filling appeal has expired. It is further submitted that there is dispute with regard to service of notice and draft order and the CIT be directed for a time bound decision.
2. The petition is disposed of, with the liberty as prayed for.
3. There is no doubt in the eventuality of the petitioner filling an appeal accompanied by the application for condonation of delay, the same would be considered in accordance with the law, sympathetically.
4. The Commissioner (Appeals) shall make an endeavour to decide the appeal as expeditiously as possible in the facts of the case but not later than six months from the date of receipt of a certified copy of this order.
5. The petition is disposed of accordingly.

Though Id. CIT(A) has dismissed the appeal within six months of the order of the High Court but has not considered the fact that the assessee has filed the appeal within 30 days from the date on which the order was

downloaded from the website and therefore, respectfully following the direction of our High Court we are of the considered view that the Id. CIT(A) should have considered the direction of the Hon'ble High Court in latter and spirit and when the assessee has filed the appeal within 30 days from the receipt of the order and that too with a prayer for condoning the delay. The Id. CIT(A) did not deal with any of the aspect of the contention raised in the petition for condonation of delay and simply dismissed the appeal by showing various charts and certain decision without dealing with the facts as stated in the condonation petition and as tabulated herein above and direction of the our High Court. What the assessee is expected when he has filed the appeal within 30 days from the receipt of the order of the High Court and therefore, we are of the considered view the Id. CIT(A) should have paid the respect of the direction of the High Court and therefore, based on the facts and direction of the High Court we condone the delay in filling the appeal before the Id. CIT(A) and thereby the ground no. 2 to 5 raised by the assessee are allowed.

14. Having condone the delay in filling the appeal before the Id. CIT(A) we deal with ground no. 6 raised by the assessee wherein the assessee challenges the impugned notice issued u/s 153C of the Act based upon

which the assessment was framed lacs jurisdiction and without any satisfaction as required u/s 153C of the Act.

The brief facts on the dispute are that the assessee is an individual OCI card holder and an NRI having no income chargeable to tax, though she was holding the Permanent Account Number [PAN]. The address as per the record and even the notices were issued at the address as shown in Delhi. In that case question remained unanswered from the side of the revenue that when notice and PAN data base shows the address of the assessee of Delhi then in that case how the notice u/s 153C was issued by the Income Tax Officer, Ward 1 (3), Jaipur. The matter was argued at length on 10.07.2025 the Id. DR submitted that the record shows non compliance before the Id. AO. The assessee has not filed the appeal in time before the Id. CIT(A) and thereby she supported the finding recorded in the order of the Id. CIT(A).

So as far as it relates to the merits of the dispute is concerned she sought time and she also sought time for the contention of the assessee for order u/s. 127 of the Act for transferring the case from Delhi to Jaipur. She submitted that she has requested the DG system to provide the correct details and thereby in the interest of justice time was given to Id. DR. Thereafter Id. DR from time filed the submission and sought time for the

status report. Finally, on 17.09.2025 she expressed that she was unable to provide that order as the same was not provided to her even though she made request for that order.

Thus, it is undisputed fact that there was no transfer of the case of the assessee from Delhi to Jaipur and thereby the notice so issued by the ITO, Ward 1(3), Jaipur lacs jurisdiction. The issue of deciding the legal ground of jurisdiction is decided by our own High Court in the case of Deep Channel Kothari vs. CIT [35 Taxman 223(Rajasthan)] where in the High court held that ;

5. In view of these facts, circumstances and authoritative observations, we have no hesitation to hold that the Tribunal was legally not right in not allowing the objections as to the jurisdiction of the ITO to initiate the notice and as to the validity of the proceedings taken in pursuance thereof, to be raised. The question is accordingly answered in the affirmative and against the department.

6. It is well settled law that the objection regarding lack of jurisdiction is decided first. Only after its decision holding that the Court or Tribunal has jurisdiction, other questions relating to the merits of the case arise for decision otherwise not.

7. The Tribunal has power to take additional evidence. After taking evidence which is considered necessary, the said point regarding lack of jurisdiction can well be decided by the Tribunal. As such it is neither necessary nor expedient for this Court to decide the remaining questions. The case observes to be sent back to the learned Tribunal for first deciding the said point regarding the lack of jurisdiction.

8. Question No. 1 is answered in the affirmative and in favour of the assessee. Remaining questions need not be answered because of our answer to question No. 1.

Respectfully following that binding precedent we consider the ground no. 6 raised by the assessee. Since we have considered the ground of jurisdiction and thereby quashed the order in dispute therefore the ground no. 7 to 11 becomes academic. Ground no. 12 premature and ground no. 13 being general does not require our finding.

In the results, the appeal of the assessee in ITA no. 505/JP/2025 stands allowed.

15. The facts of the case in ITA Nos. 506 to 509/JP/2025 are similar to the facts of the case in ITA No. 505/JP/2025 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in these appeal Nos. 506 to 509/JP/2025 are similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts, various grounds and arguments raised by both the parties in those appeals. Hence, the bench feels that the decision taken by us in ITA No. 505/JP/2025 shall apply mutatis mutandis in the case of Sonu Dusad in ITA Nos. 506 to 509/JP/2025.

In terms of these observations, the appeal of the assessee in ITA Nos. 506 to 509/JP/2025 are also allowed.

Order pronounced in the open court on 12/11/2025.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 12/11/2025

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sonu Dusad, Delhi
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-01, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 505 to 509/JP/2025)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar