

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

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER

**ITA No.8326/Del/2025
[Assessment Year: 2015-16]**

Vivek Mann Village Goghirpur, Karnal PAN No.AHCPV3556H	Vs.	ITO Ward-1 Karnal
Appellant		Respondent

Assessee by	Sh. Suresh K. Gupta, CA
Revenue by	Sh. Manoj Kumar, Sr. DR

Date of Hearing	06.01.2026
Date of Pronouncement	30.01.2026

ORDER

PER C.N. PRASAD, JM,

This appeal is filed by the assessee against the order of the CIT(A)/ NFAC dated 13.06.2024 for the A.Y. 2015-16.

2. The Ld. Counsel for the assessee at the outset submitted that the assessee moved an application for admission of additional ground for the reason that the assessment order passed by ITO, Ward- 5, Karnal is invalid and without jurisdiction as the same has been completed without issuing notice u/s. 143(2) by the authority passing the assessment order.

3. The Ld. Counsel for the assessee placing reliance on the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT (229 ITR 383) and Jute Corporation of India Ltd. vs. CIT (187 ITR 688), is submitted that the additional ground raised by the assessee purely legal ground going to the root of the matter and its adjudication does not require any fresh investigation into facts apart from looking into material already on record.

4. The assessee has raised following additional ground : -

“1. On the facts and circumstances of the case and also in law, the assessment order passed by ITO, Ward- 5, Karnal is invalid and without jurisdiction as the same has been completed without issuing notice u/s. 143(2) by the authority passing the assessment order.”

5. On going through the additional ground it is observed that it is purely a legal ground going to the very jurisdiction of the Assessing Officer in framing assessment in the case of the assessee and respectfully following the decision of Hon'ble Supreme Court referred to above the additional ground is admitted for adjudication.

6. Coming to the merits of the additional ground the Ld. Counsel for the assessee referring to page 29 of the paperbook which is the notice issued u/s.143(2) of the Act dated 26.07.2016 for the assessment year under consideration, submitted that this notice was issued by Income Tax Officer, Ward-1, Karnal.

7. Ld. Counsel for the assessee referring to page-42 to 44 which are the notices issued u/s.142(1) dated 23.08.2016 and 04.05.2017 were all issued by the ITO, Ward-5, Karnal. Therefore, it is submitted that it is an undisputed factual position that the case of the assessee was picked up for scrutiny through notice u/s. 143(2) issued by ITO, Ward- 1, Karnal. But how the case was transferred from ITO, Ward- 1 to ITO, Ward-5, Karnal is unknown as there is no order on record to show that any order u/s. 127(1) has been passed for transfer of the said case. Therefore, in the absence of any such valid order u/s.127, the authority to whom the case was transferred i.e. ITO, Ward-5, Karnal did not acquire valid jurisdiction for completion of assessment. Reliance was placed on the decision of the Delhi High Court in the case of Raj Sheela Growth Fund (P) Ltd. vs. ITO (446 ITR 26). Referring to this decision the Ld. Counsel for the assessee stated that the Hon'ble High Court held that where the case was transferred from one AO having jurisdiction over the assessee to another AO who otherwise did not have jurisdiction in terms of the direction of the Board under Section 120 and 124 of the Act, then transfer order u/s.127 is mandatory without which the jurisdiction of the AO cannot be conferred to pass any assessment order. The Ld. Counsel for the assessee placed reliance on the decision of the Delhi Tribunal in the case of Manoj Kumar Vs. ACIT 79 ITR (TRIB) 158 (ITAT-DELHI), Col. Paramjit Singh Vs. CIT [(1995) 220 ITR 446 (P & H)]. Reliance was

placed on the decision of the coordinate Sanjay Kumar Singhal vs. ACIT 2025(5) TMI 282 ITAT, Delhi.

8. On the other hand the Ld. DR supported the orders of the authorities below.

9. Heard rival submissions and perused the orders of the authorities below. In this case on perusal of the notice issued u/s.143(2) of the Act it is noticed that the same was issued by ITO, Ward-1, Karnal and the assessment was completed by ACIT (OSD), Ward- 5, Karnal. Nothing is placed on record to suggest any order of transferring jurisdiction from ITO, Ward- 1, Karnal to ITO, Ward-5, Karnal. Therefore, in the absence of any valid order for transfer of jurisdiction from one ITO to another ITO the assessment framed by the officer to whom the case was transferred is bad in law.

10. We observe that on almost identical circumstances the Tribunal annulled the assessment order in the case of Sanjay Kumar Singhal Vs. ACIT in ITA No.3581/Del/2023 dated 30.04.2025, observing as under :-

“5. On the facts and circumstances of the case, the authorities below has erred both in law and in facts of the case in making impugned addition of Rs.45,12,065/- treating the difference in value of import/custom duty between figures recorded in books and figures available with the AO as undisclosed money ignoring the fact that both the import purchase and custom duty are accounted in books and the difference in figures, if any, has been duly explained in reply to show cause notice by submitting relevant documents and the AO has not made any adverse inference on the documents submitted by the AO.

6. On the facts and circumstances of the case, the authorities below have erred both in law and in facts of the case in making various additions disturbing the trading results deduced from the regular books of accounts without complying with the requirements of rejecting books of account u/s 145(3) of IT Act and consequently completing the assessment on best judgement basis. The Ld. AO in absence of rejecting the books of account was required to compute the income on the basis of books of account in accordance with provision of sec 145(1) of IT Act.

7. On the facts and circumstances of the case, the authorities below have erred both on facts and in law in upholding the passing of order of assessment u/s 144 of IT Act when all the evidences in support of additions are already submitted during course of assessment proceedings and therefore, the passing of order of assessment u/s 144 instead of 143(3) of IT Act vitiates the assessment proceedings.

8. The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority."

6. The ld. Authorised Representative for the appellant-assessee, regarding ground of appeal No.1, submitted that the assessment proceedings were illegal as no valid notice u/s 143(2) of the Act was issued. Notice u/s 143(2) of the Act dated 24.09.2018 was issued by ITO, Ward-66(1), Delhi. Copy of notice is at page 293 of the paper book. The ld. AO had no jurisdiction over the assessee. The ITO, Ward 66(1), Delhi, had jurisdiction over those assessees having income from salary/pension income from Indian Air Force, UGC, Foreign Airlines, Rajputana Rifles and whose names begin with the alphabet A to F. The assessee did not fall in any of the above categories. The assessee falls in the jurisdiction of ITO, Ward 34(2), Delhi, by virtue of territorial jurisdiction over Shalimar Bagh and the later authority, based on correct jurisdiction, has completed the assessment u/s 144 of the IT Act. Reliance was placed on:

(i) Vedanta Resources Ltd vs ACIT W.P.(C) No.6372 of 2022 (Orissa)

(ii) Louis Dreyfus Company Asia Pte Ltd vs CITW.P.(C) No.9713/2019 (Del)

(iii) *Nirmal Gupta vs Pr CIT ITA No.1 08/Del/2018 dt: 22.06.2021*

(iv) *ITO vs M/s NVS Builders P Ltd ITA No.3729/Del/2012 dt:*

08.03.2018

(v) *Cosmat Traders P. Ltd. (2021) 128 taxmann.com 174(Kol)*

(vi) *Sanjay Kumar Singhal vs. ITO, ITA No.3581/Del/2023, dated 30.04.2025.*

7. The ld. AR submitted that there was no notice *u/s 143(2)* of the Act issued by the AO having jurisdiction over the assessee in accordance with the provisions of *section 2(7A) r.w.s. 120(3)* of the Act. The provisions of *sec 292BB* does not come to the rescue of the department as it is not a case of non- service of notice but a case of non-issue of notice.

8. The ld.DR submitted that the ld. AO had passed *ex parte* order. The ld.CIT(A) has set aside the order of the AO for *denovo* adjudication.

9. From examination of the record in the light of the aforesaid rival contention, it is crystal clear that the ld. AO/ITO, Ward-34(2) passed the assessment order dated 20.12.2019 in pursuance of notice *u/s 143(2)* of the Act dated 24.09.2018 by ITO, Ward-66(1), Delhi as is evident from the copy of notice at page 293 of the paper book. The ITO, Ward-66(1), Delhi, had no territorial jurisdiction over the assessee. A coordinate Bench *vide ITA No.3581/Del/2023 in Sanjay Kumar Singhal vs. ITO, Order* dated 30.04.2025, in paras 9 and 10 has held as under:-

"9. From the examination of records in the light of aforesaid rival submissions, it is crystal clear that notice by non-jurisdictional ITO, Ward 33(1), Delhi was issued. The impugned order was completed by the Ld. AO, Ward 33(1), Delhi having jurisdiction without issuing any notice. ITRs for the assessment years 2015-16, 2016-17 and 2017-18 at page nos. 5, 12 and 17 of the paper books, jurisdiction of the appellant/assessee was with Ld. AO, Ward 26(1), Delhi. As such, assessment under appeal is the outcome of a jurisdictional notice issued by non-jurisdictional Ld. AO.

Therefore, assessment needs to be quashed. Reliance can be placed on decision of following case laws:

A. Vedanta Resources Ltd vs ACIT W.P.(C) No.6372 of 2022 (Orissa) B. Louis Dreyfus Company Asia Pte Ltd vs CIT W.P.(C) No.9713/2019 (Del) C. Nirmal Gupta vs Pr CIT ITA No.108/Del/2018 dt: 22.06.2021 D. ITO vs M/s NVS Builders P Ltd ITA No.3729/Del/2012 dt: 08.03.2018 E. Cosmat Traders P. Ltd. (2021) 128 taxmann.com

10. As per the ratio of judgment of Hon'ble Bombay High Court in the case of [CIT vs. Lalitkumar Bardia](#) (2017) 84 taxmann.com 213 (Bombay), it is well settled law the assessment order has to be passed by the only authority having jurisdiction over an assessee. It is held that mere participation in proceedings or acquiescence would not confer jurisdiction upon the Ld. AO who otherwise was not the Ld.AO of the assessee."

10. In view of the above material facts and judicial precedents, it is held that the impugned assessment and appellate order in pursuance of notice by an authority, non-jurisdictional AO, deserves to be quashed. Accordingly, ground of appeal No.1 is allowed. The grounds of appeal No.2 to 8 being not pressed are left open.

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

11. Respectfully following the above said decision the assessment framed u/s.143(3) r.w.s. 147 of the Act dated 20.04.2017 pursuant to notice u/s.143(2) dated 26.07.2016 is hereby quashed.

12. Since the assessment was quashed on the legal ground i.e. additional ground all other grounds raised by the assessee need not be adjudicated and they are left open. The additional ground of the assessee is allowed.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 30.01.2026.

Sd/-

[C.N. PRASAD]
JUDICIAL MEMBER

Dated: 30 .01.2026

*MCAA, Sr.P.O.**

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi