

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

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

ITA No.4031/Del/2025
Assessment Year : 2016-17

Sunita Rao,
B-183, East of Kailash,
New Delhi – 110 065.

Vs. ITO,
Ward-30(5),
Delhi.

PAN: ABWPR2334M

Assessee by : Shri Raj Kumar, CA
Revenue by : Shri Manish Gupta, Sr. DR

Date of Hearing : 07.04.2026
Date of Pronouncement : 15.04.2026

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 26.05.2025 of the Ld. Commissioner of Income-tax (Appeals), NFAC, Delhi (hereinafter referred to as the First Appellate Authority or 'the Id. FAA' for short) in appeal No.CIT(A), Delhi-10/10212/2018-19, filed before him against the order dated 14.12.2018 passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by the ITO, Ward-30(5), Delhi (hereinafter referred to as the Ld. AO, for short).

2. On hearing both the sides, we find that the assessee has raised an additional ground, vide application dated 10.01.2026 by which the assessee has pleaded that in the absence of any order under Section 127 of the Act for transfer of jurisdiction from ITO, Ward 29(3), New Delhi to ITO, Ward-30(5), New Delhi, the ITO, Ward 30(5), New Delhi wrongly assumed the jurisdiction. Consequently, the impugned assessment is without jurisdiction.

3. During the course of hearing, the Ld. Counsel for the assessee has relied the information sought under the Right to Information Act from the Department wherein the assessee had requested to supply copy of the order passed under Section 127 of the Act and the Department has responded by submitting that the information is available on the e-filing portal and the application was rejected.

4. Then on behalf of the Department, the Ld. DR has not put up anything across factually to claim that in fact an order under Section 127 of the Act was passed. The Ld. DR has defended the issue by relying the decision of the Hon'ble Delhi High Court in *Sanjay Gandhi Memorial Trust vs. CIT (E) (2023) 150 taxmann.com 459 (Delhi)* and in *Abhishek Jain vs. ITO, Ward 55(1), New Delhi (2018) 94 taxmann.com 355 (Delhi)* to contend that the powers of transfer under Section 127 of the Act are administrative in nature and does not affect any fundamental or legal rights

of the assessee. It was also contended by the Ld. DR that raising such an objection at a belated stage is malicious. The Ld. DR pointed out that in fact, the assessee on earlier occasions had raised two other legal grounds which were factually found to be incorrect and, yet again, a technical ground has been raised while the assessee has no case on merits.

5. We have considered the rival contentions and, at the outset, we are of the considered view that when the assessee raises jurisdictional issue which goes to the root of assumption of jurisdiction for assessment or conclusion of the assessment, then, whatsoever be the merits of the case, do not help the Department and howsoever the technical ground raised be and whatsoever at belated stage, if it is a pure question of law which can be decided on the basis of the admitted facts, the ground deserves to be considered as an order or an exercise of power which is void ab initio cannot be upheld for mere delay or latches. Accordingly ground is admitted.

6. In the case of the assessee, admittedly, no order under Section 127 of the Act was passed. Section 127(1) of the Act categorically mandates that the order shall be passed giving reasons for transfer. The order under Section 127(1) of the Act transfers the jurisdiction from one AO to another and, therefore, it could be administrative so far as right of hearing of the assessee is involved and no notice of hearing is required for a transfer of jurisdiction under Section 127(1) of the Act. However, if no order itself is

issued, then, the only consequence is that there is no transfer of jurisdiction and proceedings leading to impugned assessment order gets vitiated.

7. Reliance in this regard is rightly placed by the Ld. AR on the decision of the coordinate bench in the case of Sanjay Kumar Singhal vs. ACIT in ITA No.3581/Del/2023, order dated 30.04.2025 and Raipur Bench decision in the case of Rahul Tyagi vs. ITO [2025] 173 taxmann.com 981 (Raipur-Trib.) wherein the coordinate Benches have held that an order passed by an AO in the absence of an order of transfer under Section 127 having been passed by the competent authority is invalid and the same deserves to be quashed.

8. The decisions which the Ld. DR has relied are quite distinguishable as the decision in *Sanjay Gandhi Memorial Trust (supra)* was in regard to the Writ jurisdiction invoked by the assessee and the issue there was not of non-issuance of an order under Section 127 of the Act altogether, but, the order under Section 127 of the Act was passed whereby the jurisdiction of the Petitioners was transferred from Exemption Circle to ACIT Circle. In those circumstances the Hon'ble Delhi High Court has considered the issue. Then, in the case of *Abhishek Jain (supra)*, again, the issue was not of issuing order under Section 127 of the Act in regard to transfer of jurisdiction which is referred in the assessment order, which did not actually exist. In *Abhishek Jain (supra)*, the issue was not with regard to transfer of

a case under Section 127 of the Act from an Assessing Officer having jurisdiction to an Assessing Officer who otherwise was not having jurisdiction. It is not the case of the Department here that the two Assessing Officers had held the concurrent jurisdiction but the ITO, Ward 30(5), New Delhi had no jurisdiction what so ever at all.

9. In sequel to the aforesaid, we are inclined to sustain the additional ground and **allow the appeal**. The impugned assessment is quashed.

Order pronounced in the open court on 15.04.2026.

Sd/-
(AMITABH SHUKLA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 15th April, 2026.

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Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi