

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI
BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND
SHRI C.M.GARG, JUDICIAL MEMBER**

**ITA No. 556-558/Del/2011
Assessment Year : 1989-90 to 1991-92**

Raj Kumar Mangla, H.No.584/3, Rohan Pura, Gurgaon PAN:AAGPM320UL (Appellant)	Vs.	ACIT, Inv. Circle, Gurgaon (Respondent)
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Appellant by : Sh.Raj Kumar Mangla
Respondent by : Sh. Vikram Sahay, Sr. DR

Date of Hearing : 06.07.2015
Date of pronouncement : 23.09.2015

ORDER

PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

All these appeals are filed by the assessee and are directed against the common order passed by the Id CIT(A), Faridabad dated 07.10.1996 in appeal No.146, 145 and 144/95-96 for the Assessment Years 1989-90, 1991-92 and 1990-91.

2. These appeals were filed before the First Appellate Authority against the orders passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (herein after referred to as 'Act') on 31/03/1995. Before the first appellate authority the assessee challenged the jurisdiction of the ACIT, Investigation Circle, Gurgaon to assess his income for the impugned assessment years. He had also challenged the merits of the case. The first appellate authority adjudicated the jurisdictional issue in favour of the revenue and on merits he set aside the assessment to the file of AO on the ground of natural justice.

3. Aggrieved with the decision of the first appellate authority on the issue of jurisdiction, the assessee has filed this appeal before us on the following grounds:-

"1. That the Id. ACIT (Inv. Circle), Gurgaon arbitrarily usurped jurisdiction u/s 147/148 of the Act in the case of the appellant when none of the appellant income liable to tax has accrued, arisen or received within the territorial jurisdiction assigned or the case having been transferred to him u/s 127 or assigned to him u/s 120 of the Act, hence assumption of jurisdiction, recording

reasons for escapement of alleged income, issue of notice u/s 148 of the Act were wholly without jurisdiction, void ab initio, patently illegal and the same ought to have been annulled or cancelled by the Id. CIT (A) rather than upholding the jurisdiction of the A.O. when issue of jurisdiction is not justice able before the appellate authorities .

2. That the Id. ACIT (Inv. Circle), Gurgaon erred in law in not making reference to the Id. Chief Commissioner/Commissioner of Income Tax u/s 124(4) of the Act when the appellant called in question the jurisdiction of the Id. ACIT (Inv. Circle), Gurgaon well within time in reply to his notice u/s 148 of the Act thus arbitrarily usurped jurisdiction and completed the assessment, hence the impugned assessment order and resultant demand notice are patently illegal, without jurisdiction, void ab initio and the same ought to have been cancelled/annulled by the Id. CIT (A).

3. That income of the appellant having already been assessed to tax by the Id. LT.O ward 10(1), New Delhi as far back as on 31-3-1992, rectified u/s 154 of the Act and the said assessment/order having remained in existence till date, the Id. ACIT (Inv. Circle), Gurgaon has grossly erred in law in invoking section 147/148 of the Act for not filing return before him and arbitrarily made second assessment of the same assessee, of same income, for the same assessment year despite the settled position of law that income of the same assessee for the same assessment year, from the same sources of income cannot be taxed more than once, thus the impugned order as well as resultant demand notice are dehere section 4 of the Act, and the impugned assessment order and resultant demand notice ought to have been cancelled/annulled by the Id. CIT (A).

4, That the Id. ACIT, Gurgaon having issued notice u/s 142(1) failed to completed the assessment within the statutory limitation, thus allowed to lapse the time allowed to complete assessment, and later on wrongly & illegally resorted to the provisions of section 147/148 of the Act, and as such assessment made was patently illegal, without jurisdiction & void ab initio and the same ought to have been cancelled/annulled by the Id. CIT (A).

5. That the impugned assessment order was passed u/s 143(3) of the Act by the Id. ACIT (Inv. Circle), Gurgaon despite the fact the appellant had not filed return of income before him nor any notice u/s 143(2) of the Act was issued and served on the appellant, as such the impugned assessment order was patently arbitrary, illegal, void ab initio and the same ought to have been cancelled/annulled by the Id. CIT (A).

6. That the reasons recorded by the Id. ACIT (Inv. Circle), Gurgaon before issue of notice u/s 148 of the Act clearly show that in law he had no jurisdiction to issue notice u/s 148 of the act. Consequently, the assessment order as passed u/s 143 (3) in pursuance of notice u/s 148 is wholly unjust, arbitrary, illegal, void ab initio and the same ought to have been cancelled/annulled by the Id. CIT (A).

7. That on facts and in view of the documentary evidence filed by the appellant, the Id ACIT (Inv. Circle), Gurgaon had neither the jurisdiction nor the powers to issue notice u/s 148 and then to pass the impugned assessment order u/s 144 of the Act on an income of Rs.3,60,000/- and the Id. CIT(A) had erred on facts and under the law in holding that the Id. ACIT (Inv. Circle), Gurgaon had jurisdiction to issue notice u/s 148 of the act and then to pass the impugned assessment order.

Various observations made by the authorities below in their respective orders are either incorrect or are legally untenable. Facts, circumstances and the submissions made supported by evidence had either been ignored or had not been given due weight by the Id. ACIT (Inv. Circle), Gurgaon and the Id. CIT(A).

8. That the Id. CIT (A) erred in not taking judicial notice of various pleadings as well as documentary evidences namely appellant letters dated 9-3-1993 & 11-4-1993 to the respective Id. Chief Commissioners with copies to A.O's urging to transfer records of the appellant from Gurgaon to Delhi; Id. ACIT (Inv. Circle), Gurgaon letter dated 12-4-1993 requesting Id. CIT-Hr to pass order u/s 127 of the Act and transfer case & records of the appellant from ACIT, Gurgaon to the Id. I.T.O Ward 10(1), New Delhi; Id. CIT (Hr) order/letter dated 22-3-1995 transferring case & records of the appellant from Gurgaon to Delhi etc, as such the Id. CIT (A) impugned order in respect of determining jurisdiction is liable to be cancelled/annulled.

9. That the Id. CIT(A) erred in law in suo motu deciding the question of jurisdiction of the Id. ACIT (Inv. Circle), Gurgaon which was called in question by the appellant in time in reply to notice u/s 148 of the Act despite the well settled law that question of jurisdiction of the

Assessing Officer is not justiciable before the appellate authority and such question shall be decided by the Chief Commissioner/Director General/Commissioner of Income tax in accordance with sub-section (2) of section 124 of the Act. The impugned order of the Id. CIT (A) is liable to be cancelled/annulled.

10. That the Id. CIT (A) erred in not deciding various legal grounds of appeal taken in the memorandum of appeal filed before him and the impugned order of the Id. CIT(A) is liable to be set aside on such grounds with direction to decide such issues after hearing the appellant.”

4. Both the parties submitted that the issues are identical in all the three assessment years and hence they may be heard together and disposed off by way of a common order.

5. There is delay of 5149 days for filing all these three appeals. The Tribunal vide its order dated 26th November 2014 had condoned the delay and admitted the appeals. This order attained finality.

6. Facts in brief are that, the assessee was an employee of M/s. Ravi Trading Co., Gurgaon, prior to 31/03/1988. He used to derive his income from salary/commission and other sources and was assessed to tax by the ITO, Gurgaon. On 20.01.1988, a search was conducted u/s 132 at the residence of the assessee. On 03.05.1988, the Commissioner of Income Tax, Haryana, Rohtak vide order F.No.CB_28(70)/88-89/3261-3324 passed an order under Sub-section (1) and Sub-section (2) of Section 120 of the Act read with section 124(1) of the Act. Page 3 of schedule of the said order reads as follows:-

- “3. Assistant Commissioner of Income Tax, Investigation Circle, Gurgaon (1) All persons or classes of persons, incomes or classes of income and the areas of Gurgaon, Rohtak and Sonapat Districts of Haryana State wherein action under section 132 of the IT Act has been/ is taken other than those assessable by Deputy Commissioner(s) of Income Tax empowered to exercise the powers and perform the functions of an assessing officer vested with jurisdiction over the above three districts in respect of the specified cases.
(2) All persons or classes of persons, income or classes or income and cases or classes of cases within the areas of Gurgaon, Rohtak and Sonapat Districts of Haryana state whose returns of income as on 1st April, 1988 and those filed subsequently show total income/ loss of (a) Rs.50,000/- and above but below Rs.5 lacks in coys & trusts cases and (b) Rs.2 lakhs and above but below Rs.5 lakhs in other cases.”

7. The assessee submits that upto assessment year 1987-88, he had filed his return of Income with the ACIT, Investigation Circle, Gurgaon and he has no dispute on the issue of jurisdiction for the years. The assessee commenced his proprietorship business in the name of and style of M/s. Deep Electricals at Shop No.20, 1st Floor, 1767/68, Bhagirath Place, Chandni Chowk, Delhi w.e.f 30.06.1988. He obtained, State Sales Tax/ Central Sales Tax registration certificates from Govt of Delhi. He also paid advance tax for the relevant and subsequent assessment years with, I.T.O., Ward 10(1), New Delhi, as the assessee was of the opinion that his place of business falls within the territorial jurisdiction assigned to ITO, Ward 10(1), New Delhi. The assessee continued to reside at Gurgaon.

8. The ACIT, Gurgaon issued a notice of demand u/s 156 of the act, for payment of advance tax u/s 210 of the act, for Financial Year 1988-89 on 07.02.1989 and on 15.03.1989 in Form No.29. On this form the assessee had written following remarks and returned the notice to the ACIT, Gurgaon:-

“I started business at Delhi in June 1988 and now the jurisdiction over my case lies with the ITO, Ward 10(1), New Delhi. I have already paid A.T. at Delhi. So,

for technical purpose my income here is (not clear) because I shall be filing my return at Delhi.”

9. Later on 24.01.1990 he wrote the following letter to ACIT, Investigation, Circle, Gurgaon:-

“To,

*The Assistant Commissioner of Income Tax,
Investigation Circle, Gurgaon*

Subject: Change in Place of Business and request for transfer of my records uptill assessment year 1988-89 to ITO, Ward No10(1), Drum Shape Bldg, I.P. State, Vikar Minar, New Delhi.

This is to inform your goodself that I have left employment with M/s. Ravi Trading Co, Gurgaon and started my own proprietary business in the name and style of M/s Deep Technical, Shop No.20, 1st Floor, 1767/68, Bhagirath Place, Chandni Chowk, Delhi with effect from 30.06.1988. Copy of Sales Tax licence obtained from Delhi, Sales Tax copy of advance tax deposited with ITO Ward No.10(1), Drum Shape Building, Vikar Minar, IP Estate, New Delhi

You are therefore, requested to please transfer my assessment records to the ITO, Ward No.10(1), Drum Shape Bldg, Vikar Minar, New Delhi at the earliest. Since I do not come within your jurisdiction anymore and any proceeding cannot be initiated or completed or decided and by your goodself, but will be decided by the ITO, Ward No.10(1), Delhi only.

Thanking you

Yours faithfully,

(Raj Kumar Mangla)

10. Thereafter on 07.02.1990 he addressed the following letter:-

“To,

*The Assistant Commissioner of Income Tax,
Investigation Circle, Gurgaon-Hr,*

Subject: Show Cause notices relevant to Assessment Year 1989-90 and 1990-91.

Sir,

Your kind attention is being invited to previous letters submitted to you goodself in the past, wherein, you goodself kind attention was invited to the fact that the undersigned has commenced his own proprietary business in the name and style of M/s. Deep Electricals, Shop No.20, 1st Floor, 1767/68, Bhagirath Place, Chandni Chowk, Delhi-110006 with effect from 30.06.1988 and this

case falls within the territorial jurisdiction of ITO Ward Drum Shape Building, Vikas Minar, IP Estate, New Delhi and as such the undersigned was not only bound in law to deposit advance tax in the jurisdiction of ITO Ward 10(1) but also return of income with this officer. Photo state copies of the sales tax registration Certificates are being enclosed as a documentary evidence in this regard.

It your goodself has ceased to have jurisdiction to have the assessee from 30.06.1988 and as such the above notices are totally without jurisdiction and void ab-initio. Your goodself is not only requested to cancel the above notices but also not to initiate any action or proceedings or make any order any time after this date i.e. 30.06.1988. It is further requested to transfer all assessments records relevant to completed as well pending proceedings to the ITO Ward 10(1) immediately.

Thanking You,

Yours faithfully,

(Raj Kumar Mangla)
H.No.584/3, Roshan ,
Gurgaon-Hr,

Copy forwarded to the following with a request to issue necessary direction

1. Commissioner of Income Tax (Hr)
Rohtak, Sohna, Haryana

Chief Commissioner of Income Tax,
Northern/ Western Region,
Ayakar Bhawan, Patiala”

11. On 20.01.1991 a notice u/s 142(1) was issued to the assessee for the Assessment Year 1990-91 calling on the assessee to file a return of income again by ACIT(IC), Gurgaon. In reply the assessee vide letter dated 07.02.1991 stated as follows:-

“To,
The Assistant Commissioner of Income Tax,
Investigation Circle,
Gurgaon

Subject:-Return for the Assessment Year 1990-91

Sir,

Please refer to your notice asking me to file my return of income tax for the Assessment Year 1990-91 and have fixed the hearing for today.

I have already informed your office during Assessment Year 1989-90 that I have started my proprietorship business at Delhi in the name of M/s. Deep Electricals and as such I will be filing my all returns at Delhi.

I am enclosing Photostat copies of the advance tax challans vide which I have deposited tax in Delhi on 14.09.89, 12.12.89 and 14.03.90 for the verification.

Thanking you,

Yours faithfully,

*(Raj Kumar Mangla)
C/o M/s. Ravi Trading Co.
Opp Civil Hospital,
Gurgaon (HR)"*

12. The CIT(Hqr), Rohtak vide order dated 20.08.1991 passed an order u/s 120 of the Act on the jurisdiction of the AO.

13. This order of the Id CIT, Haryana, Rohtak was relied upon by the AO. The AO recorded reasons for reopening for all these three assessment year and issued notice u/s 148 on 16.11.1992. Correspondence took place between the assessee and the AO, wherein the assessee disputed the jurisdiction of the AO repeatedly but the AO rejected the claim of the assessee.

14. A notice u/s 142(1) for all the three assessment years was given to the assessee on 12.02.1993 calling for return of income. In response to the notice issued u/s 148 on 16.11.1992, the assessee on this notice itself remarked as follows and returned the notice to the Id ACIT, Investigation Circle, Gurgaon:-

"Your goodself has no jurisdiction to issue any notice."

15. Thereafter on 05.03.1993, the AO issued show-cause notice u/s 271(1)(b) of the act and fix the case for hearing on 15.03.1993. Thereafter vide order dated 09.03.1993, the AO addressed the issue of jurisdiction in his order.

16. On 19.03.1993 the assessee addressed a letter to the Chief Commissioner of Income Tax, Chandigarh, requesting transfer of assessment records up to the assessment year 1988-89 from ACIT, Gurgaon to ITO, Ward 10(1), New Delhi. Similar application was made on 11.04.1993 to the CCIT, Administration, New Delhi. The assessee continued to dispute the jurisdiction of ACIT, Investigation, Circle-Gurgaon and had addressed a letter dated 15.03.1993 which is of seven pages. In response the AO wrote to the Id CIT, Haryana, Rohtak on 12.04.1993 requesting the Id CIT, Haryana, Rohtak to pass a jurisdiction order u/s 127(1).

17. Thereafter on 22.03.1995, the Id CIT, Haryana, Rohtak transferred the jurisdiction of the case to ITO, Ward 10(1), New Delhi. Order is extracted for ready reference:-

Limitation Matter

Speed Post

To,

Date:22/03/1995

Income Tax Officer,

Ward 10(1)

New Delhi.

Sir,

Subject: Transfer of case-jurisdiction-Sh. Raj Kumar Mangla-reg.

Kindly find enclosed a copy of the letter No.ACIT/94-95/721-R.8438 dated 15.03.1995, and letter No.159 dated 12.04.1993 from the Asstt. Commissioner of Income Tax, Investigation Circle, Gurgaon on the above mentioned subject.

2. *I am directed to inform you that Sh. Raj Kumar Mangla was assessed to tax with the ACIT, Inve. Circle, Gurgaon for and up to Asstt year 1988-89. Thereafter, no return were received by the above Assessing Officer and he issued notice u/s 148 of the Act to the assessee for the Asstt. Year 1989-90, 1990-91 and 1991-92. It was stated by the assessee that he had filed returns of his income for the Asstt. Years 1989-90, to 1991-92 with the Assessing Officer Ward 10(1), New Delhi for the reasons that he has left employment of M/s. Ravi Trading Co., Gurgaon and has shifted to shop No.20, 1st Floor, 1767/68, Bhagirath Place, Chandni Chowk, new Delhi. The case for the assessment year 1988-89 being partly set aside and is going time barred. However, the assessee has again questioned the jurisdiction of the office of ACIT, Inv. Circle, Gurgaon on the ground that he had already filed a writ petition before the Hon'ble Punjab and Haryana High Court, Chandigarh and also stated that all the proceedings may be transferred to ITO, Delhi where he has filed the IT Returns for the Assessment Year 1989-90 onwards.*

3. *I am directed to request you to obtain the relevant records from the ACIT, Inv. Circle, Gurgaon so that necessary action can be taken at your on before 31.03.1995,*

Encl: As above

Yours faithfully,

Income Tax Officer
(Tech),

Rohtak,

Copy to:-

1. Asstt. Commissioner of Income Tax, Inv. Circle, Gurgaon w.r.t. letter No. ACIT/94-95/721-B/8938 dated 15.03.1995 for necessary action. He is requested to contact the concerned AO at New Delhi and transfer the relevant records.

2. Dy. Commissioner of Income Tax, Rohtak Range, Rohtak, for information and necessary action, please,

-Sd/-

(Chand Shyam Sharma)
Income Tax Officer, (Tech)
For Commissioner of Income Tax,
Haryana, Rohtak,

(Emphasis own)”

Thereafter a notice u/s 142(1) dated 27.03.1995 was issued by ACIT, Investigation, Gurgaon to the assessee directing the assessee as under:-

“a. to prepare and correct return of income

b. produce the accounts and other documents before the AO on or before 29.03.1995 at 10.30 AM.”

18. The assessee vide his letter dated 29.03.1995 challenged the notice u/s 142(1). The AO on 31.03.1995 framed separate assessment orders for all the three years.

19. Aggrieved the assessee carrying the matter in appeal. The first appellate authority adjudicated the issue of jurisdiction in favour of the revenue. At Para 5 in his order as follows:-

“5. I have considered the submissions of the appellant. A report was also called from the Assessing Officer on the objections raised. A copy of the reply received from the AO was also given to the appellant for his comments and his comments were received. I have gone through the submission of the appellant as also the replies given by the Assessing Officer as also the material on record. The first question to be decided is whether the assessing office had jurisdiction to proceed with this case. The assessee had regularly been assessed to tax up the assessment year 1988-89. Since no return of income was received for the years under consideration, the assessing officer issued notices under section 148 for assessment year 1989-90, 1990-91 and 1991-92. In response to these notices, the appellant filed a reply and stated that he had filed returns of income with ITO-10(1), New Delhi as he had left the employment of M/s Ravi Trading Co. and he has started his own proprietary business at Bharigarh Palace, New

Delhi. The assessee continued to reside at Gurgaon. Section 124(1) deals with the jurisdiction of assessing officer which reads as follows:-

124(1) whereby virtue of any direction or order issued under sub-section (1) or sub-section(2) of with jurisdiction over any areas, within the limites of such area, he shall have jurisdiction.

(a) in respect of any person carrying on a business or business or profession, if the place at which he carries on his business or profession is situates within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of (any other person) residing within the area.”

Sub-clause (b) provides that the assessing officer will have jurisdiction over the assessee who resided in his area. The claim of the appellant on the other hand is that since he has his business activities was in Delhi, The jurisdiction lay with ITO-10(1), New Delhi and not with Assessing Officer, Gurgaon. This argument of the appellant was not correct. Since he had not moved out of Gurgaon jurisdiction continued to vast with Assessing Officer Gurgaon unless on the request of the assessee his case was transferred to the Assessing Officer of another District. It has also been mentioned by the Assessing Officer, Gurgaon that correct jurisdiction if at all lay with ACIT, Investigation Circle, 10(1), New Delhi and not with ITO-10(1) as it was search case and if the case had been transferred to Delhi then the case would have been transferred to ACIT, Investigation, Circle 10(1) and ITO-10(1). The process of filing of return therefore did not automatically if so faster given the correct jurisdiction to the assessing officer who processed the return in a mechanical manner. This view is supported by Hon’ble Supreme Court in the case of Industrial Trust Ltd. Vs. CIT 91 ITR 550. The appellant has taken the stand that it was for the assessing officer to move the Commissioner of Income Tax, Haryana, Rohtak because the assessee had challenged the jurisdiction under section 124)3). The appellant could have also moved an application for transfer of assessment record which it appeals did not do so. The assessing officer did to the commissioner of Income Tax, Haryana, Rohtak for transfer of record on 12.04.1993 but did not receive any orders. In view thereof, the ACIT, Investigation, Circle, Gurgaon continued to hold jurisdiction and had to proceed with this case as the assessments were getting barred by limitation. In view of the these facts, all these grounds of appeal are dismissed.”

20. Aggrieved the assessee is before us.

21. The assessee Mr. Raj Kumar Mangla appeared in person and argued his case. The case of the revenue was argued by Mr. Vikram Sahay, Id Sr. DR.

22. Shri Raj Kumar Mangala, Id assessee submitted that the assessee had challenged the jurisdiction of the ACIT, Investigation, Gurgaon u/s 124(3) of the Act, in such a situation the AO is required under law to refer the matter for

determination of the jurisdiction to the Id CIT(A) or Chief Commissioner of Income Tax u/s 124(4) read with section 124(2) of the Act or in the alternative, if he is convinced that he has no jurisdiction, then he should drop the proceeding of assessment. In this case, it was argued that the AO had not followed the provisions of law as mandated by Section 124.

23. He relied on the order of the Id CIT(A), Faridabad in Appeal No.143/1995-96, dated 29.11.1999, for the Assessment Year 1988-89, wherein he held that the jurisdiction of the assessee's case was already transferred to Delhi vide letter of the ITO (Hq) dated 22/23.03.1995 and hence the ACIT, Investigation, Circle-Gurgaon has no jurisdiction over the case as on 31.03.1995. He submitted that this order of the Id CIT(A) has been accepted by the revenue and no appeal had been filed before the ITAT. He pointed out that the assessment order for the Assessment Year 1988-89 was passed on 31.03.1995, by the same AO, who passed orders u/s 143(3), for the impugned three assessment years 1989-90, 1990-91 and 1991-92 on the same day i.e.31.03.1998. He submitted that the order of the Id CIT(A) for the assessment year 1988-89 declared the correct position of law and this should be followed. That the order u/s 124(2) read with section 121(2) extracted above, demonstrates that case of the assessee does not fall within the jurisdiction of ACIT, Investigation, Gurgaon, for the reasons that the assessee is an individual and his income as on 1st April is below Rs.2 lakh. He submitted that he moved an application before the CCIT on 09.03.1992 and 11.03.1992 for transfer of records and no action was taken by them on these requests. Alternatively he submitted that the assessee's place of business is Delhi and hence the natural jurisdiction is of the assessee is ITO, Ward 10(1), New Delhi and in such a situation there is no requirement to move an application before any authority for transfer of jurisdiction.

24. He relied on the following case laws:-

Sardar Baldev Singh Vs. CIT reported in 40 ITR 605 (SC)

CIT Vs.S.S. Ahluwalia reported in (2014) 225 Taxmann.com 131 (Del)

Uma Loomba/ K. K. Loomba Vs. Commissioner of Income-Tax and others reported in 241 ITR 152 (Del)

25. He also relied on the Circular of CBDT No.1739 dated 19.12.1986. He submitted that the assessee filed its return of income before ITO, Ward 10(1), New

Delhi and the same was processed u/s 143(1) and thereafter rectification was made u/s 154 of the Act and that the assessment of income of the assessee by ACIT, Gurgaon resulted in two assessment orders, by different AO, on the same person, on the same income, which is against the Section 4 of the Income Tax Act. He argued that the AO, ACIT, Gurgaon issued a notice u/s 142(1) and without dropping the proceeding of before completion the proceedings, erred in making the assessment u/s 144 of the Act and initiating penalty proceeding etc, He submitted that the AO does not get the jurisdiction to recorded reasons and issue a notice u/s 148 and that in the reasons records u/s 148 the AO suppressed the known facts, which was very much on record, that the assessee has a place of business in Delhi and that the assessee has filed return of income with ITO, Ward 10(1), Delhi. Hence he argued that the reopening is bad in law. He argued that the ld CIT had no power to decide the territorial jurisdiction and at best, he could have directed the AO, to refer the matter to the appropriate authority for determining the jurisdiction and hence the order of the ld CIT(A) dated 20.08.1991 is bad in law. He relied on the decision in the case of Rai Bhadur Seth Teomal Vs. CIT reported in 36 ITR 9 (SC) in support of his contention.

26. The assessee also relied on the number of case laws as well as his correspondence and submitted that the assessment should be cancelled on the ground of jurisdictions.

27. The ld DR, in reply argued at length. The sum and substance is as follows:-

- a. The argument that once a notice u/s 142(1) is issued, proceedings u/s 147 cannot be taken unless the proceeding u/s 142(1) are dropped or brought to final conclusion was not argued before the ld CIT(A) nor was ground taken. Hence this argument has to be dismissed.
- b. That proceeding u/s 147 can be initiated without dropping proceeding u/s 142(1)
- c. The order u/s 124 dated 03.05.1988 states that, wherever action u/s 132 of the act has been taken, then the jurisdiction lies with the ACIT, Investigation, Gurgaon. He submitted that post search assessments for subsequent Assessment Years also lies with the same AO, unless an order is made, de notifying to assessment from the investigation circle.

d. While admitting that the assessee had made repeated application on the issue of jurisdiction, he submitted that the assessee's residence was in Gurgaon, and that he was partner in partnership concern situated in Gurgaon and under those circumstances the assessment was correctly done in Gurgaon. He submitted that the AO did write to the Id CIT(A) but had not received any reply for the same.

e. On the issue of two assessment being made by different assessing officers on the same income, he submitted that u/s 143(1)(a) is not an assessment and hence the argument of the assessee is erroneous. Similarly an order u/s 154 cannot be considered as an assessment order.

f. On the order of Id CIT, Faridabad for the assessment year 1988-89 he submitted that the issue of the territorial jurisdiction cannot be adjudicated by him and that he has no information as to whether the revenue has disputed this order before the Hon'ble High Court. Hence he submits that this order cannot be taken as a precedent.

g. That the assessee had challenged the issue of jurisdiction before the Hon'ble Punjab and Haryana High Court and he did not get any relief. Thus he submits this ground is not maintenance.

i. He placed reliance on the common order of the Id CIT(A), Delhi for the impugned three years.

j. Before the Hon'ble Delhi High Court, the assessee filed a writ petition on the issue of jurisdiction and the assessee did not get any relief. Hence this ground of the assessee should be dismissed.

k. The assessee had conceded before the Hon'ble Delhi High Court that he would not agitate the issue of jurisdiction in future. Thus the issue is settled and cannot be adjudicated before the Tribunal.

l. That adjudicating the issue of jurisdiction, on the face of the order of the Hon'ble Delhi High Court would be a case of contempt of court. He referred to the judgment of the Hon'ble Delhi High Court dated 05.05.2010 which reads as under:-

"6.....we also make it clear that this order has been passed under the clear understanding that the petitioner shall not agitate the question of transfer of the case from Gurgaon to New Delhi any further nor would be file any further application/ applications under Section 154 of the said Act

in respect of the very same appellate orders, which were passed in appeal No.s.144, 145 and 146/95-96.

m. That the Hon'ble Delhi High Court adjudicating the issue raised by the assessee of jurisdiction lies with the CIT or the CCIT, does not mean that the ACIT, Investigation, Gurgaon has wrongly assumed jurisdiction of the case. He prayed that the order of the first appellate authority be upheld and the appeal of the assessee may be dismissed.

28. In reply the ld assessee submitted as under:-

a. U/s 143(1)(a) creates statutory liability and notice of demand is issued and hence the argument that this is not an assessment was not correct.

b. Though the issue has not been raised these grounds before the ld CIT(A), there are legal issues and the assessee can raise it for the first time before the Tribunal.

b. That the ld CIT(A) adjudicating the case for the Assessment Year 1988-89 has not adjudicated the claim about the territorial jurisdiction and has only held that the AO has not abided by the jurisdictional order passed by the commissioner and whereas the ld CIT(A) in the impugned assessment order has adjudicated the territorial jurisdiction of the AO.

c. That the assessee has fundamental right to migrate and that the natural jurisdiction lies with Delhi and there is no need for seeking an order u/s 127 of the Act. The writ petition before the Hon'ble Punjab and Haryana High Court was for challenging the search and retention of books of account etc and had nothing to do with the jurisdictional issues.

d. On the judgement of the Hon'ble Delhi High Court, he submitted that the issue was not of jurisdiction of the AO and it was only regarding the jurisdiction to transfer of rectification pending before the appellate authority u/s 154, which was challenged. He submitted that mis-interpretation was made by the ld DR and that the DRs submission is against the facts of the case and the concession given by the assessee was only for the transfer of application pending made u/s 154 of the Act, which was pending before the first appellate authority. On the other hand after, the decision of the Hon'ble

Delhi High court dated 11.04.1993, he submitted that he had asked the ld CCIT to transfer the records from the ACIT, Investigation, Gurgaon to ITO, Ward 10(1), Delhi and as no action was taken by the ld CCIT, a writ was filed for expiation adjudication of territorial jurisdiction. He pointed out the Hon'ble Delhi High Court has directed the concerned authorities to expeditiously decide the case.

e. He submitted that the assessee's case is that the natural jurisdiction is with ITO, Ward 10(1), New Delhi, the question of asking CCIT/ CIT, to transfer this jurisdiction would simply not arise as it would be contrary position.

f. That the jurisdiction is decided on year to year basis and for this proposition he relied on the judgment of Hon'ble Punjab and Haryana High Court in the case of Joginder Singh Vs. CIT reported in 128 ITR14 (P&H).

g. He submitted that he has no income from the property which is situated in Gurgaon and on being a partner in partnership firm he submitted this to reply to a notice for the Assessment Year 1991-92 and that he has not any income from the partnership firm, he prayed for relief.

29. After hearing the rival contention and perusing the papers on record and the order of the authorities below we hold as follows:-

30. It is not in dispute that the authority which can decide the jurisdiction of the assessing officer is the CIT/CCIT u/s 124 (2) of the Act, when the question arose as to which AO has jurisdiction to assess the person. The power to transfer a case from one jurisdiction to another jurisdiction also lies with CCIT or the CIT. In exercise this power, the ld CIT, Haryana, Rohtak in his dated 22.03.1995 No. Tech/ Misc/ 94-95/15498, which has been extracted at Para 16 of this order, has specifically directed the ACIT, Investigation, Circle Gurgaon to transfer the relevant record to the ITO, Ward 10(1) at New Delhi. The ITO, Ward 10(1), New Delhi was directed to obtain the relevant records from the ACIT, Investigation, Circle Gurgaon and take necessary action on or before 31.03.1995. Hence, it can be seen that the ACIT, Investigation, Gurgaon was divested of his jurisdiction of this case, on 22nd March 1995, by the appropriate authority. The ld ACIT, Investigating Circle, Gurgaon, has after this date, issued notices and completed the assessment. Hence, the issue of notice u/s 142(1) dated 27.03.1995 and consequent passing of the order's u/s 143(3) on

31.03.1995, was without jurisdiction. When a clear order, transferring the jurisdiction, is passed by a competent authority in law, the question of holding that the ACIT, Investigation, Circle Gurgaon has jurisdiction does not arise. Coming to the argument of the Id DR, we find that neither in the order of the Hon'ble Punjab and Haryana High Court nor the judgment of the Hon'ble Delhi High Court had stated that the assessee shall not raised the issue of the jurisdiction of the assessing officer, in the impugned assessments. There is no prohibition imposed on the assessee, not to raise the issue of jurisdiction. In view of the above, all the appeals of the assessee are allowed on the sole grounds that, the ACIT, Investigation Circle, Gurgaon has no jurisdiction over the case of the assessee as on date of passing order u/s 143(3) i.e. on 31.031995. An order passed without jurisdiction is null and void in the eyes of law.

31. In the result the all the three appeals filed by the assessee are allowed.

Order pronounced in the Open Court on 23rd September, 2015.

-Sd/-

**(C.M.GARG)
JUDICIAL MEMBER**

-Sd/-

**(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

Dated:23/09/2015
AKK

Copy forwarded to: -

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

TRUE COPY

By Order,

ASSISTANT REGISTRAR