

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "A" New Delhi

BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No: 6487/Del/2012  
Asstt. Year: 2009-10

ACIT  
Circle, Saharanpur  
  
(Appellant)

vs. M/s. Abhay Pigments (P) Ltd.,  
21- Old Survey Road,  
Dehradun  
(Respondent)

Appellant by : Shri S.L. Anuragi, DR  
Respondent by : Shri V.K. Tulsian, CA

Date of Hearing : 16.2.2016  
Date of pronouncement :

**ORDER**

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

The present appeal is preferred by the Department against order dated 11.9.2012 passed by the Ld. CIT (Appeals)-Muzaffarnagar for Asstt. Year 2009-10 wherein the Ld. CIT (Appeals) has annulled the assessment order dated 22.12.2011 passed u/s 143(3). The Department has raised the following grounds of appeal:-

1. *“On the facts and in the circumstances of the case, the CIT(A) has erred in law to render the order passed under section 143(3) of the Income Tax Act,1961 on 22-12-2011 by the Assessing Officer as null and void on account of jurisdiction of the Assessing Officer by ignoring the provision of clause (a) of sub section (3) of section 124 of the Income Tax Act,1961 because the assessee did not avail the opportunity to challenge the jurisdiction of the Assessing Officer within one month from the date of service of the notice under section 143(2) of the Income Tax Act,1961.”*
  
2. It has been the assessee’s contention that its registered office is situated at 2/12, Old Survey Road, Dehradun since its incorporation on 10.5.1990 and the same also stands confirmed by the company/LLP Master Data available at the web site of the Registrar of Companies, Uttarakhand and, therefore, the jurisdiction rested with the DCIT/ACIT Circle -2, Dehradun. It was the assessee’s grievance before the Ld. CIT (A) that without recourse to any prior notice, the jurisdiction over the case was transferred to DCIT/ACIT Circle, Saharanpur. On the other hand, it has been the Department’s contention that the case of the assessee was fixed for hearing by issue of notice u/s 143(2) dated 28.9.2010. Notice u/s 143(2)/142(1) of the Act, questionnaires and other letters were also issued from time to time. However, the assessee never requested for change of jurisdiction from Saharanpur to Dehradun and it was only on 5.12.2011, when the

case was at a final stage that the assessee filed written reply dated 2.12.2011 requesting that the jurisdiction be retained at Dehradun. As the assessment was going to be barred by limitation on 31.12.2011, it was not possible to transfer the case to Dehradun. It was also the contention of the AO that the PAN of the assessee existed in the code of ACIT, Circle, Saharanpur.

3. The Ld. CIT(A) decided the issue in favour of the assessee by holding that AO lacked jurisdiction over the assessee's case and that the proper recourse for the AO would have been to transfer the assessee's case immediately to the jurisdictional AO where assessee's past records were available. The assessment framed u/s 143(3) was annulled.

4. In the appeal before us, the factual matrix was again repeated by both the parties which is not being reproduced again for the sake of brevity. A perusal of the impugned order reveals that the Ld. CIT (A) has examined the issue at length in para 3.1.2 of his order as under:-

*“The facts of the case, submissions made by the appellant and remand report of the AO have been carefully considered. The assessment folder of the appellant with the ACIT, Circle, Saharanpur was requisitioned and examined. After examination of the assessment folder following facts emerge:-*

- (i) *The ACIT, Circle, Saharanpur downloaded the e-filed return for the relevant accounting period from the System. Subsequently, the AO recorded reasons for selection of case under scrutiny as under:-*

*“.....Reasons or Selecting the case under Scrutiny:*

*In this case, the return of income for A. Y. 2009-10 has been filed on 30-09-2009 declaring total income at Nil and deemed total income u/s 115JE of Rs. 44,46,426/-.*

*The assessee has shown share application money amounting to Rs.5,00,000/-, capital reserve at Rs.19,90,000/-, unsecured loan has been shown at Rs.1,68,77,702/-, other income has been shown at Rs.45,06,8001-. No expenses have been shown like travelling, conveyance, freight etc. This is a fit case for scrutiny. All these points need deep verification.*

*Therefore, the case is proposed for scrutiny .....*”

*Interesting the AO in the assessment order has in, Para 1 has mentioned as under:-*

*“ ..... Return of income was filed on 30-09-2009: through e-filing showing income at Nil. Assessee derives income from business of Fertilizer Chemicals and paint. Later on the case was selected under scrutiny through CASS and fixed for hearing on 05-10-2010..... ”*

*Admittedly, from the perusal of assessment order, it is noticed that the appellant's case was selected under scrutiny after reasons were duly recorded and approved by the Range Addl. CIT, Saharanpur and not through CASS as mentioned by the AO in the assessment. The AO has definitely tried to give wrong impression that the appellant's case was selected directly through CASS on the basis of PAN which existed in the code of ACIT, Circle, Saharanpur and as such no effort was actually made by him to take the appellant's case under scrutiny which fell beyond his jurisdiction.*

- (ii) *The AO issued notice u/s 143(2) dated 28-09-2010 through Speed Post as well as the I.T.I was deputed to serve the notice personally upon the assessee. The I.T.I vide report dated 30-09-2010 intimated that the Director of the assessee company, Sh. K.N. Singh refused service of the notice but at the same time intimated that the notice issued through Speed Post had already been received by his wife. Thus ITI served the notice through affixture.*
- (iii) *At the back of the notice issued U/S 143(2) dated 20-09-2010 issued by Speed Post, it has been written as under:-*
- Factory Address - Industrial Extension Satharia, Distt. Jaunpur*
  - Closed from 4 years*
  - Head Office - Chand Bai Palace, 60 Bazar Road, Bandra (West), Mumbai - 400050*
- These facts clearly indicate that the AO was aware of the location of registered office, factory and head, office and none of them was lying in his territorial jurisdiction.*
- (iv) *Thereafter the AO again issued notices u/s 143(2) dated 03-02-2011, 01-06-2011. But these notices were sent in a routine way as the AO did not pursue further on non-compliance made by the assessee. Notice U/S '142(1) and 143(2) dated 24-06-2011 along with detailed questionnaire (containing routine queries comprising 29 points) were sent on 05-07-2011 fixing hearing for 14-07-2011.*
- (v) *In response to notices issued u/s 143(2)/142(1) dated 01-06-2011 and 24-06-2011, the Ld. AR for the assessee vide letter dated 06-07-2011 intimated that the company was based in Mumbai and all relevant documents were in Mumbai Office, therefore the assessee sought adjournment.*
- (vi) *The appellant vide letter dated 14-07-2011 intimated that he was not well from last couple of years and was also admitted to Apollo Hospital, New Delhi and came*

*back a few days back. It was reiterated that the company was based in Mumbai and all the relevant documents were in Mumbai Office. Therefore, it was pleaded to grant adjournment.*

- (vii) *In the meantime, the CIT, Muzaffarnagar vide letter dated 23-08-2011 while monitoring the case, directed the AO to intimate the relevant para of the guidelines for selection of the scrutiny case of the assessee issued by CBDT in F.Y.2010-11 under which this case had been selected for scrutiny. In response the AO vide letter dated 1f-09-2011 could not point out the particular para of the CBDT guidelines under which the assessee's case was selected for scrutiny but reported that the assessee's case was selected after approval of the erstwhile Range Addl.CIT, saharanpur.*
- (viii) *The assessee vide letter dated 09-11-2011 replied to all 29 queries with the opening sentence as under:-*

*".....With reference to your notice dated 24-06-11 we have to bring to your kind notice that our jurisdiction to: tax arises under CIT, Dehradun and have been accordingly assessed since the inception of the Company at Dehradu1 however, we are hereby giving point-wise reply as under....."*

- (ix) *The assessee vide letter dated 29-11-2011 filed details and evidences on 29-11-2011 showing NIL production as per Commercial Tax assessment order and copies of ITRs of last several years showing brought forward business losses and depreciation. I*
- (x) *The assessee further vide letter dated 02-12-2011 vide para 2 submitted as under: - I*

*" .... The jurisdiction to tax was earlier with CIT, Dehradun for the last many years, in fact since incorporation where all the past records are kept. Change in jurisdiction has not been intimated to us and*

*it is causing great hardship to present the case at Saharanpur. It is therefore prayed that the jurisdiction be retained at Dehradun..... "*

- (xi) *During the course of appellate proceedings, the appellant furnished copy of letter dated 08-07-2011 addressed to the ACIT, Circle, Saharanpur wherein it was submitted as under:-*

*".... 2. In this regard it is stated that the company's registered office since its incorporation is at 21, Old Survey Road, Dehradun and is being assessed to tax at Dehradun only. The rightful jurisdiction of our case lies at Dehradun and we have been continuously being assessed at Dehradun since incorporation..... "*

*However, from the examination of the assessment folder of the appellant with the AO, it is noticed that no such letter dated 08-07-2011 finds place in the assessment folder. Further, the AO in his remand report dated 10-09-2011 has mentioned that it was only on 05-12-2011 when the case was at a final stage, the assessee made submissions dated 02-12-2011 requesting for transfer of its case to Dehradun. Thus it is not ascertainable whether the appellant actually filed letter dated 08-07-2001 as reproduced above before the AO.*

*It is observed that the AO has exercised jurisdiction over the appellant's case as perhaps the PAN allotted to the appellant fell within his jurisdiction and the AO code mentioned in the system was KNP/C/2511 i.e. DCIT/ACIT, Circle, Saharanpur. Thus appellant's case was though selected after recording the reasons, no efforts were made to verify the details of the company from the website of ROC whether it was a new company, especially when registered office mentioned was based at Dehra Dun. On the other hand, it has been contended that the appellant's registered office was at 2112, Old Survey Road, Dehra Dun since its incorporation on 10-05-1990 as per the Company/L.P Master Data downloaded from the web-site of the Registrar' of Companies, Utrakhand. Since A.Y.1996-97 it was regularly assessed*

*to income tax with DCIT/ACIT, Circle-2, Dehra Dun. The appellant has also furnished copies of ITRs and other documents in support of its contention. It has further been argued that the jurisdiction over its case was transferred to DCIT/ACIT Circle, Saharanpur without prior notice to the appellant and without giving any opportunity to it.”*

5. From the above it is evident that the AO assumed jurisdiction over the appellant case merely because the PAN of the assessee fell within his jurisdiction. The ACIT, Saharanpur did not have jurisdiction over the assessee since neither the registered office/ Head office nor any factory/business concern was lying in the territorial jurisdiction of the Income Tax authorities at Saharanpur. Further, the competent authority viz. CIT, Dehra Dun had never transferred the assessee's case to ACIT, Circle, Saharanpur by any order U/S 127 of the I.T. Act. As has been discussed by the Ld. CIT (A) above, it has been noted at the back of notice U/S 143(2) dated 28-09-2010 that the assessee's factory was situated in District Jaunpur (U.P.) and was closed for the last 4 years. It has also been noted that the assessee's Head Office was located in Mumbai. Further, its registered office was at Dehra Dun and it was regularly filing returns of income with ACIT/DCIT, Circle-2, 'Dehra Dun.

Therefore, it was not a case where the assessee's case was linked with ACIT, Circle, Saharanpur. We are of the considered opinion that merely on the basis of the fact that the assessee's PAN fell with ACIT, Circle, Saharanpur, the AO could not rightfully assume jurisdiction over the assessee's case. Though the PAN of the assessee, due to one reason or the other, fell with ACIT, Circle, Saharanpur, however, the important thing to note is that the assessee neither ever filed returns of income in Saharanpur nor its principal place of business was in Saharanpur. Further, the Head Office was in Mumbai with Registered Office in Dehra Dun. Thus the AO lacked jurisdiction over the assessee's case. As rightly pointed out by the Ld. CIT (Appeals), the proper recourse for the AO was to transfer the assessee's case immediately to the jurisdictional AO at Dehra Dun where assessee's past records were available. Although the assessee did claim before the Ld. CIT (A) that a letter dated 08-07-2011 was sent by it to the A.O. disclosing its rightful jurisdiction but the AO feigned ignorance about such letter. Be that as it may, the assessee, during the course of assessment proceedings vide letter dated 02-12-2011, specifically requested the AO to transfer its case to the jurisdictional AO at Dehra Dun where it was regularly assessed

to tax for the past several years. Even if the request was made on 02-12-2011, the AO had still time to transfer the case to DCIT/ACIT, Circle-2, Dehra Dun. However, the AO even while lacking jurisdiction proceeded to frame assessment u/s 143(3) of the Act which is legally untenable.

6. The Hon'ble Supreme Court in the case of Dasa Muni Reddy v Appa Rao AIR 1974 SC 2089 has pointed out that want of Jurisdiction must be distinguished from irregular or erroneous exercise of jurisdiction. If there is want of jurisdiction the whole proceeding is coram-non judice. The absence of a condition necessary to find the jurisdiction to make an order or give a decision deprives the order or decision of any conclusive effect. The distinction between invalidity and nullity is well established in Dharendra Nath Gorai v. Sudhir Chandra Ghosh AIR 1964 SC 1300. It was pointed out that whether a provision fell under one category or the other was not easy of discernment as, in the ultimate analysis, it depended upon the nature, scope and object of the particular provision. The workable test propounded in the case of Holmes v. Russel (1841) 9 Dowl 487 extracted below, was approved:-

*"It is difficult sometimes to distinguish between an irregularity and a nullity; but the safest rule to determine what is an irregularity and what is a nullity is to see whether the party can waive the objections; if he can waive it, it amounts to an irregularity, if he cannot, it is nullity. "*

7. This test involves a distinction being drawn between provisions which confer jurisdiction and provisions which merely regulate the procedure. Provisions which confer jurisdiction or such mandatory provisions as are enacted in public interest or on grounds of public policy cannot be waived, because of the underlying principle that jurisdiction could neither be waived nor created by consent. The Hon'ble Allahabad High Court in the case of Sant Baba Mohan Singh vs. CIT (1973) 90 ITR 197 (All.) has held that a proceeding is a nullity where the AO has no jurisdiction *ab initio* to take up the proceeding. A proceeding is a nullity when the authority taking it up has no jurisdiction either because of want of pecuniary jurisdiction or of territorial jurisdiction or of jurisdiction over the subject matter of the proceeding. A proceeding is a nullity when the authority taking it has no power to assess the case. Thus the jurisdiction assumed

by the AO has rendered the assessment proceedings to nullity and in any case it is not an irregularity.

8. The clear scheme of Income-tax Act provides that when an Officer has jurisdiction over the assessee, the same cannot be transferred and assumed by another Officer unless there is an appropriate order passed by the Competent Authority transferring the jurisdiction from one city to other after giving an opportunity of hearing to assessee. In the assessee's case no order u/s 127 of the Act has been passed by the Competent Authority. Therefore, the entire assessment proceedings are rendered to nullity. Hence, in light of the facts and circumstances of the case we find no reason to interfere with the findings of the Ld. CIT (A) and we uphold the same.

9. In the result, the appeal of the Department is dismissed.

Order pronounced in the open court on 16.05.2016.

Sd/-

**(S.V. MEHROTRA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA )**  
**JUDICIAL MEMBER**

Dated: the 16<sup>th</sup> of May 2016  
'GS'

Copy of the Order forwarded to:

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

By order

Asstt. Registrar