

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 7216/Del/2017
निर्धारण वर्ष/Assessment Years : 2008-09

Smt. Asha Nath/ Asha Saxena, C/o Rajiv Saxena & Co. Advocates and Solicitors 318 Pocket-D, Mayur Vihar Phase-II, New Delhi-110091	बनाम Vs.	The ITO, Ward-4, Bharatpur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: EPWPS 4522 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 7217/Del/2017
निर्धारण वर्ष/Assessment Years : 2008-09

Smt. Veena Saxena, D/o Sh. Jamuna Prasad B-2/2163, Vasant Kunj, New Delhi.	बनाम Vs.	The ITO, Ward-4, Bharatpur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BFBPS 1191 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA. No. 7174/Del/2017
निर्धारण वर्ष/Assessment Years : 2008-09

Sh. Sarvesh Kumar Kamthhan, S/o Sh. Jamuna Prasad, D-1/1017, Vasant Kunj, New Delhi.	बनाम Vs.	The ITO, Ward-4, Bharatpur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BAFPK 8120 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA. No. 1033/JP/2017
निर्धारण वर्ष / Assessment Years : 2008-09

Sh. Adarsh Kumar Kamthan, C/o Dr. Mohan Kamthan SF-T-1, Block 14 CSIR Scientist Apartment, Aliganj Sector K, Lunknow-226024.	बनाम Vs.	The ITO, Ward-4, Bharatpur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEKPK 4773 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Saxena (Adv.)
राजस्व की ओर से / Revenue by : Shri J.C.Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 18/06/2018
उदघोषणा की तारीख / Date of Pronouncement : 03/08/2018

आदेश / ORDER

PER BENCH:

These are four appeals filed by the respective assessees against the orders of Id CIT(A), Alwar of even date i.e 25.10.2017 for AY 2008-09.

2. The appeals in ITA No. 7216/Del/2017, 7217/Del/2017 and 7174/Del/2017 have been transferred to the Jaipur Benches pursuant to the order No. F.2-AD(ATD)/2018 dated 20.04.2018 passed by the Hon'ble President, ITAT in terms of Rule 4 of the ITAT Rules, 1963. Hence, these appeals along with appeal in ITA No. 1033/JP/2017 involving common grounds of appeal were heard together and are being disposed off by consolidated order.

3. In ITA No. 7216/Del/2017, the assessee has taken the following grounds of appeal:-

"1. That the learned Commissioner of Income Tax (Appeals), has grossly erred both in law and on facts in upholding the initiation of the reassessment proceedings under section 147 of the Act, which proceedings have been initiated without satisfying the statutory preconditions as envisaged under section 147 of the Act, and hence initiation of the reassessment proceedings is bad in law.

2. That the learned Commissioner of Income Tax (Appeals), has grossly erred both in law and on facts that initiation of reassessment proceedings was without jurisdiction.

3. That the learned Commissioner of Income Tax (Appeals), has grossly erred both in law and on facts in enhancing the income of the appellant to Rs. 3,50,000/- and bringing to tax the aforesaid sum u/s 25AA and 25B of the Act failing to appreciate that since computation of income under the head income from house property was not the issue before the learned AO as such, same being new source of income was beyond the subject matter of appeal and hence enhancement of income by the aforesaid sum is outside the scope of section 251 of the Act and as such, without jurisdiction.

4. That the learned Commissioner of Income Tax (Appeals), has grossly erred both in law and on facts in enhancing the income of the appellant without issuing a specific show cause notice to the appellant and hence enhancement made was without jurisdiction.

5. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that sum of Rs. 5,00,000/- relates to

mainly rent which could not be collected because the owners were residing outside Dhaulpur and this rent was neither unrealized rent nor arrear of rent.

6. That the learned Commissioner of Income Tax (Appeals) has failed to notice that that income from house property as aforesaid of each year was below the taxable limit hence not liable to be taxed in that year and hence no return of income was filed.

7. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in initiating the proceedings u/s 271(1)(c) of the Act.”

4. Firstly, we will take up the ground no. 2 wherein the assessee has challenged the issuance of notice U/s 148 by the ITO, Ward-4, Bharatpur stating that the notice has been issued without valid jurisdiction, as he is not the jurisdictional Assessing Officer. Similar ground of appeal challenging the jurisdiction of the Assessing officer has been taken in other three cases as well.

5. It was submitted that the assesseees have jointly inherited the property situated at Dushhera Road, Sarai Gajra, Dholpur, Rajasthan, later known as Asha Hotel and the same was sold on 18.03.2008. It was submitted that jurisdiction over the respective assesseees lie with other Assessing officers and merely because the property was situated at Dholpur, Rajasthan, the Assessing Officer at Bharatpur is not vested with the jurisdiction over the assesseees unless there is change of address in PAN data or there is an order issued U/s

127 of the Act transferring the jurisdiction over the assesseees to ITO, Ward-4, Bharatpur. It was submitted that in respect of Smt. Veena Saxena, the jurisdiction of the assessee lies with ITO, Ward-32(2), Delhi; in respect of Asha Saxena, the jurisdiction lies with ITO, Circle International Tax (1)(1), New Delhi; in respect of Shri Sarvesh Kamthhan, the jurisdiction lies with ITO, Ward-52(1), Delhi; and in respect of Shri Adarsh Kumar Kamthhan, the jurisdiction lies with ITO-2(1), Allahabad. It was accordingly submitted that the notices issued U/s 148 by the ITO, Ward-4, Bharatpur to all these assesseees were without valid jurisdiction.

6. In support, reliance was placed on the decisions in case of Ranjeet Singh vs ACIT 120 TTJ 517(Delhi), ACIT vs Smt. Chetna Kukreja in ITA No. 2141/Del/2009 dated 09.12.2010, ITO vs. Karan Sawhney in ITA No. 2098/Del/2009 order dated 07.08.2009 and CIT vs. Smt. Anjali Dua 219 CTR 183 (Del).

7. The Id. DR s heard who has vehemently argued the matter and relied on the orders of the Assessing Officer and the Id CIT(A).

8. We have heard the rival contentions and perused the material available on record. It is not in dispute that the property which has been sold is situated at Dholpur, Rajasthan, at the same time, when the capital gain arising out of the sale of the said property is to be brought to the tax in the hands of the respective assesseees, what has to be examined is whether the Assessing Officer issuing notice U/s 148 of the Act has the jurisdiction over the said assesseees. The Id. AR has

contended that at the relevant point in time when the notices were issued U/s 148, the jurisdiction over the assessee lies with Assessing officers at Delhi and Allahabad and not with the Assessing officer at Bharatpur. The Revenue has not disputed the said fact and has not brought on record any order passed u/s 127 transferring the jurisdiction over the assessee to ITO, Ward-4, Bharatpur on or before the issuance of notice u/s 148 to them. In our view, where the ITO Ward 4, Bharatpur was ceased of the information of the impugned property being disposed off, the correct course of action would have been to pass on the said information to the jurisdiction Assessing officer having jurisdiction over the respective assessee and it is for the jurisdictional Assessing officer to issue notice u/s 148 to the respective assessee and bringing the capital gains to tax in their individual hands to the extent of respective share in the property. Alternatively, all the cases could have been centralized by the Revenue by passing an order u/s 127 of the Act. In the instant case none of this has happened. It is therefore a case where the ITO Ward 4, Bharatpur has proceeded ahead and issued notice u/s 148 of the Act to the respective assessee when the jurisdiction over the respective assessee doesn't lie with him and lies with other Assessing officers at Delhi and Allahabad, a fact not disputed by the Revenue. In absence of valid jurisdiction, the issuance of notice u/s 148 by ITO Ward 4, Bharatpur is bad in law and the consequent proceedings u/s 147 are vitiated and are liable to be quashed.

9. The Coordinate Delhi Bench decision in case of Ranjeet Singh vs ACIT (supra) also supports the case of the assessee wherein it was held as under:-

"7. From these facts it is clear that the assessee was assessed to income-tax in Delhi and as on 30th March, 2005, the ITO, Ward 2(2), Ghaziabad, did not have any jurisdiction over the assessee. Therefore, the notice issued under s. 148 of the Act by the ITO, Ward 2(2), Ghaziabad, is without jurisdiction. Further, under s. 149 of the Act, no notice under s. 148 shall be issued for the relevant assessment year if four years, but not more than six years have elapsed from the end of relevant assessment year unless income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs. 1,00,000 or more for that year. Therefore, notice under s. 148 could be issued for asst. yr. 1998-99 upto 31st March, 2005. The present AO when received the relevant file from ITO, Ward 2(2), Ghaziabad containing material for proceedings initiated under s. 147 in December, 2005, the time of six years had already elapsed. Therefore, he could not have issued further notice under s. 148 of the Act. Accordingly, the assessment framed on the basis of notice issued without jurisdiction is bad in law and does not have legs to stand. The contention of Revenue that the proposal was routed through the file of the Addl. CIT is of no help when the AO including the learned CIT and Addl. CIT were not having jurisdiction over the case of the assessee on the date when the proposal was sent to the learned CIT, Ghaziabad. Another contention of the learned Departmental Representative is that the assessee cannot challenge the jurisdiction of the AO within the meaning of s. 120. Sec. 120 of the Act confers jurisdiction on IT authorities as per the procedure prescribed therein. Sub-ss. (2) and (3) of s. 120 do not automatically confer jurisdiction on territorial basis in respect of person already assessed to tax under the jurisdiction of other Chief CIT. The assessee was assessed in the charge of Chief CIT, Delhi. No orders were passed by the CBDT empowering the AO or the learned CIT to exercise jurisdiction over the assessee. The assessee has intimated the AO that he was assessed to tax with Dy. CIT Circle 21(2), New Delhi. Therefore, this contention of the Revenue does not have any merits.

8. *The learned senior Departmental Representative has placed reliance on the decision of Hon'ble Allahabad High Court in the case of Hindustan Transport Co. vs. IAC (supra), wherein it has been held that no appeal lies as to the jurisdiction after the assessment. This decision of the Hon'ble Allahabad High Court is not applicable to the facts of the case before us. The assessee has raised the objection immediately after issue of the notice that he was assessed to tax by the Dy. CIT, Circle 21(2), New Delhi and in fact the file containing notice under s. 148, reply filed by the assessee, information received by the ITO, Ghaziabad, etc. was transferred to the AO having jurisdiction over the case. Therefore, it is incorrect on the part of the senior Departmental Representative to plead that after assessment the assessee cannot take objection to the jurisdiction. In this case the assessee had taken objection to jurisdiction from very beginning of s. 147 proceedings. She has also placed reliance on the decision of the Hon'ble Calcutta High Court in the case of Reckitt Colman of India Ltd. & Anr. vs. Asstt. CIT (supra). In this case the Chief CIT assigned jurisdiction to the Asstt. CIT, TDS, Circle 21(2) to deal with all the matters relating to all sections contained in Chapter XVII in respect of all persons, who were or could come within the jurisdiction of Jt. CIT. The decision of this case is also not applicable as neither the Chief CIT nor the CBDT have assigned jurisdiction over the assessee to the ITO, Ward 2(2), Ghaziabad. Another case relied upon by the learned Departmental Representative is of Hon'ble Delhi High Court in the case of B.R. Industries Ltd. vs. CIT & Ors. (supra). In this case the order passed by the learned CIT, Delhi-I, assigning the jurisdiction was challenged by way of writ petition. The ratio of this decision is also not applicable as no jurisdiction was assigned to ITO, Ward 2(2), Ghaziabad. The learned Departmental Representative also contended that the defect in the notice can be ignored under s. 292B of the Act. Sec. 292B of the IT Act, 1961 says that no return of income, assessment, notice, summons or other proceedings, etc. shall be invalid, or shall be deemed to be invalid*

merely by reason of any mistake or defect or omission in such return of income, assessment, notice, summons or other proceedings, if such return of income, assessment, notice, summons or other proceedings is in substance and effect in conformity with or in according to the intent and purpose of this Act. The notice issued by the ITO, Ward 2(2), Ghaziabad, is not in substance and effect in conformity with the provisions of s. 120 r/w s. 147 of the Act. The notice was issued without jurisdiction. Therefore, the provisions of s. 292B will not be of any help to the Revenue. The provisions of s. 292B could have been invoked if the ITO, Ward 2(2), Ghaziabad, was having jurisdiction over the assessee and some mistake was committed in the notice issued by him under s. 148. Therefore, we do not find any force in the argument of the learned Departmental Representative.

***9.** In view of the above facts, we are of the considered view that the notice issued by the AO, Ward 2(2), Ghaziabad, was without jurisdiction and consequentially the assessment made is bad in law and deserves to be quashed. We order accordingly."*

10. The decision of the Hon'ble Delhi High Court in case of CIT vs Smt. Anjali Dua (supra) also supports the case of the assessee wherein it was held as under:-

***"4.** It is in this background that the Tribunal noted that the request of the assessee to transfer the jurisdiction was noted in the letter dt. 25th March, 1998, whereby the no objection of CIT, New Delhi, was conveyed to the CIT, Ludhiana. It is also noted that thereafter the assessee submitted returns for the asst. yrs. 1997-98 onwards at New Delhi. It is in these facts and circumstances that the Tribunal came to the conclusion that insofar as, the assessee was concerned, after the said transfer, it is only Revenue authorities at New Delhi who had jurisdiction*

over the assessee's cases and who were competent to issue a notice in terms of s. 148 of the said Act. It may also be pointed that pursuant to the issuance of impugned notice under s. 148 of the said Act on 28th March, 2003, when the notice under s. 142(1) was issued to the assessee in December, 2003, the assessee by her reply dt. 21st Jan., 2004, indicated that her AO was not located in Ludhiana, but was the ITO at New Delhi.

5. In view of the foregoing, we are of the view that the Tribunal has come to the conclusion on the basis of the facts available on the record and, we do not find any substantial question of law arising in the present case. No interference with the impugned order is called for. The appeal is dismissed "

11. In light of above discussions and respectfully following the decisions referred supra, the notice issued u/s 148 by the ITO Ward 4, Bharatpur was without jurisdiction and the consequent assessment order passed u/s 147 r/w 144 is bad in law and deserves to be quashed in all these cases.

12. Having decided the jurisdictional issue, other grounds of appeal have become infructious and the same are hereby dismissed.

In the result, the appeals of the respective assessees are allowed.

Order pronounced in the open court on 03/08/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य/Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य/Accountant Member

जयपुर/Jaipur

दिनांक/Dated:- 03/08/2018.

***Santosh**

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

1. अपीलार्थी / The Appellant- A- Smt. Asha Nath/ Asha Saxena, New Delhi.
B- Smt. Veena Saxena, New Delhi.
C- Sh. Sarvesh Kumar Kamthhan, New Delhi.
D- Sh. Adarsh Kumar Kamthan, Lucknow.
2. प्रत्यर्थी / The Respondent- ITO, Ward- 4, Bharatpur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 7216, 7217, 7174/Del/2017 & 1033/JP/2017 }

आदेश नुसार / By order,

सहायक पंजीकार / Asst. Registrar

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