

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
ITA.No.156/Del./2018
Assessment Year 2014-2015

Smt. Reeta Singhal, Meerut. PANABTPS0061P C/o. Raj Kumar & Associates, C.As., L-7A (LGF), South Exten. Part-2, New Delhi – 110 049.	vs.	The Income Tax Officer, Ward – 2 (2), Meerut. Uttar Pradesh.
(Appellant)		(Respondent)

For Assessee :	Shri Rajkumar Gupta, C.A.
For Revenue :	Shri Gurmel Singh, Sr. D.R.

Date of Hearing :	03.03.2021
Date of Pronouncement :	05 .03.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Meerut, Dated 31.10.2017, for the A.Y. 2014-2015 on the following grounds :

1. *That the asstt. order framed by ITO Ward-2 (2), Meerut, U.P. in pursuance to notice issued u/s.143 (2) dt. 18.09.15 issued by the ITO Ward-2, Malegaon, Nasik, Maharashtra is illegal and without jurisdiction, more so, as ITO at Malegaon was never had any valid jurisdiction in the matter and no order ever passed u/s.127 (2) of the I.T. Act for transferring the existing jurisdiction from Meerut, U.P. to Malegaon Nasik, Maharashtra.*
2. *That without prejudice to G.No.1, transfer of jurisdiction from Nasik (Maharashtra) to Meerut (U.P.) vide order u/s.127 (2) passed by Pr. CIT-1, Nasik (Maharashtra) is unsustainable for not complying with the mandatory provisions of sec. 127 (1) r/w sec. 127 (3) of the Act which mandates issuing of show cause notice and personal hearing to the assessee before passing order to transfer the case where the new officer is not situated in the same city, which non compliance makes the impugned asstt.*

framed by ITO Ward-2 (2) Meerut, U.P. as illegal, without jurisdiction and unsustainable in law.

3. *That without prejudice, the order passed u/s.127 (2) by Pr. CIT-1, Nasik (Maharashtra) is otherwise also without any authority of law, including further reason that there never existed any valid jurisdiction at Nasik, to enable the CIT at Nasik for passing any order u/s.127 (2) of the I.T. Act.*
4. *That without prejudice the impugned asstt. as well as asstt. proceedings are without jurisdiction and unsustainable in law in the absence of issuance and service of mandatory statutory notice u/s.143 (2) upto 30.09.15 as mandated by proviso below sec. 143 (2) by the correct jurisdictional A.O. of Meerut.*
5. *That without prejudice to G.No.1, irrespective of any contention of assessee before CIT (A) on the issue of jurisdiction, when the issue of jurisdiction stood raised before him in grounds of appeal and submissions on said issue were also given, CIT (A) was legally duty bound to adjudicate the issue of*

jurisdiction first and only thereafter could enter into other controversies and issues, if needed and if remains alive.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

3. In this case assessee has filed its return declaring income at Rs.9,55,930/-/- on 12.11.2014 which was processed under section 143(1) of the I.T. Act, 1961. Later on the case was selected for scrutiny and notice under section 143(2) Dated 18.09.2015 was issued by the ITO, Ward-2, Malegaon and the same served upon the assessee through post as well as e-mail ID. Later on the proceedings in case along with the case record was transferred from the ITO, Ward-2, Malegaon to the O/o the ITO, Ward-2(2), Meerut in compliance to the order passed by the Pr. CIT-I, Nasik. The A.O. noted that assessee herself had made a request before the ITO, Ward-2, Malegaon to transfer the case to Meerut. Notice under section 142(1) dated 16.12.2016 was issued for compliance. The A.O. noted that

there is a difference as per TDS statement [26AS]. In the absence of explanation of assessee, addition of Rs.55,700/- was made. The A.O. also noted that in the return assessee claimed deduction of Rs.1,10,714/- under section 80 of the I.T. Act, 1961. In the absence of documentary evidences, A.O. made addition of Rs.1,10,714/- and completed the assessment under section 143(3) Dated 30.12.2016.

3.1. The assessee challenged the assumption of jurisdiction by the A.O. at Nasik for issuing notice under section 143(2) and claimed that since no notice under section 143(2) have been issued by the jurisdictional ITO at Meerut, therefore, entire assessment proceedings are illegal and bad in Law. The assessee also contended that in the absence of any order under section 127(2) the transfer of jurisdiction from Meerut, Uttar Pradesh to Malegaon, Nasik, Maharashtra is illegal and invalid. The assessee also challenged both the additions before the Ld. CIT(A) on merits. The Ld. CIT(A) deleted both the addition on merits.

3.2. The Ld. CIT(A) as regards the legal issue of assumption of jurisdiction for issuance of notice under

section 143(2) of the I.T. Act, 1961, noted the submissions of the assessee in which the assessee contended that notice under section 143(2) Dated 18.09.2015 was issued within the statutory time period was issued by non-jurisdictional A.O. at Nasik while the jurisdiction was at Meerut. Therefore, the assessment framed by assuming jurisdiction from notice under section 143(2) Dated 18.09.2015 is illegal and unsustainable. It was submitted that no Order under section 127 has ever been passed for transferring the jurisdiction from Meerut to Nasik. The assessee further submitted that return was filed on 12.11.2014. The first notice under section 143(2) was to be issued on or before 30.09.2015. Notice under section 143(2) Dated 18.09.2015 was issued by ITO, Ward-2, Malegaon (Nasik). The assessee filed return of income at Meerut and his PAN is also at Meerut. The assessee has no connection with Malegaon (Nasik). Thus, the correct jurisdiction of the assessee was with ITO, Meerut. Notice under section 143(2) up to 30.09.2015 has been issued only by ITO, Ward-2, Malegaon (Nasik) vide notice Dated 18.09.2015. The jurisdictional ITO

at Meerut never issued notice under section 143(2) of the I.T. Act, 1961. No Order under section 127 of the I.T. Act, 1961 for transfer of case from Nasik to Meerut have been passed by giving an opportunity of being heard to the assessee. Therefore, the entire assessment order is nullity and bad in Law. The Ld. CIT(A) considering the fact that additions on merit has already been deleted, therefore, this issue was not adjudicated upon.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and that he has referred to PB-1 which is return of income filed for assessment year under appeal at Meerut. PB-2 is notice Dated 18.09.2015 issued by ITO, Ward-2, Malegaon (Nasik) under section 143(2) of the I.T. Act, 1961. PB-3 is objection filed by assessee before ITO, Ward-2, Malegaon (Nasik) under section 124(3) intimating that assessee has no connection at Malegaon (Nasik) and the jurisdiction for the case of assessee lies at Meerut, therefore, notice Dated 18.09.2015 should be dropped. PB-4 is another notice Dated 12.07.2016 under section 142(1) by ITO, Ward-2,

Malegaon (Nasik) which is replied by assessee on Dated 16.07.2016 [PB-5] intimating the same fact that jurisdiction of the A.O. lies to Meerut. PB-6 is another notice under section 142(1) Dated 02.12.2016 by ITO, Ward-2, Malegaon (Nasik) which is replied by assessee on Dated 07.12.2016 [PB-7] intimating the jurisdiction and other details before A.O. PB-9 is notice under section 142(1) Dated 16.12.2016 of ITO, Ward-2(5), Meerut. Learned Counsel for the Assessee, therefore, submitted that assessee raised objections at Malegaon that ITO at Malegaon has no jurisdiction over the matter which was ultimately accepted and the case of assessee is transferred to Meerut. However, no opportunity have been given while passing the Order under section 127 of the I.T. Act, 1961. It is not clarified as to how the case of assessee was transferred from Meerut to Malegaon. No notice under section 143(2) have been issued by jurisdictional ITO at Meerut within the period of limitation, therefore, entire assessment order is nullity and bad in Law. In support of the contention Learned Counsel for the Assessee relied upon the following decisions.

4.1. Judgment of Allahabad High Court in the case of CIT-II, Lucknow vs., M/s. U.P. Electronics Corp. Ltd., Lucknow in Income Tax Appeal No.79 of 2015, Dated 01.03.2017 in which it was found that notice under section 143(2) was issued by ITO who had no jurisdiction in the matter. Therefore, notice issued by such Officer was held to be illegal and without jurisdiction.

4.2. Order of ITAT, Delhi Bench in the case of ITO vs., NVS Builders P. Ltd., [2018] 63 ITR (Trib) (S.N.) 16 (Delhi) in which it was held as under :

“Held, that the Assessing Officer having jurisdiction over the case of the assessee did not issue notice under section 143(2) upon the assessee within the period of limitation provided under the Act. Therefore, the first notice issued by the Faridabad Income-tax Officer having no jurisdiction over the case of the assessee was not valid and would not confer any jurisdiction over the case of the assessee. The contention of the Department that the Faridabad Income-tax Officer

was empowered to issue notice according to the permanent account number or that the notice was issued according to the computerised system of the Department was not tenable, because it was against the provisions of law. The entire assessment proceedings were vitiated because of non-service of the jurisdictional notice under section 143(2) within the period of limitation by the Assessing Officer having jurisdiction over the case of the assessee. The assessment order was null and void. Since the entire assessment order was declared as null and void, there was no need to decide the issue on the merits.”

4.3. Order of ITAT, Delhi Bench in the case of Manoj Kumar vs., ACIT [2020] 79 ITR (Trib.) 158 (Del.) in which it was held that *“notice under section 143(2) for commencing scrutiny assessment was issued by non-jurisdictional ITO. It was, therefore, held that assessment order is void abinitio and was liable to be quashed.”*

4.4. Learned Counsel for the Assessee also submitted that the Ld. CIT(A), Meerut in subsequent A.Y. 2015-2016 vide Order Dated 06.04.2018 on the same facts quashed the assessment order as no jurisdictional notice under section 143(2) have been issued by jurisdictional ITO, Meerut [PB-1 to 16].

5. On the other hand, the Ld. D.R. relied upon the Orders of the authorities below and submitted that since the Ld. CIT(A) did not adjudicate upon this issue, therefore, it may be remanded back to the file of Ld. CIT(A). He has submitted that PAN of assessee was at Nasik and filed copy of the jurisdiction history details in the case of the assessee.

6. We have considered the rival submissions and perused the material on record. Since it is a legal issue and all facts are arising from record, therefore, we propose to decide the issue of jurisdiction and as such there is no need to remand back the matter to the file of Ld. CIT(A) as is argued by the Ld. D.R. It is not in dispute that assessee filed return of income with Range-2, Meerut [PB-1] for assessment year in appeal. Learned Counsel for the

Assessee also placed on record copy of the acknowledgment of filing of the return of income for preceding A.Ys. 2011-2012, 2012-2013 and 2013-2014 with Range-2, Meerut in the name of the assessee. It would, therefore, show that assessee filed return of income at Meerut. The Revenue Department has not produced any material before us to show as to how the jurisdiction from Meerut to Malegaon (Nasik) have been transferred in the case of the assessee. It is contended that the time limit for issuing notice under section 143(2) was up to 30.09.2015. In this case the ITO at Malegaon has issued notice under section 143(2) on Dated 18.09.2015, but, he was having no jurisdiction with the case of the assessee. The assessee objected to the jurisdiction at Malegaon by filing an objection under section 124(3) of the I.T. Act, 1961, Dated 30.09.2016 denying any connection at Malegaon (Nasik). These facts clearly show that assessee had been filing the return of income at Meerut even for earlier years and filed return of income for assessment year under appeal at Meerut. No material or Order under section 127 have been produced before us as to

how the case of assessee was transferred from Meerut to Malegaon (Nasik). Therefore, the ITO at Malegaon (Nasik) was having no jurisdiction over the case of the assessee. Admittedly, no notice under section 143(2) have been issued by ITO, Meerut who was the jurisdictional ITO in the case of the assessee. Whatever notice under section 143(2) Dated 18.09.2015 was issued by ITO, Malegaon (Nasik) was not having any jurisdiction over the case of the assessee. Therefore, it was clearly a nullity. The above facts and material on record clearly prove that ITO at Meerut having jurisdiction over the case of the assessee did not issue notice under section 143(2) upon the assessee within the period of limitation provided under the Act. Therefore, the notice issued under section 143(2) by ITO, Malegaon have no jurisdiction over the case of the assessee was not valid and would not confer any jurisdiction over the case of the assessee. The entire assessment proceedings are, therefore, vitiated because of non-service of jurisdiction notice under section 143(2) within the period of limitation by ITO at Meerut having jurisdiction over the case of the assessee.

The assessment order is, therefore, null and void. Since the entire assessment order is null and void and as such the same is liable to be quashed. The Ld. D.R. filed copy of jurisdiction history in the case of the assessee, but, it did not provide how the case of assessee was transferred from Meerut to Malegaon for the assessment year under appeal. It would, therefore, would not support the case of the Revenue. Considering the totality of the facts and circumstances of the case in the light of above decisions relied upon by Learned Counsel for the Assessee, we hold that the entire assessment order is null and void in the absence of issue and service of jurisdictional notice under section 143(2) by the ITO at Meerut having jurisdiction over the case of the assessee. In view of the above, we set aside the Orders of the authorities below and quash the assessment order. Accordingly, appeal of the assessee allowed.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 05th March, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.