

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC” NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.351/Del/2024

निर्धारणवर्ष/Assessment Year: 2017-18

Navita Gupta, C/o Kapil Goel, Adv. F-26/124, Sector-7, Rohini, New Delhi.	बनाम Vs.	Income Tax Officer, Ward-5(2)(3), Aayakar Bhawan, A-2D, Sector-24, Gautam Budh Nagar, Noida, Uttar Pradesh.
PAN No.AGBPG3465E		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Kapil Goel, Adv.
राजस्वकीओरसे /Revenue by	Shri Om Parkash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	25.04.2025
उद्घोषणाकीतारीख/ Pronouncement on	30.04.2025

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld. CIT(Appeals), NFAC, Delhi dated 26.12.2023 for the AY 2017-18 in sustaining the addition made u/s 69 r.w.s. 115BBE of the Act.

2. Ld. Counsel for the assessee, at the outset, submits that the appeal of the assessee was dismissed by the Ld. CIT(Appeals) observing that the assessee could not prove its contention with supporting documentary evidences. Ld. Counsel particularly referred to para 5.2 of the CIT(Appeals) order in this regard. Ld.

Counsel submits that the cash flow statement furnished by the assessee was completely ignored by the Ld. CIT(Appeals).

3. Coming to the validity of reopening of assessment Ld. Counsel for the assessee submits that in the case of the assessee notice was issued u/s 143(2) by ITO, Ward 38(2), New Delhi and whereas the assessment u/s 143(3) was completed by the ITO, Ward 5(2)(3), Noida. Ld. Counsel for the assessee submitted that the assessment is framed u/s 143(3) by Noida Officer i.e. ITO, Ward 5(2)(3) without valid transfer order u/s 127 of the Act for shifting of jurisdiction of ITO, Ward 38(2), New Delhi. Therefore, since assessment is framed by ITO, Ward 5(2)(3), Noida on the basis of notice issued u/s 143(2) by ITO, Ward 38(2), New Delhi the assessment framed u/s 143(3) is bad in law.

4. Ld. Counsel for the assessee placed reliance on the decision of the coordinate bench in the case of Saroj Sangwan Vs. ITO (ITANo.2428/Del/2023) dated 17.05.2024 and the decision of the Hon'ble Jurisdictional High Court in the case of PCIT Vs. Vimal Gupta in ITA No.515/2016 dated 16.10.2017.

5. Heard rival submissions, perused the orders of the authorities below. The contention of the assessee on validity of assessment framed u/s 143(3) is that the notice u/s 143(2) was issued by ITO,

Ward 38(2), New Delhi and the assessment was framed by the ITO, Ward 5(2)(3), Noida u/s 143(3) of the Act. It is the contention that without the transfer order u/s 127 transferring the jurisdiction to Noida from New Delhi the assessment framed is invalid.

6. Heard rival submissions, perused the orders of the authorities below. On perusal of page 2 of the paper book which is the notice u/s 143(3) of the Act the same was issued by the ITO, Ward 38(2), Delhi the assessment was completed by the Income Tax Officer, Ward 5(2)(3), Gautam Budh Nagar, Noida. There is nothing on record to suggest that the assessment framed by the ITO, Ward 5(2)(3), Gautam Budh Nagar, Noida had obtained jurisdiction by virtue of an order u/s 127 of the Act transferring the jurisdiction from ITO, Ward 38(2), Delhi. We observe that the identical issue came up for consideration of the Bench in the case of Saroj Sangwan Vs. ITO (supra) wherein the Tribunal held as under:

“4. Heard rival contentions, perused the orders of the authorities below and the case laws relied on.

5. On perusal of page 7 of Paper Book it is observed that notice u/s 148 of the Act dated 30.03.2018 was issued by ITO, Ward 69(1), Delhi for reopening of assessment of the assessee. Later on the case was transferred to the ITO, Ward 4(1), Gurgaon, by way of letter dated 12.11.2018 by ITO, Ward 69(1), New Delhi for completion of reassessment. It is very much clear that at the time of issue of notice u/s 148 of the Act by ITO, Ward 69(1), New Delhi he has no jurisdiction over the

assessee as the jurisdiction over the assessee was vested with ITO, Ward 4(1), Gurgaon, therefore, it can be safely concluded that the assumption of jurisdiction by ITO, Ward 69(1), New Delhi for reopening of assessment by issue of notice u/s 148 of the Act is bad in law. There is nothing on record to suggest that the Assessing Officer who has jurisdiction over the assessee i.e. ITO, Ward 4(1), Gurgaon, had issued any notice u/s 148 of the Act. The assessment was completed u/s 143(3) read with section 147 of the Act on 28.12.2018 by ITO, Ward 4(1), Gurgaon on the basis of notice issued u/s 148 of the Act by ITO, Ward 69(1), New Delhi who had not validly assumed jurisdiction to initiate reassessment proceedings.

6. In the case of Nishi Kapoor Vs. ITO (supra) the Delhi Bench considered a similar issue and following the decision of the Hon'ble Gujarat High Court in the case of Hynoup Food & Oil Industries Ltd. Vs. ACIT (307 ITR 115) quashed the reassessment on identical facts observing as under: -

“4. He has submitted that these reasons are recorded by ITO, Ward 2(3), Noida and thereafter, he has written a letter dated 07.09.2017 PB 10 to the Assessing Officer (ITO, Ward 2(1), Faridabad) stating therein that the notice u/s 148 of the Act was issued on 30.03.2017. As per acknowledgement of return for assessment year submitted by the assessee on 07.09.2017, assessee comes under the jurisdiction of ITO, Ward 2(1), Faridabad. The ITO, Ward 2(3), Noida therefore, transferred this case to ITO, Ward 2(1), Faridabad. Ld. Counsel for assessee submitted that the ITO, Ward 2(3), Noida who has recorded reasons for reopening of the assessment was not having jurisdiction over the case of assessee and that the ITO, Ward 2(1), Faridabad who has further issued notice u/s 148 and 142(1) of the Act and completed the reassessment order who was having jurisdiction over the case of the assessee did not record reasons for the reopening of the assessment. Therefore, initiations of reassessment proceedings are illegal, bad in law and liable to be quashed. In support of which contention he has

relied upon order of ITAT Agra Bench in the case of S.N. Bhargawa Vs. ITO 147 ITD 306 in which it was held as under:

“IT: Where Assessing Officer, Agra initiated reassessment proceedings against assessee and subsequently he transferred case to Assessing Officer, Mathura, who was having jurisdiction over assessee, and thereupon Assessing Officer, Mathura, without recording fresh reasons and on the basis of reasons recorded by Assessing Officer, Agra issued on assessee a fresh notice u/s 148. Assessing Officer, Mathura had not validly assumed jurisdiction to initiate reassessment proceedings against assessee.”

5. On the other hand, Ld. DR relied upon the orders of the authorities below. Vide order sheet dated 26.08.2019 Ld. DR wanted to intimate, if any, other reasons u/s 148 have been recorded by ITO, Ward 2(1), Faridabad. Ld. DR produced the assessment record and submitted that no separate reasons u/s 148 have been recorded by ITO, Ward 2(1), Faridabad. Ld. DR, however, submitted that AO was having jurisdiction to proceed with the matter on transfer of the case from ITO, Noida.

6. I have considered the rival submissions. It is not in dispute that reasons for reopening of the assessment have been recorded in this case by ITO, Ward 2(3), Noida, who was having no jurisdiction over the case of the assessee. When assessee filed letter before ITO, Ward 2(3), Noida on 07.09.2017 stating therein that return filed originally may be treated as return having been filed in response to notice u/s 148 of the Act and is also supported by copy of acknowledgment of return filed originally, the ITO, Ward 2(3), Noida transferred this case to ITO, Ward 2(1), Faridabad, vide letter dated 07.09.2017 (PB 10). The AO while completing the assessment in this case has taken the shelter of provisions of section 129 of the Act. However, the said provision is not applicable because it is a matter of assumption of

valid jurisdiction in the matter or to validly initiate the reassessment proceedings against the assessee. It is not a case of succession to exercise jurisdiction by one ITO to another ITO. Since, reasons have been recorded for reopening of the assessment by ITO, Noida who was not authorized to do so, therefore, mere recording of reasons for reopening of the assessment by him is of no consequence and has no value under the law. The AO who has jurisdiction over the case of assessee i.e. ITO, Faridabad admittedly did not record any reasons for reopening of the assessment. Therefore, the issue is covered in favour of the assessee by order of ITAT Agra Bench in the case of S N Bhargawa (supra). It is, therefore, clear that assumption of jurisdiction by the AO is illegal and bad in law. The AO at Faridabad had not validly assumed jurisdiction to initiate reassessment proceedings against the assessee. This view is further supported by judgment of Hon'ble Gujarat High Court in the case of Hynoup Food & Oil Industries Ltd. vs. ACIT (2008) 307 ITR 115 in which it is observed that AO recorded reasons for reassessment and AO issued a notice u/s 148 must be the same person. Successor AO cannot issue notice u/s 148 on the basis of reasons recorded by predecessor AO. The Hon'ble Gujarat High Court held as under:

"Held, (i) that so far as the assessment years 1990-91 and 1991-92 were concerned, the officer who had issued the notice under section 148 of the Act, was different from the officer who had recorded the reasons and hence, the notices for both these years were invalid and deserved to be quashed on this ground alone."

7. In view of the above discussion, I am of the view that the assumption of jurisdiction u/s 147/148 of the Act is illegal and bad in law and, as such, liable to be quashed. I, accordingly, set aside the orders of the authorities below and quash the reopening of the assessment u/s 147/148 of the Act. Resultantly the entire addition stands deleted."

7. *This decision squarely applies to the facts of the assessee's case. Thus, respectfully following the said decision, the reassessment made by the ITO, Ward 4(1), Gurgaon on the basis of notice issued u/s 148 of the Act by non-jurisdictional Assessing Officer i.e. ITO, Ward 69(1), New Delhi, is hereby quashed. Ground nos. 5 & 6 are allowed."*

7. In the case of Pr. CIT Vs. Vimal Gupta (supra) the Hon'ble Jurisdictional High Court held as under: -

2. *Although other grounds have been pressed by the Revenue regarding the validity of the impugned order of the ITAT holding the assessment order passed under Section 148 of the Income Tax Act, 1961 ('Act') to be invalid, a threshold ground urged is that the ITAT erred in holding in the impugned order that the assessment made by the Additional Commissioner of Income Tax ('ACIT') Circle 34 (1) was without jurisdiction. It has been noticed that the matter was transferred to the said ACIT by the Income Tax Officer ('ITO') Ward 34(4), New Delhi without an appropriate order having been issued under Section 127 of the Act. Further that the ACIT did not himself issue the notice under Section 148 of the Act.*

3. *The ITAT has in para 13 of the impugned order specifically adverted to the above aspect and correctly held that "The ACIT, Circle 34(1), New Delhi has admittedly not recorded that he had reasons to believe that income chargeable to tax of the Assessee has escaped assessment. He continued reassessment proceedings initiated by the ITO, Ward 34(4) of the Act without independently recording reasons for reopening or issuing a fresh notice u/s 148 of the Act." Further the ITAT noted that "There is no order u/s 127 of the Act transferring the jurisdiction of the case from ITO, Ward 34(4) to ACIT, Ward 34(1). Thus this order of reassessment passed by the ACIT u/s 34(1) of the Act is without jurisdiction and hence is bad in law."*

4. *In the present memorandum of appeal no attempt has been made by the Revenue to aver whether in fact there was an order under Section 127 of the Act transferring the case to the ACIT, Circle 34(1). That being the position, the impugned order of the ITAT cannot be faulted. In view of the above conclusion, there is no occasion to examine the other questions urged by the Revenue in this appeal."*

8. Respectfully following the above decisions, the assessment framed by the Assessing Officer u/s 143(3) by the ITO, Ward 5(2)(3), Noida without the transfer order u/s 147 is bad in law and therefore the same is quashed. Since the assessment order is quashed on legal point, the other grounds of the assessee are left open since the adjudication of the same renders only academic at this stage.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 30/04/2025

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 30.04.2025

*Kavita Arora, Sr. P.S.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI