IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 10 of 2017 (O&M)
Date of decision: 30.07.2018

The Pr. Commissioner of Income Tax (Central), Ludhiana

……Appellant

Vs.

Ashwani Gandhi, B-5/617, Bhatti Colony, Chandigarh Road, Nawanshahr.

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajesh Katoch, Senior Standing Counsel for the appellant-revenue.
Mr. Ashok Paul Batra, Advocate for the respondent-assessee.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos. 10 to 13, 16, 30, 33, 44, 62, 63, 74, 75, 80 and 92 of 2017 as according to the learned counsel for the parties, the issues involved in all the appeals are identical. However, the facts are being extracted from ITA No. 10 of 2017.

2. ITA No. 10 of 2017 has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 30.06.2016, Annexure A.III, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amristar (in short, "the Tribunal") in ITA No. 351/Asr/2013, for the assessment year 2008-09, claiming following substantial questions of law.

> "(i) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in quashing the order under Section 127 of the Income Tax Act, 1961 dated 14.11.2011 of the transfer of jurisdiction of the case

of the assessee to the DCIT, Central Circle-II, Jalandhar and consequently reversing and nullifying the assessment order under Section 153A/144 of the Income Tax Act, 1961 passed by the DCIT, Central Circle-II, Jalandhar, ignoring the specific finding of the CIT(A) that the order under Section 127 of the Income Tax Act, 1961 dated 14.11.2011, had been passed by complying with the requisite procedure of granting the opportunity of being heard?

(ii) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in nullifying and reversing the assessment order under Section 153A/144 of the Income Tax Act, 1961 passed by the DCIT, Central Circle-II, Jalandhar, ignoring the specific finding of the CIT(A) on the applicability of the provisions of Section 292BB of the Income Tax Act, 1961 as the assessee had not raised any objection to the assumption of jurisdiction by the DCIT, Central Circle-II, Jalandhar after the order dated 14.11.2011, was passed under Section 127 of the Income Tax Act, 1961?

(iii) Whether the order of the Hon'ble ITAT, quashing the order under Section 127 of the Income Tax Act, 1961 dated 14.11.2011 is perverse as an order passed under Section 127 of the Income Tax Act, 1961 is not appealable before the Income Tax Appellate Tribunal under Section 253 of the Income Tax Act, 1961?"

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No. 10 of 2017 may be noticed. A search under Section 132 of the Act was conducted in the case of the assessee on 18.02.2010. Thereafter, order under Section 127 of the Act was passed by the Commissioner of Income Tax, Jalandhar-I, Jalandhar (CIT) on 10.08.2010 transferring the jurisdiction of the case of the assessee to Central Circle-II, Jalandhar. A notice under Section 153A of the Act was issued on 05.10.2010 by the Deputy Commissioner of Income Tax, Central Circle-II, Jalandhar

(DCIT) which was duly served but the assessee did not comply with the notice. Thereafter, a number of statutory notices were issued and served upon the assessee which also remained un-complied with. For continuous non compliance of the statutory notices, penalty under Section 271(1)(b) of the Act amounting to ₹10,000/- was also imposed by the Assessing Officer. Later on, a letter dated 26.09.2011 alongwith a fresh notice under Section 153A of the Act was issued and duly served on the assessee. But no compliance was made by him. Thereafter, jurisdiction of the case of the assessee was restored to the Income Tax Officer, Nawanshahr by the CIT, Jalandhar-I, Jalandhar by passing order dated 28.10.2011. Another notice under Section 153A of the Act dated 28.10.2011 was issued by the Income Tax Officer, Nawanshahr for furnishing return of income. Again, no reply was furnished by the assessee. The CIT Jalandhar-I, Jalandhar passed another order dated 14.11.2011 re-centralising the case of the assessee with DCIT, Central Circle-II, Jalandhar who proceeded with the scrutiny assessment proceedings. Additions of ₹ 1,85,000/-, ₹ 85,000/-, ₹ 3,60,417/-, ₹ 74,937/-, ₹ 1,07,000/-, ₹ 96,318/-, ₹ 1,00,000/-, ₹ 1,86,600/-, ₹ 12,14,805/- and ₹ 40,90,000/- were made by the Assessing Officer on various issues. Aggrieved by the assessment order dated 28.12.2011, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The assessee, besides challenging on merits, various additions made by the Assessing Officer, also challenged the assessment order on the ground that the same was illegal and bad in law and without jurisdiction. It was observed by the CIT(A) that there had been a transfer of jurisdiction of the case of the assessee from Income Tax Officer, Nawanshahr to DCIT, Central Circle-II, Jalandhar which was later on cancelled by the CIT on the representation of the assessee that no opportunity before passing the impugned order had been granted. The CIT(A) also referred to the applicability of the provisions of Section 292BB of the Act. Contention raised by the assessee on the issue of jurisdiction was not accepted by the CIT(A). However, on merits, the CIT(A) partly allowed the appeal filed by the assessee, by deleting some of the additions and confirming the other ones. Aggrieved by the order dated 26.03.2013 passed by the CIT(A), the assessee filed appeal before the Tribunal. The assessee raised the contention that the CIT(A) had grossly erred in law in concluding that the Assessing Officer had framed assessment on assumption of valid jurisdiction and that the impugned assessment framed under Section 153A read with Section 144 of the Act did not suffer from any jurisdictional infirmity. Vide order dated 30.06.2016, Annexure A.III, the Tribunal held that no opportunity was granted to the assessee before transfer of the jurisdiction of the case, vide order dated 14.11.2011, passed under Section 127 of the Act. It was further recorded that jurisdiction of the assessee laid with the Assessing Officer at Nawanshahr who had not made the assessment and that being so, the order passed by the Assessing Officer, Central Circle-II, Jalandhar was vitiated. Consequently, the Tribunal quashed the order under Section 127 of the Act dated 14.11.2011 and reversed the assessment order passed by the DCIT Central Circle-II, Jalandhar. Hence the instant appeals by the appellant-revenue.

4. We have heard learned counsel for the appellant-revenue.

5. Challenge in all these appeals is to the order passed under Section 127 of the Act by the CIT, whereby the case of the assessee was transferred to DCIT, Central Circle-II, Jalandhar from Income Tax Officer, Nawashahr. In the present case, undisputedly, a search was conducted on 18.02.2010. Vide order dated 10.08.2010 passed under section 127 of the Act, the CIT transferred the jurisdiction of the case of the assessee to DCIT, Central Circle C-II, Jalandhar. Later on, vide order dated 28.10.2011, the said

order dated 10.08.2010 was cancelled and the CIT restored the jurisdiction to the Income Tax Officer, Nawanshahr. Still later, vide order dated 14.11.2011, the jurisdiction was again transferred by the CIT to Central Circle-II, Jalandhar. According to the respondent-assessee, no opportunity was ever granted to him to enable him to raise any objection against transfer of jurisdiction. Reliance was placed by the learned counsel for the respondent-assessee on various judgments.

6. Examining the case law on which reliance had been placed by the assessee-respondent, in ***Anil Mittal and others Vs. Chief Commissioner of Income Tax*** 1997 (225) ITR 282 it was held by this Court that since no reasons had been recorded in the order by the revenue while passing order under Section 127 of the Act transferring the case of the assessee from Gurdaspur to New Delhi, the order was held to be against the provisions of Section 127 of the Act and the law laid down by the Apex Court in ***Ajanta Industries Vs. CBDT*** (1976) 102 ITR 281 and was quashed. In ***Smt. Smriti Kedia Vs. Union of India and others,*** WP 1984 of 2006 decided on 11.4.2011, it was recorded by the Calcutta High Court that there was nothing on record to show that pursuant to an order under Section 127 of the Act, the assessment records of the petitioner were transferred either from Calcutta to New Delhi or from New Delhi to Calcutta. It was, thus, held that unless records were validly transferred from Calcutta to New Delhi, the respondent had no jurisdiction to issue notice under Section 148 of the Act for the assessment year in question. In ***Lieutenant Colonel Paramjit Singh Vs. Commissioner of Income Tax (***1996) 220 ITR 446, it was held by this Court that the assessee has to be a given reasonable opportunity of being heard before an order of transfer is passed and that the competent authority shall record his reasons for the transfer. Further, Explanation to Section 127 of the

Act makes it clear that once an order of transfer is made under the section, all pending proceedings for different years are transferred. In ***Nitin Developers and Const Vs. Commissioner of Income Tax*** (2006) 284 ITR 605, it was held by Delhi High Court that the order of transfer ought to disclose proper application of mind to the objections which the assessee may have raised. Similar view was taken by the Gujarat High Court in ***Dr. Parthasarathy Seshan Iyengar Vs. Dy. Commissioner of Income Tax and another,*** Special Civil Application No's. 8337 to 8342 of 2010 decided on 17.08.2010. In ***Commissioner of Income Tax, Faridabad Vs. M/s Cebon India Limited,*** ITA No. 85 of 2009 decided on 07.07.2009, it was held by this Court that in the absence of notice being served under Section 143(2) of the Act, the Assessing Officer had no jurisdiction to make assessment. Further, absence of notice could not be held to be curable under Section 292 BB of the Act.

7. There is no quarrel with the propositions of law enunciated in the above mentioned decisions. However, the Tribunal was not competent to enter into the domain of testing the validity of the order under Section 127 of the Act in the appeal as it is not an appealable order under the Act. That order can only be assailed in independent proceedings where question of validity or otherwise of the said administrative order could be examined. Similar issue arose before the Division Bench of this Court in ***Commissioner of Income Tax Vs. Paras Rice Mills***, (2009) 313 ITR 182, where it was held that while hearing an appeal against an order of assessment, the Tribunal cannot go into the question of validity or otherwise of any administrative decision for conducting search and seizure. The relevant para of the judgment reads thus:-

> " 11. We are of the view that the Tribunal when hearing an appeal against the order of assessment, could not go into the question of validity or otherwise of any administrative decision

> for conducting search and seizure. The same may be subject-matter of challenge in independent proceedings where question of validity or otherwise of administrative order could be gone into. The appellate authority was concerned with the correctness or otherwise of the assessment.”

Since, in the present case, assessment was framed under Section 144 of the Act, it would now be in the interest of justice, if the matter is referred back to the Assessing Officer who shall pass a fresh order after affording an opportunity of hearing to the assessee in accordance with law.

8. In view of the above, the impugned orders dated 28.12.2011, 26.03.2013 and 30.06.2016, Annexure A.I to A.III are set aside and the matter is remanded to the Assessing Officer in all these 14 appeals to decide it afresh in accordance with law after affording an opportunity of hearing to the assessee. The appeals are disposed of accordingly. Needless to say that the findings recorded by any of the authorities in earlier assessment proceedings shall not come in the way of the Assessing Officer while passing fresh assessment order.

(Ajay Kumar Mittal)
Judge

July 30, 2018 **(Avneesh Jhingan)**
‘gs’ **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**