(2013) 08 AHC CK 0086

In the Allahabad High Court

Case No : IT Appeal Defective No''s. 84 to 90 of 2012

Commissioner of Income Tax (Noida) APPELLANT

Vs

Deepak Gupta RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2014) 266 CTR 265 : (2013) 219 TAXMAN 1

Hon'ble Judges : Surya Prakash Kesarwani, J;Sunil Ambwani, J

Bench : Division Bench

Advocate : Dhananjay Awasthi, for the Appellant;

Judgement

1. We have heard Shri Dhananjay Awasthi, learned counsel for the income tax department. The income tax appeal Nos. 84 of 2012, 85 of 2012, 86 of 2012, 87 of 2012, 88 of 2012, 89 of 2012 and 90 of 2012 are reported to be defective for want of certified copy of the order. The certified copy of the common order has been filed in the connected income tax appeal. The application for exemption is allowed in all the cases. The office will give regular number to the defective income tax appeal Nos. 84 of 2012, 85 of 2012, 86 of 2012, 87 of 2012, 88 of 2012, 89 of 2012 and 90 of 2012.

2. These income tax appeals u/s 260A of the income tax Act are directed against a common judgment and order dated 31.5.2012 passed by the Income Tax Appellate Tribunal, Delhi Bench ''A'', New Delhi in ITA No. 1708 to 17013/ Del/2011 for the assessment year 1996-97 to 2001-02.

3. The department has preferred the appeal on the following questions of law:--

(I) Whether, the ITAT was justified in quashing the order of the A.O. u/s. 148 in view of the provisions of Section 127(4) which stipulates transfer of case at any stage which shall not render reassurance of notice already issued by the earlier A.O.?

(II) Whether the ITAT was justified in quashing the order of the A.O. u/s.

147/144 on basis of territorial jurisdiction completely ignoring the provisions of Section 124(3) which talks about raising of jurisdictional issue within one month of issuance of notice which was not done in the present case?

(III) Whether the ITAT was justified in quashing the order u/s. 127 on grounds of non opportunity when it is clear that 127 does not talk of mandatory opportunity?

(IV) Whether the ITAT was correct in law in quashing the order u/s. 127 when the assessee could not substantiate his address before the CIT(A)?

(V) Whether the ITAT was correct in holding that Noida in Delhi geographically separate when both fall in N.C.R. Region?

(VI) Whether the ITAT was correct in quashing the administrative order passed u/s 127 on grounds of opportunity when addressed this is quotable terror specially when the assessee had participated in the subsequent proceeding?

4. The findings recorded by ITAT would show that the assessee was filing returns of income with ITO, Delhi. The returns from the year 1993-94 to 2002-03 were filed at Delhi. The dates on which returns were filed are given in para 3.10 of the order of the Tribunal.

5. The petitioner was served notice of reassessment by ACIT, Noida u/s 147/148. The notices were challenged on the ground that the assessee was also assessed at ITO Ward No. 32, New Delhi and thus ACIT, Noida has no jurisdiction to issue notice. While proceedings of reassessment u/s 147/148 were going on and assessee filed objections to the jurisdiction, the A.O. finalized assessment u/s 147 read with Section 144 on the basis of the material available on record. He found unexplained expenditure in property and had estimated the income from salary. The assessee filed appeal against the order and also filed writ petition in the Lucknow Bench of Allahabad High Court. Since there was no interim order from the High Court, the CIT(A) by his order dated 22.1.2009 dismissed the appeal both on the ground of non-prosecution as well as on merits. In the second appeal filed by the assessee before the ITAT, New Delhi the assessee again pleaded that issue of jurisdiction was still sub-judice before the High Court and therefore ITAT, New Delhi by its order dated 9th October, 2009 restored the appeal to the file of CIT(A) for fresh adjudication after decision of the High Court, Allahabad with directions that he will inform the office of CIT(A) in regard to decision of the High Court at Allahabad, and shall cooperate in the appellate proceedings and in the event of non-cooperation, the CIT(A) will draw adverse inference against the appellant.

6. While appeals were pending, the High Court decided the writ petition with directions as follows:--

In view of above, the writ petition is disposed of finally directing the CIT (Appeals) to consider and decide petitioner''s appeal on merits expeditiously and preferably within a period of two months from the date of receipt of certified copy of this order. The CIT (Appeals) shall also consider and adjudicate the question with regard to jurisdiction of the Assessing Officer as has been raised by the learned counsel for the petitioners.

7. The CIT(A) considered the question of jurisdiction and found that office of M/s. Auram Jewellery is run by Deepak Gupta. The manufacture and export of plain gold jewellery was carried out in the unit at Noida within the jurisdiction of the CIT Circle Noida, which had jurisdiction over the company. The CIT(A) also found that the first return of the assessment year 2000-01, which was signed on 26.9.2000 at Noida by Shri Deepak Gupta was filed with ITO Ward-33, New Delhi with address given as 167 NEPZ, NOIDA. The territorial jurisdiction of such address lies with Income Tax Officer, NOIDA. Subsequent returns for the assessment year 2001-02 and 2002-03 were filed disclosing address at 205, Kamal Plaza Building, Karol Bagh, New Delhi but in the place of PAN simply A/F is written. PAN quoted in the return by Shri. Deepak Gupta for the assessment year 2000-01 was wrong as no series of PAN starts from the alphabet ''F'' but the same begins with alphabet ''A''. On examination of relevant web-site and replacing ''G'' with alphabet ''A'' the PAN was found to be in the name of Deepak Gupta son of Shri Ganeshi Lal Gupta, RJO K-221, Sector-34, Noida. It was also found that Smt. Urmila Gupta was using entirely different address namely C-92, Khazan Basti, Nangal Rai, Delhi Cantt. and was filing returns with ITO Ward-27(4), Delhi. The property belongs to different persons and there was no connection of Smt. Urmila Gupta with the address. In these circumstances, in order to centralize the case the A.O. took pains to get the assessee''s case transferred from ITO Ward-33(2) Delhi to him. In exercise of powers under sub-section (2) of Section 127 of the Income Tax Act the Commissioner of income tax Delhi XI New Delhi, has transferred the case of Shri Deepak Gupta under the jurisdiction of the ACIT, Noida. In compliance with the directions issued by the High Court, the CIT(A) decided the question of jurisdiction against the assessee, recording following findings:--

From the detailed discussion as made above, it is clear that the appellant''s jurisdiction over the income tax cases lied definitely with A.C.I.T., Circle, Noida which is clear from the PAN allotted to the appellant. Further, the order of the D.G.I.T. (Inv.), Lucknow is clear on this aspect wherein it has been held that the appellant''s territorial jurisdiction is also with the A.O. under the Commissioner of income tax, Ghaziabad. The appellant in all his legal documents filed before the various authorities including Hon''ble Courts have shown the addresses at Noida/ Ghaziabad. Furthermore all the bank accounts were maintained at-Noida only. It is important to note that the appellant although has challenged the issue of jurisdiction but neither he has come out why he was using the address of Delhi as referred above in his returns of income nor he has been able to explain with details/evidences as to how the impugned property at Delhi was used by him for the business purposes so as to substantiate the claim of filing of return in Delhi. All the above facts reinforce the conclusion that the appellant should have filed his returns of income in Noida. In other words, the correct territorial/legal jurisdiction of the appellant was in Noida, department was very much within its right to treat the appellant''s jurisdiction with Noida Range. The appellant''s contention that no opportunity was given before passing of the jurisdiction order has no force because opportunity is required when appellant is being assessed at its appropriate territorial jurisdictional Ward/Circle. As is obvious, the present case is otherwise; the department has only streamlined the assessment at correct jurisdiction. The appellant cannot be allowed to find flaws in the legal action of the department and claim relief for his illegal actions.

All above discussion clearly establishes that the jurisdiction over the assessee''s case validly lied with the ACIT, NOIDA. The appellant fails on this ground. Thus additional grounds raised by the appellant on the issue of jurisdiction are hereby dismissed.

8. In the appeal filed by Shri Deepak Gupta the ITAT found that on the efforts made by ACIT the jurisdiction was transferred by the Commissioner of income tax by order dated 9.3.2004 u/s 127(2) of the Act. The ACIT wrote a letter requesting to transfer the assessee''s case from New Delhi to Ghaziabad. The jurisdiction was thereafter transferred within 5 days by order dated 9.3.2004 from one city to another without giving opportunity of hearing as prescribed u/s 127(2)(a).

9. The ITO quoted the proposal of transfer of records of M/s. Auram Jewellery Export Pvt. Ltd., 167, NEPZ, Noida and Shri Deepal Gupta and Smt. Urmila Gupta written by Addl. Commissioner of Income Tax (HQ) to the Commissioner of Income Tax, Vaishali, Ghaziabad dated 3.3.2004 as follows:--

F. No. CIT-Tech./Approval/2003-04/Scrutiny/V-1529

Office of the Chief Commissioner of income tax, Meerut, Vaishali, Ghaziabad Dated:-03.03.2004

To,

The Commissioner of income tax, Ghaziabad.

Sir,

Sub:- Jurisdiction-Proposal for transfer of records of M/s. Auram Jewellery Export Pvt. Ltd., 167, NEPZ, Noida and Sh. Deepak Gupta & Smt. Urmila Gupta-Reg.

Kindly refer to your letter dated 20.1.2004 and the queries raised by this office dated 25.1.2004 to ACIT, Noida. In this regard, I am directed to convey the following:-

ACIT, Noida assumed jurisdiction over M/s. Aurum Jewellery Export Pvt. Ltd., 167, NEPZ Noida by virtue of issue of notice u/s. 148 dated 27.03.2002 for A.Y. 95-96.

Thereafter in case of Mr. Deepak Gupta notice u/s. 148 for the A.Y. 1996-97 to 2001-02 and notice u/s. 142(1) for A.Y. 2002-03 were issued on 27.3.2003 and in the case of Smt. Urmila Gupta also notice u/s. 142(1) for A.Y. 2002-03 were issued on 27.3.2003 and in the case of Smt. Urmila Gupta also notice u/s. 142(1) for the A.Y. 2002-03 was issued on 27.03.2003. From the perusal of the record it is seen that these notices were served by affixture and there was no regular service on notices.

However prior to this, as reported by ACIT Noida, Sh. Deepak Gupta and Smt. Urmila Gupta have been filing returns regularly in the respective wards at Delhi. The information in this regard was communicated to ACIT, Noida and the same is as follow:

From the above facts it is obvious that Sh. Deepak Gupta & Smt. Urmila Gupta had voluntarily submitted them to the jurisdiction of Delhi Charge much before ACIT, Noida assumed jurisdiction over the case of Auram Jewellery Pvt. Ltd.

The report of ACIT, Noida also confirms the facts that ITO Ward-33(2), Delhi and Ward-27(4), Delhi have confirmed their jurisdiction over the case of Sh. Deepak Gupta & Smt. Urmila Gupta respectively. Moreover, as of now there is no business activity in the company and the Directors are not receiving any remuneration. Therefore, automatic assumption of jurisdiction of Directors only by virtue of facts that company is assessed in Noida, does not hold good ground.

Considering these facts the ACIT, Circle Noida should not automatically assume jurisdiction over the case of Sh. Deepak Gupta & Smt. Urmila Gupta. The inter charge change of jurisdiction between two regions requires concurrence of the concerned Commissioner and specific order u/s. 127 of income tax Act, 1961 by the concerned CCIOT having present jurisdiction of the case in Delhi, needs to be passed.

Yours faithfully

Sd/-

(Tarun Kumar)

Addl. Commissioner of income tax (HO)

10. The ITAT held that it is undisputed that the assessee was consecutively assessed at Delhi for number of years. Some sort of dispute arose at between the assessee and the high ranking officer of the Income Tax Department Shri Bani Singh. Due to this dispute the officer started causing trouble to the assessee and as he could not influence the income tax authorities at Delhi, efforts were made through NOIDA CIT to issue notice u/s 148. The assessee went on objecting to the jurisdiction to the departmental authorities about the arbitrary acts of ACIT, NOIDA and his inability to submit to the illegal jurisdiction. He filed appeals against the ex-parte orders of assessment before CIT and also filed Writ Petition No. 1023 of 2004 against various income tax authorities including Bani Singh. The writ petition was disposed of with directions to decide his objections in the pending appeals before CIT(A). The Director General (Inv.) vide order dated 19.10.204 on the representation filed by the petitioner took a

stand that he was not supervising/controlling authority and reporting only to the Member (Inv.) CBDT and had no control over it and thereafter without referring to the assessee''s objections it was held that the petitioner''s assessment was being properly framed by the officers of Noida falling within the jurisdiction of CIT, Ghaziabad.

11. The ITAT concluded as follows:--

6.1 Adverting tot he first issue, from the entire record and particularly the letter from the office of the CCIT, Meerut addressed by Addl. Commissioner, Head Quarters, Meerut dated 3.3.2004, it clearly emerges that till 3.3.2004 the assessee and his wife have been filing their returns regularly with AO, Delhi and were assessed by ITO Delhi. There is no accusation in this letter that the Delhi and jurisdiction was based on misrepresentation of facts. This letter further clarifies that the assessment of jurisdiction assumed by ACIT Noida was not on good grounds and he should not have issued the notice without the prescribed procedure of inter charge change of jurisdiction between two regions of income tax department with the endorsement of both the commissioner. This letter clinches the issue and belies the observations of CIT(A) that Delhi and Noida are practically same locality and that the assessee wrongly got himself assessed at Delhi. With this authoritative communication of CIT, Delhi on the record issued to all the officers, we are unable to sustain any finding of the AO or Ld. CIT(A)''s there cannot be any hesitation in holding that by the time 148 notices were issued by ACIT, Noida, he had no jurisdiction, whatsoever on the assessee, therefore, all the notices issued u/s. 148 are invalid as per the provisions of Income Tax Act. This ground of the assessee is allowed.

6.2 Coming to issue raised by the assessee that the transfer of jurisdiction order u/s. 127(2) is also not proper in the eyes of law, it is clear that the CCIT, Meerut issued the letter to both the Commissioner i.e. CIT, Ghaziabad and CIT Delhi for inter charge transfer of jurisdiction on 3.3.2004. The impugned 127(4) order has been passed by the CIT, Delhi on 9.3.2004 i.e. within 5 days. There is no reference to any opportunity of being heard given to the assessee. There is neither any reference in the order nor Ld. DR could dispute this fact. Ld. DR has only argued that it is an administrative order and denial of opportunity of hearing is not appealable, therefore, no prejudice is caused to the assessee. We are unable to agree with Ld. DR. Statutory requirements are always mandatory irrespective of the fact whether the same is appealable or not, therefore, any transfer order passed u/s. 127(2) of inter charge jurisdiction, without complying with the statutory requirement of giving opportunity of being heard to the assessee is invalid.

6.3 Hon''ble Delhi High Court''s judgment in the case of Melco India Pvt. Ltd. & others (supra) is binding on us and observations are to be followed with utmost respect. Respectfully following the Hon''ble Delhi High Court judgment in the case of Melco India Pvt. Ltd. & others (supra) which in turn followed Vijay Shanli Investment passed by the CIT, Delhi, cannot be sustained as no notice was issued to the Pvt. Ltd. 187 ITR (Del), we hold that transfer order u/s. 127 dated 9.3.2004 assessee giving opportunity of being heard about the transfer of jurisdiction. In view of these facts and observations we hold that order of CIT, Delhi dated 9.3.2004, transferring jurisdiction u/s. 127(2) is bad in law. Consequently 148 notices, reassessment and transfer of jurisdiction order u/s. 127(2) dated 9.3.2004 are quashed. This ground raised by the assessee is also allowed.

6.4 Since we have held that the notices u/s. 148, consequential reassessments and transfer order u/s. 127(2) to be bad in law, therefore, there is no need to decide merits of additions.

12. So far as ITA No. 1562/Del/11- Smt. Alka Tiwari giving rise to Income Tax Appeal (D) No. 86 of 2012, the ITAT observed that the case of Smt. Alka Tiwari is similar to that of Deepak Gupta except for some details. In her case ACIT Noida''s request letter for transfer of jurisdiction is dated 22.3.2004 and the transfer order of jurisdiction u/s 127(2) was passed within three days i.e. 26.3.2004. There is small variation in the date of notice u/s 148. Further facts and circumstances are the same and that notice u/s 148 also could not have been given prior to transfer of jurisdiction.

13. Shri Dhananjay Awasthi appearing for the department submits that in the present case there is valid transfer of jurisdiction by the Commissioner of income tax and that the orders under Suction 127 can be passed after giving reasonable opportunity of being heard in the matter, wherever it is possible to do so after recording reasons for transfer of case. He submits that since the orders u/s 127(2) were not challenged by the assessee and that the order has not been set aside, the ITAT could not have interfered in the matter. He has relied upon the words ''wherever it is possible to do so'' in submitting that where notice u/s 127(1) has been served, proceedings of transfer cannot be questioned unless there was an objection. The provisions of Section 127(2)(a) provides for reasonable opportunity of being heard in the matter, wherever it is possible to do so. In the present case he submits that since the notice was served, the provisions of Section 127(2)(a) have been complied with.

14. Shri Dhananjay Awasthi also submits that since the office and the business premises of the petitioner was situated at Noida, it was ACIT, NOIDA, which had the jurisdiction to assess the petitioner. The notice u/s 147/148 gets validated even if it is issued by the officer, who was competent to assess the petitioner, if the order u/s 127 has been passed, when the returns were filed at Delhi.

15. Shri Dhananjay Awasthi has relied upon Commissioner of Income Tax Vs. Union of India and Others, in submitting that where search is conducted in group of companies as well as residential and official premises and it becomes necessary for coordinate investigation to centralise, powers u/s 127(2) can be used. The object of centralization is to coordinate investigation. The word ''coordinate investigation'' is neither vague nor the opportunity could be said to

have been given to the assessee.

16. The facts of this case are distinguishable. There was no search and seizure operation nor any coordinate investigation was required as there was no group of companies nor any incriminating material was seized at any place or places. It was during the course of assessment made by ACIT, NOIDA, who had assumed jurisdiction on the ground that he alone could have assessed the assessee as they had their office and business place in NOIDA, the order u/s 127(2) was obtained by making efforts. According to A.O. the assessee was seeking repeated adjournments. In the circumstances, it cannot be said that the assessee was either absconding from proceedings or was not available so as to form any opinion that service of notice was not possible. The assessee had filed objections, which was directed to be decided by the High court. The ITAT has rightly found that the reasons given by CIT(A) in deciding the objections were not sufficient as the transfer of jurisdiction was made on the request of A.O. to which objections were filed and were not decided by the A.O.

17. We agree with the reasoning given by ITAT that it was mandatory for the A.O. to decide objections and that the exercise of discretion on the objections would in any case not validate the notice u/s 147/148 of the income tax Act.

18. On the aforesaid discussion, we do not find any merit in these appeals. The questions of law are decided against the department and in favour of the assessee. The income tax appeals are consequently dismissed.

