

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

ITA No. 149/Ahd/2021 Assessment Year 2015-16

Shri Jignesh Lilachand Shah, At Post Zalmor TA. Kankrej, Banaskantha Zalmor-385555 PAN: AQFPS7112L (Appellant)		The Pr. CIT-3, Ahmedabad (Respondent)
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Assessee by: Shri M.S. Chhajed, A.R.
Revenue by: Shri Ritesh Parmar, CIT-D.R.

Date of hearing : 16-02-2023
Date of pronouncement : 21-03-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Principal Commissioner of Income Tax, PCIT, Ahmedabad-3, in proceeding u/s. 263 vide order dated 31/03/2021 passed for the assessment year 2015-16.

2. The assessee has raised the following grounds of appeal:

“1. Order passed by the Ld. PCIT is bad and illegal as it is in violation of principle of natural justice.

2. The Original assessment order was invalid and without jurisdiction, hence the Ld. PCIT cannot assume valid jurisdiction on void & illegal order.

3. The Ld. PCIT has no jurisdiction on appellant and hence all proceedings conducted by PCIT are void & illegal.

4. The Ld. Pr. CIT has erred in law and on facts in considering that order passed by Ld. A.O. is erroneous and prejudicial to the interest of revenue, hence set aside the assessment order passed by the Ld. A.O.

5. Appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final hearing.”

3. The assessee has also taken the following additional ground of appeal:

“1. Assumption of jurisdiction to pass order u/s 263 of the Act by the Ld. PCIT is bad & illegal as assessment order passed by the Ld. A.O. is void, illegal & non est.”

4. Before us, at the outset, the counsel for the assessee submitted that the order passed by the PCIT under section 263 of the Act is bad in illegal since the assessment order passed by the Ld. Assessing Officer is void, illegal and non-est. The reason for the same is that notice under section one 143(2) of the Act was issued on 21-09-2017 by the ITO, ward-4, Palanpur. The

learned counsel for the assessee drew our attention to copy of notice at page number 6 of the paper book. As per the aforesaid notice, the ITO Ward 4 Palanpur had issued a transfer notice to the ITO Ward 3(3)(2) Ahmedabad on 29-09-2017 wherein it has been stated that “*the case record and relevant files for AY 2010-11 to 2013-14 were already transferred to you. The territorial jurisdiction over the assessee rests with you.*” A copy of the notice has been reproduced for us at page 8 of paper book. The final assessment order was passed by ITO Ward 3(3)(2) Ahmedabad. Accordingly, the grievance of the assessee is that while the initial notice of assessment was issued to the assessee by ITO Ward 4, Palanpur, the assessment order was passed by ITO Ward 3(3)(2) Ahmedabad in absence of valid order under section 127 of the Act. Therefore, the condition of the counsel for the assessee is that in absence of valid order under section 127 of the Act, the assessment order passed by ITO Ward 3(3)(2) Ahmedabad is illegal and void in the eyes of law. Therefore, when the assessment order passed under section 143(3) of the Act itself is illegal and void, and consequently the revisional order passed under section 263 of the Act is also null and void.

5. Before going into the merits of the order passed under section 263 of the Act, it would be appropriate to first adjudicate on the issue of jurisdiction raised by the Ld. Counsel for the assessee before us. The primary thrust of the argument of the counsel for the assessee is that the initial notice of assessment was issued by the ITO Ward-4 Palanpur and without completing the procedure as laid out under section 127 of the Act for transfer of jurisdiction without any prior intimation to the assessee, the case file of the

assessee was transferred to ITO Ward 3(3)(2) Ahmedabad and therefore the assessment order itself was bad in law. In view of the arguments of the counsel for the assessee, two issues for consideration have come before us for adjudication: firstly, whether the assessment order passed in the instant set of facts by ITO Ward 3(3)(2) Ahmedabad is valid in the eyes of law and secondly, if the assessment order itself is not valid in the eyes of law, can the same be subject to revision under section 263 of the Act. It is a well-settled principle of law that before the jurisdiction of assessment is transferred by the assessing Officer to another jurisdiction, the necessary procedures that need to be carried out under section 127 of the Act have to be complied with. Before us, the Ld. DR has not been able to bring forth any material on record to substantiate that the procedure as envisaged under section 127 of the Act for transfer of files was fulfilled in the instant set of facts. It is a well-settled principle of law that power of transfer is a quasi-judicial function and was to be exercised in a fair and reasonable manner and not in an arbitrary or mechanical way. Therefore, notice has to be given to the assessee under section 127 of the Act whenever it is proposed transfer case from one Officer to another. It has also been held by various Courts that it is also necessary to mention in the notice the reasons for the proposed transfer so that the assessee can make an effective representation with reference to those reasons. Further, the opportunity of being heard must be given to the assessee not only when the case is to be transferred despite the objection of the assessee, but also when it is not to be transferred despite his request. Needless to say, the objections raised by the assessee must be appropriately dealt with by the Commissioner and an order that does not consider the objections is liable to be quashed. In the case of **Benz Corporation v. ITO**

232 ITR 807 (Kerala), the High Court held that power of transfer of assessment files from one authority to another vested in Commissioner under section 127(1) is quasi – judicial power and such power should be exercised in fair and reasonable manner and not in a mechanical or arbitrary way. In the case of **Vijayasanthi Investments (P.) Ltd. v CIT 56 Taxman 190 (Andhra Pradesh)**, the High Court held that where neither show-cause notice nor intimation sent to assessee gives any reasons for proposed transfer, such transfer order passed under section 127 can be said to be vitiated and liable to be set aside. In the case of **Melco India (P.) Ltd. v. CIT 260 ITR 450 (Delhi)**, the High Court held that since no notice u/s 127 of the Act was issued to petitioners giving them an opportunity of being heard, impugned order passed by Commissioner was invalid and liable to be set aside. Accordingly, in light of the above observations by various high Courts, we are of the considered view that since the necessary procedure for transfer of case was not followed in the instant set of facts, the assessment order in the instant set of facts is null and void.

5.1 We further observe that in the case of **PCIT v. Nopany & Sons 136 taxmann.com 414 (Calcutta)** where case of assessee was transferred from ITO, Ward-3 to ITO, Ward-4 and impugned order under section 143(3) was passed by ITO, Ward-4 without issuing notice under section 143(2) and only in pursuance with notice issued by ITO, Ward-3, who had no jurisdiction over assessee at relevant time, said impugned order would be null and void. In the instant case, we observe that no fresh notice of assessment was issued by ITO Ward 3(3)(2) and for this reason also, the assessment order passed

by ITO Ward 3(3)(2) is null and void since there is a legal requirement to issue a separate notice of assessment to the assessee.

6. The next issue for consideration before us is that once it is held that the assessment order itself is null and void, can such assessment order be the subject matter of revision under section 263 of the Act. In our view, it is a well-settled principle of law that once the assessment order passed itself is null and void, the same cannot be the subject matter revision under section 263 of the Act. In the case of **Pioneer Distilleries Limited Vs Pr. CIT ITA No. 479/PUN/2017(ITAT Pune)** the ITAT held that revisionary jurisdiction cannot be exercised against Void order. In this case, the ITAT held that when the said order is void and did not stand in eyes of law, it cannot be held to be erroneous and prejudicial to the interest of revenue by the Commissioner. Again in the case of **Westlife Development Ltd. v. PCIT vide order dated 24.06.2016 (ITAT Mumbai)**, the ITAT held that when an Assessment order passed under section 147 of the Act was illegal the CIT cannot invoke the jurisdiction under section 263 of the Act against such void or non-est order. In the case of **Inder Kumar Bachani (HUF) v. ITO (2006) 101 TTJ 450 (ITAT Lucknow)**, the ITAT held that as the order of the Assessing Officer passed under section 147 / 143(3) was itself void, the order of PCIT passed under section 263 for quashing this order was without jurisdiction. In view of the above observations, we are of the considered view that since the assessment order passed by ITO Ward 3(3)(2), Ahmedabad itself was null and void, the same could not be the subject matter of revision under section 263 of the Act. In the result, we are

allowing the appeal of the assessee on the ground of jurisdiction itself. We are accordingly not separately adjudicating into the merits of the case.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 21-03-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 21/03/2023

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद