



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA Nos. 255/2002, 256/2002, 257/2002, 1577/2006, 314/2002**  
**315/2002, 316/2002, 1578/2006, 1580/2006**

% **Reserved on: 27<sup>th</sup> November, 2013**  
**Date of Decision: 14<sup>th</sup> March, 2014**

COMMISSIONER OF INCOME TAX DELHI-XVI....Appellant  
 Through Mr. AmolSinha, Sr. Standing Counsel &  
 Mr. Anshum Jain, Rahul Kochar, Advs.

Versus

S.S. AHLUWALIA ..... Respondent  
 Through Mr. S. Krishnan, Advocate.

**WTA Nos. 13/2006, 14/2006, 15/2006, 16/2006, 18/2006**

COMMISSIONER OF WEALTH TAX ..... Appellant  
 Through Mr. AmolSinha, Sr. Standing Counsel &  
 Mr. Anshum Jain, Rahul Kochar, Advs.

versus

S.S. AHLUWALIA ..... Respondent  
 Through Mr. S. Krishnan, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**SANJIV KHANNA, J.**

**ITA Nos. 255/2002, 256/2002, 257/2002, 1577/2006, 315/2002,**  
**1578/2006, 316/2002, 1580/2006, 314/2002**

The respondent assessee is an IAS Officer of Nagaland cadre, who was compulsorily retired in January, 1993. During the period 1971-72 to 1978-79, the respondent had filed income tax returns at



Dimapur, Nagaland as he was posted and working there. In July 1977, he was posted to Delhi on deputation in the Ministry of Home Affairs, a position which he continued to hold till 1984. Income tax returns for the assessment years 1980-81 to 1983-84 were filed at Delhi with the Income Tax Officer, Salary Circle.

2. As per the respondent assessee, return for the assessment year 1984-85 was filed by the respondent at Dimapur, Nagaland on or about 8<sup>th</sup> August, 1985. The return was not taken up for scrutiny assessment but was processed on 31<sup>st</sup> March, 1987 under Section 143(1) of the Act.

3. The respondent assessee was subjected to search by the Central Bureau of Investigation on 27<sup>th</sup> March, 1987. It is the case of the Revenue that the assessee had acquired 18 commercial properties in Delhi, 370 acres agricultural land in and around Delhi and had substantial unaccounted/undisclosed deposits in form of Fixed Deposit Receipts. These assets/properties were in names of the respondent and his family members.

4. The Assessing Officer at Delhi i.e. Assistant Commissioner of Income Tax (Investigation), Circle 8(1) (hereinafter referred to as the AO, Delhi) issued notice under Section 148 of the Act dated 26<sup>th</sup> June, 1987 in respect of assessment years 1984-85, 1985-86, 1986-87 and 1987-88. Commissioner of Income Tax, Delhi by order dated 10<sup>th</sup> November, 1987 transferred the case of the respondent assessee from Income Tax Officer, Salary Circle to AO, Delhi i.e. Assistant Commissioner of Income Tax (Investigation). Proceedings in respect of assessment year 1988-89 were taken up for scrutiny assessment by issue of notice under Section 143(2) of the Act. It appears that



proceedings for the assessment year 1984-85 under Section 148 of the Act were dropped. We are not concerned with the said proceedings in the present appeals. We are also not concerned with the proceedings in respect of 1988-89 in the present income tax appeals as these appeals relate to assessment years 1985-86, 1986-87 and 1987-88. Appeals, ITA No. 89/2003 and ITA No. 1579/2006 relating to assessment year 1988-89 were disposed of vide orders dated 7<sup>th</sup> April, 2011 and 24<sup>th</sup> July, 2011, due to low tax effect.

5. The respondent assessee did not file returns pursuant to the above notices for the assessment years 1985-86, 1986-87 and 1987-88 under Section 148 of the Act. Subsequently, the assessing officer issued notice under Section 142(1) on 22<sup>nd</sup> March, 1988 and thereafter vide letter dated 25<sup>th</sup> March, 1988, the respondent assessee raised objection to the jurisdiction of the AO, Delhi. It was, inter alia, stated that the respondent was employed with the Government of Nagaland and was regularly assessed by the ITO, A Ward, Dimapur for the last many years.

6. In respect of assessment year 1985-86, the AO, Delhi passed the assessment order dated 27<sup>th</sup> March, 1990 and for assessment years 1986-87 and 1987-88, assessment orders were passed on 28<sup>th</sup> March, 1990. A few days before the assessment orders were passed, ITO, Dimapur had written letter dated 15<sup>th</sup> March, 1990 enclosing therewith income tax assessment records in two parts as directed by the AO, Delhi. Copy of the said letter was marked to Commissioner of Income Tax (Investigation) as well as Commissioner of Income Tax, North Eastern Region, Shillong and other authorities. This was followed by another letter dated 20<sup>th</sup> September, 1990 written by the ITO, Dimapur



to the AO, Delhi enclosing therewith return for the assessment ye 1990-91.

7. These two letters dated 15<sup>th</sup> March, 1990 and 20<sup>th</sup> September, 1990 written by the ITO, Dimapur were made subject matter of challenge before the Gauhati High Court in a writ petition filed in February, 1991. On an interim application, the income tax proceedings for assessment years 1975-76, 1976-77 and 1988-89 in respect of which notice dated 27<sup>th</sup> September, 1990 was issued by the AO, Delhi were stayed till further orders. The prayers made in the writ petition read as under:

“In the premises aforesaid, it is prayed that your Lordships may graciously be pleased to issue Rule, call for the records directing the Respondents to show cause as to why an appropriate Writ shall not be issued declaring the impugned Orders dated 15.03.1990 and dated 20.09.1990 (Annexure – A and B) and any orders passed by the Respondent No. 5 under given assessment jurisdiction and as illegal, unconstitutional and void ab initio and/or why a Writ in the nature of Mandamus/Certiorari/Prohibition and/or any other appropriate Writ shall not be issued quashing the aforesaid impugned Orders dated 15.03.1990 and 20.09.1990 and any orders passed by the Respondent No. 5 under given assessment jurisdiction and prohibiting the Respondent No. 5 from proceeding further in the matter or exercising any jurisdiction in the matter of Income Tax not vested in him in respect of the Petitioner and on cause or causes being shown and upon hearing the parties, be pleased to make the Rule absolute and/or pass any other Order or further orders as your Lordships may deem fit and proper.

Pending disposal of the Rule be further pleased to pass an Order staying the income Tax proceedings before the Respondent No.5 and also restraining the Respondent No. 5 in exercising any jurisdiction in the aforesaid matter in respect of the Petitioner.

And for this act of your Kindness the humble Petitioner as in duty bound shall ever pray.”



8. By order dated 17<sup>th</sup> July, 1993, this writ petition was substantially but partly allowed holding that the two letters issued by the ITO, Dimapur were without following due process as postulated under Section 127 of the Act. The dictum of the Gauhati High Court was as under:-

“14. After hearing learned counsel for the parties and on careful examination of the relevant documents placed before me and relied upon by the parties, I am of the view that orders/letters dated 15-3-90 and 20-9-90 cannot be sustained in as much as there is no order of transfer of jurisdiction from Dimapur to Delhi by a competent authority. I also hold that Respondent 5 has no authority to give direction to Respondent 4 regarding transfer of jurisdiction and in calling for the records of the petitioner.”

9. The aforesaid judgment also takes on record earlier correspondence exchanged between the respondent assessee and the ITO, Dimapur on transfer of records in terms of letter dated 5<sup>th</sup> February, 1982 written by ITO, Dimapur and reply dated 27<sup>th</sup> November, 1982 by the respondent to the said officer that he was not permanently transferred to Delhi and on completion of deputation period he was likely to come back to the parent cadre in Nagaland for posting. Response to this letter was purportedly written by the ITO, Dimapur on 27<sup>th</sup> February, 1985 and the respondent was informed that the assessment records had not been sent to Delhi.

10. On 23<sup>rd</sup> December, 1988, Commissioner of Income Tax, North-eastern Region, Shillong, had issued statutory notice under Section 127 of the Act for transfer of respondent's case from ITO, Dimapur to the AO, Delhi to which response/objection was filed vide letter dated 5<sup>th</sup>

January, 1989. The respondent assessee had objected to transfer of the



case to Delhi. There is nothing on record and it is not known whether any order was passed thereupon by the Commissioner of Income Tax, Dimapur.

11. In respect of assessment year 1985-86, the respondent had filed return of income with ITO, Dimapur on 8<sup>th</sup> August, 1985. The return was, however, defective as no TDS certificate was enclosed and defect memo dated 31<sup>st</sup> March, 1987 was issued. As per Section 139(9) of the Act, defects were required to be removed by 30<sup>th</sup> April, 1987. The same were not removed and as per respondent, he had written a letter on 18<sup>th</sup> April, 1988. The ITO, Dimapur thereupon issued notice dated 26<sup>th</sup> June, 1987 under Section 148 of the Act for the assessment year 1985-86.

12. In respect of assessment year 1986-87, there is a dispute. As per the Revenue, no return was filed by the respondent before the ITO, Dimapur and notice under Section 148 of the Act dated 26<sup>th</sup> June, 1987 was issued by ITO, Dimapur. The respondent, however, claims that he had filed return for the assessment year 1986-87 on 30<sup>th</sup> July, 1986 with ITO, Dimapur. We notice that in the assessment order dated 28<sup>th</sup> March, 1990, passed by the AO, Delhi, it is recorded that the respondent assessee had not filed any proof of filing of return at Dimapur for the assessment year 1986-87. Notice under Section 148



issued by the ITO, Dimapur on 26<sup>th</sup> June, 1987 was on record (s assessment order dated 28<sup>th</sup> March, 1990 relating to assessment year 1986-87 in ITA No. 257/2002).

13. In respect of assessment year 1987-88, the respondent assessee had filed return of income on 27<sup>th</sup> April, 1988 but defect memo dated 6<sup>th</sup> July, 1988 was issued on the ground that annexures, statements in columns in the return under the heads of income, computation of gross total income and total income had not been fully filled up; statement of computation of income on statement of facts had not been furnished; dividend warrants have not been attached; TDS and self assessment advance tax challans had not been attached etc. The respondent has not stated or averred that he had filed the requisite papers as mentioned in the said notice dated 6<sup>th</sup> July, 1988. However, there is no order of the income tax authority at Dimapur declaring the return to be void or invalid.

14. The assessment orders passed by the AO, Delhi dated 27<sup>th</sup> March, 1990 and 28<sup>th</sup> March, 1990, were made subject matter of appeals before Commissioner of Income Tax (Appeals), New Delhi [CIT (Appeals), for short] and were decided by a common order dated 26<sup>th</sup> February, 1993. The said order is fairly detailed and has become the substratum of subsequent orders passed by the tribunal



in the second, third and fourth round. CIT(Appeals) in order dated 21

February, 1993 has given the following findings:-

(i) Return for the assessment year 1985-86 filed with ITO, Dimapur was rightly declared to be invalid and the assessee had belatedly tried to rectify the defects after a period of 13 months from the date of issue of defect notice dated 30<sup>th</sup> April, 1987 vide letter dated 13<sup>th</sup> April, 1988. ITO Dimapur was therefore right and fully justified in initiating proceedings under Section 148 of the Act for the assessment year 1985-86.

(ii) Notice issued by ITO, Dimapur under Section 148 of the Act was legal and valid for the assessment years 1985-86 as well as 1986-87.

(iii) The respondent assessee was assessed at Delhi only for the period of five years during his tenure in Delhi and was regularly assessed with ITO, Dimapur and on his reversion to the parent cadre; the jurisdiction was with ITO, Dimapur only.

(iv) Commissioner of Income Tax, Shillong had rightly initiated the proceedings under Section 127 of the Act for transfer of the jurisdiction from ITO, Dimapur to AO, Delhi, but ITO Dimapur was



wrong and had erred in transferring records to the AO, Delhi with an order under Section 127 of the Act.

(v) Instruction No. 1739 of the CBDT dated 19<sup>th</sup> December, 1986 stipulated, the procedure for transfer of assessment records of an assessee on change of his residence for the convenience of the assessee but the instruction by itself cannot and did not result or cause transfer of jurisdiction.

(vi) The respondent was reverted to Nagaland in 1984 and instruction No. 1739 of the CBDT was issued on 19<sup>th</sup> December, 1986. The search was conducted only on 19<sup>th</sup> March, 1987 at which date the respondent was residing within the jurisdiction of ITO, Dimapur. Thus, AO, Delhi should have transferred the records to ITO, Dimapur in terms of instruction No. 1731 dated 19<sup>th</sup> December, 1986 and not vice versa.

(vii) Upon receipt of notice under Section 142(1), the respondent had objected to the jurisdiction of the AO, Delhi. The respondent assessee denied receipt of notice under Section 148 of the Act issued by AO, Delhi for the three assessment years. The respondent had correctly objected to the assumption of jurisdiction by the AO, Delhi within the statutory time limit fixed/stipulated under Section 124 of the Act. The

AO, Delhi should have approached the Board to decide the question of



jurisdiction under Section 124(4) of the Act or an order under Section 127 of the Act was required for transfer of jurisdiction from the Commissioner of Income Tax, North Eastern Region (NER), Shillong to New Delhi.

(viii) The initiation of proceedings by ITO, Dimapur for assessment years 1985-86, 1986-87 and 1987-88 were legal and valid and there was infirmity in the proceedings assumed/conducted by the AO, New Delhi. All proceedings before the AO, New Delhi were illegal and set aside.

(ix) However, AO, Delhi could acquire proper jurisdiction from the Chief Commissioner, NER, Shillong under Section 127 of the Act or Section 120 from CBDT and frame fresh assessment as per law for the three assessment years.

(x) As the assessments were set aside on the point of jurisdiction, there was no need to discuss merits as this could be examined during fresh assessment proceedings before the Assessing Officer. It was finally observed as under:-

“4. Since the assessment have been set aside on the point of jurisdiction, I do not want to discuss the addition made on merits. The objections of the Id Counsel in this regard will be considered by the A.O. During fresh assessment proceedings and a decision will be taken as per law after giving adequate opportunity to the appellant in respect of the investments made in flats, land and bank



deposits etc. In the name of family members and close relatives.

Assessment for A.Y. 85-86, 86-87 and 87-88 are hereby set aside for statistical purposes, the appeals for these 3 years will be partly allowed.”

15. Both Revenue and the respondent preferred cross-appeals before the tribunal which were disposed of 9 years later vide order dated 19<sup>th</sup> March, 2002. This order dated 19<sup>th</sup> March, 2002 has become subject matters of ITA 256/2002, 257/2002 and 255/2002, filed by the Revenue relating to the assessment years 1985-86, 1986-87 and 1987-88. In the order dated 19<sup>th</sup> March, 2002 passed by the tribunal, it has held as under:-

- (i) It has not been disputed by the Revenue that jurisdiction was with ITO Dimapur with whom the assessee was filing returns after repatriation from deputation.
- (ii) The assessee had objected to assumption of jurisdiction by the AO, Delhi upon issue of notice under Section 142(1) of the Act.
- (iii) The respondent had successfully challenged transfer of assessment records to Delhi before the Gauhati High Court and succeeded vide judgment dated 15<sup>th</sup> July, 1993.
- (iv) There was no specific order of transfer of jurisdiction by the competent authority under Section 127 of the Act.

It was further held:

“7. Ld. Counsel for the assessee has further invited our attention to the order dated 14.8.1995 passed by the CIT, N.E.R., Shillong u/s 127(2)(a) of the IT Act transferring the jurisdiction over the assessee from ITO Ward Dimapur to ITO Ward 20(3), New Delhi. Admittedly, till 14.8.95 no order for transferring the jurisdiction over the assessee was ever passed by any competent authority u/s 127(2)(a) of the IT Act.



8. On careful perusal of these documents, we find that till 14<sup>th</sup> August, 1995, the jurisdiction over the assessee as per Section 124(1) lies with the ITO, Ward Dimapur with whom the return of income were regularly filed by the assessee. But the impugned assessment orders for the AY 85-86 to AY 87-88 were passed by the ACIT Inv. Circle 8(1), New Delhi on 27.3.90 and 28.3.90. The appeals against these assessment orders were filed before the CIT(A) who had decided these appeals by a single consolidated order on 22<sup>nd</sup> February, 1993. It means till the disposal of the appeal by the CIT(A), the AO did not assume jurisdiction over the assessee. Hence, the order passed by the AO is defective. Now, the question arises before us whether this defect is curable or it goes to the root of the case and makes the order null and void. In support of his contention that order was passed by an authority having no jurisdiction is a void ab initio and liable to be quashed, ld. counsel for the assessee has relied upon the following judgments:-

State of Gujarat v. Rajesh Kumar ChianLal AIR 1996 P.2664

Raza Textiles Ltd. v. ITO 87 ITR 539 (S.C.).

ChoubeyJagdish Prasad v. Gaya Pal Chaturvedi AIR 1959 492

P. Das Muni Reddy v. AppaRao AIR 1974 208

Sant Baba Mphan Singh v. CIT 90 ITR 197

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9. We have carefully perused the aforesaid judgments and we find that whenever an order is passed by an officer having no jurisdiction to pass such order, that order is void ab initio and it deserves to be annulled. The defect in this order is not curable and it cannot be rectified even by sending the matter back to the concerned officer. In these circumstances, we are of the considered opinion that since the assessment orders were passed by the ACIT Circle 8(1), New Delhi without assuming proper jurisdiction over the assessee, his orders are void ab-initio and CIT(A) should have annulled the same instead of setting it aside. We, therefore, set aside the order of CIT(A) and annul all the assessment orders for the AY 85-86, 86-87 and 87-88 passed by the ACIT, Cir.8(1), New Delhi.



10. In the result, the appeals of the assessee are allowed and that of the Revenue are dismissed.”

16. During this period of 9 years from 27<sup>th</sup> March, 1990 to 19<sup>th</sup> March, 2002, there were three more rounds of assessment.

17. ITO Dimapur passed three assessment orders all dated 1<sup>st</sup> March, 1995 for the assessment years 1985-86, 1986-87 and 1987-88, assessing total income of the respondent assessee at Rs.44,93,340/-, Rs.86,97,230/- and Rs.67,79,930/- respectively.

18. Meanwhile, on 14<sup>th</sup> August, 1995, an order under Section 127(2)(a) of the Act was passed by Commissioner NER, Shillong transferring “the case” from ITO Ward Dimapur to ITO Ward 20(3), New Delhi. Reason given for transfer was administrative convenience and it was stated that the transfer order would take effect from 21<sup>st</sup> August, 1995. This order was accepted by the respondent assessee and has not been challenged.

19. In view of the order under Section 127(2)(a) of the Act, the respondent assessee preferred appeals against three assessment orders dated 1<sup>st</sup> March, 1995 passed by ITO, Dimapur before the CIT (Appeals), New Delhi. These appeals were allowed by the CIT (Appeals) vide order dated 27<sup>th</sup> March, 1997 recording as under:

“2. I have considered the facts and circumstances of the case. The records of the assessee do not indicate that the assessee was given adequate opportunity to explain these investments. Further, it was also enjoined upon the assessing officer to make independent enquiries about these investments from the assessee’s relatives. I, therefore, hold that the assessee has not been granted proper opportunity of being heard. The assessment is, therefore, set aside and the assessing officer is, therefore, directed to frame the assessment denovo in accordance with law after giving a fair and reasonable opportunity to the assessee.”



20. It is noticeable that the aforesaid order does not refer to the merits or jurisdiction of the assessing officer but an order of remand was passed for fresh adjudication after fair opportunity of hearing being given to the respondent assessee.

21. Pursuant to the order of remand, ACIT, Circle 15 (2), New Delhi passed three assessment orders dated 30<sup>th</sup> March, 1999 assessing total income of the assessee at Rs. 41,19,344/-, Rs. 86,97,227 and Rs.67,79,930/- for the assessment years 1985-86, 1986-87 and 1986-87 respectively. The assessee preferred appeals which were allowed vide order dated 29<sup>th</sup> February, 2000 of the CIT (Appeals) recording as under:-

“From the perusal of assessment order and after discussion of the case with the A.O., I find that the infirmities and irregularities pointed by my learned predecessor still persists and there is nothing before me to defer with the decision of my learned predecessor CIT (A) – V. I am of the view that these assessments should be set aside again for allowing another opportunity to the A.O. Accordingly, I set aside all the three assessment orders from the stage the A.O. New Delhi assumed jurisdiction for issuing notice u/s 148 and completing the assessment. In my above decision to set aside the order, I am supported by the decision of Hon’ble Supreme Court in the case of Gudhudhar Brothers Vs. ITO 40 ITR 289. Further the Hon’ble Supreme court has also held in the case of Kapoor Chand Srimat v. CIT AP 131 ITR page 551, 560 that “it is well known that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden by the Statute.”

(emphasis supplied)



22. Before that the CIT(Appeals) had quoted from the order of t CIT (Appeals) dated 26<sup>th</sup> February, 1993, the gist of which we have reproduced above.

23. This order of the CIT (Appeals) dated 29<sup>th</sup> February, 2000 was not challenged, either the Revenue or the respondent assessee and thus has attained finality.

24. Pursuant to the order of remit passed by the CIT(Appeals) dated 29<sup>th</sup> February, 2000, in the fourth round, DCIT, Circle-2 passed assessment orders dated 23<sup>rd</sup> March, 2001 assessing the income at Rs.41,19,344/- Rs.86,97,227/- and Rs.67,79,390/- for the assessments years 1985-86, 1986-87 and 1987-88 respectively. The respondent assessee there upon preferred appeals and succeeded before the CIT (Appeals) vide order dated 28<sup>th</sup> February, 2003. The CIT (Appeals) relied upon order of the tribunal in the first round dated 19<sup>th</sup> March, 2002 and held that the first assessments had been annulled. There could not have been a further or fresh assessment. He did not notice or refer to the position that the ITO, Dimapur had passed the assessments order in the second round or the order of the CIT (Appeals), Delhi dated 29<sup>th</sup> February, 2000.

25. Against the order of CIT (Appeals) dated 27<sup>th</sup> March, 1990, relating to second round, assessee preferred appeals which stand allowed by the order dated 13<sup>th</sup> May, 2002. Tribunal in this order relied upon their earlier order dated 19<sup>th</sup> March, 2002 in the first round. Order dated 13<sup>th</sup> May, 2002 of the tribunal has been made subject matter of appeals of Revenue being ITA Nos.314/02, 315/02 and 316/02.



26. Similarly appeals relating to the fourth round against the order of CIT (Appeals) dated 28<sup>th</sup> February, 2002 have been dismissed by the tribunal vide order dated 21<sup>st</sup> February, 2006. The said order also relies upon the order of the tribunal dated 19<sup>th</sup> March, 2002, annulling the assessments in the first round. This order of the tribunal has been made subject matter of ITA Nos. 1578/06, 1577/06 and 1580/06.

### **Substantial Questions of Law**

27. ITA Nos. 256/02, 257/02 and 255/02 were admitted for hearing vide order dated 10<sup>th</sup> November, 2005 on the following substantial question of law:

“Whether the ITAT was correct in law in holding that the order of assessment passed by the ACIT, Investigation Circle 8(1), New Delhi were without jurisdiction and therefore void ab initio?”

28. ITA Nos. 314/02, 315/02 and 316/02 were admitted for hearing vide order dated 10<sup>th</sup> November, 2005 on the following substantial question of law:

“Whether the Income Tax Tribunal was correct in law in holding that the assessment made by the assessing officer was unsustainable in law?”

29. ITA Nos. 1578/06, 1577/06 and 1580/06 were admitted for hearing vide order dated 20<sup>th</sup> February, 2007 on the following substantial question of law:

“Whether the Income Tax Appellate Tribunal was correct in law in holding that the assessment made by the Assessing Officer was not sustainable in law?”



However, in the said ITAs vide order dated 26<sup>th</sup> November, 2011 following question of law on similar lines was framed:-

“Whether the Income Tax Appellate Tribunal was right in dismissing the appeal of the Revenue following their earlier orders dated 19<sup>th</sup> March, 2002 and 13<sup>th</sup> May, 2002?”

The substantial question of law dated 20<sup>th</sup> February, 2007 is being answered.

30. In order to decide the question, it would be appropriate to first reproduce and understand the ambit and scope of Sections 120, 124 and 127 of the Act both pre-amendment and post-amendment i.e. w.e.f 1.4.1988.

31. Pre-Amendment Section 120 reads:

**“120. Jurisdiction of Directors of Inspection.**--Directors of Inspection shall perform such functions of any other Income-tax authority as may be assigned to them by the Board.”

Post-Amendment Section 120 reads:

**“120. (1)** Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.

[Explanation.—For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the



Board shall be deemed to be a direction issued under sub-section (1).]

(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely :—

- (a) territorial area;
- (b) persons or classes of persons;
- (c) incomes or classes of income; and
- (d) cases or classes of cases.

(4) Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,—

- (a) authorise any Director General or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;
- (b) empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by a <sup>25</sup>[Joint] Commissioner <sup>26</sup>[or a <sup>25</sup>[Joint] Director], and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such <sup>25</sup>[Joint] Commissioner <sup>26</sup>[or <sup>25</sup>[Joint] Director] by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the <sup>25</sup>[Joint] Commissioner shall not apply.

(5) The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate



for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.

(6) Notwithstanding anything contained in any direction or order issued under this section, or in [section 124](#), the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification.]”

32. Sub-Section (1) to Section 120 post- amendment stipulates that Income Tax authorities shall exercise any of the powers and perform all or any functions conferred on, or assigned to any authority by or under the Act as per directions of the Board. The explanation elucidates that the power can be exercised by an authority higher in rank. Sub-section (2) states that the Board may issue orders in writing under sub-section (1) for exercise of powers and performance of functions by income-tax authorities. Sub-section (3) postulates that the Board while issuing directions or issuing orders can have regard to the four-fold criteria, namely, territorial area; persons or classes of person; incomes or classes of income; and cases or classes of cases. The aforesaid criteria is very broad and by the orders referred to sub-sections (1) and (2), the Board can authorize any income-tax authority



to perform function based upon territorial area, type/class of person( , , income or case(s). Sub-section (4) confers power on the Board to pass general or special order as may be desired without prejudice to sub-section (1) and (2). Sub-section (5) is relevant and stipulates that orders/directions under sub-sections (1) and (2) wherever considered necessary and appropriate may require two or more Assessing Officers to perform concurrent power and functions in respect of area, person(s), income(s) or case(s) and when so stipulated, the higher authority may direct the authority lower in rank. This enables distribution of work between two or more Assessing Officers having concurrent jurisdiction under a single higher authority. Under sub-section (6), the Board retains power by way notification to direct furnishing of return or any act or thing under the Act or rules, shall be made before such authority as may be specified, in relation to class of persons. Thus, it is apparent that Act does not by itself confer jurisdiction by way of territory, class of persons, income or cases. It is left to the discretion and wisdom of the Board who have been given wide powers and latitude. The said exercise, is administrative and broad choice/option given to the Board. Though Section 120 refers to jurisdiction of the Assessing Officer or authorities but the said term has been used rather loosely and does not refer to subject matter jurisdiction as such. Concurrent jurisdictions are not an anathema, but clearly postulated and accepted. This becomes clear when we refer to Section 124 of the Act both prior and past 1.4.1988.

33. Pre-Amendment Section 124 reads:

"124. (1) Income Tax Officers shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income as the Commissioner may direct.



(2) Where any directions issued under sub-section (1) have assigned to two or more Income Tax Officers, the same area or the same persons or classes of persons or the same incomes or classes of income, they shall perform their functions in accordance with any orders which the Commissioner may make for the distribution and allocation of the work to be performed.

(3) Within the limits of the area assigned to him, the Income Tax Officer shall have jurisdiction -

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(4) Where a question arises under this section as to whether an Income Tax Officer has jurisdiction to assess any person, the question shall be determined by the Commissioner; or where the question is one relating to areas within the jurisdiction of different Commissioners, by the Commissioners concerned or if they are not in agreement, by the Board.

(5) No person shall be entitled to call in question the jurisdiction of an Income Tax Officer -

(a) after the expiry of one month from the date on which he has made a return under sub-section (1) of section 139 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 139 or under section 148 for the making of the return.

(6) Subject to the provisions of sub-section (5), where an assessee calls in question the jurisdiction of an Income Tax Officer, then, the Income Tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (4) before assessment is made.

(7) Notwithstanding anything contained in this section, or in section 130A, every Income Tax Officer shall have all the powers conferred by or under this Act on an Income Tax



Officer in respect of any income accruing or arising or received within the area for which he is appointed."

Post-Amendment Section 124 reads:

**124. Jurisdiction of Assessing Officers.-** (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Director General or the Chief Commissioner or the Commissioner; or where the question is one relating to areas within the jurisdiction of different Directors General or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—

(a) where he has made a return under sub-section (1) of section 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or [sub-section (2) of section 115WE or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-



section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.

(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.

(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120.”

34. On analyzing the new Section 124, it is viewed that as per sub-section (1), Assessing Officer has jurisdiction in respect of persons carrying on business or profession where such business or profession was being carried out or situated within the area or where the business or profession was carried on in different areas, if the principal place of business or profession was situated within the area. Assessing Officer under sub-clause (b) also had jurisdiction in respect of any other person(s) residing within the area. Residence and place of business being the basis. Sub-section (2) stipulates that question/ dispute of jurisdiction among two or more Assessing Officers, if raised, shall be determined by the Director- General, Chief Commissioner or the Commissioner, or if the question relates to areas falling within the jurisdiction of different Directors- General, Chief Commissioners or Commissioners, then by the Directors- General, Chief Commissioners



or Commissioners concerned, and if they are not in agreement, by the Board or by such Director-General, Chief Commissioner or Commissioner that the Board may by an Official Gazette specify. Sub-section (3) further stipulates that the objection to the jurisdiction could be questioned by an assessee or a person within one month from the date on which return of income under Section 139(1) was made or within one month from the date of issuance of notice under Section 142(1) or 143(2) or after completion of assessment, whichever was earlier. If no return of income was made, objection to the jurisdiction could be entertained, if made within the time allowed by way of notice under Section 115WD(2)/142(1)/115WH(1)/148 of the Act to make the return or by notice under first proviso to Sections 115WF or 144 to show cause why the assessment should not be completed by the best judgment of the Assessing Officer, whichever was earlier. Sub-section (4) lays down that when an assessee raises a dispute regarding jurisdiction of the Assessing Officer and the Assessing Officer if not satisfied with the correctness of the claim, he shall refer the matter for determination as per sub-section (2) of Section 124, however, this should be done before the assessment was made. The aforesaid Section, therefore, postulates waiver of objection to assumption of jurisdiction by the Assessing Officer. Time limit for raising the objection stands stipulated. Principle of deemed waiver applies. This could only happen when the authority does not lack or suffer from inherent lack of subject matter jurisdiction. When there is inherent lack of subject matter jurisdiction, principle of waiver does not apply. The principle being simple that by consent one cannot confer jurisdiction on authority which lacks inherent subject matter jurisdiction. The provisions ensure that conflict between Assessing



Officers having concurrent jurisdictions is avoid and curtailed and the assessment proceeding do not get misdirected on side issues. Such deviation should be avoided. It is also clear that question of jurisdiction cannot be made subject matter of appeal, as the issue has to be decided on the administrative side by the Commissioner/Commissioners/ Board. Appeal can, however, be filed questioning the action of the Assessing Officer in not following the procedure mentioned/stipulated in Section 124. In **Wallace Brothers & Co. Ltd. v. CIT** [1945] 13 ITR 39, Federal Court had held that the objection to place of assessment could not be raised in an appeal against the assessment under the Income Tax Act, 1922. This view was affirmed by the Supreme Court in **RaiBahadur Seth Teomal Vs. The Commissioner of Income Tax**, [1959] 36 ITR 9(SC) holding that the objection as to the place of objection under the 1922 Act could not be made a subject or issue before the appellate forums including the Tribunal and reference to the High Court. Thus, the question of place or authority of the particular Assessing Officer was the matter of administrative convenience and not strictly a matter of subject matter jurisdiction and where there was an error or erroneous exercise by the Assessing Officer/Commissioner notwithstanding the challenge within stipulated time, it could be corrected by way of writ jurisdiction. The position is no different under the Act i.e. Income Tax Act 1961, as was elucidated by a Division Bench of this Court in **Kanji Mal & Sons vs. C.I.T.** (1982) 138 ITR 391 (Del), wherein reference to said two decisions was made and it was observed that if the assessee fails to raise objection before the Income Tax Officer within the time, he will be shut out from raising the question altogether. Further, if the issue was raised and decided by the Commissioner, the decision would be



final and cannot be questioned in the appellate forums but where the Income Tax Officer does not refer the question to the Commissioner, the following proposition emerges:

“But where he raises the issue but the ITO does not refer the question to the CIT as in the present case (or the CIT or the Board does not decide the question before the assessment is completed) what will be the result of such failure ? Clearly, one answer to the question would be that this failure should not be held to vitiate the assessment altogether and that it should be open to the appellate authority to set aside the assessment for being redone in accordance with law after having the matter referred to the CIT and obtaining his decision. There is nothing wrong in adopting this course and it will not prejudice anyone. By adopting this course, the appellate authority will not be deciding the question of jurisdiction itself but will only be getting it done by the appropriate authority. The appellate order will not also help the department in any way if eventually the CIT (or the Board) comes to the conclusion that the ITO, who completed the assessment, had no jurisdiction in the matter and it will not confer any right on any other ITO having jurisdiction to proceed against the assessee, if he is otherwise not competent to do so. It will only help the department in the event of the CIT (or the Board) coming to the conclusion that the ITO who completed the assessment had the jurisdiction so to do.

The above approach to the issue derives support from the recent decision of the Supreme Court in the case of *KapurchandShrimal v. CIT* [1981]131ITR451. In that case (under the 1922 Act) the ITO completed the assessments of an HUF without disposing of the claim for partition that had been made by the members of the family. Before the Tribunal, the assessee contended that the assessments should be cancelled but the department contended that even if there had been a violation of s. 25A of the Act the proper order to be passed was either to direct the ITO to give effect to Section 25A or to set aside the assessments with a direction to the ITO to pass fresh orders of assessment. The Tribunal came to the conclusion that the assessments were in clear violation of the procedure prescribed for that purpose in s. 25A and cancelled the same. The Tribunal added : "We do not consider it necessary to direct first assessments. It would be open to the ITO to do so if the law otherwise so permits."



The Supreme Court held that this was not the right procedure to be adopted. It observed as follows (p.460) :

"The Tribunal was, Therefore, right in holding that the assessments in question were liable to be set aside as there was no compliance with s. 25A(1) of the Act. It is, however, difficult to agree with the submission made on behalf of the assessee that the duty of the Tribunal ends with making a declaration that the assessments are illegal and it has no duty to issue any further direction. It is well known that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute. The statute does not say that such a direction cannot be issued by the appellate authority in a case of this nature. In interpreting s. 25A(1), we cannot also be oblivious to cases where there is a possibility of claims of partition being made almost at the end of the period within which assessments can be completed making it impossible for the ITO to hold an inquiry as required by s. 25A(1) of the Act by following the procedure prescribed therefor. We, however, do not propose to express any opinion on the consequence that may ensue in a case where the claim of partition is made at a very late stage where it may not be reasonably possible at all to complete the inquiry before the last date before which the assessment must be completed. In the instant case, however, since it is not established that the claim was a belated one, the proper order to be passed is to set aside the assessments and to direct the ITO to make assessments in accordance with the procedure prescribed by law. The Tribunal, Therefore, erred in merely cancelling the assessment orders and in not issuing further directions as stated above."

It was further observed:-

“It is, however, possible to look at the matter from another point of view. It can be said that the issue involved is one of jurisdiction and when an assessed puts it in challenge immediately he receives a notice or files a return, it must be resolved one way or the other in the manner provided for in the statute before the ITO can assume jurisdiction to proceed further and complete an assessment. The statute requires this to be done before the assessment is made. A failure to do so



will render the assessment null and void and without jurisdiction as held in Dina Nath Hemraj v. CIT [1927] 2 ITC 304 (All) which has been referred to and in no way disapproved in Teomal's case [1959] 36 ITR 9 (SC). Once the ITO fails to follow the statutory course prescribed before assessment, it can be said, he misses the bus and cannot be given a second chance to rectify matters. It appears that the Tribunal was inclined to accept this line of argument and to hold "that the AAC could not have rendered an assessment which was illegal into a legal assessment by putting the clock back, so to speak, and enabling the Commissioner to decide the question of jurisdiction." In the view of the Tribunal, "for the exercise of the Commissioner's jurisdiction, the sands had clearly run not". It is for this reason that the Tribunal also said that the department could not rely upon Jajodia's case [1971] 79 ITR 505 (SC) to uphold the validity of a direction of the redoing of the assessment."

However, in the facts of the said case, the Division Bench refrained from expressing their final conclusion on the question raised, though they were inclined to accept the former view that the assessment would not be a nullity, as the order of the Tribunal in the said case had attained finality and there was no reference at the instance of the Commissioner. It would be also important to reproduce the conclusion drawn by the Division Bench of the High Court on the said aspect which reads:-

“(2) The failure of the ITO to follow the above procedure may not render the assessment invalid. A view is possible that, in appeal, it is open to the AAC or the Tribunal to set aside the assessment and direct a fresh assessment after following the procedure mentioned in s.124(4) & (6) provided such a direction does not prejudice or affect the right of the assessee to challenge the reassessment as not being in accordance with any other provision of the Act. It is, however, not necessary to decide this question as the view of the Tribunal seems to be that such an assessment would be invalid and this matter is not in issue before us.”

35. The said issue directly arises before us in the present appeals and it is time we give affirmative approval to the aforesaid principle as the question has been raised by the Commissioner. Reasons for the same



are mentioned by the Division Bench of this Court in *Kanji Mal's ca (supra)* and is also apparent and clear to us. Sub-section (4) and (6) of Section 124 and for that matter sub-section (2) and (4) of Section 124 after amendment w.e.f. 1<sup>st</sup> April, 1988 are procedural sections. They relate to administration and exercise of powers/authority by the Assessing Officers/Income Tax Officers and are not part of the substantive law. That the Act i.e. Income Tax Act 1961 being a complete code deals with substantive and procedural aspects. Section 120/124/127 govern the process of procedure for assessment and not the subject matter or its purpose. They relate to conduct of the Assessing Officer/Income Tax Officers and the assesseees in respect of the assessment proceedings. It is a matter of merely a process. A irregularity in procedure need not result in annulment unless the statute specifically stipulates to the contrary. The appellate authorities have right to put a clock back and direct the Income Tax Officer/Assessing Officer to follow the procedure notwithstanding the difference between mandatory and directory procedural norms. In *Grindlays Bank vs. Income Tax Officer* AIR 1980 656 (SC), the Supreme Court quashed the assessment order but then issued directions to make fresh assessment in the circumstances of the case. The said principle has been followed in cases of violation of principles of natural justice wherein an order of remit/remand when justified are passed. The courts have taken recourse of pragmatism and exigencies of the situation rather than legalistic approach of void and voidable (see Principle of Administrative Law, M.P. Jain and S.N. Jain, Fifth Edition, 2007 at pages 592-95).

36. In *Budhia Swain and Ors. Vs. GopinathDev and Ors.*(1999) 4 SCC 396, it was highlighted that distinction exists and was well



recognized between lack of jurisdiction and mere error in exercise jurisdiction. Lack of jurisdiction strikes at the very root of the action/act and want of jurisdiction might vitiate proceedings rendering the orders passed and exercise thereof, a nullity. But a mere error in exercise of jurisdiction would not vitiate the legality and validity of the proceedings and the said order was valid unless set aside in the manner known to law by laying a challenge, subject to law of limitation. The following portion of *HiraLalPatni vs. Kali Nath*, AIR 1962 SC 199 was quoted:

“... The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it.”

37. The view we have taken, finds support from the decision of the Patna High Court in *MahalliramRamniranjan Das vs. CIT* (1985) 156 ITR 885, wherein the decision of Delhi High Court in *Kanji Mal & Son's case* (supra) was referred to. Reference was also made to the decision of the Supreme Court in *Guduthur Bros. vs. ITO* (1960) 40 ITR 298 (SC), and the matter was remanded to the authority to continue with the proceedings from the stage irregularity had occurred. It was observed that the tribunal was not right in annulling the assessment. It would be also appropriate here to refer to the decision in *Hindustan Transport Co. vs. Inspecting Asstt. Commissioner of Income Tax and Anr.* (1991) 189 ITR 326 of the Allahabad High Court-Lucknow Bench, wherein it has been observed as under:-



“A survey of the above provisions of the Act highlights the following situations. After creating the various Income Tax authorities, the Act does not prescribe their respective jurisdiction or functions. Any case can be dealt with by any Income Tax authority with the possible exception of the Board. Accordingly, the various Income Tax authorities are of co-ordinate jurisdiction. What function or functions, which authority or officer, shall perform is left to be decided either by the Board or by the Commissioner. On what principles the Board and the Commissioner will allocate the functions is not indicated in the Act. The principle is, however, apparent from the nature of the enactment. The Act has been enacted with a view to collect revenue. Income Tax is the main source of revenue for the State. It is through revenue that the machinery of the State is run. It is desirable that the tax should be collected as early as possible. Collection of tax is preceded by assessment thereof. It is consequently desirable that the assessment proceedings should be completed expeditiously but expeditious disposal of an assessment does not mean that the assessee may be put to unwarranted harassment or prejudice. Therefore, the Board and the Commissioner shall take into account the convenience of the assessee also. It is with this purpose in view that it has been provided in Sub-section (1) of Section [127](#) that, whenever possible, an opportunity of hearing may be given to the assessee while transferring a case from one place to another. Since the assessee does not suffer any inconvenience or prejudice if a case is transferred locally, no such opportunity has been prescribed. From these provisions it is obvious that the Board and the Commissioner will exercise the power of allocation of functions to various authorities or officers in the exigency of tax collection with due regard to the convenience of the assessee. In other words, the allocation is a measure of administrative convenience. In such a situation, the concept of jurisdiction cannot be imported and, certainly, not in the sense of invalidating the resultant action on account of the defect in the exercise of functions.

Being an enactment aimed at collecting revenue, the Legislature did not intend collection of revenue to be bogged down on account of technical plea of jurisdiction. It has, therefore, prescribed the limit up to which the plea of jurisdiction may be raised. As provided in Section [124\(5\)\(a\)](#), the right is lost as soon as the assessment has been completed. Even where the right is exercised before the assessment is completed, the question is to be decided by the Commissioner or by the Board. Courts do not come into the picture.



From the above provisions of the Act, it is apparent that the Act does not treat the allocation of functions to various authorities or officers as one of substance. It treats the matter as one of procedure and a defect of procedure does not invalidate the end action. The answer to the first question, therefore, is that the power is administrative and procedural and is to be exercised in the interest of exigencies of tax collection and the answer to the second question is that, under the Act, a defect arising from allocation of functions is a mere irregularity which does not affect the resultant action.”

38. In *Commissioner of Income Tax vs. ShivkumarAgrawal* (1990) 186 ITR 734 (Orissa), it was held that imposition of penalty by the Assistant Commissioner in view of the amendment was without jurisdiction in light of an earlier judgment but there was no dispute about validity of initiation of the said proceedings. Once proceedings were validly initiated but disposed of by an officer having no jurisdiction, the proceedings do not come to an end but should be finalized by an officer having jurisdiction. Therefore, while accepting the decision of the tribunal on the question of cancellation of penalty, the High Court held that the proceedings had not been finalized and could be finalized by the Income Tax Officer. In the present case, proceedings were initiated both by the AO, Delhi and ITO, Dimapur. Even if it is assumed that the proceedings initiated by AO, Delhi were not in accordance with law, there is no finding and indeed the respondent did not contest the proceedings initiated by ITO, Dimapur. ITO, Dimapur had accepted that the assessment order should be passed by AO, Delhi. Even if the said opinion/belief was wrong, it would not affect the initial initiation of proceedings by ITO, Dimapur, who had passed the assessment orders in the second round.



39. A Division Bench of Bombay High Court in *Commissioner of Income Tax vs. Bharatkumar Modi* (2000) 246 ITR 693, referred to the well settled principle of law; setting out the difference between lack of jurisdiction and irregular exercise of authority/ jurisdiction. Proceedings are a nullity when the authority taking it, has a no power to have seisin over the case. But an order is not a nullity or in exercise of *void abintio* jurisdiction, when the Assessing Officer does not confront the assessee with the material in his possession. The said error is an irregularity which could be corrected by remitting the matter. Powers of annulment and power to set aside and remit the case, have to be exercised keeping in mind the distinction between lack of jurisdiction and irregularity in exercise of authority/jurisdiction. The latter can be rectified and should be rectified as early as possible. Annulment of assessment would mean that the entire assessment proceedings would become *ab initio void* and the consequences were different from merely setting aside.

40. We will now like to refer to the decisions quoted by the Tribunal in the impugned order to hold that the assessments should be annulled. The citations given in the orders of the Tribunal unfortunately are incomplete except for two, namely; *Raza Textiles Ltd. vs. Income Tax Officer, Rampur* (1973) 87 ITR 539 (SC) and *Sant Baba Mohan Singh vs. Commissioner of Income Tax, U.P.* (1973) 90 ITR 197 (All). We have gone through the said decisions. In *Raza Textiles Ltd. (supra)* it has been observed that no authority much less the quasi judicial authority could confer jurisdiction on itself by deciding the jurisdictional facts wrongly. Jurisdictional facts could be examined by the High Court in an application for Writ of Certiorari. The said decision does not help us in determining when an order



would be a nullity and when an error relates to irregular exercise of jurisdiction. In *Sant Baba Mohan Singh (supra)*, it was observed that the assessment proceedings would be a nullity when the Assessing Officer had no jurisdiction *ab initio* to take the proceedings i.e. he had no power to have seisin over the case. When, however, the authority has overall jurisdiction over the case and power to initiate the proceedings, an omission to issue notice under Section 23(2) of the Income Tax Act, 1922 did not affect the jurisdiction and could be rectified. These were steps within the overall jurisdiction, therefore, omission to issue notice under Section 23(2) of the Income Tax Act, 1922 had not resulted in annulment of assessment but setting aside of the assessment was justified. Allahabad High Court in the said case, no doubt, referred to jurisdiction as to pecuniary jurisdiction, territorial jurisdiction and jurisdiction over the subject matter of proceedings, but the said observations have to be read in light of procedural provisions in the Act on the question of waiver, etc. Territorial jurisdiction when the authority has subject matter jurisdiction is normally not equated with the latter as is clear from Section 124 of the Act which prescribes time or limitation period during which the objection has to be raised. Similarly, as per Section 21 of the Code of Civil Procedure 1908, objection to the place of suing cannot be allowed to be raised in the appellate or revisional proceedings unless such objection is taken in the court of first instance at the earliest possible opportunity and in all cases where issues were settled or before settlement, unless there has been consequent failure of justice.

41. In *Sitaram Rathore versus Commissioner of Income Tax*, (1994) 77 Taxman 265 (MP) it was observed that Section 124 of the Act refers to jurisdiction of ITO/Assessing Officer with reference to



area, classes of persons or classes of income or of such classes as the Commissioner may direct and in such cases an assessee could waive objection to irregular exercise or assumption of jurisdiction and an order thereupon would not be a nullity. However, when there was inherent lack of jurisdiction, the order passed was a nullity as the authority lacks jurisdiction when the subject matter was not at all amenable to its jurisdiction and in such cases acquiescence was immaterial because agreement or consent cannot confer jurisdiction. Lack of jurisdiction could be of various varieties, including lack of authority under law but distinction between inherent lack of jurisdiction and irregular exercise or assumption of jurisdiction should be kept in mind. The reference was made to the following observations in *Central Potteries versus State of Maharashtra*, AIR 1966 SC 932 wherein with reference to C.P. and Bazar Sales Tax Act, 1947 and jurisdiction of taxing authorities to make assessment, when the assessee voluntarily filed a return, it was observed:-

“7. In this connection it should be remembered that there is a fundamental distinction between want of jurisdiction and irregular assumption of jurisdiction, and that whereas an order passed by an authority with respect to a matter over which it has no jurisdiction is a nullity and is open to collateral attack, an order passed by an authority which has jurisdiction over the matter, but has assumed it otherwise than in the mode prescribed by law, is not a nullity. It may be liable to be questioned in those very proceedings, but subject to that it is good, and not open to collateral attack. Therefore, even if the proceedings for assessment were taken against a non-registered dealer without the issue of a notice under Section 10(1) that would be a mere irregularity



in the assumption of jurisdiction and the orders of assessment in those proceedings cannot be held to be without jurisdiction and no suit will lie for impeaching them on the ground that Section 10(1) had not been followed. This must a fortiori be so when the appellant has itself submitted to the jurisdiction and made a return. We accordingly agree with the learned Judges that even if the registration of the appellant as a dealer under Section 8 is bad that has no effect on the validity of the proceedings taken against it under the Act and the assessment of tax made thereunder.”

42. In the said case, it was observed that it would be idle to contend that the proceedings were without jurisdiction. Reference was also made to the decision of the Full Bench of Kerala High Court in *George versus ThekkekkaraVareed*, AIR 1979 Kerala 1 (FB) wherein it has been held that jurisdictional defect or procedural irregularity was open to correction by the appellate court, where it had occasioned failure of justice or had resulted in prejudice.

43. In *P. Dasa Muni Reddy v. P. AppaRao*(1974) 2 SCC 725, the appellant before the Supreme Court, had filed eviction petition before the Rent Controller for eviction which was dismissed, but subsequently the landlord filed a suit for ejection propounding that the building was constructed after 26<sup>th</sup> August, 1957 and therefore, the rent control legislation did not apply. The Supreme Court reversed the decision of the High Court and affirmed the view of the trial court and the first appellate court observing that neither estoppel nor res judicata could give jurisdiction when the rent controller did not have jurisdiction over the subject matter. The rent control legislation, operated in rem and mere fact that the landlord had instituted



proceedings before the rent controller by mistake would not confer jurisdiction by consent on the rent controller, when the civil court possessed jurisdiction and the building was outside the realm of rent control legislation. The said decision does not apply to the facts of the present appeals as it relates to subject matter jurisdiction and inherent lack of jurisdiction in the absence of subject matter jurisdiction.

44. We will now like to deal with and refer to the decisions relied upon by the counsel for the respondent before us. Decision of the Kerala High Court in *P.A. Ahammed versus Chief Commissioner of Income Tax*, (2006) 282 ITR 334 (Kerala) relates to challenge made to an order under Section 127 of the Act. It was observed that two Assessing Officers cannot retain concurrent jurisdiction over the same assessee and when an order of transfer under Section 127 was affected, old and pending cases were also transferred. The said decision has no application to the facts of the present case, except to the extent that an order under Section 127 dated 14.08.1995 was passed and was never challenged by the respondent-assessee. Similar view was taken earlier by the Kerala High Court in *Redwood Hotel (P) Limited versus Chief Commissioner of Income Tax and Others*, (2003) 259 ITR 191 (Kerala) wherein an order under Section 127 was upheld in spite of the plea of inconvenience raised by the assessee therein. It was observed that the order of transfer under Section 127 was purely administrative in nature and except when there were allegations of mala fide and want of jurisdiction, there was little scope for interference. An assessee has no vested right to have his assessment decided by an officer at a specific place. Decision of the Delhi High Court in *Valvoline Cummins Limited versus Deputy Commissioner of Income Tax and Others*, (2008) 307 ITR 103 (Delhi) relates to a different factual



matrix. An application under Section 220(6) of the Act was filed by the assessee. The assessee was advised by Additional Commissioner to approach Deputy Commissioner, who had concurrent jurisdiction. Assessee complied and moved an application requesting Deputy Commissioner for stay of demand by way of two applications and a direction was passed to deposit 15% of the tax liability. Dispute arose whether the application under Section 220(6) should have been decided by Additional Commissioner or Deputy Commissioner. Reference was made to the term “Assessing Officer” as defined in Section 2(7A) of the Act and it was observed that under Section 220(6) discretionary power vested with the Assessing Officer and since Additional Commissioner was the Assessing Officer, he was required to exercise the discretion and pass an order on the stay application. The expression “concurrent jurisdiction” was interpreted to mean two or more authorities having equal power to deal with the situation. However, it was observed that this does not mean that one part of the assessment should be dealt with by one officer and the other part by the superior officer having concurrent jurisdiction. Either of them could have exercised the power but once a decision was taken by any one of the said authorities, the exercise must be terminated by the said authority. It was accordingly observed that the application under Section 220(6) was still pending, yet the Revenue was seeking to enforce the demand thereby putting the cart before the horse. Accordingly, appropriate directions were issued. In *Commissioner of Income Tax versus Anjali Dua*, (2008) 219 CTR (Delhi) 183 the High Court refused to interfere in view of the factual finding recorded by the tribunal that the assessee had shifted her residence from Ludhiana to Delhi and there was correspondence, which showed change in



jurisdiction and place of assessment to Delhi, which was accepted as there was a case of transfer of records, i.e., a transfer under Section 127 of the Act. It was accordingly held that upon transfer the Revenue authorities at Delhi had necessary power and were competent to issue notice under Section 148 of the Act. The aforesaid decision does not deal with the question relating to annulment or setting aside of the assessment. Reference has not been made to Section 124 of the Act and the Revenue had not pleaded that at best the assessment could have been set aside and not annulled. The aforesaid decision is not, therefore, directly dealing with the issue and question raised before us, i.e., the effect of not following the procedure prescribed under Section 124 and whether this would result in annulment or setting aside.

45. In *Smriti Kedia versus Union of India and Others*, (2011) 339 ITR 37 (Calcutta), a single Judge of the said High Court struck down the notice issued by the Revenue authority at Delhi as there was no transfer under Section 127 of the Act. The petitioner was all along assessed at Kolkata. In the present case, we have noticed that the respondent was assessed in Delhi and also had properties in Delhi as per the claim of the Revenue. Question of annulment or setting aside was not raised or answered. *Lt. Col. Paramjit Singh versus Commissioner of Income Tax and Another*, (1996) 220 ITR 446 (P&H) has been dissented from by the Delhi High Court in the case of *K.K. Loomba vs. CIT and Ors.* (2000) 241 ITR 152 (Del.). The last decision referred is in the case of *Rishabh Buildcon (P) Limited versus Commissioner of Income Tax, Delhi-V*, (2011) 10 Taxman.com 227 (Delhi). In this writ petition, order of transfer under Section 127 was challenged. It was observed that the reasons given by the authority should be cogent and germane having nexus to the facts.



Noticing that facts relied by the Revenue were absent and not record in the impugned order, direction for fresh decision after affording adequate opportunity of hearing and by ascribing reasons was passed.

46. At this stage, we would like to examine and deal with the contention that the decision in the case of *S.S. Ahluwalia vs. State of Nagaland* reported in (1996) 220 ITR 523 (Gauhati), which has been referred to earlier, operates as res-judicata. We have already quoted the prayer clause in the writ petition and also the direction and the findings given by Gauhati High Court in the case of the respondent assessee. The said findings are in fact the entire reasoning and ratio of the said decision, as earlier paragraphs refer to the submissions on behalf of the respondent assessee and the Revenue. What was quashed in the said decision were letters dated 15<sup>th</sup> March, 1990 and 20<sup>th</sup> September, 1990. The said letters have been noticed above. Letter dated 15<sup>th</sup> March, 1990 related to transfer of records by the ITO, Dimapur to the Assessing Officer at Delhi. Letter dated 20<sup>th</sup> September, 1990 was written by the Income Tax Officer/Assessing Officer at Dimapur for transfer of income tax return for the year 1990-91 filed before him. The second letter also stated that the jurisdiction of the case was with ACIT (Investigation) Delhi, Circle 8(1). There is no observation for finding in the said judgment relating to jurisdiction of the Assessing Officer with reference to the assessment year 1985-86, 1986-87 and 1987-88.

47. Section 124 (7) of old provisions and new Section 124(5) require clarification and elucidation. In *Kanji Mal & Sons (supra)*, it was held that sub section (7) to Section 124 was an overriding clause that brushes away all technicalities of Section 124 (1) to (6) including sub



section (4). It protects validity of an assessment even when there w violation in pursuing the procedure outlined in sub-section 4, despite challenge made by the assessee. However, sub section (7) to Section 124 would come into play and an order of assessment under the said sub-section could be sustained only in very limited class of cases; i.e. when an assessee has income accruing, arising or received only and within a particular area and does not have income anywhere else.

48. This brings us to the Section 127 of the Act.

Pre-Amendment Section 127:

**“127. Power to transfer cases.--**(1) The Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more of the following officers subordinate to him, namely:--

(a) any Income-tax Officer or Income-tax Officers ;

(b) any Income-tax Officer or Income-tax Officers having concurrent jurisdiction with the Inspecting Assistant Commissioner, to any other Income-tax Officer or Income-tax Officers (whether with or without concurrent jurisdiction with the Inspecting Assistant Commissioner) also subordinate to him and the Board may similarly transfer any case from-

(i) any Income-tax Officer or Income-tax Officers, or

(ii) any Income-tax Officer or Income-tax Officers having concurrent jurisdiction with the Inspecting Assistant Commissioner, to any other Income-tax Officer or Income-tax Officers (whether with or without concurrent jurisdiction with the Inspecting Assistant Commissioner):

Provided that nothing in this sub-section shall be deemed to require any- such opportunity to be given



where the transfer is from any Income-tax Officer or Income-tax Officers (whether with or without concurrent jurisdiction with the Inspecting Assistant Commissioner) to any other Income-tax Officer or Income-tax Officers (whether with or without concurrent jurisdiction with the Inspecting Assistant Commissioner) and the offices of all such officers are situated in the same city, locality or place:

Provided further that--

(a) where any case has been transferred from any Income-tax Officer or Income-tax Officers to two or more Income-tax Officers, the Income-tax Officers to whom the case is so transferred shall have concurrent jurisdiction over such case and shall perform their functions in accordance with such general or special orders in writing as the Board or the Commissioner or the Inspecting Assistant Commissioner authorised by the Commissioner in this behalf, may make for the purpose of facilitating the performance of such functions ;

(b) where any case has been transferred from any Income-tax Officer or Income-tax Officers (whether with or without concurrent jurisdiction with the Inspecting Assistant Commissioner), to two or more Income-tax Officers (with concurrent jurisdiction with the Inspecting Assistant Commissioner), the Officers (including the Inspecting Assistant Commissioner) to whom the case is so transferred shall have concurrent jurisdiction over such case and shall perform their functions in accordance with such general or special orders in writing as the Board or the Commissioner may make for the purpose of facilitating the performance of such functions, and the Income-tax Officers shall perform their functions also in accordance with such orders or directions as the Inspecting Assistant Commissioner may make under sub-section (2) of section 124 or, as the case may be, under sub-section (2) of section 125A.

(2) The transfer of a case under sub-section (1) may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Income-tax Officer or Income-tax Officers from whom the case is transferred.



Explanation.--In this section and in sections 121, 123, 124 and 125, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.”

Post- Amendment Section 127 reads:

**“127. Power to transfer cases.--**(1) The Director General or Chief Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing officer or Assessing officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing officer or Assessing Officers from whom the case is to be transferred and the Assessing officer or Assessing officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner,--

(a) where the Directors General or Chief Commissioners or Commissioners to whom such Assessing officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or



Commissioner as the Board may, by notification in the official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing officer or Assessing officers (whether with or without concurrent jurisdiction) to any other Assessing officer or Assessing officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing officer or Assessing officers from whom the case is transferred.

Explanation.--In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

49. The said provision is different from Section 124 and deals with transfer of cases both presently pending and where assessment have concluded, as is clear from the Explanation to the said Section. It can also relate to future assessments. We are for convenience considering post amendment provisions. Transfer need not be to an assessing officer having jurisdiction under Section 124(1) of the Act. The procedure which has to be adopted/followed for transfer has been stipulated. Opportunity of hearing where it is possible is stipulated under sub-section (1) and it also mandates recording of reasons for transfer of case from one Assessing Officer to another, whether or not



having concurrent jurisdiction. This transfer can be made by Director General/Chief Commissioner or Commissioner. In case the Assessing Officers are not subordinate to the same Director General/Chief Commissioner or Commissioner, sub-section (2) comes into play and this requires concurrence of the Directors-General, Chief Commissioners or Commissioners. In case of disagreement, matter has to be referred to the Board or Director General/Chief Commissioner/Commissioner notified by the Board in the Official Gazette. However, as per sub-section (3) opportunity of hearing is not required when the transfer is to an officer within the same city, locality or place. It must also be noted that as per sub-section (4) transfer of a case under sub-section (1) or (2) can be made at any stage of the proceedings and re-issue of notice by the Assessing Officer from whom the case is transferred is not mandated.

50. Territorial aspect relating to authority of the Assessing Officer in each assessment year was examined by a Division Bench of this Court in ***K.K. Lomba (supra)***. In the said case, notices under Section 148 had been issued by the Assistant Commissioner of Income Tax (Investigation), Circle 11(1), New Delhi, in respect of assessment years 1985-86 to 1987-88, 1988-99 to 1990-91 and 1992-93. Some assessments had been made, while others were pending. Procedure under Section 124(2) was followed and it was held that the Assessing Officer at Delhi had jurisdiction as the petitioners had shifted their business and profession to New Delhi after they had closed their business and profession at Amritsar. For some of the years, the petitioner had also filed returns at Amritsar. Referring to Section 127 of the Act, it was observed as under:-



“Section [120](#) provides for jurisdiction conferred on the Income Tax authorities to exercise the powers and perform the functions conferred by the Act. The jurisdiction between different authorities can be divided by reference to (i) territorial area, (ii) person or persons, (iii) income and classes of income, and (iv) cases or classes of cases. Section [124\(1\)](#) has relevance to territorial jurisdiction. If area wise jurisdiction has been conferred on the Assessing Officer then a person carrying on business or profession must find out the Assessing Officer having jurisdiction over the place within which business or profession is being carried on. If the assessee be a person not carrying on a business or profession then he is subject to the jurisdiction of the Assessing Officer vested with jurisdiction over the area where he is residing.

Section [127](#) does not speak of power to transfer jurisdiction ; it speaks of transfer of "case", as defined in the Explanation enacted to Section [127](#).

That being the position of law, we are very clear in our mind that the petitioners having shifted their business/profession and residence--both--in July, 1984, from Amritsar to Delhi, the return could have been filed only before an Assessing Officer having jurisdiction over the area where the business/profession of the petitioners was situated. If there was any doubt, the petitioners could have moved under Section [124\(2\)](#) for determining the question of jurisdiction which the petitioners have not done. The proceedings finalised at Amritsar after the petitioners had ceased to have their business/profession at Amritsar would be without jurisdiction. However, this observation would not obviously apply to such proceedings which have been taken without any objection as to the jurisdiction by either side and permitted to achieve a finality.”

It was further observed:

“If a case falls under Section [124\(4\)](#) then the question of jurisdiction can be resolved only in the manner outlined in that section and it cannot be challenged before or decided by the appellate authorities. If the assessment can be supported under Section [124\(7\)](#), the provisions of Section [124\(4\)](#) will not apply and there is nothing to bar the jurisdiction of the appellate authorities to uphold the assessment on that ground. In such a case, there is no conflict between the procedure outlined in Sub-sections (4) and (6) and the appellate powers of the Appellate Assistant Commissioner and the Tribunal.



Section 124(7) is very limited in its operation. All that it saves is an assessment made by an Income Tax Officer (whether he has or not jurisdiction otherwise) provided that the assessment does not bring to tax anything other than income accruing, arising or received within the area over which he exercises territorial jurisdiction.

Once it has been found that the two petitioners had their business/profession situated at Delhi, the assessing authority having natural jurisdiction over the area would have jurisdiction to assess them, issue notices under Section [148](#) as well, though referable to the period when they were assessed or were assessable at Amritsar by virtue of Sections [124\(1\)](#) and [124\(5\)](#) read with Section [120\(1\)](#). No order under Section [127](#) or even Section [124\(2\)](#) was called for. Such an interpretation and the view of the law satisfies the twin test of (i) the convenience of the assessee, and (ii) the exigencies of tax collection.”

51. In light of the aforesaid discussion, the following propositions emerge:

- (1) The respondent assessee was assessed at Delhi from 1980-81 to 1983-84.
- (2) For the assessment years 1985-86, 1986-87 and 1987-88, the Assessing Officer at Delhi had issued notices under Section 147/148 to the respondent assessee. There is no finding of the tribunal, when these notices were to be served and whether the respondent assessee within one month had raised objection to the jurisdiction of the Assessing Officer at Delhi. However, objection was raised during the course of the assessment proceedings and as per the finding of the CIT (Appeals), within one month of issue of notice under Section 142(1) of the Act, but this aspect has not been discussed by the tribunal.



- (3) Aforesaid notices were issued to the respondent assessee at his residential address namely F-5, N.D.S.E. Part II, New Delhi, a property purchased and owned by the respondent assessee.
- (4) For assessment year 1984-85, the respondent assessee had filed his return with Income Tax Officer, Dimapur and proceedings initiated by the AO, Delhi were dropped but the reasons for dropping the proceedings at Delhi are not on record.
- (5) For the assessment year 1985-86, the respondent had filed return of income with ITO, Dimapur on 8<sup>th</sup> August, 1985 but the said return was declared null and void by the ITO, Dimapur in view of non-compliance of Section 139(9) i.e. failure to rectify the defects as per the finding of the CIT (Appeals) in order dated 26<sup>th</sup> February, 1993. ITO Dimapur, thereupon issued notice dated 26<sup>th</sup> June, 1987 under Section 148 of the Act for the assessment year 1985-86. This finding has not been reversed or commented upon by the tribunal.
- (6) There is a dispute whether any return of income was filed by the assessee at Dimapur for assessment year 1986-87. The assessee claims that return of income was filed for the assessment year 1986-87 on 30<sup>th</sup> July, 1986 with ITO, Dimapur but there is no proof or evidence. Notice under Section 148 was issued by ITO, Dimapur on 26<sup>th</sup> June, 1987.
- (7) For the assessment year 1987-88, the respondent had filed return with ITO, Dimapur on 27<sup>th</sup> April, 1988 but defect memo dated 6<sup>th</sup> July, 1988 was issued. However, no order was passed declaring the return void or bad on account of the fact that TDS,



self assessment and advance tax challans and dividend warran etc. had not been attached.

- (8) There was exchange of correspondence between Assessing Officer at Delhi and ITO, Dimapur. ITO, Dimapur conceded and accepted that for the assessment years 1985-86, 1986-87 and 1987-88, the Assessing Officer at Delhi had jurisdiction to initiate and complete the assessment proceedings. However, the procedure under Section 124 of the Act was not followed and the Commissioners concerned did not deliberate in writing upon the said issue. Even if they did, no such document or evidence was brought on record.
- (9) After the order of the CIT (Appeals) dated 26.02.1993 setting aside the assessment but permitting the Assessing Officer to proceed further from the stage of default and directing compliance of Section 127 of the Act, ITO, Dimapur had passed assessment orders in respect of assessment years 1985-86, 1986-87 and 1987-88. This fact has not been adverted to and noticed by the tribunal in the appeals relating to second and fourth round. Thus the assessment orders in the second round were not passed by the Assessing Officer at Delhi but the ITO Dimapur. This was crucial and relevant fact but was not referred to and considered by the tribunal while examining the appeals in the second and fourth round.
- (10) Subsequently, an order under Section 127 of the Act dated 14<sup>th</sup> August, 1995 was passed and the case was transferred to ITO, Ward No. 20(3), New Delhi. In terms of the said transfer, the respondent assessee had preferred appeals against



the assessment orders for assessment years 1985-86, 1986-87 and 1987-88 passed by ITO, Dimapur before the CIT(Appeals) at Delhi which was allowed vide order dated 27<sup>th</sup> March, 1997 with remit to the Assessing Officer to re-examine the issue on merits after giving fair and reasonable opportunity to the respondent assessee. The assessee did not challenge and question the jurisdiction of the ITO, Dimapur or the Assessing Officer at Delhi after order dated 14<sup>th</sup> August, 1995 under Section 127 of the Act.

(11) In the third round, the Assessing Officer at Delhi passed the assessment orders in view of the order under Section 127(2)(a) dated 14<sup>th</sup> August, 1995. But this order was again set aside by the CIT (Appeals) for want of fair and adequate opportunity, with the order of remand to the Assessing Officer at Delhi. The said order remained unchallenged by both the respondent assessee and the Revenue meaning thereby that they accepted the order of remit to the Assessing Officer at Delhi. However, this would not affect the challenge to the earlier order of remand in the first round and if the said order is struck down or set aside, the orders passed by the Assessing Officer in the second, third or fourth round would be inconsequential.

(12) Sections 120, 124 and 127 of the Act underwent amendments with effect from 1<sup>st</sup> April, 1988. The said provisions being procedural in nature, the amendments would apply to the pending proceedings. Notices under Section 148 of the Act by the appellant i.e., A.O, Delhi were issued prior to 1<sup>st</sup> April, 1988 and therefore, earlier provisions would apply with



reference to proceedings upto 31<sup>st</sup> March, 1988 and accordingly, limitation period for challenging of assessment etc. would be applicable. However, the assessment orders were passed post 1.4.1988. CIT (Appeals) has observed that in absence of proof of service of notices under Section 148, date of notice under Section 142(1) was relevant. Notices under Section 142(1) were post 1.4.1988. There is no factual finding on service of notices under Section 148 of the Act by the Tribunal. It is imperative to observe that in spite of the amendments, the basic postulates of the provisions both pre and post amendments remain substantially similar. The provisions as they existed before and after the amendments, postulate filing of objections before the Assessing Officer within stipulated periods, reference to the Commissioner or Commissioners concerned and a decision by the said Commissioner/ Commissioners/ the Board/ appropriate authority in case of disagreement between the Commissioners.

- (13) The provisions indicate that Sections 120, 124 and 127 of the Act recognizes flexibility and choice, both with the assessee and the authorities i.e. the Assessing Office before whom return of income could be filed and assessment could be made. The Assessing Officer within whose area an assessee was carrying on business, resided or otherwise income had accrued or arisen (in the last case, subject to the limitation noticed above) has jurisdiction. Similarly, the Assessing Officer also has authority due to class of income or nature and type of business. The Act, therefore, recognized multiple or concurrent jurisdictions. Provisions of Section 124 ensures and prevents two assessments by different assessing officers, having or enforcing concurrent



jurisdiction. There cannot be and the Act does not envisage tv assessments for the same year by different officers. (Reassessment order can be by a different officer).

(14) In view of the decision of Delhi High Court in ***K.K. Loomba (supra)***, each year is separate and distinct year and in case the assessee shifts his residence or place of business or work etc., the Assessing Officer of the place where the assessee has shifted or otherwise, will have jurisdiction and it is not necessary that an order under Section 127 of the Act should be passed. This, however, does not mean that the Assessing Officer where the returns of income were earlier filed ceases to have jurisdiction, provided the assessee has residence in his area, place of business, class, income etc. Residence can mean permanent residence as well as current or temporary residence of some permanence. There is no specific finding by the Tribunal with reference to Section 124 of the Act on the question of jurisdiction on the basis of residence, class, income etc.

(15) The Assessing Officer at Delhi as well as ITO, Dimapur had issued notice under Section 148 of the Act in respect of assessment years 1985-86 and 1986-87. For the assessment year 1987-88 AO, Delhi had issued notice under Section 148 and ITO, Dimapur had taken up regular assessment proceedings. Return of income for the assessment year 1985-86 filed by the respondent assessee before ITO, Dimapur was declared invalid and as per Revenue no return of income has been filed by the assessee for the assessment year 1986-87. In respect of



assessment year 1987-88, return of income was filed by the assessee with ITO, Dimapur but defective notice was issued.

(16) Assessing Officer, Delhi was wrong in assuming that as returns for the assessment years 1980-81 to 1983-84 were filed in Delhi, he would alone continued or had exclusive jurisdiction for assessment year 1985-86 onwards as well. ITO, Dimapur wrongly accepted the said plea/contention and had erroneously understood the legal provisions. They had concurrent jurisdictions, if the respondent assessee had residence in Delhi. The said stance and stand of the Revenue is contrary to their own stand in the case of *K.K. Loomba (supra)*. On the said aspect, decision of the Delhi High Court in the case of *K.K. Loomba (supra)* is binding on us. Thus, the question of jurisdiction or the place of filing has to be examined each year with reference to provisions of Section 124 of the Act. Decision in *K.K. Loomba (supra)* was pronounced in the year 2000 and dissents from the view/ratio of the Punjab and Haryana High Court in *Lt. Col Paramjit Singh (supra)*. Thus, when the proceedings were going on, the legal position was not clear and hence, debatable. However, as noticed above, Section 124 of the Act provides flexibility and postulates multiple and concurrent jurisdiction including filing of return and where the assessee has permanent or current residence or where he has sole/only source of income.

(17) The Tribunal could not have gone into the question of jurisdiction of AO, Delhi except on the question and issue whether there was any lapse on the part of the Assessing Officer



in not following the procedure prescribed under Section 124 the Act and effect thereof. As in the present case, the procedure under Section 124 was not followed by the Assessing Officer, the effect thereof could have been considered and examined by the Tribunal.

- (18) The Tribunal has erred and incorrectly held that failure to follow the procedure under Section 124 makes the assessment order a nullity and an order of annulment should be passed. We have held that an assessment order passed without making reference to Commissioner/ Commissioners under Section 124 is not a nullity for want of jurisdiction but it results in irregularity which can be rectified by order of remit and directing the Assessing Officer to continue with the proceedings from the stage where the error had occurred. This was directed and held by the CIT (Appeals), but 9 years later reversed by the Tribunal. To this extent, the decision of the Tribunal cannot be sustained.

52. In view of the aforesaid discussion, we answer the substantial questions of law relating to the first round, i.e., ITA Nos. 256/02, 257/02 and 255/02 holding:-

- (i) There was failure on the part of the Assessing Officer, Delhi and ITO, Dimapur in not following the procedure prescribed under Section 124 of the Act, but this would not make the assessment in the first round a nullity. The assessment order passed should have been set aside as was directed by CIT(Appeals) and assessments remitted for a fresh decision. Question of law is accordingly answered in favour



of the Revenue and against the respondent-assessee but in t  
aforesaid terms.

- (ii) ITA Nos. 314/02, 315/02 and 316/02 which relate to the second round, the substantial question of law is answered in favour of the Revenue and against the respondent-assessee. The tribunal clearly erred in not noticing that in the second round assessment order were passed by ITO, Dimapur and consequent to the order under Section 127, the first appeal was decided by CIT(Appeals) at Delhi. In view of the decision in ITA Nos. 256/02, 257/02 and 255/02 relating to the first round, the order of the tribunal dated 13.05.2002 cannot be sustained.
- (iii) In view of the answers to the substantial questions of law mentioned above relating to the first and the second round, the substantial question of law in the fourth round i.e. ITA Nos. 1577/2006, 1578/2006 and 1580/2006 has to be answered in favour of the Revenue and against the respondent-assessee but subject to the observations made above.

53. In light of the aforesaid discussions, ITA Nos. 314/02, 315/02, 316/02, 1577/06, 1578/06 and 1580/06 relating to the second and the fourth round are remitted to the tribunal for fresh decision on merits on the additions made by the Assessing Officer. Paper books relating to the first round subject matter of ITA Nos. 256/02, 257/02 and 255/02 will be also made available and placed before the tribunal. To cut short delay, parties are directed to appear before the tribunal on 15<sup>th</sup> April, 2014, when a date of hearing will be fixed.



**WTAs 13/2006, 14/2006, 15/2006, 16/2006 & 18/2006**

54. At the outset, we notice that two appeals being WTA Nos. 15/2006 and 16/2006 have been filed in respect of assessment year 1986-87. The reason, it appears, is that there were two cross appeals before the tribunal for the said assessment year.

55. By order dated 20<sup>th</sup> February, 2007, the following substantial question of law has been framed in the Wealth Tax Appeals:

“Whether the Income Tax Appellate Tribunal was correct in law in holding that the Wealth Tax Officer has no jurisdiction to pass the assessment order in the case of Assessee and thereby quash the assessment framed?”

56. For the purpose of record, we observe that the tribunal had passed a common order dated 8<sup>th</sup> February, 2006 in respect of four assessment years and has held that the Wealth Tax Officer had no jurisdiction to pass the assessment orders under the Wealth Tax Act, 1957 (WT Act, for short) in view of the orders passed by the Income Tax Appellate Tribunal under the Act i.e. Income Tax Act, 1961 in different income tax appeals relating to assessment years 1985-86, 1986-87, 1987-88 and 1988-89 vide orders dated 13<sup>th</sup> May, 2002 and 9<sup>th</sup> August, 2002. The tribunal in the impugned order has not discussed factual matrix or details relating to wealth tax proceedings. Section 11 of the WT Act before its amendment by the Direct Tax Laws (Amendment) Act, 1987 before 31<sup>st</sup> March, 1988 stipulated that the authorities shall perform their functions in accordance with such orders as the Commissioner may make for allocation of work to be performed. With effect from 1<sup>st</sup> April, 1988, Section 11(1) of the WT



Act stipulated that the provisions of Section 124 and 127 of the Act i. the Income Tax Act so far as it may be, shall apply subject to modifications in sub-section (2). (The said sub section is not relevant for the present decision).

57. We may now refer to the factual matrix as is apparent from the assessment orders and appellate orders relating to assessment years 1985-86 to 1988-89.

**WTA 13/2006 (A.Y. 1985-86) -Valuation dated 31<sup>st</sup> March, 1985**

- (1) A notice under Section 17 of the WT Act was issued and return of wealth tax declaring wealth of Rs.1,14,900/- dated 18<sup>th</sup> October, 1994 was filed by the respondent assessee. By assessment order dated 17th March, 1997, the net wealth was assessed at 67,80,000/-.
- (2) The respondent assessee did not object to the jurisdiction of the Assessing Officer in Delhi and the address as disclosed in the wealth tax assessment order was F-5, N.D.S.E. Part II, New Delhi.
- (3) The respondent assessee filed an appeal but did not question the jurisdiction of the Assessing Officer. Commissioner (Appeals) by order dated 27<sup>th</sup> January, 1999 passed an order of remand on the ground that question of ownership of 18 flats assessed as wealth of the assessee was to be examined and was a subject matter of the income tax proceedings. These flats as per the assessee belonged to assessee's relatives. Assessment order was accordingly set aside for de novo assessment in accordance law with the direction that the question of ownership of the



assets could be examined and established more appropriately the income tax proceedings. The assessee did not prefer any appeal against the order of the Commissioner (Appeals) and as noticed above, the question of jurisdiction of the Assessing Officer was not challenged.

- (4) The Assessing Officer thereupon passed order dated 23<sup>rd</sup> March, 2001 and taxable wealth was assessed at Rs.23,48,670/-.
- (5) Commissioner (Appeals) substantially upheld the additions made by the Assessing Officer including additions made on account of 18 commercial flats and he also upheld the issue of notice under Section 17 of the WT Act. He also upheld addition of Rs.18,54,000/- as unexplained deposits and Rs.5,00,000/- and Rs.60,450/- on account of FDRs etc. He directed that income tax and wealth tax liabilities should, however, be allowed as deduction. It is noticeable that the question of territorial jurisdiction of the Assessing Officer was not challenged before the Commissioner (Appeals).

**WTA 15/2006 (A.Y. 1986-87)**

- 1) In this year notice under Section 17 was issued and return of net wealth of Rs.1,06,900/- was filed on 18<sup>th</sup> October, 1993 with the address F-5 N.D.S.E. Part II, New Delhi. Respondent did not object to jurisdiction of the Assessing Officer. By assessment order dated 17<sup>th</sup> March, 1997, net taxable wealth tax was assessed at Rs.1,24,91,000/-.
- 2) Commissioner (Appeals) vide order dated 27<sup>th</sup> January, 1999 set aside the said assessment with direction for de novo assessment on the basis of income tax proceedings as in the last



year. Respondent assessee did not challenge jurisdiction of the Assessing Officer before the Commissioner (Appeals).

- 3) By de novo assessment order dated 23<sup>rd</sup> March, 2001, assessment was again framed at taxable wealth of Rs.1,19,91,400/-. Commissioner (Appeals) substantially upheld the said additions including additions made on account of 18 flats but held that that income tax and wealth tax liability should be allowed as per Wealth Tax Act. The assessee did not challenge and question jurisdiction of the Assessing Officer before the Commissioner (Appeals).

#### **WTAs 16/2006 and 18/2005 (Assessment year 1987-88)**

- 1) Return of income was filed after issue notice under Section 17 on 18<sup>th</sup> October, 1993 declaring net wealth of Rs.1,19,900/-. The assessee did not challenge jurisdiction of the Assessing Officer. By assessment order dated 17<sup>th</sup> March, 1997, assessment made at taxable wealth of Rs. 99,49,000/-.
- 2) The assessment was set aside with direction for de novo assessment for reasons and as in the assessment year 1985-86 and 1986-87. The assessee did not challenge the jurisdiction of the Assessing Officer at Delhi.
- 3) De novo fresh assessment order dated 23<sup>rd</sup> March, 2001 was passed computing the taxable wealth of Rs.99,49,000/-.
- 4) Commissioner (Appeals) by order dated 31<sup>st</sup> March, 2005 upheld the validity of Section 17 notice and substantially upheld the additions. However, he granted exemption/relief in respect of value of trees on agricultural land which were held to be



exempt. He further directed that liabilities on account of wealth tax and income tax should be allowed as per laws. The assessee did not challenge and question the jurisdiction of Assessing Officer at Delhi.

**WTA 14/2006(A.Y. 1988-89)**

- 1) Notice under Section 17 of the WT Act was issued and return of wealth declaring wealth of Rs.1,38,400/- was filed on 18<sup>th</sup> October, 1993. By assessment order dated 17<sup>th</sup> March, 1997, assessment was framed at a taxable wealth of Rs.53,34,100/-. The assessee did not question jurisdiction of the Assessing Officer in Delhi in the assessment proceedings.
- 2) Commissioner (Appeals) set aside the assessment order as done in earlier orders vide order dated 27<sup>th</sup> January, 1999. Question of jurisdiction was not raised before the Commissioner (Appeals).
- 3) The assessment was again framed by de novo assessment order dated 23<sup>rd</sup> March, 2001 at taxable wealth of Rs.53,34,100/-.
- 4) On appeal, Commissioner (Appeals) vide order dated 31<sup>st</sup> March, 2005 upheld the validity of notice under Section 17 and several additions made by the Assessing Officer. However, relief was granted in respect of value of construction of structure and eucalyptus trees on the agricultural land, income tax and wealth tax liabilities. Some other reliefs were also granted.

58. In light of the aforesaid discussion and the position of law, the substantial question of law raised in the present wealth tax appeals are answered in favour of the appellant-Revenue and against the



respondent-assessee. It is apparent that the respondent assessee d not challenge and object to the jurisdiction of the Assessing Officer at any stage. Reference to the Commissioner/Commissioners was not required as per the Section 124 of the Act. There was waiver and respondent/assessee had accepted jurisdiction of the AO, Delhi. Tribunal could not have, therefore, held to the contrary. The tribunal will now decide the appeals of the assessee/Revenue pending before them on merits and not on the question of jurisdiction of the Assessing Officer. To cut short delay, parties are directed to appear before the tribunal on 15<sup>th</sup> April, 2014, when a date of hearing will be fixed.

59. Appeals are accordingly disposed of. In the facts and circumstances of the present case, there will be no order as to costs.

**(SANJIV KHANNA)**  
**JUDGE**

**(SANJEEV SACHDEVA)**  
**JUDGE**

**March 14<sup>th</sup>, 2014**  
**KKB/NA/VKR**