

P.P. Verma Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Feb-28-1990

Reported in : (1990)34ITD27(Delhi)

Judge : K Vishwanathan, Vice, M Agarwal

Appellant : P.P. Verma

Respondent : inspecting Assistant

Judgement :

1. These are appeals by the assessee arising out of his assessments for assessment years 1984-85 and 1985-86.
2. We have heard the learned counsel for the assessee and the learned Departmental Representative and have perused the material placed before us.
3. The assessments, which are the subject matter of these appeals, have been made by the Inspecting Asstt. Commissioner, Central Range-IV, New Delhi and onto the contentions raised in these appeals is that the assessing officer had no jurisdiction over the assessee. This is the case of a person who has not been assessed for any year prior to assessment year 1984-85. The Central Board of Direct Taxes passed an order dated 14-9-1984 conferring jurisdiction over the case of the" assessee on ITO, Central Circle VIII, New Delhi by way of transfer from ITO, Pvt. Salary Circle (Main), New Delhi. The order purports to have been passed by the CBDT in exercise of powers under Section 127 of the Income-tax

Act, 1961. In pursuance of the said order the ITO, Central Circle-VIII issued a notice under Section 148 of the Act to the assessee irrespective assessment year 1984-85. The said notice was served on 17-9-1985. For assessment year 1985-86 the same ITO issued a notice under Section 139(2) to the assessee. That was served on the assessee on 25-9-1985. The assessee after the service of the aforesaid notices filed a return of income for assessment year 1985-86 on the 4th of October, 1985 before the ITO, Distt. VI(9), New Delhi, who framed the assessment under Section 143(1) on 15-10-1985. In pursuance of the notices under Section 148 and 139(2) served by the ITO, Central Circle VIII, New Delhi, the assessee filed his returns of income before the said ITO for both the years on 12-12-1985 and with the return for assessment year 1985-86 he also enclosed a copy of the intimation under Section 143(1) dated 15-10-1985 of the ITO, Distt. VI(9) to show that for this year he had already been assessed by the said ITO and also contended before the ITO, Central Cir. VIII, New Delhi that it was ITO, Distt. VI(9) who had the jurisdiction to assess him. This contention of the assessee has been rejected by the authorities below because of the Board's Notification No. F.No. 185/228/ 84-IT(AI) dated 14-9-84, by which the jurisdiction over the case was transferred to ITO, Central Circle-VIII, New Delhi.

4. The learned counsel for the assessee contended that the ITO, Private Salary Circle (Main), New Delhi had no jurisdiction over the assessee because although the assessee was receiving income by way of salary as a school teacher, yet he was carrying on a business as a broker arranging donations and income from commission from that business. For this reason, according to the learned counsel for the assessee, the jurisdiction lay with the territorial ITO, i.e., ITO, Distt. VI(9) and, therefore, the Board's order transferring the case, from ITO, Pvt.

Salary Circle (Main) to ITO, Central Circle VIII, New Delhi was ineffective. This contention, in our view, has no force. What is important is that on 14-9-1984, when the Board passed the order" under consideration purporting to be under Section 127, no return of income filed by the assessee was pending consideration before the ITO, Pvt.

Salary Circle and the assessee had never been assessed before. A search had taken place at the premises of the assessee on 13-9-1983, i.e., much before the order under reference was made and, therefore, assessment proceedings were under contemplation. The assessee was employed as a school teacher and was receiving salary and, therefore, the ITO, Pvt.

Salary Circle (Main) would normally have had jurisdiction to assess the assessee. According to the learned counsel for the assessee from the time of search on 13-9-1983, when the assessee was also examined the Department knew that the assessee was having income from commission as well and, therefore, the jurisdiction would lie with ITO, Distt. VI(9) and not with ITO Private Salary Circle. The learned counsel for the assessee has not placed before us the relevant notification defining the jurisdictions of the ITO, Pvt. Salary Circle and of the ITO, Distt.

VI(9) and, therefore, without looking at them it cannot be said whether in the circumstances of the case the jurisdiction appropriately lay with ITO, Pvt. Salary Circle (Main) or with the ITO, Distt. VI(9). But the order passed by the Board under Section 127 is not a general order.

It is a specific order transferring the case of the assessee from one Income-tax Officer to another and in the absence of anything it cannot be said that ITO, Private Salary Circle could, in no circumstances, have jurisdiction over the case. It is also important to remember that no assessment proceedings were actually pending either before the ITO, Private Salary Circle (Main) or before the ITO, Distt. VI(9) when the order was passed. Therefore, the order transferring the case to ITO, Central Cir. VIII, New Delhi was, in our view, an effective order under Section 127 of the Income-tax Act, 1961 taking away jurisdiction from all Income-tax Officers and conferring the same on ITO, Central Circle VIII, New Delhi.

5. The learned counsel for the assessee contended that the order under Section 127 was not served on the assessee till 15-10-1986 and that this was, therefore, did not become effective till it was served on the assessee. This contention, in our view, has no force. Section 127 of the Act deals with a purely administrative power and does not require that a copy of the order should necessarily be served on the

assessee.

In any case, there is nothing in Section 127 indicating that the order shall not become effective unless communicated either to the assessee or to the officer concerned. An order under Section 127 passed either by the Commissioner or by the Board is an order taking away jurisdiction from one officer and conferring jurisdiction over another, such an order becomes effective as soon as it is made and does not depend for its effect like an injunction order on the service thereof on the parties concerned. Therefore, even though a copy of the order may not have been served on the assessee till 15-10-1986, yet the order became effective from 1-10-1984, the date on which it says it shall take effect, from.

6. It was also contended that the reasons recorded by the Board for transferring the case to the ITO, Central Cir. VIII, New Delhi should have been supplied to the assessee and since it has not been done, the order of transfer is a nullity. For this proposition reliance was placed on CIT v. Oriental Rubber Works [1984] 145ITR 477 (SC). In that case the Hon'ble Supreme Court was dealing with the powers of the Revenue authorities to retain books of accounts seized by them during a search and seizure operation. Under Section 132 such books could be retained for a period of 180 days and for a further extension, reasons had to be recorded and approval of the Commissioner had to be sought.

It was with reference to those provisions that the Hon'ble Supreme Court observed that the reasons recorded by the officer and the approval of the Commissioner should be communicated to the assessee, without which the Commissioner's decision according his approval will not become effective. The relevant observations of Hon'ble the Supreme Court is as below:- It is true that Sub-section (8) does not in terms provide that the Commissioner's approval or the recorded reasons on which it might be based should be communicated to the concerned person but in our view since the person concerned is bound to be materially prejudiced in the enforcement of his right to have such books and documents returned to him by being kept ignorant about the factum of fulfilment of either of the conditions, it is obligatory upon the Revenue to communicate the Commissioner's approval as such the recorded reasons to the person concerned.

In the absence of such communication the Commissioner's decision according his approval will not become effective.

It would be noticed that the Hon'ble Supreme Court was dealing with a case in which a valuable property in the shape of books of accounts and other records had been seized from the possession of the assessee and having been retained for 180 days was intended to be further retained and the assessee might be materially prejudiced if the reasons for extending the period of retention and the Commissioner's approval is not communicated to the assessee within the period of 180 days. No such prejudice is involved when in the administrative discretion vested in the authorities concerned under Section 127, a case is transferred from one ITO to another in the same town. While an assessee has a vested right to retain his books of accounts and other documents, he has no such right to be assessed by a particular officer.

7. In the case before us what is material to be noticed is that the assessee was not an existing assessee and prior to 14-9-1984, the date of the order or 1-10-1984, the date on which it became effective, the assessee was never assessed nor did he file any return of income.

Therefore, there was no question of any prejudice being caused to the assessee by conferring jurisdiction of assessing him on the ITO, Central Circle VIII, New Delhi. The copy of the order dated 14-9-1984 passed by the CBDT would show that the proposal in this regard had been made as far back as 18-8-1984 and the Board had even directed that a copy of the order be supplied to the assessee. The ITO, Central Cir.

VIII served notices on the assessee under Section 148 for assessment year 1984-85 and under Section 139(2) for assessment year 1985-86. Up to that time the assessee had not filed return before any Income-tax Officer whatsoever. If the assessee's conduct had been bona fide and straightforward and he wanted to challenge the jurisdiction of the ITO, Central Cir. VIII, New Delhi, he would have immediately written to him to enquire how he acquired jurisdiction to assess him. The assessee, however, did not do so nor did he file the returns of income before ITO, Central Circle VIII, New Delhi within the time prescribed in the notices. On the

other hand, he has tried to play a trick on the department by filing a return of income for assessment year 1985-86 before ITO, Distt. VI(9) on 4-10-1985 and the said ITO, for reasons best known to him or to the assessee, accepted the same under Section 143(1) with great speed on the 15th October, 1985, i.e., within a period of 11 days. This could be possible only if the assessee concealed from the ITO, Distt. VI(9) the fact relating to the search and seizure held on 13-9-83 and the details of the properties recovered from his possession. We are, therefore, of the view that the order dated 14-9-1984 was a valid order and from the date specified therein, i.e., 1-10-1984 it was ITO, Central Circle VIII, New Delhi only that had jurisdiction over the assessee. It is not in dispute that from the ITO, Central Circle VIII, New Delhi the jurisdiction was validly transferred to the IAC (Asstt) Central Range-FV, who ultimately made the assessments in this case. We, therefore, uphold the findings of the learned CIT(A) that the assessing officer aforesaid had valid jurisdiction to assess the assessee-appellant.

8. to 20. [These paras are not reproduced here. As they involve minor issues.]

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