

Cliftons Pearson Export and Vs. Assistant Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Aug-13-1996

Reported in : (1997)61ITD60(Kol.)

Appellant : Cliftons Pearson Export and

Respondent : Assistant Commissioner of

Judgement :

1. This appeal is instituted by the assessee against the order of the CIT (Appeals) for the assessment year 1984-85.

2. In ground Nos. 1 & 2 which are reproduced as under, the assessee has challenged the jurisdiction of the Assessing Officer (AO) to assess the assessee :-
(i) That the learned CIT (Appeals) on the facts and in the circumstances of the case, erred in holding that the Assessing Officer could lawfully assume jurisdiction to assess the appellant notwithstanding the appellant's objection filed within a period of one month from the date of filing the return.

(ii) That the Id. CIT (Appeals) failed to apply his mind and failed to appreciate that the assessment made is a nullity in view of the provisions of section 124 as also the order being in violation thereof.

3. In this case, the original assessment was made under section 144 on 13-2-1987 which was set aside by the CIT(A) on 25-11-1987. The present assessment order under appeal is made under section 144/251 in compliance with the direction of

the CIT(A). The Assessing Officer in his order has mentioned that the original assessment was set aside with a direction to re-do the assessment after considering the assessee's claim that it has filed a return in Kanpur where the assessment has already been completed. According to him, the CIT(A) upheld the jurisdiction of the ITO, Calcutta over the case and the ITO, Kanpur had intimated that the assessments for the assessment years 1985-86, 1986-87 and 1987-88 had already been set aside by the CIT, Kanpur. It has also been mentioned by the ITO in his order that the assessment records at Kanpur had already been received on transfer as the ITO, Calcutta has proper jurisdiction over the case. He also pointed out that although the assessee had made a petition to the Company Law Board for transfer of its registered office from Calcutta to Kanpur, its request does not appear to have been granted. On the basis of these observations and findings he assumed the jurisdiction and issued notices under section 143(2) at three different addresses as according to him, the assessee could not be traced. Ultimately he got the notice under section 143(2) dated 17-1-1990 served through inspector by affixature but as there was no compliance he completed the assessment ex parte to the best of his judgment on the basis of records. He also held that the assessee is not a genuine company.

4. Being aggrieved by the order of the Assessing Officer, the assessee filed appeal before the CIT(A) and submitted as under :- (i) That the assessee-company has erroneously filed its return of income before the Assessing Officer, Comp. Dist. III. Calcutta because before that the assessee had shifted its place of business from Calcutta to Kanpur and that the assessee has no activity whatsoever at Calcutta and the directors are also operating from Kanpur.

(ii) That no part of business of the assessee was carried on in Calcutta but was in Kanpur for the whole of the previous year relevant to the assessment year 1984-85.

(iii) That the assessee had addressed a letter to the ITO to transfer the return to Kanpur but the request of the assessee was not accorded to.

(iv) That the assessment made by the ITO, Kanpur dated 29-3-1985 is a valid assessment and, therefore, the ITO, Calcutta had no jurisdiction over the case for

that assessment year.

5. The CIT(A) did not concur with the argument raised by the assessee for the following reasons :- (i) That the registered office of the assessee-company is at Calcutta and it being a company registered under the Companies Act its jurisdiction lies with the ITO, Calcutta and unless the company takes permission from the Company Law Board of shift its registered officer from Calcutta to Kanpur the jurisdiction lies with the ITO, Calcutta and not with the ITO, Kanpur where the assessee claims to carry on its business and that the residence of the director is of no relevance in this context.

(ii) That the assessee has not taken any prior permission from the CBDT to transfer its assessment record from Calcutta to Kanpur and unless the CBDT's approval for transfer of jurisdiction is taken the jurisdiction lies where the registered office is located.

He, therefore, held that the assessment made by the ITO, Calcutta is a correct one since only he has the jurisdiction to make the assessment and the assessment made by the ITO, Kanpur dated 29-3-1985 is without any jurisdiction.

6. The assessee being further aggrieved by the order of the CIT(A) has preferred this appeal to the Tribunal. The learned counsel for the assessee Sri H.N. Kundu filed two paper books, viz., paper book No. 1 containing 25 pages and paper book No. 2 containing 28 pages. It is noticed that the documents mentioned at Sl. Nos. 7 to 10 in the second paper book are certified by the assessee to be fresh documents which the learned deptt. representative Sri Satya Parkash objected. The learned D.R. contended that the documents at Sl. Nos. 7 to 10 of the second paper book are fresh documents and, therefore, they are not to be admitted. After hearing both the parties and after considering all the facts and circumstances of the case the objection of the learned D.R is sustained.

7. The learned counsel for the assessee Sri H.N. Kundu submitted that the assessment has been finalised by the Assessing Officer, Co. Cir.

II, Calcutta is without any jurisdiction as the assessee has already shifted its office and business from Calcutta to Kanpur. He invited our attention to the assessee's letter dated 18-8-1984 addressed to the ITO, A-Ward, Comp. Dist. III, Calcutta a copy of which is placed at page 7 of the second paper book and submitted that the assessee informed the Assessing Officer that the return of income was wrongly filed before him as the company has been carrying on its business at Kanpur during the relevant accounting year with entire control and management of the company in Kanpur and, therefore, the return filed inadvertently may be treated as withdrawn and transferred to the ITO, Co., Cir. Kanpur. He further contended that although the assessee addressed this letter to ITO, Calcutta within 18 days of filing of the return with a request to transfer the case, yet the Assessing Officer did not pay any heed to it. He also invited our attention to the copy of the assessment order for the assessment dated 1984-85 passed by the ITO, A-Ward, Co. Cir., Kanpur placed at page 8 of the second paper book and contended that the Assessing Officer, Calcutta passed the impugned assessment order while the original assessment passed by the ITO, Kanpur was with him. He further pointed out that although the letter of the assessee dated 18-8-1984 was filed within the time prescribed under section 124 and since it was not referred to the Commissioner it invalidates the assessment order completed by the Assessing Officer, Calcutta. He further contended that in the absence of any intimation it is presumed that the request of the assessee is granted by the ITO. In order to support his contention Sri Kundu placed reliance on following decisions :- (i) Lachman Chaturbhuj Java v. R.G. Nitsure [1981] 132 ITR 631/6 Taxman 198 (Bom.); (ii) CIT v. Gordhanbhai Jethabhai [1983] 142 ITR 84/12 Taxman 54 (Guj.); (iii) Harmanjit Trust v. CIT [1984] 148 ITR 214/17 Taxman 372 (Punj.

& Har.).

He also challenged the order of the CIT(A) and contended that nowhere in section 124 it is laid down that the jurisdiction of the ITO over a company will be according to the registered office. According to him, the jurisdiction is curved out according to carrying on of the business or the principal place of his business situated within the area.

8. The learned depty. representative Sri Satya Prakash on the other hand contended that the assessee has not filed the copy of the order of the CIT(A) and has also not filed second appeal against the first appellate order and therefore, it is presumed that the assessee has accepted the jurisdiction of the Assessing Officer, Calcutta. He also strongly supported the order of the CIT(A) who has upheld the jurisdiction of the Assessing Officer, Calcutta. According to him, he has rightly done and rightly decided so. He further argued that since the CIT(A), Kanpur has set aside the assessment order for the assessment years 1985-86, 1986-87 and 1987-88, this means and proves that the ITO, Kanpur did not have jurisdiction over the case. In order to support his arguments and contentions, Sri Satya Parkash relied on the following decisions :- (ii) Mahalliram Ramniranjan Das v. CIT [1985] 156 ITR 885/[1986] 29 Taxman 44 (Pat.) 9. We have carefully considered the rival contentions, the relevant facts and material placed on the record and have also gone through and perused all the decisions on which reliance is placed by both the parties. We find that the Assessing Officer has completely ignored the directions of the CIT(A) to consider that the ITO, Kanpur has already finalised the assessment at Kanpur. He has also completely ignored the assessee's letter dated 18-8-1984 and has not acted upon it as per the provisions of law. An apparent contradiction is also evident from the Assessing Officer's order as on one hand he has held that the assessee-company is not genuine and not traceable and on the other hand he has made the substantive assessment on the same company at Calcutta.

It is also observed that for assuming the jurisdiction over this case the Assessing Officer has relied on irrelevant material and unreasonable grounds and, therefore, his order cannot be sustained in the eyes of law.

10. It is also pertinent to note that the CIT(A) while deciding the appeal against the assessee has completely brushed aside all three main contentions of the assessee viz. (i) that the assessee had no business activity whatsoever at Calcutta and has shifted its place of business from Calcutta to Kanpur, (ii) that the assessee has addressed a letter to the ITO with a request to transfer the return to Kanpur as it was wrongly filed and to treat the same as withdrawn but there was no intimation; and (iii) that the ITO, Kanpur has also made a valid assessment on 29-3-1985 and, therefore, the ITO, Calcutta had no jurisdiction. Of course, he has

touched upon the third contention of the assessee partially and half-heartedly and has held that the assessment made by the ITO, Kanpur dated 29-3-1985 is without any jurisdiction and is non est assessment. He has declared so without going into the legality and validity of the assessment and without giving any reason. Apart from this, the reasons advanced by the CIT(A) for approving and upholding the jurisdiction of the Assessing Officer, Calcutta over the case are also not in accordance with the provisions of law as he has completely missed the legal procedure laid down in section 124 and has misguided himself. In view of these legal and procedural lapses and infirmities the order of the CIT(A) does not stand the test of judicial scrutiny and, therefore, cannot be sustained as such in law.

11. Before proceeding to apply the legal pronouncements and provisions of law it is essential to narrate in short the facts which are undisputed and uncontroversial. On an analysis of chronological history of the case we find that in this case the return of income was filed at Calcutta on 31-7-1984 and the objection was raised by the assessee on 18-8-1984. Meanwhile, the assessee filed a return of income at Kanpur also on 16-3-1985 as according to the assessee there was no response to the assessee's letter dated 18-8-1984 and the assessment under section 143(3) was completed by the ITO, Kanpur on 29-3-1985. Another assessment was also completed under section 144 on 13-2-1987 by the ITO, Calcutta but the CIT(A), Calcutta set aside the original assessment order on 25-11-1987 with a direction to the Assessing Officer to consider the fact that the assessment had already been completed by the ITO, Kanpur on 29-3-1985. The assessment under section 144/251 was reframed by the Assessing Officer, Calcutta on 20-3-1990 and the CIT(A), Calcutta confirmed the same vide his order dated 14-8-1991 which is appealed against and which is under our consideration in this appeal.

12. Thus, it is noticed that there are two assessments made by the department in the case of this assessee for the same assessment year, i.e., one by the ITO, Kanpur and the other by the ITO, Calcutta. It is this assessment order under section 143(3)/251 confirmed by the CIT(A), Calcutta which is under consideration in this appeal before us.

13. Turning to the ground of appeal Nos. 1 & 2 we find that the main grievance or main objection of the assessee is that the assessment made is a nullity in view of the violation of the provisions of section 124, as the assessment is completed notwithstanding the assessee's objection filed within a period of one month from the date of filing the return.

For the sake of convenience section 124 of the IT Act, 1961 as existing at the relevant time is reproduced as under :- "S. 124. Jurisdiction of Income-tax Officers - (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 or of such cases or classes of cases 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 or the same cases or classes of cases, they shall have concurrent jurisdiction and shall perform their functions in relation to the said area, or persons or classes of persons, or incomes or classes of income, or cases or classes of cases, in accordance with such general or special orders in writing as 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.

(3) Within the limits of the areas 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 the 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 principle place of his business or profession is situate within the area, and (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 provision 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." The assessee has filed return with ITO, A-Ward, Co. Dist. III, Calcutta under section 139(1) on 31-7-1984, as it is evident from original assessment order dated 13.2.1987 and the assessee has also filed its objection vide letter dated 18-8-1984 addressing the same to the ITO, A-Ward, Co. Dist. III, Calcutta on 18-8-1984. This letter is received by the ITO under seal and signature on 18-8-1984 as it is evident from the copy of the letter placed at page 7 of the paper book No. 2. It is noticed that this letter is filed within a month as required in section 124(5) and, therefore, the contention of the assessee is correct that the objection letter was filed within 18 days of filing of the return.

The contents of the assessee's letter dated 18-8-1984 are very short and are being reproduced as under for the sake of convenience :- "We have wrongly filed a return of income for the assessment year 1984-85 with your office. But the return should have been filed in Kanpur as the company has been carrying on its business at Kanpur during the relevant accounting year. Most of the Directors are also permanent residents of Kanpur. There is no activity of the company at Calcutta. The entire control and management of the company is in Kanpur. Therefore, the return which we filed inadvertantly may be treated as withdrawn and the same may be transmitted to the Ld. ITO, Company Circle, Kanpur for completion of the assessment of the assessee-company for the said assessment."

(i) That the assessee has wrongly filed a return of income for the assessment year

1984-85 inadvertently.

(ii) That there is no activity of the assessee-company in Calcutta and the assessee-company has been carrying on its business at Kanpur, the entire control and management of the company is in Kanpur and most of the directors are permanent residents of Kanpur.

(iii) That the return wrongly filed may be treated as withdrawn and may be transmitted to the ITO, Co. Cir., Kanpur.

14. In this way we find that the assessee has called in question the jurisdiction of the Assessing Officer, Calcutta within the prescribed time under section 124(5) and the Assessing Officer was duly bound to consider and act upon such objection to his jurisdiction on merits. But the ITO, Calcutta has completely ignored the objection raised by the assessee and has failed to send any intimation to the assessee and has also failed to refer the matter to the Commissioner under section 124(6) for determination under section 124(4) of the Act.

15. Thus, we come to the conclusion that the Assessing Officer has not followed the legal procedure laid down in section 124 when his jurisdiction over the case was called in question by the assessee and was challenged within the time prescribed in section 124(5). There is no material or evidence to show that the Assessing Officer has considered the objection on merit and being not satisfied with the correctness of the claim, has rejected the objection or referred the matter for determination under sub-section (4) of section 124 of the Commissioner or Commissioners before making the assessment as laid down in sub-section (6) of section 124. It is now crystal clear that neither the Assessing Officer has outrightly rejected the objection filed by the assessee nor has referred the matter to the Commissioner or Commissioners but has proceeded to completed the assessment under section 144/251 at his sweet will and in violation of all the provisions of law envisaged and legal procedure laid down in section 124. In our opinion, therefore, such assessment completed without rejecting the objection of the assessee and without referring the matter to the Commissioner or Commissioners is without jurisdiction and, therefore, is null and void. Our view is duly supported by Allahabad High Court decision in the case of Dinanath Hemraj v. CIT [1927] ILR

16. The assessee's contention is that the Assessing Officer has completely ignored the objection and has not sent any intimation to the assessee and, therefore, by his silence impliedly has accepted the assessee's objection as to the absence of the jurisdiction. In order to support his contention the learned counsel for the assessee Sri Kundu has relied on the following decisions wherein it was held as under :- (i) Lachman Chaturbuj Java's case (supra) - "that for the assessment year 1970-71, the assessee had applied for an extension of time for filing returns till December 1970. The department had vouchsafed no reply. The assessee was justified in assuming that silence on the part of the department was content and that time was extended till December 1970 to file the returns." (ii) Gordhanbhai Jethabhai's case (supra) - "that the applications for extension of time for furnishing returns were not disposed of by the ITO. Under the circumstances, the assessee could have reasonably entertained the belief that his applications were granted by the ITO." (iii) Harmanjit Trust's case (supra) - "that a duty is cast on the ITO to intimate the assessee whether its request for extension of time for furnishing the return had been granted or refused. If there is no reply within a reasonable time from the ITO, the assessee could presume that his request for extension of time had been granted." It is noted that neither the receipt of objection raised by the assessee is denied by the department nor the department has come forward with any material or evidence to prove that any intimation to the assessee or reference to the Commissioner or Commissioners was made. This simply means that the Assessing Officer has failed to discharge his duty cast on him to intimate to the assessee whether its request is granted or refused. As there was no reply within a reasonable time the assessee was justified in assuming that silence on the part of the revenue was consent. In the light of the above cited decisions and on these facts and circumstances of the case, we are of the view that the contention of the assessee is correct and the assessee has reasonably entertained the belief that its application for treating the return of income filed with the ITO, Calcutta as withdrawn was granted and has correctly submitted its return to the ITO, Kanpur.

In terms of jurisdictional (Calcutta) High Court's decision in the case of CIT v. Janata Film Exchange (P.) Ltd. [1993] 202 ITR 532 also it is presumed that the ITO, Calcutta has treated the return of income filed with him as withdrawn by the assessee and, therefore, the ITO is deprived of the jurisdiction over this case. In other words, the assessment made by the Assessing Officer, Calcutta on the basis of the return of income treated to have been withdrawn and transferred to ITO, Kanpur is without jurisdiction and is illegal. Once the return of income is withdrawn by the assessee and is treated by the department to have been withdrawn it becomes non est in the eyes of law and any assessment made on such return being non est is bound to be null and void.

17. It is also seen that after filing the objection on 18-8-1984 and getting no response or intimation from the ITO, Calcutta the assessee has filed the return of income with ITO, Co. Cir., A-Ward, Kanpur on 16-3-1985 and the assessment is completed under section 143(3) on 29-3-1985. Although the assessment for this assessment year was completed on 29-3-1985 at Kanpur, the ITO, Calcutta also completed another assessment under section 144 on 13-2-1987 and when it was set aside by the CIT(A), Calcutta on 25-11-1987, it was reframed under section 144/251 on 20-3-1990, ignoring the direction of the CIT(A) to consider the assessment already made by the ITO, Kanpur. Thus, the actions of the department at both the places have resulted in double assessments of the same assessee for the same assessment year. This fact has not been controverted by the department and the assessment made at Kanpur has also not been so far cancelled/set aside by the CIT, Kanpur as in the cases of other assessments for the assessment years 1985-86, 1986-87 and 1987-88, as mentioned by the Assessing Officer in his order dated 20-3-1990. The actions resulting in double assessments are, therefore, in violation of the principles of natural justice and, therefore, the second assessment made on 20-3-1990 at Calcutta after the first assessment was completed at Kanpur as early as on 29-3-1985 cannot survive in the eyes of law. The present assessment under consideration is, therefore, null and void on this ground as well.

18. Coming to the arguments and contentions of the department it is noticed that the first contention raised by the learned D.R. Sri S.Prakash about non-furnishing

of the first CIT(A)'s order is our opinion, neither material nor relevant insofar as contents of that order are admitted by the Assessing Officer and the CIT(A) in their orders. The facts and directions contained in the orders of the CIT(A) are neither denied nor disputed by both the parties. However, we have perused the order of the CIT(A) No. 188/C-III/CIT(A)-X/87-88 dated 23-11-1987 a copy of which is placed on the assessment record for the assessment year 1984-85 requisitioned for the purpose. This contention is, therefore, rejected. The next contention of the revenue that the CIT(A) has upheld the jurisdiction is also not tenable as the CIT(A) has completely ignored the objection raised by the assessee in its petition dated 18-8-1984 and has completely misdirected himself on the point of jurisdiction. The third argument of the learned D.R. that the CIT, Kanpur has set aside the assessment orders for the assessment years 1985-86, 1986-87 and 1987-88 also does not help the cause of the department as the assessment order for the assessment year 1984-85 which is under consideration is not set aside by the CIT, Kanpur for the reasons best known to him. In this context, the learned D.R. has raised very important contention to save the jurisdiction of the Assessing Officer, Calcutta that the assessee has not filed second appeal against the first appellate order and, therefore, has accepted the jurisdiction of the ITO, Calcutta. We notice that while setting aside the original assessment order the CIT(A) has directed the Assessing Officer, Calcutta to reframe the assessment after considering the claim of the assessee that it had filed its return in Kanpur where the assessment has already been completed. In our opinion, therefore, since the whole assessment was set aside by the CIT(A) and as the most fatal objection of the assessee about the completion of the assessment at Kanpur was under consideration of the department at Calcutta, it was neither prudent nor necessary on the part of the assessee to file a second appeal without exhausting all the remedies available at the level of the authorities below. The Assessing Officer, Calcutta could have dropped the proceedings for this assessment year or could have moved the CIT, Kanpur to cancel the assessment made at Kanpur under section 263. Either of the two actions could have solved the problem and could have served the legal purpose. The third alternative was also open to the Assessing Officer, Calcutta to refer the matter to the Commissioner, Calcutta or to the Commissioner, Calcutta and Commissioner, Kanpur for determination under

sub-sections (4) and (6) of Section 124. This contention of the learned D.R., therefore, does not hold good as waiting for the legal and remedial action against the pending objection, and appeal cannot be treated as acceptance on the part of the assessee as it is evident from the facts and circumstances of the case.

19. Then, in order to protect the jurisdiction of the Assessing Officer, Calcutta, the learned D.R. relied on the decisions rendered by the Orissa High Court in the case of Shivkumar Agrawal (supra) and by the Patna High Court in the case of Mahalliram Ramniranjan Das (supra).

In the case of Shivkumar Agrawal (supra), the Orissa High Court has held that "where a proceeding has been validly initiated but has been disposed of by an officer having no jurisdiction, the proceeding itself does not come to an end. The same is to be finalised by the officer having jurisdiction." 20. In the case of Shivkumar Agrawal (supra), the IAC had jurisdiction to impose the penalty but that jurisdiction was taken away by the amendment of the Act and, therefore, the imposition of penalty under section 271(1)(c) by the IAC was not valid. In our opinion, in the instant case neither there is overlapping of jurisdiction nor there is any withdrawal of jurisdiction by any amendment in the Act and, therefore, this case law does not support the cause of the Revenue because of the different facts and circumstances of the instant case.

In the instant case, the assessment proceedings do come to an end in view of an assessment already made at Kanpur.

21. In the case of Mahalliram Ramniranjan Das (supra), the Patna High Court has held under :- "that this was not a case of total lack of jurisdiction. In the present case, the irregularity had occurred at the stage after a petition was filed objecting to the jurisdiction of the Income-tax Officer. 'C' Ward, to proceed with the case and the Income-tax Officer without referring the matter to the Commissioner for deciding the matter, himself completed the assessment. Thus, the irregularity was at that stage and so the case had to be restored to that stage." In our opinion, the ration of this decision is also not applicable to the instant case because of distinguishing features, facts and circumstances of the case. In the case of Mahalliram Ramniranjan Das (supra), the assessee was regularly assessed to tax

as a regular assessee while the present assessee is a new assessee. In that case subsequently the CIT directed that those having hotel business should be assessed by a different ITO. In the present case there is no such direction of the CIT. In that case as the assessee derived income only partly from hotel business filed objection to transferee ITO who did not refer the same to the CIT whereas in the instant case the assessee objected on the basis of shifting of place of distinction is evident that in that case the objection was on the ground that the assessee derives only partly income from hotel while in the instant case it was on the basis of territorial jurisdiction and carrying on of the principal business at Kanpur. Then that case was not a case of total lack of jurisdiction while the instant case was a case of total lack of jurisdiction. In the instant case, therefore, in our opinion, in view of total lack of jurisdiction and double assessments at two places, the irregularity deliberately committed by the Assessing Officer, Calcutta cannot be restored to that stage. In this view of the matter we are of the view that this case law also does not help the cause of the Revenue.

22. In view of these facts and legal position all other contentions and arguments raised by Sri S. Prakash, the learned D.R. are rejected as in our opinion, neither they are relevant nor tenable. Thus, in view of the above discussion as the provisions of section 124(4) which are mandatory are violated and the objection of the assessee regarding question of jurisdiction was not decided by the Commissioners concerned or by the Board, in our view the assessment order under section 144/251, dated 20-3-1990 is vitiated. Our view gets due support from the Punjab & Haryana High Court decision in the case of Joginder Singh v. CIT [1981] 128 ITR 14 wherein it was held as under :- "that the I.T. authorities had to deal with the application under section 124(4). The fact that the assessee had given an address in Jullundur or that he had originally acquiesced in the proceedings were immaterial. The order of assessment passed in violation of section 124(4) was not valid and was liable to be quashed, and a fresh order had to be passed after deciding the question of jurisdiction." 23. The question of fresh assessment order does not arise in this case as the first assessment has already been made by the ITO, Kanpur and the same has not been cancelled or set aside by the CIT, Kanpur. That assessment, therefore, has become final from all angles. Then the Allahabad High Court decision in the case of ITO v. Firm Madan Mohan

Damma Mal [1968] 70 ITR 293 also supports the view taken by us. While commenting on the sub-section (6) of section 124 of the Act, the Hon'ble High Court has observed as under at page 299 :- "This sub-section contemplates that an Income-tax Officer where he is satisfied with the correctness of the claim will himself refuse to proceed with the assessment. But where he is not satisfied with the correctness of the claim, he will refer the matter to the Commissioner. This at least contemplates that the Income-tax Officer has to apply his mind and to come to a conclusion whether he has jurisdiction or not." In the present case neither the ITO has refused to proceed nor has referred the matter to the CIT but has preferred to make the assessment which is invalid, illegal and without jurisdiction.

24. On the facts and in the circumstances of the case, in our opinion, the assessment in this case does not fall within the scope of section 124(7) as well as the assessment is declared invalid as it was made without following the procedure laid down in sub-sections (1) to (6) of section 124 of the Act. In the case of *Kanjimal & Sons v. CIT* [1982] 138 ITR 391/[1983] 12 Taxman 34, the Delhi High Court has held at page 417 as under :- "In our opinion, therefore, the provisions of sub-section (7) of the section 124 cannot be availed of to support the assessment. It seems to us, therefore, that once it is held that the assessment is invalid for being made without following the procedure outlined under sub-sections (1) to (6) the provisions of sub-section (7) will be of no avail to sustain the validity of an assessment which includes income from beyond the territorial jurisdiction of the ITO who made it." In this way we come to the conclusion that the assessment made by the Assessing Officer, Calcutta is a clear case of violation of the principles of natural justice and, hence, the assessment is null and void. Since the proceedings are nullity in law and they come to an end, the assessment passed on them being void ab initio cannot survive in the eyes of law. If the Assessing Officer had jurisdiction but and made some omission of irregularity, the same may be made good. But in the present case, the proceeding is nullity where the Assessing Officer taking it had to jurisdiction over the subject-matter of the proceedings and, therefore, the lack of jurisdiction coupled with double assessment enable us to declare the assessment null and void. In view of this as well as for the reasons mentioned in the above paragraphs we hold that since the proceedings in this case are nullity in law and the assessment framed by the Assessing Officer,

Calcutta is null and void, the CIT(A) was not justified in upholding the same. The order of the CIT(A) is, therefore, vacated and the assessment order is annulled.

25. It is not necessary to decide the other grounds of appeal as the assessment is annulled on the basis of first two grounds.

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