# आयकर अपीलीय अधिकरण, कटक न्यायपीठ,कटक

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**

**BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM**

**आयकर अपील सं./ITA No.160/CTK/2010**

(**निर्धारण वर्ष /** Assessment Year :2006-2007)

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|---|---|---|
| Shri Dillip Kumar Chatterjee,<br>At/Po: Boneikela,, Joda,<br>Dist: Keonjhar, Orissa | Vs. | ACIT(OSD), Range-2,<br>Bhubaneswar |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **ACXPC 2491 A** | | |
| (अपीलार्थी **/Appellant**) | .. | (प्रत्यर्थी / **Respondent**) |

निर्धारिती **की ओर से** /Assessee by : Shri P.C.Sethi, AR

राजस्व **की ओर से** /Revenue by : Shri D.K.Pradhan, DR

सुनवाई की तारीख **/ Date of Hearing : 23/07/2018**

घोषणा की तारीख**/Date of Pronouncement 23/08/2018**

## आदेश / O R D E R

***Per Shri Pavan Kumar Gadale, JM***:

This is an appeal filed by the assessee against the order of CIT(A), Cuttack, dated 30.11.2009 passed in I.T.Appeal No.263/08-09 for the assessment year 2014-2015.

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

> *1. That, the learned CIT (A) has committed a serious error by not annulling the assessment order along with the demand notice as processing u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred as 'the Act') has not been made before issuance of notice u/s 143 (2) of the Act or within the time limit prescribed in that section.*
>
> *2. That, the order of assessment is barred by limitation as the assessment order has been served on the appellant on 19.01.2009 and for that matter the assessment order along with demand notice is liable to be quashed and/or annulled.*
>
> *3. That, the learned CIT(A) has committed a serious error by treating the assessment made by the Asst. Commissioner of Income-Tax (OSD), Bhubaneswar is within the jurisdiction and for that matter the assessment order is liable to be quashed and/or annulled along with demand notice as the Asst. Commissioner of Income-tax (OSD), Bhubaneswar is not*

*having the jurisdiction to assess the income of the appellant in accordance with the provisions of the Act.*

4. *That, the learned CIT (A) has committed a serious error in not giving an opportunity to the appellant when the appellant through the written submission has categorically requested to resolve the issue of jurisdiction before proceeding to the merit of the case as the matters relating to merit of the assessment order will be academic until and unless the matter of jurisdiction of the Assistant Commissioner of Income-tax (OSD), Bhubaneswar is resolved.*

5. *That, the learned CIT (A) has committed a serious error by not considering the principles of natural justice as raised by the appellant in the Grounds of Appeal No-3 in his appellate order and for that matter the order of CIT (A) is liable to be set aside.*

6. *That, the learned CIT (A) has committed a serious error by going into the merit of the grounds of appeal without giving an opportunity of being heard to the appellant as the appellant has categorically requested to decide that issue of jurisdiction and in any case before proceeding to the matter of merits of the assessment the learned CIT (A) should have given an opportunity of being heard regarding the merit of the case citing the reason that the issue of jurisdiction does not stand the test of appeal and for that the order of the CIT (A) is liable to be set aside or annulled.*

7. *That, the learned CIT (A) has committed a serious error by not interpreting the section 40(a)(ia) of the Act before confirming the addition of Rs.1,16,000/- and Rs.65,67,791/- regarding payments made to Pattnaik Minerals Pvt. Ltd and truck drivers respectively as per Ground of Appeal No-5 and 7 raised before him and for that matter the appellate order is liable to be set aside to the file of the CIT (A) for its consideration.*

8. *That the appellant may add, alter, delete or modify any of the grounds at the time of hearing of the matter.*

3. Brief facts of the case are that the assessee is in the business of contractor in mines and crusher works and filed the return of income on 31.10.2006 for the A.Y.2006-07 declaring total income of Rs.6,86,900/-. The return of income was processed u/s.143(1) of the Act. Subsequently the case was selected under scrutiny and notices u/s.143(2) & 142(1) of the Act along with detailed questionnaire were issued. In compliance of

the same, ld. AR appeared before the AO and case was discussed. The AO on perusal of the financial statements was not satisfied with the explanations and made additions on the expenses claimed by the assessee on the provisions of Section 40(a)(ia) of the Act, sundry expenses, deduction u/s.80G and passed order u/s.143(3) of the Act, dated 24.12.2008.

4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). In the appellate proceedings on the validity of issuance of notice, where the CIT(A) has observed that the notice issued u/s.143(2) of the Act is within the time and, therefore, dismissed the assessee's grounds. The assessee raised other grounds that the AO has no jurisdiction to pass the order and, therefore, the assessment order is to be annulled. Ld. CIT(A) dealt on the disputed issue of jurisdiction at page 3 to 5 as under :-

> *"Further during the course of appellate proceedings the A/R of the assessee kept repeating the contention that ACIT(OSD), Range-2, Bhubaneswar is not an Assessing Officer and hence has no jurisdiction to pass assessment orders. In fact the A/R is not aware about the change in the scheme of jurisdiction which has been effected by the CBDT after restricting of the Income Tax Deptt. from 01.8.20008. After 01.8.2008 the jurisdiction over all the assessee in an area jurisdiction is vested with the Additional CIT/Jt. CIT of the concerned Range. All the officers posted in that Range other than the Tax Recovery Officer have concurrent jurisdiction over all the cases in that Range with the Addl. CIT/Jt. CIT of that Range. It is only to ensure effective work load distribution that the Addl. CIT/Jt. CIT passes office orders assigning any particular case to any officer posted in his Range. No order u/s.127 of the I.T.Act, 1961 is necessary for transferring the cases from one AO to another AO within the same Range. Such transfers can be effected by the Addl. CIT/Jt. CIT by Internal Office Orders since no change in jurisdiction is involved because all Officers have concurrent jurisdiction over cases of that Range.*

> *The reliance of the A/R on the decision of the Hon'ble Cuttack High Court (Orissa) in the case of ITO & Others Vrs. U.K.Mohapatra & Co. & Others in Civil Appeal No.5067 of 2009 is of no avail to the A/R in this case. In that case the Jt. DIT(Inv.) Unit-II has issued authoriziation in favour of ITO(Hqrs.). The Hon'ble Court held that ITO (Hqrs.) was not an Assessing Officer because no notification could be produced by the Departmental Counsel to prove that the powers of the AO had been vested in the ITO (Hqrs.).*
>
> *In the instant case the facts are completely differently. ACIT(OSD), Range-2, Bhubaneswar has been posted to Range-2, Bhubaneswar by the orders of the Chief Commissioner of Income Tax, Orissa Region, Bhubaneswar. As clarified earlier in the order all officers posted to a particular Range function as Assessing Officers and have concurrent jurisdiction over all the cases of the Range. It is only through Office Orders in order to efficiently manage the workload of the Range the Addl. CIT/Jt. CIT assigns cases for such Officer.*
>
> *In view of the above the contention of the A/R that the order has been passed without jurisdiction is not correct.*

In respect of other grounds, ld. CIT(A) has dealt on the facts and concurred with the findings of AO and dismissed the assessee's appeal.

5. Aggrieved by the order of the CIT(A) the assessee filed the present appeal before the Tribunal.

6. Before us, at the time of hearing ld. AR submitted that he has filed the additional grounds of appeal and also affidavit in respect of restructuring and jurisdiction of Income Tax Department. Ld. AR argued on the jurisdictional aspects though raised various grounds of appeal in the Form No.36 filed along with appeal papers. On the jurisdiction aspects the ld. AR submitted that the order passed by the ACIT(OSD), Bhubaneswar is without jurisdiction which is contrary to the provisions of the Act. Ld. AR referred to the assessment year without going into the additions that the Assistant Commissioner Income Tax(OSD), who has passed the order on 24.12.2008 is without any basis or any jurisdiction

and further the grounds raised before us is in respect of the jurisdiction for passing the order and also non-consideration of submissions by the lower authorities. Ld. AR also demonstrated that the matter pertains to assessment year 2006-07 and the appeal was filed in the year 2010 and the assessee is a senior citizen now and having the health ailments. Ld. AR also relied on the affidavit filed in the course of hearing proceeding held on 19.05.2015 :-

**BEFORE THE INCOME-TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK.**

| | | |
|---|---|---|
| Name of the Appellant | : | Sri Dillip Kumar Chatterjee |
| Assessment Year | : | 2006-07 |
| Appeal No | : | 160/CTK/2010. |

The Appellant most humbly submits this affidavit before this Hon'ble Tribunal.

**AFFIDAVIT**

19 MAY 2015

I, Shri Dillip Kumar Chatterjee, S/o Late Umakanta Chatterjee, aged about 72 years, at present residing at Boneikela, Joda, Dist:- Keonjhar, Orissa do hereby solemnly affirm as follows:

1. That, I am the deponent of this affidavit.
2. That, the learned CIT(A), Cuttack in his order in the case of Dilip Kumar Chatterjee dated 30.11.2009 in IT Appeal No. 263/08-09 has mentioned that the A/R is not aware about the change in the scheme of jurisdiction which has been effected by the CBDT after restructuring of the Income Tax Deptt from 01.08.2008. After 01.08.2008 the jurisdiction over all the assessee in an area jurisdiction is vested with the Additional CIT/ Jt. CIT of the concerned Range
3. That, in this regard, I hereby swear that no such order dated 01.08.2008 of the CBDT, New Delhi as cited by the CIT (A) is available regarding the restructuring of the scheme of jurisdiction.
4. That, the Facts stated above are true to the best of my knowledge and belief.
5. That, this Affidavit is being affirmed for filing the same before the Honorable Income Tax Appellate Tribunal, Cuttack Bench, Cuttack.

IDENTIFIED BY

Advocate

19.05.15 Dilip Kumar Chatterje

DEPONENT

DUSASAN SAMANTARAY
NOTARY, GOVT. OF ODISHA
DIST-KHURDA,BBSR,ODISHA
REGD.No-88/2012
NOTARY PUBLIC, BHUBANESWAR

7. The ld. AR also relied on the paper book filed in the year 2016 and referred to the ordersheets maintained by the ACIT(OSD) at page 6 to 9 and the judicial decisions. Ld. AR also relied on the order dated 25th November, 2008 issued by the Additional Commissioner of Income Tax, Range-2, Bhubaneswar wherein cases regarding various assessees including the assessee in the present appeal have been assigned to the ACIT(OSD) for the purpose of completion of time barring scrutiny assessment for the A.Y.2006-07. Ld. AR further submitted that the AO passed order without complying the provisions of Section 127 of the Act. Ld. AR also relied on the following judicial decisions and prayed for allowing the appeal of the assessee :-

i) U.K.Mahapatra And Company And Others Vs. ITO & Ors., 196 ITR 243 (jurisdictional High Court);

ii) Bindal Apparels Limited Vs. ACIT, 85 ITD 414 (ITAT Delhi Bench)

8. Contra, ld. DR vehemently opposed to the submissions and referred to the Gazette Notification and the orders passed by the CBDT and also filed written submissions, which read as under :-

> *"It is humbly submitted that during the course of hearing in the above mentioned case the Hon'ble ITAT Cuttack bench, Cuttack has drawn my attention in regards to the affidavit made by the appellant on 19.05.2015 copy of which was submitted before the Hon'ble bench. In the said affidavit the appellant has sworn that he was not aware about the change of scheme of jurisdiction notified by CBDT w.e.f 01.08.2008. After 01.08.2008 the jurisdictional areas of all the assesses are vested with Addl. CIT/Jt.CIT of the concerned range. Further it was also sworn by the appellant that no such order dated 01.08.2008 of the CBDT as cited by the CIT(A) is available regarding the restructuring of scheme of jurisdiction.*
>
> *In this connection it is respectfully submitted that as per the CBDT notification dated 3rd July 2001, the Addl. CIT/ Jt. CIT has the concurrent jurisdiction over all the assesses of the range and he is*

*empowered to ensure effective work load distribution among the officers of the Range. In this case, as empowered by the said CBDT notification the Addl. CIT has passed the order distributing the cases among the officers of his range and there is no necessary of passing separate order u/s 127 of the I.T. Act, 1961 by the CIT.*

*Further, it is humbly submitted that the learned CIT (A) in his order at page-3 has mentioned that the effective date of scheme of jurisdiction made by CBDT after restructuring of the department mentioned as 01.08.2008. However the said notification came into force w.e.f. 01.08.2001. The date mentioned by the CIT (A) may be an inadvertent typographical error.*

*The claim of appellant that the orders passed by Addl.CIT is without any jurisdiction has no merits.*

The ld. DR has also filed documents of Gazette notification dated 31st July, 2001 and also the order of jurisdiction by the Commissioner and prayed that the appeal of the assessee has no merit and deserves to be dismissed.

9. Ld. AR filed counter to the documents filed by the department and submitted as under :-

*Counter to the documents produced by the Income-tax department.*

*Most Respectfully Sheweth :*

*That, the learned CIT (A), Cuttack while passing the order in the above referred case has referred and relied to a letter dated 01.08.2008 issued by the Central Board of Direct Taxes, New Delhi so as to justify the action of the Joint Commissioner of Income-tax, Bhubaneswar in transferring the case from ACIT, Circle-2(1), Bhubaneswar to the ITO, Khurda Ward, Khurda and thereafter from the ITO, Khurda Ward, Khurda to the ACIT (OSD), Range-2, Bhubaneswar.*

*That, the appellant in the written notes of submission alongwith paper book submitted in this regard inter alia categorically stated that no such letter of the CBDT is available and for which the Hon'ble Tribunal directed the appellant: to submit an affidavit to that effect. Accordingly, the appellant has submitted an affidavit before the Hon'ble Tribunal mentioning categorically that no such documents exist as has been referred by the learned CIT (A), Bhubaneswar.*

*That, after receiving the affidavit the Hon'ble Tribunal has directed the Respondent - Income-tax Department to produce the letter dated 01.08.2008 issued by the Central Board of Direct Taxes, New Delhi. The Income-tax department after taking so many adjournments on 29th October, 2015 has finally submitted before the Hon'ble Tribunal that no such document exists which has been referred and has produced some other documents in the open court, which are as under.*

*a) Gazette notification dated 31.07.2001.*

*b) Order No.50/2008-09 dated 19.11.2008 issued by the Chief Commissioner of Income-tax, Bhubaneswar.*

*c) Letter issued by the Joint Commissioner of Income-tax, Range-2, Bhubaneswar to the Joint Commissioner of Income-tax (Sr. DR), office of the Commissioner of Income-tax (ITAT), Cuttack dated 14.10.2014.*

*d) Order of the Additional Commissioner of Income-tax, Range-2, Bhubaneswar dated 11.08.2008.*

*e) Jurisdiction order u/s 120 of the IT. Act, 1961 issued by the Commissioner of Income-tax, Bhubaneswar dated 31.10.2006.*

*That, the Respondents - Income-tax Department has failed to produce any submission in writing for not submitting the order of the CBDT, New Delhi dated 01.08.2008 as relied by the learned CIT (A), Cuttack in the impugned appellate order dated 30.11.2009. That, since the said order is the judicial order, the Respondent - Income-tax Department is not permitted to say that this is a typographical mistake and for which the averments made by the Respondents being fallacious is liable to be rejected.*

*In any case, the Respondent's submission that the jurisdiction over the appellant lies with Sri A.K. Bandopadhyay, ACIT (OSD) by virtue of order No.50/2008-09 shall not be taken as a ground for justifying the change of jurisdiction from ITO, Khurda Ward,. Khurda to the ACIT (OSD), Bhubaneswar. The averments dated 14.10.2014 made by the Joint Commissioner of Income-tax, Range-2, Bhubaneswar is fallacious and the enclosures have not been made in respect of the averments made by the Joint Commissioner of Income-tax, Range-2, Bhubaneswar dated 14.10.2014.*

*The Respondents-Income-tax Department has submitted the Gazette Notification dated 31.07.2001 and the order of the Commissioner of Income-tax, Bhubaneswar dated 31st October, 2006 is incomplete due to lack of complete schedule for which the Hon'ble Tribunal may direct the Respondents - Income-tax Department to submit both the documents dated 31.7.2001 and 31.10.2006 in totality and not in a piecemeal manner as has been* *done. The said action of the authorized representative of the IT. Department in submitting the incomplete documents before the Hon'ble Tribunal without following the Rules and procedures of the ITAT shows the callous approach of the authorized representative of the IT. Department before the Hon'ble Tribunal and for which the appellant will be seriously prejudiced.*

***Prayer***

*The appellant therefore prays your lordship to quash the order passed by the Assistant Commissioner of Income-tax (OSD), Bhubaneswar in the aforesaid case being illegal and without jurisdiction."*

10. We have heard rival submissions and perused the material on record and also the documents produced before us by the assessee and the department in the earlier hearings. Before we go into adjudication of issues, we refer to the order sheet dated 19.05.2015, which reads as under :-

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| *23* | *Appellant : Mr. P.C.Sethi* |
| *19/5/2015* | *Respondent : Mr. Shovan Krishan Sahu* |

*Ld. Counsel for the assessee has filed an affidavit stating therein that no circular of CBDT relating to conferring the jurisdiction over the Addl. CIT to transfer cases from one AO to another AO within his range is available. From the affidavit it is not clear whether CBDT has ever issued any circular in this regard. Therefore, the Department is directed to produce the circular if any in this regard before the tribunal on the next date of hearing. Accordingly, hearing is adjourned sine die and to be listed for the next bench.*

| | |
|---|---|
| *Sd/-* | *Sd/-* |
| *BPJ* | *SKY* |
| *(AM)* | *(JM)* |

In continuation of hearing proceedings, the contention of ld. AR is that the order is without any jurisdiction. Ld. AR also relied on the judicial decisions to support his case. Further ld. AR before us has argued only on the jurisdictional aspects and has not argued on any other grounds or additional grounds. First of all, we would like to reproduce Section 2(7A) of the Income Tax Act, 1961, where the definitions of Assessing Officer has been provided :-

> *"**2(7A) of the Income Tax Act,1961**.*
>
> *"Assessing Officer" means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act ;*

11. Further, the jurisdiction of Assessing Officers has been defined under Section 124 of the Income Tax Act, 1961, which reads as under :-

> **Section 124 of the Income Tax Act, 1961 :**
>
> *Jurisdiction of Assessing Officers.*
>
> *124(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. ............*
>
> *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 115 WH 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. It is pertinent to note that w.e.f. 1.6.2016 the Finance Act, 2016 is inserted the following sub-clause (c) :*
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> *(c) where an action has been taken under section 132 or section 132A, after expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.*

12. A perusal of sub-section (3)(*b*) of section 124 of the Act shows that the jurisdiction of an Assessing Officer cannot be called in question by an assessee after the expiry of one month from the date of which he was served with a notice under sub-section (1) of section 142 of the Act or after completion of assessment, which was to be earlier. It is further evident that sub-section (4) of section 124 of the Act has been made subject to the provisions of sub-section (3) in case an assessee has questioned the jurisdiction of an Assessing Officer. It is only in those jurisdictions that the Assessing Officer is to refer the matter for determination to the Director General or the Chief Commissioner or the Commissioner as per the provisions of section 124(2) of the Act. It is, thus, evident that before the expiry of the period of one month from the date of service of notice under sub-section (1) of section 142 of the Act, no right to question the jurisdiction of an Assessing Officer would survive.

13. In this case, it is undisputed position that the return of income was filed on 31.10.2006 declaring taxable income at Rs.6,86,900/- and upon

issuance of statutory notice, ld. AR of the assessee appeared and submitted the details. Finally the ACIT(OSD), Range-2, Bhubaneswar after hearing the Authorised Representative of the assessee on various dates i.e on 5.12.08, 10.12.08, 15.12.08, 19.12.08 and 23.12.08 framed the assessment u/s.143(3) of the Act on 24.12.2008.

14. However, in the present case in hand, the important question is as to whether the Additional Commissioner of Income Tax is empowered to transfer the cases to any other the Assessing Officers. Power to transfer of cases to the Assessing Officers has been defined u/s.127 of the Income Tax Act, 1961, which reads as under :-

> ***"[Power to transfer cases.***
>
> ***127.*** *(1) The [Principal Director General] or Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal 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 Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner,—*
>
> *(a) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal 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 [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners 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.]"*

15. From the above provisions of Section, it is understood that the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, can transfer any case from one or more Assessing Officers subordinate to him. In the instant case the Additional Commissioner of Income Tax vide order dated 25th November, 2008 has passed an order and reassigned the case of the assessee to the ACIT(OSD) and forwarded the copies to the Chief Commissioner of

Income Tax and Commissioner of Income Tax accordingly. Here, we would like to mention the functions of Additional Commissioner of Income Tax provided in the Manual of Office Procedure, Directorate of Income Tax (Organisation & Management Services) Central Board of Direct Taxes, Department of Revenue, Government of India, February, 2003, reads as under :-

> *18 Functions of Additional/Joint Commissioner of Income Tax (Range)*
>
> *18.1 After restructuring of the department, the business process has been redesigned to make it Range-centric, thus emphasizing the pivotal role of the Range-head. Additional/Joint Commissioner, who is the head of the Range, exercises concurrent jurisdiction and may, as such, also be required to formulate assessments in revenue yielding and complex cases. The assessment unit of the Range consists of five assessing officers (one DCIT/ACIT and four ITOs). The collection unit in a Range is headed by a TRO who is responsible for collection and recovery of tax. The Record Keeping Unit of the Range is headed by an Administrative Officer/Office Superintendent.*
>
> *18.2 As head of the range, the main functions of the Addl./Joint Commissioner of the Income Tax are :*
>
> *i. Supervision and control ii. Statutory functions*
> *iii. Effective tax-payer services*
> *iv. Expansion of tax-base*
> *v. Judicial functions*
> *vi. Processing of TEPs*
> *vii. Computerization*
>
> *Note: Detailed functions of the Range are enumerated in the relevant chapters of this Manual such as 'Office Management', 'Assessment Procedure', etc.*

16. From the above, it is clear that the Additional/Joint Commissioner, is the head of the Range, exercises concurrent jurisdiction and may, as such, also be required to formulate assessments in revenue yielding and complex cases and the assessment unit of the Range consists of five assessing officers (one DCIT/ACIT and four ITOs). The proposal to assign

cases to an ACIT(OSD) is generally moved or held from the Range Head. However, cases are assigned by a Commissioner of Income Tax only after passing a specific order assigning cases to an ACIT(OSD), as he is always an adjunct in the office of the CIT. Therefore, he is specifically designated to perform the duties of an AO.

17. In this case, although the office of the Chief Commissioner of Income Tax, vide order No.50/2008-09, dated 19th November, 2008 has transferred/posted the Assistant Commissioner of Income Tax (A.K.Bandopadhyay, who is the Assessing Officer in the present appeal) to the office of the Commissioner of Income Tax, Bhubaneswar, copy of which is placed on record by the Department along with written submission filed on 15.06.2017), however, the office of the Additional Commissioner of Income Tax, has assigned the cases to the ACIT(OSD) vide order dated 25.11.2008. Before us, ld. DR could not place any authorization or order issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act by the Commissioner authorizing an Additional Commissioner of Income Tax to assign or reassign the cases to the Assessing Officers, neither any CBDT Circular supports the Additional Commissioner of Income Tax on record to transfer or reassign the cases to any other Assessing Officer.

18. The issue involved in this appeal can also be viewed from one another angle. The issue involved is that the Assistant Commissioner of Income Tax, Circle-2(1), Bhubaneswar, having jurisdiction over the case of the assessee, issued notice u/s.143(2) of the Act in exercise of that

jurisdiction. After exercise of that jurisdiction which was conferred upon him under law, can the case of the assessee be transferred to another officer i.e. ACIT(OSD), Range-2, Bhubaneswar without passing any order u/s.127 of the Act merely on the ground that the other officers also had concurrent jurisdiction over the case of the assessee.

19. We find that the issue is squarely covered by the decision of Hon'ble Delhi High Court in the case of **Valvoline Cumins Limited Vs. Deputy Commissioner of Income-Tax and others, [2008] 307 ITR 103 (Delhi)**, wherein it has been held as under :-

> *"When a power has been conferred upon two authorities concurrently, either one of them can exercise that power and once a decision is taken to exercise the power by either of those authorities, that exercise must be terminated by that authority only. It is not that one authority can start exercising a power and the other authority having concurrent jurisdiction can conclude exercise of that power."*

Further in para 29, the Hon'ble High Court has held as under :-

> ***"29.** It appears to us quite clearly that there is a distinction between concurrent exercise of power and joint exercise of power. When power has been conferred upon two authorities concurrently, either one of them can exercise that power and once a decision is taken to exercise the power by any one of those authorities, that exercise must be terminated by that authority only. It is not that one authority can start exercising a power and the other authority having concurrent jurisdiction can conclude the exercise of that power. This perhaps may be permissible in a situation where both the authorities jointly exercise power but it certainly is not permissible where both the authorities concurrently exercise power. One example that immediately comes to the mind is that of grant of anticipatory bail. Both the Sessions Judge and the High Court have concurrent power. It is not as if a part of that power can be exercised by the High Court and the balance power can be exercised by the Sessions Judge. If the High Court is seized of an application for anticipatory bail it must deal with it and similarly if the Sessions Judge is seized of an anticipatory bail, he must deal with it. There can be no joint exercise of power both by the High Court as well as by the Sessions Judge in respect of the same application for anticipatory bail."*

20. In view of the above decision of Hon'ble Delhi High Court, the ACIT(OSD), Range-2, Bhubaneswar could not have jurisdiction to pass the assessment order in case of the assessee as the ACIT, Circle-2(1), Bhubaneswar had already exercised the jurisdiction by issuing notice u/s.143(2) of the Act when admittedly no order u/s.127 of the Act was passed by the competent authority under that section.

21. Accordingly, we hold that the order passed by the Additional Commissioner of Income Tax, dated 25th November, 2008 re-assigning the cases to the ACIT(OSD), who is the Assessing Officer in the present case, is not maintainable and consequently, the orders passed by the AO and confirmed by the CIT(A) in the case of present assessee are hereby quashed. We order accordingly.

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

Order pronounced in the open court on 23/08/2018.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(N.S.SAINI)** | **(PAVAN KUMAR GADALE)** |
| **लेखा सदस्य / ACCOUNTANT MEMBER** | **न्यायिक सदस्य / JUDICIAL MEMBER** |

**कटक** Cuttack; दिनांक Dated 23/08/2018

प्र.कु.मि/PKM, Senior Private Secretary

**<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :**

1. अपीलार्थी / The Appellant-
   Shri Dillip Kumar Chatterjee,
   At/Po: Boneikela,, Joda, Dist: Keonjhar, Orissa
2. प्रत्यर्थी / The Respondent-
   ACIT(OSD), Range-2, Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/** BY ORDER,

(**Senior Private Secretary**)
**आयकर अपीलीय अधिकरण, कटक /**
**ITAT, Cuttack**