

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 06.08.2019

Pronounced on: 21.01.2020

CORAM

THE HON'BLE **DR.JUSTICE ANITA SUMANTH**

WP.(MD)No.20171 of 2016

and

WMP(MD)Nos.14462 and 15917 of 2016

Abdul Azeez Haroon

... Petitioner

Vs.

The Deputy Commissioner of Income Tax,
International Taxation,
Madurai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified Mandamus, to call for the records on the file of the Respondent in PAN: AABCW3559Q and quash the reassessment order dated 22.03.2016 passed under Section 144(1) read with Section 147 of the Income Tax Act.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mrs.S.Srimathy

ORDER

The petitioner challenges a notice under Section 148 of the Income Tax Act, 1961 ('Act') dated 30.03.2015 and an order of re-assessment dated

22.03.2016 passed in terms of Section 144(1) read with Section 147 of the Act.

2. Heard Mr.R.Sivaraman, learned counsel for the petitioner and Mrs.S.Srimathy, learned counsel for the respondent.

3. The petitioner is a non-resident Indian. According to the petitioner, he is assessable to tax under the jurisdiction of the Income Tax Officer Ward (1), Shimoga. The petitioner had been residing in Madurai prior to the period relating to Assessment Year ('AY') 2011-12. However, and admittedly, no return of income had been filed by him during his stay at Madurai since, according to him he had not earned any income liable to tax in that period. From AY 2010-11 onwards, the petitioner states that he had shifted to Shimoga, Karnataka, carrying on business there. Hence returns of income were being filed from AY 2012-13 onwards at Shimoga, till date, and intimations under Section 143(1) had also been issued in respect of some of the years.

4. While this is so, the petitioner received, in respect of AY 2008-09, a notice under Section 148 dated 30.03.2015. Though initially a dispute was raised by the petitioner in regard to the date of dispatch and service of the aforesaid notice, pursuant to the records being summoned and perused, which contained an acknowledgment of receipt of the notice by the petitioner on 04.04.2015, the dispute raised with regard to date of dispatch and service thereof were not pursued and have been given up by Mr.Sivaraman, learned counsel for the petitioner and no further arguments raised in that regard.

5. The petitioner replied to the notice on 18.05.2015 requesting three months' time to collect the details needed to file a return as called for. By letter dated 09.10.2015, the respondent/Deputy Commissioner of Income Tax, International Taxation, Madurai called for the total numbers of days when the petitioner was resident in India during financial year 2007-08. She also called for a photocopy of the petitioners' passport to evidence the aforesaid. In conclusion, she states that if it were found that the petitioner had been an NRI, jurisdiction to assess him would stand transferred to the Officer, International Taxation, Bangalore, whereas if he had been resident in India, jurisdiction would stand transferred to Shimoga. The communication is extracted in full below:

'GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT

O/o The Dy Commissioner of Income-tax,
International Taxation, Madurai
2 V P Rathinasamy Nadar Road CR BLDG,
Babikulam, Madurai
Tamilnadu-625002
Phone: 044 28333255

PAN: ADGPH6621R / 2015-16

09.10.2015

To
Shri. Abdul Azez
No.2/749
Maruthupandiyar Street
Thasildar Nagar
Madurai-625 020

सत्यमेव जयते

Sir,

Sub: Transfer of jurisdiction – PAN: ADGPH6621R – reg.

You are requested to provide the details of no. of total days of residence in India during the Assessment Year – 2008-09. Also you are requested to submit a photocopy of Passport to evidence the same. On the basis of residence in India during the Assessment Year 2008-09, if you had been an NRI then your jurisdiction will be transferred to International Taxation, Bangalore. If your residence had been in India then your jurisdiction will be transferred to Shimoga. This is for your kind information. The reply in this regard should reach this office on or before 20.10.2015.

Yours faithfully,

*(R.ANITA, IRS)
Deputy Commissioner of Income-tax,
International Taxation,
Madurai.*

*Copy to: Paramesheara. E
I.T.P.No.28/I.T.P./CIT/DVG/2012-13
1st Floor, Raksha Nilaya
Opp, KB Ltd Building,
Savalanga Road,
Shimoga-577201.'*

6. The communication from the respondent as above makes it clear that there was ambiguity in her mind as to who would be the proper authority in whom jurisdiction vested to assess the petitioner for the period 2008-09. However, she was clear on two aspects; firstly, that the officials in Karnataka were the officers holding jurisdiction as regards the petitioner and secondly, that the assessment would thus have to be transferred to the concerned official at Karnataka for completion based upon the status of the petitioner in India at the relevant point in time i.e. during the financial year relevant to AY 2008-09. The petitioner replied through counsel on 20.10.2015 enclosing the particulars sought for.

7. On 10.12.2015, the respondent writes to the petitioner stating that since the total number of days when the petitioner had been resident in India had been five months, he was a non-resident for the purposes of assessment under the Act. She goes on to state that since the PAN address of the petitioner is in Madurai, he would be assessed to tax by the Deputy Commissioner of International Taxation, Madurai. Hence, the petitioner was required to file a return of income for the years in question before the

respondent Assessing Officer. This communication marks a departure in the stand of the officer as her initial stance was that the assessment would be completed only by the officials at Karnataka where the petitioner is consistently being assessed.

8.Vide communication dated 17.12.2016, the petitioner set forth his objections to the proposals for assessment, stating that though he was resident in Madurai at the time when he sought allotment of PAN number, his business interests were located at Shimoga and thus he had been a regular assessee at Shimoga only. He referred to the provisions of Section 124 of the Act, according to which, the assessing officer within whose jurisdiction an assessee would fall, would be one within whose jurisdiction the principal place of business of an assessee is situated. Since his principal place of business was at Shimoga, he reiterated that he fell within the jurisdiction of the officer at Shimoga only. He also pointed out that if at all his assessment were to be shifted to the file of any other officer it should be done as per the procedure set out under Section 127 of the Act, after affording opportunity to him. In conclusion he objected to the proceedings for reassessment initiated by the officer at Madurai, as being *ab initio void*.

9.On 08.01.2016, the respondent, acknowledging the petitioners' objections, notes from the record that the petitioner has been a regular assessee with the Assessing Officer at Shimoga, since AY 2012-2013. She however relied upon the provisions of Section 124(1) to validate the impugned proceedings. The petitioner again objects by communication dated 27.01.2016, specifically bringing to the notice of the officer, the provisions of

Section 124(1)(d) dealing with the assessment of a person carrying on business or profession, and the provisions of Section 124(4), which empowers an assessee to question the jurisdiction assumed by an officer.

10. Sub-section(4) of Section 124 of the Act provides that objections, if any, raised by an assessee, should be specifically dealt with by an officer, who, if satisfied with the objections raised, should drop the proceedings in question. However, if the officer were not satisfied with the correctness of the objections raised, he will refer the matter for determination to either the Director General/Chief Commissioner/Commissioner. The petitioner thus sought determination in regard to assumption of jurisdiction by a superior officer, before the Officer proceeded with the matter, if at all. The petitioner, on 09.03.2016 reiterated the objections filed specifically calling upon the officer to pass a speaking order on the question of assumption of jurisdiction, in the light of the judgment of the Supreme Court laying down the proper procedure to be followed in matters of re-assessment, in *GKN Driveshafts (India) Ltd. v. Income Tax Officer and others* (319 ITR 18).

11. However without reference to the request of the petitioner, on 22.03.2016, the respondent proceeds to pass the impugned order of re-assessment reiterating the assumption of jurisdiction by her as well as dealing with the assessment on merits, as against which the petitioner is before this Court.

12. The assumption of jurisdiction by an assessing authority is determined by the provisions of Section 120 of the Act that deals with the jurisdiction of income tax authorities and states that the authorities shall

exercise all or any of the functions and powers conferred on them for this purpose by the Board or by those officers/authorities to whom such power has been delegated by the Board. Section 120 reads thus:

120. Jurisdiction of income- tax authorities

(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.

(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 Deputy Commissioner, 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 Deputy Commissioner 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 Deputy 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.

13. The scope and extent of the exercise of such jurisdiction by an assessing authority, once vested, is set out in terms of Section 124 of the Act, extracted below:

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) 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 Principal Director General or Director General or the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner; or where the question is one relating to areas within the jurisdiction of different Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners, by the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Principal Director General or Director General or

Principal Chief Commissioner or Chief Commissioner or Principal 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;

(c) where an action has been taken under section 132 or section 132A, after the 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.

(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.'

14.If at all the senior Officers of the Department of the rank of the Principal Director General/Director General or Principal Chief Commissioner/Chief Commissioner or Principal Commissioner/Commissioner were of the view that that a change in jurisdiction was called for by transfer of file from one assessing officer to another, either concurrently or

exclusively, the Act prescribes the methodology for such change/transfer in terms of Section 127 of the Act, extracted below:

'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 Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal 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.'

15. On a combined reading of Sections 120, 124 and 127 the following positions emerge (i) jurisdiction vests in an officer in terms of Section 120 of the Act (ii) Sections 120(2) and (3) state that the Central Board of Direct Taxes ('Board') will vest authority in an officer for the purpose of assessment or the Board may, in writing, authorise any Income Tax authority to issue an order in writing authorizing any other authority to perform the functions of assessment. (iii) Section 124(1) states that where, by virtue of any direction or order issued under Section 120(1) or sub-section 2 of the Act, the assessing authority had been vested with jurisdiction over any area, he shall, within the limits of such area have jurisdiction both in respect of any person carrying on business or profession if such place is located within the area or where his business or profession is carried on in multiple locations, where the principal place of business or profession is located, and, in respect of any other person residing within the area. (iv) In issuing such orders, the Board or the authority to whom the power has been delegated by the Board will take note of other criteria such as (a) territorial area, (b) persons or classes of persons, (c) incomes or classes of incomes and (d) cases or classes of cases

16. In the present case, the facts involved are not in dispute and the petitioner has been assessed for the years 2012-2013 to 2015-2016 as follows:

S.No.	Assessment Year	Date of filing of Return	Income Returned and processed u/s 143(1) Rs.
1.	2012-13	04.08.2013	14,00,170/-
2.	2013-14	04.08.2013	9,96,850/-
3.	2014-15	13.03.2015	9,89,920/-
4.	2015-16	30.03.2016	12,38,160/-

17. Intimations under Section 143(1) of the Act have been issued by the Central Processing Centre in respect of the returns filed. The petitioners' case is that during the financial year relevant to assessment year 2009-2010 he had shifted his residence to Shimoga, Karnataka, carrying on business at Shimoga as well and the respondent, vide communication dated 08.01.2016 admits these facts, after verification of records, to the effect that the petitioner, as on date and since AY 2012-2013 is an assessee on the file of the Income tax Officer at Shimoga.

18. If jurisdiction thus vested with the Income Tax Officer at Shimoga, an alternate assessing authority assuming jurisdiction of the petitioners' file can be only by transfer of the file and such power of transfer is to be exercised by the Director General or Chief Commissioner or Commissioner, after recording reasons for such transfer and after hearing the assessee concerned. In this case, no order transferring the file of the petitioner from the jurisdiction of the Income Tax Officer, Shimoga to the Deputy Commissioner of Income Tax, International Taxation, Madurai, has been produced before me.

19. Instead, the learned Standing Counsel produces a Notification in F.No. Addl CIT, Rg,CBE/IT/CBE/1/2014-15, dated 15.11.2014, reading as follows:

'GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT

Office of the Additional Commissioner of Income-tax (International Taxation),
Coimbatore.

F.No. Addl CIT, Rg,CBE/IT/CBE/1/2014-15

Dated 15.11.2014

NOTIFICATION NO.1/Additional CIT (INTL.TAXN.) Coimbatore/2014-15

In exercise of the powers conferred by the Central Board of Direct Taxes under sub-section (1) and (2) of Section 120 of the Income-tax Act, 1961 Notification Order in S.O. No.2813(E) in Notification No. 56/2014/F.No.187/30/2014 (ITA.I) dated 3rd November, 2014 and Consequent order of the Commissioner of Income tax, International Taxation, Chennai vide Notification No.1/CIY (INTL.TAXN.)/2014-15 dated 15.11.2014 and in supersession of earlier Notifications, I, Additional Commissioner of Income Tax (International Taxation), Range, Coimbatore do hereby direct that the Income tax Authority specified in Column (2) below and having their headquarters mentioned in column (3), shall exercise the powers and perform all the functions of Assessing Officer in respect of the cases or classes of cases specified in the corresponding entries in column (5) or (6) below in such territorial areas as specified in corresponding entries in column (4). The Income-tax Authority who exercise the powers and perform functions under Income-tax Act, 1961 in respect of any case as specified below, shall also exercise the powers and perform all the functions of Assessing Officer under other Direct Tax Laws, i.e. Wealth Tax, Gift Tax, etc., over the same case.

20.The Notification sets out the following heads of information:-

S.No.	Designation of the Income tax Authorities	Head-quarters	Alphabets and Territorial Area	Persons or Classes of persons	or of	Powers and functions
1	2	3	4	5		6

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...
2.	Deputy/ Assistant Commissioner of Income tax (International Taxation), Madurai	Madurai	1.All Alphabets in the Territorial limits under the jurisdiction of CCIT, Madurai	<p>(a) Except the non-residents mentioned in section 172 & 285 of the Income Tax Act, all the Persons being non-resident including foreign companies within the meaning of sub-section (23A) of Section 2 of the Income Tax Act, 1961 and having Income from any source which (1) is received or deemed to be received in</p> <p>(b) Persons being companies registered under the Companies Act, 1956, and having registered office or principal place of business in the area mentioned in Column 4(1);</p> <p>(c) Persons being other than companies deriving income from sources other than income from business or profession</p>	<p>(a) All powers and functions of Assessing Officer including functions and powers relating to Tax Deduction at Source under section 194E, 195, 196A, 196B, 196C, 196D, 197 and 201 of the Income Tax Act, 1961 in respect of such persons mentioned in</p> <p>(b) All functions and powers of Assessing officer under the Income tax Act 1961 relating to Tax Deduction at Source under section 194E, 195, 196A, 196B, 196C, 196D, 197 and 201 of the Income Tax Act, 1961, on payments made to non-residents and foreign companies in respect of persons mentioned in items (b) to (e) of</p>

This notification shall come to effect from 15th November 2014.

S.RAVICHANDRAN
Additional Commissioner of Income tax
International Taxation
Coimbatore.

Thus according to the respondent, jurisdiction has been validly assumed by her.

21. She also relies on the decision of the Allahabad High Court in *CR Foods (India) (P.) Ltd. v. Income-tax Officer-4(1), Agra*, specifically paragraph Nos.25 and 26 extracted below:

'25. Sub-section (5) of Section 124 provides that, notwithstanding anything contained in the 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 income accruing or arising or received within the area, if any over which he has been vested with the jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of Section 120.

26. Sub-section (5) of Section 124 thus provides for a concurrent jurisdiction to the AOs. In Burger Paints India Ltd. V. Asstt. CIT [2000] 246 ITR 133/[2001] 115 Taxman 290 (Cal.) it was held that the AO of the area in which the person carries on business or resides shall have all the powers conferred by or under the Act in respect of any income accruing, arising or received within his area. Though the assessment of the total income must be made at the assessee's principal place of business, it would be open to the AO having jurisdiction over the branch office to assess income received by the branch office subject to the rule that two assessments cannot be made at different places upon the same person in respect of the same income.'

22. The respondent also relies on a decision of the Delhi High Court in *Abishek Jain vs. Income-tax Officer, Ward-55(1), New Delhi* (405 ITR 1) wherein, a Division Bench of the Delhi High court dealt with the challenge to

assumption of jurisdiction to re-assessment raised by an assessee on the ground that the procedure followed for transfer of case had not been followed and no order for such transfer had been passed by the Chief Commissioner. The petitioner therein was assessed by the Income Tax Officer, Ward 58 (2) Delhi, whereas proceedings for re-assessment had been initiated by the Income Tax Officer Ward 1(1), Noida. According to the petitioner, there had been no transfer of file from the former to the latter. Based on the Annual Information Return received from the Banks and on the basis of the address for communication contained in the bank records, the petitioner not having mentioned his PAN number to the Bank, the officer at Noida had initiated proceedings for escapement of income.

23. While considering the challenge to assumption of jurisdiction of officer at Noida, the Division Bench notes specifically the existence of concurrent jurisdiction by multiple officers over a particular assessee in line with the four-fold criteria set out for the purposes of assessment in Section 120 (3).

24. Concurrent jurisdiction of assessing officers set out in Section 124 was considered by the Delhi High Court in the case of *Commissioner of Income Tax V. S.S.Ahluwalia* ((2014) 46 taxmann.com169), wherein also the Division Bench, while considering the provisions of Section 120, 124 and 127 recognised the flexibility and choice available with both the officials of the department as well as by the assessee in the matter of initiation and finalization of assessment proceedings. At paragraph 13, the Bench in *SS.Ahluwalia* (supra) states as follows:

"(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 ensure and prevent two assessments by different assessing officers, having or enforcing concurrent jurisdiction. There cannot be and the Act does not envisage two assessments for the same year by different officers. (Reassessment order can be by a different officer)."

25. Again on the question of exercise of concurrent jurisdiction, the Bench in the case of *Abishek Jain* (supra) states in paragraph 19 and 20 as follows:

19. We would reiterate that sub-section (1) to [Section 124](#) states that the Assessing Officer would have jurisdiction over the area in terms of any direction or order issued under sub-section (1) or sub-section (2) to [Section 120](#) of the Act. Jurisdiction would depend upon the place where the person carries on business or profession or the area in which he is residing. Sub-section (3) clearly states that no person can call in question jurisdiction of an Assessing Officer in case of non-compliance and/or after the period stipulated in clauses (a) and (b), which as observed in *S.S. Ahluwalia* (supra) would negate and reject arguments predicated on lack of subject matter jurisdiction. Where an assessee questions jurisdiction of the Assessing Officer within the time limit and in terms of sub-section (3), and the Assessing Officer is not satisfied with the correctness of the claim, he is required to refer the matter for determination under sub-section (2) before the assessment is made. Reference of matter under sub-section (2) would not be required when Assessing Officer accepts the claim of the assessee and transfers the case to another Assessing Officer in view of the objection by the assessee. (In terms of sub-section (3) to [Section 124](#) of the Act, the petitioner had lost his right to question jurisdiction of the Income Tax Officer, Ward No. 1(1), Noida.)

20. Sub-section (5) to [Section 124](#), though limited in scope, would also be applicable in the facts and circumstances of the present case as the Income-Tax Officer, Ward-1 (1), Noida had the power to assess income accruing or arising within the area as it is not the case of the petitioner-assessee that the said officer did not have jurisdiction in view of location of the bank account and/or petitioner's place of work. [Section 124\(5\)](#) of the Act saves assessment made by an assessing officer provided that the assessment does not bring to tax anything other than income accruing, arising or received in that area over which the assessing officer exercises jurisdiction. However, notwithstanding [Section 124\(5\)](#), the Act

does not postulate multiple assessments by different assessing officers, or assessment of part or portion of an income [see Kanjimal & Sons Vs. Commissioner of Income Tax, New Delhi, (1982) 138 ITR 391 (Del)]. Thus, it is necessary that the Assessing Officers having concurrent jurisdiction ensure that only one of them proceeds and adjudicate. This is the purport and objective behind sub-section (2) to [Section 124](#) of the Act.

26. The Delhi High Court has concluded that the objections raised by Abishek Jain cannot be equated with lack of subject matter of jurisdiction and relates only to place of assessment. They thus reject the challenge to the assumption of jurisdiction on the ground that the principle of concurrent jurisdiction would save the initiation of proceeding by officer at Noida.

27. The material facts in Abishek Jains' case and the matter before me are that the petitioner in that case was seen not to have raised any effective or timely objection to the assumption of jurisdiction by the assessing officer at Noida. Moreover, the petitioner therein appears to have been harping only on the violation of the principles of natural justice. In any event and very relevantly, there was no request by the petitioner for a specific determination in terms of Section 124 (4) by a superior officer to decide on who the appropriate officer for assessment would be.

28. Though the principle of concurrent jurisdiction would permit and empower the superior officer to take a view that an officer different and distinct from the regular assessing officer may assess that part of an income that fell within the jurisdiction of another officer concurrently, such determination has to be specifically made, particularly to ensure that the same income does not suffer tax twice. Though procedural, this determination has been specifically sought for by the petitioner repeatedly in

this case, and ignored by the Department. The facts as noted by the Division Bench do not reveal any such request for determination to have been made by the petitioner therein.

29. The petitioner, for its part, relies on two decisions, one of the Allahabad High Court in *Prashant Chandra vs. Commissioner of Income-tax* and the other of the Delhi High Court in the case of *Veena Devi Karnani vs. Income-Tax Officer*.

30. In *Veena Devi (supra)* the Court considered the provisions of Rule 127(2) that stipulated the addresses to which notice/summons/requisition/order/any other communication under the Act may be delivered or transmitted, as (i) address available in the PAN database of the addressee, (ii) address available in the income tax return to which the communication relates, (iii) address available in the last income tax return furnished by the assessee or (iv) in the case of the addressee being a company, the address of the registered office as available on the website of the Ministry of Corporate Affairs. The only exclusions to the aforesaid are any other addresses that the assessee has indicated in writing for the purposes of communication with the Department.

31. The Delhi High Court in *Veena Devi Karnani* considered a case where the assessee had shifted her address during the financial year relevant to AY 2010-2011. She filed her return under the same existing PAN number reflecting the new and changed address. The Assessing Officer continued to be the same both for the earlier as well as present year. Despite having been intimated of the change in address, proceedings for re-assessment were

initiated and notice under Section 148 on the ground that there had been escapement of income for AY 2011-2012, were issued only to the old address.

32. The assessee challenged the re-assessment proceedings on the ground that the notice had been sent to her old address and was thus invalid particularly, when she had specifically disclosed the change of address to the Department. The challenge was accepted by the Court holding in conclusion that the narrative of facts and behavior of the Assessing Officer was disturbing, to say the least. The proceedings had been initiated by the Officer mechanically and on the basis of the address supplied by the Bank without noting that the address supplied by the Bank was incorrect and without verifying the correct address and all other details including E-mail ID that were available in the database of the Income Tax Department. The proceedings for re-assessment were quashed.

33. In *Prashant Chandra* (supra) the Allahabad High Court considered the case of an assessee who had filed returns of income at Lucknow till AY 2011-2012. From AY 2012-2013 the petitioner filed returns in New Delhi since he has shifted his principal place of business there. On receipt of the notices from the Assessing Officer at Lucknow, the assessee tendered a reply bringing to the notice of the authority that he had shifted his principal place of business to New Delhi and thus the notice under reply was without jurisdiction. After considering the provisions of Section 124 and specifically noting that the petitioner in that case had brought to the notice of the Department the factum of shifting of business from Lucknow to Delhi, the

Bench allowed the writ petition holding the proceedings to be bereft of jurisdiction.

34. Only in the counter does the respondent cite the provisions of Section 124(3) to the effect that no person shall be entitled to call in question the jurisdiction of an assessing officer where he has not filed a return in response to notice under Section 148 within the stipulated time therein. However, in my considered view, this argument fails in the light of the timelines as well as facts involved in this matter.

35. The notice under Section 148 was received by the petitioner on 04.04.2015 and thus a return of income would have to be filed in response thereto within 30 days i.e., on or before 04.05.2015. In the meantime, the petitioner raised the question of assumption of jurisdiction on 18.05.2015 which came to be addressed by the officer on 09.10.2015 only. In the communication dated 09.10.2015, the subject states '*transfer of jurisdiction*'. On 10.12.2015, the petitioner is once again called upon to file a return of income for A.Y.2008-09 in terms of Section 148 of the Act. It is only in this communication, extracted below, that the Assessing Officer finally determines that the PAN address of the petitioner being in Madurai, the respondent officer would be the proper officer to exercise jurisdiction:

.....
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The total No. of days of stay in India during the FY 2007-08 of the assessee being less than 56, assessee is a Non resident for the Income Tax purposes. However, since the PAN address of the assessee is in Madurai, assessee should be assessed to tax only with DCIT International Taxation, Madurai.

Hence assessee is required to file Return of Income for A.Y. 2008-09 as mandated by notice u/s 148 of IT act 1961 on or before 18.12.2015.

.....'

36. In fact in earlier communications, she had taken the stand that the assessment of the petitioner would be transferred either to International Taxation, Bangalore or the Assessing Officer at Shimoga based on the status of the petitioner in the relevant financial year. The lack of clarity on the part of the department as to who the proper officer would be to assume jurisdiction, is obvious and glaring.

37. The petitioner in rejoinder to the counter has set out the periods of his entry and exit into and out of India, as follows:

1. 01.01.2015 to 12.01.2015-Los Angeles (US)-12 days – 01.01.2015 exit from Dubai and entered US
2. 12.01.2015 to 22.01.2015 – Dubai – 10 days – 12.01.2015 exit from US and entered Dubai
3. 22.01.2015 to 08.02.2015 – Mozambique – 17 days – 22.01.2015 exit Dubai and entered Mozambique
4. 08.02.2015 to 15.02.2015 – Dubai – 7 days – 08.02.2015 exit Mozambique and entered Dubai
5. 15.02.2015 to 27.02.2015 – India – 12 days – 15.02.2015 exit from Dubai and entered India
6. 27.02.2015 to 11.03.2015 – Dubai – 12 days – 27.02.2015 exit from India and entered Dubai
7. 11.03.2015 to 26.04.2015 – Mozambique – 46 days – 11.03.2015 exit from Dubai and entered Mozambique
8. 26.04.2015 to 01.05.2015 – Dubai – 5 days – 26.04.2015 exit Mozambique and entered Dubai
9. 01.05.2015 to 11.05.2015 – India – 10 days – 01.05.2015 exit Dubai and entered India
10. 11.05.2015 to 02.06.015 – Dubai – 22 days – 11.05.2015 exit India and entered Dubai
11. 02.06.2015 o 14.06.2015 – Mozambique – 12 days – 02.06.2015 exit Dubai and entered Mozambique

12. 14.06.2015 – Exit from Mozambique entered Dubai.

38. The dates as set out above have not been controverted by the respondent despite being in possession of the passport of the petitioner and are hence taken to be admitted.

39. In the facts and circumstances of the present case where the petitioner is seen to have been in India only between 15.2.2015 and 27.2.2015 and then again from 01.5.2015 to 11.5.2015, as combined with the fact that the respondent assessing Officer has also taken contradictory stands as regards the proper officer to assume jurisdiction, the rigour of Section 124(3), in my considered view, would not be applicable to the present case.

40. The officer could well have, pursuant to 4th of May, 2015 simply rejected the challenge to assumption of jurisdiction citing the provisions of Section 124(3). But this has not been done and the provisions of Section 124(3) are invoked for the first time only in the counter affidavit. In fact, the impugned order at paragraph 2 states as follows:

'Notice u/s 148 dated 30.03.2015 was issued to assessee by the undersigned as change of jurisdiction of International Taxation, Madurai and the same was duly served on the assessee on 04.04.2015. In response assessee, Shri Abdul Azeez, No.2/749, Thasildar Nagar, Madurai, filed letter dated 18.05.2015 seeking 3 months time to file return of income called for vide notice u/s 148 of IT Act 1961. Alongwith the letter, assessee also filed power of Attorney dated 30.04.2015 favouring AR Shri Parameshwara to appear before DCIT, International Taxation Madurai. Assessee also vide the above letter submitted the assessee has been filing return of income regularly with ITO-Ward-1 Shimoga and is assessable under the jurisdiction of ITO Ward -1 Shimoga. Hence in order to ascertain the rightful jurisdiction and residential status of assessee, a letter dated 09.10.2015 was sent to assessee calling for details of residence in India of the assessee.'

Emphasis by underlining, mine)

41. In the face of such patent lack of clarity on the part of the officer, who on 09.10.2015, was still uncertain as to the proper officer to assume jurisdiction, the provisions of Section 124(3) cannot be resorted to by the Department.

42. In the present case the petitioner has, no doubt obtained a PAN from the Assessing Officer at Madurai, wherein the address of the assessee is stated to be in Madurai. However, no assessments have been completed by the officials at Madurai, till date. For AY 2012-2013 to 2015-2016 the petitioner has filed returns of income electronically, stipulating his jurisdictional officer as the Income tax officer, Shimoga, Karnataka. These returns of income have been processed and intimations issued by the CPC wherein the address of the petitioner is stated to be Shimoga.

43. The appropriate officer to assess the petitioner is thus the officer at Shimoga. No doubt, the provisions of Section 124(5) provide for the vesting of jurisdiction concurrently upon two officers if the situation and circumstances so warrant the same, such as if the assessee in question has business interests or assets as well as income arising there from spread over various parts of the country, Concurrent jurisdiction is, no doubt, a principle enshrined as part of the procedure for finalizing assessments, the thumb rule being that the same income not be assessed twice. However, if at all such jurisdiction were to vest concurrently by way of transfer to the respondent officer as well, it was incumbent upon the officials to have followed the methodology set out in terms of Section 127 for change of jurisdiction by way of a determination by a superior officer. The provisions of sub-section

(5) that vest concurrent jurisdiction in more than one officer, will have to be seen and read with Section 124(4) only and do not constitute a standalone provision. In fact, it is only to decide the appropriate officer for exercise of concurrent jurisdiction vested in 124(5), that sub-section (4) provides for a reference of the matter to a superior officer by an Assessing Officer. In the present case, though the petitioner/assessee has specifically sought such determination, the Assessing Authority has not bothered to refer the matter to the superior officer. In my view, this is a patent error that vitiates the assumption of jurisdiction of the respondent in full.

44. In the light of the discussion as above, this writ petition is allowed and the impugned proceedings for re-assessment quashed. Consequently, connected Miscellaneous Petitions are closed. No costs.

21.01.2020

Index : Yes/No
Speaking order/ non-speaking order
vs/ska/sl

To

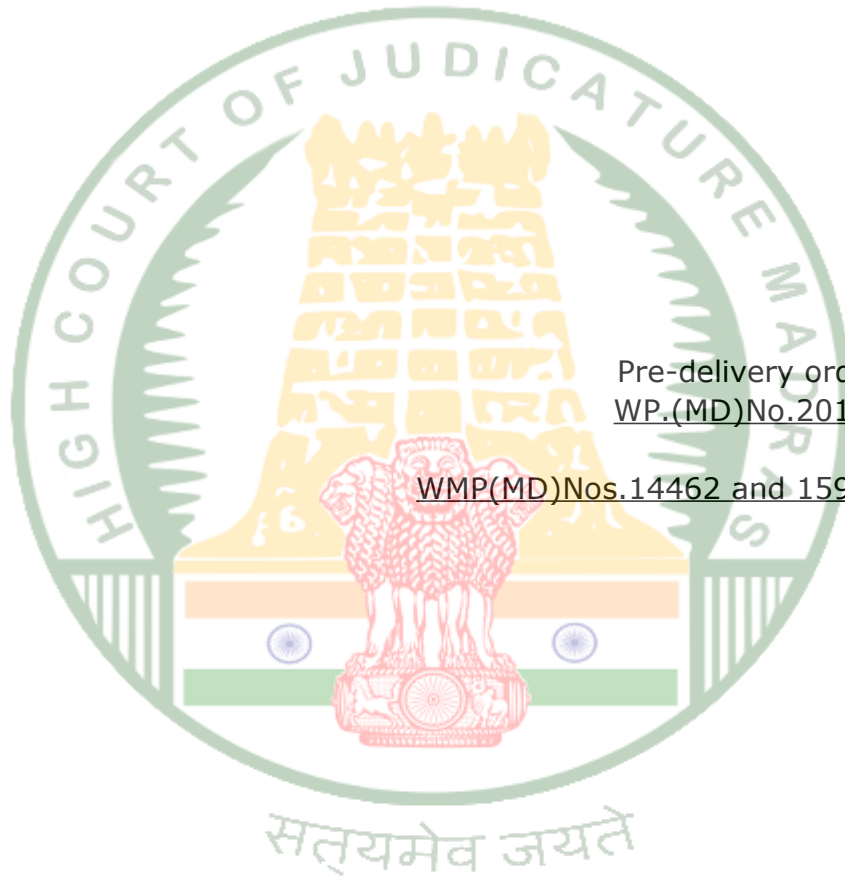
The Deputy Commissioner of Income Tax,
International Taxation,
Madurai.

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DR.ANITA SUMANTH, J.

vs/ska/sl



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