

Court No. - 3**Case :- WRIT TAX No. - 1047 of 2021****Petitioner :- Shivaaditiya Jems And Jewellery Private Limited****Respondent :- Income Tax Officer Ito-2(1) And 2 Others****Counsel for Petitioner :- Suyash Agarwal****Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan,Manu Ghildyal,Sudarshan Singh****Hon'ble Surya Prakash Kesarwani,J.****Hon'ble Jayant Banerji,J.**

1. Heard Sri Suyash Agarwal, learned counsel for the petitioner, Sri Gaurav Mahajan, learned Senior Standing Counsel for the respondent no.2 and Sri Sudarshan Singh, learned counsel for respondent no.3.

2. This writ petition has been filed praying for the following relief:-

“(i) Issue writ, order or direction in the nature of certiorari quashing the notice dated 31.3.2021 issued under Section 148 of the Act, for A.Y. 2017-18 issued by the Income Tax Officer ITO-2(1), Moradabad, respondent no.1(Annexure no.7).

(ii) Issue writ, order or direction in the nature of certiorari quashing the order dated 13.9.2021 passed by Income Tax Officer ITO-2(1), Moradabad respondent no.1, rejecting the objection of the petitioner (Annexure no.13).

(iii) Issue writ, order or direction in the nature of Prohibition restraining the respondent no. 1 from completing the reassessment proceeding u/s 148 of the Act, for A.Y. 2017-18.”

3. Briefly stated facts of the present case are that for the assessment year in question i.e. 2017-18, the petitioner, which is a corporate entity, filed its return of income on 11.10.2017 with the Income Tax Officer (ITO-2(1), Moradabad disclosing total income of Rs. 32,57,900/-. It has been admitted by the learned counsel for the petitioner before us that ITO Ward-2(1) is the Assessing Officer who has territorial jurisdiction over the petitioner.

Facts.

4. The case of the petitioner is that since monetary limit fixed for assessment by the ITO for return is upto Rs. 15 lacs and if it is above Rs.

15 lacs, the assessment was to be made by Assistant/Deputy Commissioner, therefore, for that reason the assessment for the Assessment Year 2017-18 was completed by the Assistant Commissioner of Income Tax, Moradabad (ACIT) vide assessment order dated 26.11.2019 under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act, 1961). Therefore, the notice under Section 148 of the Act would have been issued only by the ACIT-2, Moradabad and not by the ITO Ward-2(1), Moradabad.

5. From the record, it appears that thereafter, the ITO, Ward-2(1) received certain information from DDIT (Investigation), Unit 7(4), New Delhi. It came to light in the search conducted under Section 132A of the Act at the premises of Mr. Mohit Garg and others on 11.03.2018 and in subsequent investigations, which, according to the respondent-department revealed that an accommodation purchase entry of Rs.20,32,46,098/- which was not shown by the petitioner. Based on this information, the ITO Ward-2 issued a notice under Section 148 of the Act, 1961 to the petitioner and supplied the reasons recorded for issuance of the notice. The petitioner submitted objection to it which was rejected by order dated 13.09.2021 passed by the ITO-2(1), Moradabad. Being aggrieved, the petitioner has filed the present writ petition, challenging the notice dated 31.03.2021 under Section 148 as well as the order dated 13.09.2021 rejecting the objection.

Submission:

6. The only submission of learned counsel for the petitioner is that the impugned notice under Section 148 of the Act, 1961 issued by the respondent No.1 [ITO-2(1)] is without jurisdiction inasmuch as the ITO Ward 2(1) is not the jurisdictional assessing officer for the Assessment Year 2017-18. He further submits that jurisdictional assessing officer for

the Assessment Year 2017-18 is the ACIT, Range-2, Moradabad. Therefore, the impugned notice is without jurisdiction and consequently it cannot be proceeded with by the respondent No.1. For the same reason, the impugned order rejecting the objection, also deserves to be quashed along with the impugned notice under Section 148.

7. Learned Central Government Standing Counsel and the learned standing counsel for the Income Tax Department - respondent No.1 and 2 jointly supported the impugned notice and the order rejecting the objection.

Discussion and findings:

8. We have carefully considered the submission of the learned counsel for the parties and perused the record of the writ petition.

9. Before we proceed to consider the rival submission, it would be appropriate to reproduce the relevant provisions of the Act, 1961 as under:-

(i) **Section 2(7A)** defines the word **Assessing Officer**, as under:-

“2(7A) " **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;”

(ii) **Section 120** of the Act, 1961 provides for jurisdiction of income tax authorities as under:-

"Jurisdiction of income-tax authorities:-

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

Explanation:- For the removal of doubts, it is hereby declared that any income- tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section- (1).

(2) The directions of the Board under sub section (1) may authorize 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 authorized 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) income 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 Principal Director General or Director General or Principal Director or Director to perform such functions of any other income- tax authority as may be assigned to him by the Board;

(b) empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal 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 an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any Rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.

(5) The directions and orders referred to in sub- sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed

concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.

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

(iii) **Section 124** of the Act, 1961 provides for **jurisdiction of Assessing Officers**, as under:-

"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.**"

10. Thus, sub-section (1) of Section 120 of the Act, 1961 confers powers on the Board to issue directions to the Income Tax authorities for exercise of powers and performance of the functions by all or any of those authorities. Sub-section (2) of Section 120 permits directions of the Board made under sub-section (1) for authorising 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.

Sub-section (3) of Section 120 provides for the Board or other income tax authority authorised by it to have regard to one or more of the

mentioned four criteria in issuing directions or orders referred to in sub-sections (1) and (2) of Section 120. The criteria are:

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

Sub-section (5) of Section 120 enables issuance of directions and orders referred to in sub-section (1) and (2) requiring two or more Assessing Officers (whether or not of the same class) to exercise and perform concurrently the powers and functions referred to in the four criteria mentioned in sub-section (3).

Section 124 of the Act deals with jurisdiction vested in any Assessing Officer under sub-section (1) or sub-section (2) of Section 120 of the Act with regard to territorial area. Where any question arises as to whether an Assessing Officer has jurisdiction to assess any person, (qua the territorial area), the question is required to be determined administratively by the authority in the manner mentioned in sub-section (2) of Section 124.

Sub-section (3) of Section 124 limits and negativates the right of any person to call in question the jurisdiction of an Assessing Officer where any of the three conditions mentioned in clause (a),(b) and (c) of sub-section (3) respectively exist. Clause (a) of sub-section (3) of Section 124 refers to situations, inter alia, where a person has made a return under sub-section (1) of Section 139, who has been served with a notice under sub-section (1) of Section 142 or sub-section (2) of Section 143. Given the provision of clause (a) of sub-section (3) of Section 124, no person is entitled to call in question the jurisdiction of an Assessing Officer after expiry of one month from the date on which he is served with such notice, whichever date is earlier.

Sub-section (4) of Section 124 mandates the Assessing Officer to refer the matter for determination under sub-section (2) before the assessment is made, if he is not satisfied with the correctness of the claim of the assessee calling in question the jurisdiction of an Assessing Officer, subject to the provisions of sub-section (3).

Sub-section (5) of Section 124 which begins with a non-obstante clause, is as under:-

“(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.”

11. It is undisputed that ITO Ward-2(1), Moradabad who issued the impugned notice dated 31.3.2021 under Section 148 of the Act, 1961 for the Assessment Year 2017-18 and passed the impugned order dated 10.9.2021/13.9.2021 under Section 148A(d) rejecting the objections, is the Assessing Officer within the meaning of Section 2 (7A) of the Act, 1961.

12. The contention of the learned counsel for the petitioner is that since on account of the mandated monetary limit, the impugned order was passed by the ACIT-2, Moradabad, therefore, only ACIT-2, Moradabad could have issued notice under Section 148 of the Act and not the ITO Ward-2(1). We do not find any substance in the submission.

13. Section 120(1) of the Act, 1961 confers powers upon the Income Tax Authorities to exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assign 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.

Sub-section (3) provides the criteria to be considered by the Board in issuing directions for purposes of sub-section (1) and (2).

14. Admittedly, the Board has issued a direction by Instruction No. 01 of 2011 dated 31.01.2011 and 6 of 2011 dated 8.4.2011 for equitable distribution of works amongst the Assessing Officers and pursuant thereto, the Chief Commissioner of Income Tax, Bareilly issued an order dated 19.2.2018 as under:-

“Order

Dated 19.02.2018.

In exercise of powers conferred on me by CBDT Instructions No. 01/2011 dated 31.01.2011 and 06/2011 dated 08.4.2011 and all other powers enabling me in this behalf, I hereby order that the monetary limit for assigning Non-Corporate cases among Income Tax Officers and Deputy/Assistant Commissioners of Income Tax under the charges of Pr. Commissioner of Income Tax, Bareilly & Moradabad, falling in Chief Commissioner of Income Tax, Bareilly, Region will henceforth be as under:

	Income/Loss Declared.	
	ITOs	Dy./Asst. CsIT.
In case of Non-Corporate Returns	Upto Rs. 15 lac	Above Rs. 15 lac.

The notification will come into effect from 1.4.2018 onwards till further order.

(Praveen Kumar)

Chief Commissioner of Income Tax

Bareilly.

19.2.2018.”

15. The learned counsel for the petitioner has also referred to the jurisdictional chart enclosed with the objection against issuance of notice under Section 148, showing Assessing Officer-wise jurisdiction in respect of Corporate cases.

16. It is reiterated that Sub-section (1) of Section 124 of the Act, 1961 provides that 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.

17. Thus, under sub-section (1) of Section 124 of the Act, 1961 the Assessing Officer who has been vested with jurisdiction over any area, shall have jurisdiction within the limits of such area. Sub-section (5) of Section 124 of the Act, 1961 starts with a non-obstante clause and provides that every Assessing Officer shall have all the powers conferred by or under the Act, 1961 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. Thus, the Assessing Officer vested with jurisdiction by virtue of direction of sub-section (1) and (2) of Section 120 shall have all powers conferred by or under the Act, 1961 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.

18. It has been admitted before us that respondent no.1 i.e the ITO-2(1), Moradabad has the territorial jurisdiction over the petitioner, but only objection to the jurisdiction has been raised merely on the ground that on account of pecuniary limit, the proceedings ought to have been initiated by ACIT-2, Moradabad.

19. Once the territorial jurisdiction of respondent no.1 is admitted by the petitioner, there existed no occasion for the Assessing Officer to refer the matter for determination under sub-section (2) of Section 124 before the assessment was made.

20. The facts and legal position as discussed above leave no manner of doubt that the respondent no.1 is the Assessing Officer having territorial jurisdiction over the petitioner. Merely because some pecuniary limit has been fixed for purpose of distribution of work between officers, it would not mean that there shall be inherent lack of jurisdiction of respondent no.1. Therefore, it cannot be said that respondent no.1 lacked inherent jurisdiction while issuing the impugned notice under Section 148 of the Act, 1961.

21. A similar controversy came up before the Delhi High Court in the case of **Abhishek Jain Vs. Income Tax Officer, Ward-55 (1), New Delhi; 2018 (94) taxmann. Com 355 (Delhi)** in which it has been held as under:-

“16. Section 120 of the Act which relates to jurisdiction of the Income-tax Authorities stipulates that Income-tax Authorities shall exercise any of the powers and perform all or any of the functions conferred or assigned to such authority by or under this Act as per the directions of the Board i.e., Central Board of Direct Taxes. As per Explanation to sub-section(1), the power can also be exercised, if directed by the Board, by authorities higher in rank. Under sub-section (2), the Board can issue orders in writing for exercise of power and performance of functions by the Income-tax Authorities and while doing so in terms of sub-section (3), the Board can take into consideration and have regard to the four-fold criteria namely, territorial area; persons or classes of persons; incomes or classes of income; and cases or classes of cases. Thus, the Act does not authoritatively confer exclusive jurisdiction to specific Income Tax Authority. It is left to the Board to issue directions for exercise of power and functions taking into consideration territorial area, class/types of persons, income and case, and Board have been given wide power and latitude. The said Section by necessary implication postulates and acknowledges that multiple or more than one Assessing officer could exercise jurisdiction over particular assessee. Concurrent jurisdictions are therefore not an anathema but an accepted position under the Act. The term "jurisdiction" in Section 120 of the Act has been used loosely and not in strict sense to confer jurisdiction exclusively to a specified and single assessing officer, to the exclusion of others with concurrent jurisdiction. It would refer to "place of assessment", a term used in the Income Tax Act, 1922. Sub-section (5) to Section 120 of the Act again affirms and accepts that there can be concurrent jurisdiction of two or more assessing officers who would exercise jurisdiction over a particular assessee in terms of the four-fold criteria stated in sub-section (3) to Section 120. Second part of sub-section (5) states that where powers and functions are exercised concurrently by Assessing Officers of different classes, then the higher

authority can direct the lower authority in rank amongst them to exercise the powers and functions.

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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 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 (Delhi)]. 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.”

22. The aforesaid judgement of Delhi High Court only supports the view taken by us herein above.
23. No other point has been argued before us by the learned counsel for the petitioner.

24. For all the reasons aforesaid, we do not find any merit in this writ petition. Consequently, the writ petition fails and is hereby **dismissed**.

Order Date :- 14.7.2022

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