

## Acit, Meerut vs Sh. Ramesh Dhingra, Meerut on 30 September, 2022

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : F : NEW DELHI  
BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
IT(SS)A No.42/Del/2009

Block Assessment Period: 1997-98 to 2003-04

ACIT,  
Circle-2,  
Meerut

Vs. Ramesh Dhingra,  
C/o Raj Mahal Hotel,  
Abu Lane,  
Meerut.  
PAN: AALPD8166B

CO No.179/Del/2009  
IT(SS)A No.42/Del/2009

Block Assessment Period: 1997-98 to 2003-04

Ramesh Dhingra,  
C/o Raj Mahal Hotel,  
Abu Lane,  
Meerut.

Vs. ACIT,  
Circle-2,  
Meerut

PAN: AALPD8166B

(Appellant)

(Respondent)

Assessee by	:	Shri Sanjay Malik, Advocate & Shri Sankalp Malik, Advocate
Revenue by	:	Shri Vivek Sharma, CIT, DR
Date of Hearing	:	01.09.2022
Date of Pronouncement	:	30.09.2022

### ORDER

PER C.M. GARG, JM:

This appeal filed by the Revenue is directed against the order dated 04.03.2009 of the CIT(A), Meerut, relating to Block Assessment Period: 1997- 98 to 2003-04. The assessee has filed Cross Objection in this case.

IT(SS)A No.42/Del/2009

2. The grounds of appeal raised by the Revenue read as under:-

"1. Whether in the facts and circumstances of the case, the CIT(Appeals) had erred in annulling the assessment order on the ground of lack of jurisdiction ignoring the provisions of Section 124 where in it is provided that only the AO, CIT, CCIT can

decide questions of jurisdiction?

2. Whether in the facts and circumstances of the case, the CIT(Appeals) erred in ignoring the provisions of Section 124(3) by which the assessee was precluded from questioning the jurisdiction of the AO after one month of filing his return of income?

3. Whether in the facts and circumstances of the case, the CIT(Appeals) erred in holding that jurisdiction over the assessee lay with ITO, Ward-2(2) disregarding the fact that the ACIT and ITO had overlapping jurisdiction and in any case jurisdiction over search cases lay with the ACIT in view of Section 158BG?

4. Whether in the facts and circumstances of the case, the CIT(Appeals) had erred in holding that the ACIT u/s 158BD taken by ACIT, Circle-2 was vitiated on the ground that satisfaction note of the AO was not recorded before passing the assessment order of Sh. Baljeet Singh Bakshi and that it constituted a legal infirmity and thus vitiated the action of ACIT, Circle-2, without appreciating the fact that it is not mandatory to record satisfaction before issuing notice u/s 158BD and in any case satisfaction was recorded before issue of notice u/s 158BD?

5. In the facts and circumstances of the case, the order of the Commissioner of Income Tax (Appeals) may be set aside and that of the AO restored."

3. The grounds of Cross Objection read as under:-

"1. That the Ld AO was wrong to content in Ground No 1 that the Ld CIT (Appeal) has erred in annulling the assessment order on the ground of lack of jurisdiction ignoring the provisions of section 124 of the IT Act wherein it is provided that only the AO, CIT , CCIT can decide question of jurisdiction , whereas the Ld CIT(Appeal) very elaborately applying the provisions of law on this point and basing his decision on evidences on record, allowed the appeal of the IT(SS)A No.42/Del/2009 respondent, who fully rely on the appellate order of the CIT(A) Meerut.

2. That The Ld AO was further wrong in observing that the Ld CIT (A) Mrt erred in law in ignoring the provisions of Section 124(3) by which the assessee was precluded from questioning the jurisdiction of AO after one month of filling his return of income whereas the CIT(A) has rightly ignored the said provisions on the ground that the same are not applicable in the case of Block Asstt. under section 158BD, where the return of income was filed in compliance to notice u/s 158BD read with section 158BC. The Special Procedure for assessment of search cases are laid down in chapter XIV- B of Income Tax Act which is a code in it self and is different from the procedure of assessment laid down for assessment of other Income Tax cases , therefore , the Ld CIT(A) has rightly ignored to apply the said provisions of section 124(3) of IT Act. Furthermore legal mistake can be challenged at the appellate stage, therefore, the CIT (A) rightly allowed the appeal of respondent who fully rely on the appellate order

passed by the CIT (A) Mrt.

3. That the Ld AO has further erred in law & on facts to claim that the CIT (A) erred in holding that jurisdiction over the assessee does not lay with ITO Ward 2(2) Mrt. disregarding the fact that the ACIT & ITO had overlapping jurisdiction & in any case the jurisdiction over such cases lay with the ACIT in view of section 158 BG, which is wrong to the extent that as per provisions of section 120 coupled with section 124 such case where the provisions u/s 158BD are started should have been transferred by specific order of CIT or CCIT in writing & communicated to the respondent failing with the whole proceeding so initiated u/s 158BD would be abinitio void as per Income Tax Act & as has been held by various judicial pronouncements of Supreme Court, Delhi High Court & as well as Lucknow Bench of Tribunal relied upon by the CIT Meerut which were supported by respondent during the explanation filed in assessment proceedings as well as before CIT(A) Mrt, therefore, the CIT(A) has rightly held that the jurisdiction in the case of assessee/ appellant lei with Ward 2(2) Mrt & the respondent fully rely & supports the order of CIT(A) Mrt.

4. That the Ld AO has wrongly further contended that CIT(A) has erred in holding that the ACIT u/s 158BD taken by ACIT Circle II Meerut was vitiated on the ground that the satisfaction note of the AO was not recorded before passing the Asstt Order of Sh Baljit Singh IT(SS)A No.42/Del/2009 Bakshi & it constituted a legal infirmity & thus vitiated the action of ACIT Circle II Meerut without appreciating the fact that it is not mandatory to record satisfaction before issuing the notice u/s 158BD and in any case satisfaction was recorded before the issue of notice u/s 158BD which is wrong and against the settled provisions of law as laid down by the SC in the case of Manish Maheshwari v/s ACIT 289ITR 341, followed by recent judgments of Lucknow ITAT in 2009 (13) MTC 307 (trib.) in the case of Smt Lalita Rani Gupta Vs ACIT as well as the decision of Delhi ITAT in the case of Manoj Agarwal Vs Dy.CIT (2008) 117 TTJ (Del) (SB) 145 which were rightly relied upon by the respondent and approved by CIT(A) while allowing the appeal of the respondent, therefore, the respondent fully rely upon the appellate order of CIT(A) & support the order.

5. That the said ground is of general nature wherein the appellant has prayed to the prescribed authority to set aside the order of CIT(A) Mrt & restore the said assessment order of AO. In view of the above departmental appeal is bad in law as well as on facts & is liable to be dismissed."

#### Ground No.4 of the Revenue

4. The ld. CIT-DR, drawing our attention towards para 4 of the first appellate order, submitted that the ld.CIT(A) has granted relief on the legal ground by holding that the assessment order in the case of Shri Baljeet Singh Bakshi (person searched) was passed on 31.12.2004 and satisfaction u/s 158BD of the act was recorded on 14.01.2005 in the case of the present assessee i.e., the other person. The ld.CIR-DR further vehemently submitted that in view of the judgement dated 12.03.2014 of the

Hon'ble Supreme Court in the case of Calcutta Knitwears , 362 ITR 673, the satisfaction for initiation of proceedings u/s 158BD of the Act could be prepared after completion of assessment in the case of the person searched. The ld. CIT-DR drew our attention towards para IT(SS)A No.42/Del/2009 44(c) of the said judgement and submitted that the ld.CIT-DR was wrong in holding that the non-recording of reasons/satisfaction note by the AO before completion of assessment in the case of the person searched Shri Baljeet Singh Bakshi constituted legal infirmity, by which the initiation of assessment by the AO, Circle-2, Meerut stand vitiated. The ld. CIT-DR, therefore, submitted that the judgement of the Hon'ble Supreme Court has been ignored by the ld.CIT(A) while allowing legal ground of the assessee and, therefore, the first appellate order may kindly be set aside.

5. Replying to the above, the ld. Counsel of the assessee submitted that the ld.CIT(A), Meerut, passed order on 04.03.2009, whereas the judgement of the Hon'ble Supreme Court in the case of Calcutta Knitwears (supra) was rendered subsequently on 12.03.2014. Therefore, it cannot be alleged that the ld.CIT(A) has ignored the judgement of the Hon'ble Supreme Court as the same was not in existence at the time of passing the first appellate order. Further, placing vehement reliance on the judgement of the Hon'ble Supreme Court in the case of Manish Maheshwari, reported as 289 ITR 341, the ld. Counsel submitted that the recording of satisfaction before completion of assessment in the case of person searched u/s 158BC of the Act is a mandatory provision for assuming valid jurisdiction to initiate assessment proceedings in the case of the other person u/s 158BD of the Act which was not complied by the AO in the present case. Therefore, the ld.CIT(A) was right in holding that non-recording of satisfaction IT(SS)A No.42/Del/2009 before passing assessment order in the case of the person searched vitiates the assessment order passed u/s 158BD of the Act.

6. Placing rejoinder to the above, the ld. CIT-DR again drew our attention to the judgement of the jurisdictional High Court of Delhi in the case of CIT vs. Raghubir Singh Garg, (2014) 51 taxmann.com 79 (Delhi) and submitted that the AO can initiate proceedings u/s 158BD of the Act in a case of a person other than a searched person even after completion of block assessment in case of searched person. The ld.CIT-DR, further placing vehement reliance on another judgement of the jurisdictional High Court in the case of CIT vs. V.K. Narang, 372 ITR 333 (Del) submitted that the Hon'ble jurisdictional High Court, after considering the judgement of the Hon'ble Supreme Court in the case of Manish Maheshwari (supra) and CIT vs. Calcutta Knitwears (supra) and placing reliance on the judgement in the case of CIT vs. Raghubir Singh Garg (supra) held that where the satisfaction note was recorded after the completion of assessment, there was no delay in issuance of notice u/s 158BD of the Act to the assessee whereas in the present case, undisputedly, the assessment order u/s 158BC of the Act in the case of the searched person Shri Baljeet Singh Bakshi was passed on 31.12.2004 and satisfaction u/s 158BD of the Act in the case of the other person was recorded only after 14 days on 14.01.2005, therefore, the ld.CIT(A) was not correct in granting relief to the assessee. Therefore, the first appellate order on this issue may kindly be set aside.

IT(SS)A No.42/Del/2009

7. On careful consideration of the above rival submissions, we are of the considered view that the Id. Counsel of the assessee is supporting the first appellate order on the strength of the judgement of the Hon'ble supreme Court in the case of Manish Maheshwari (supra) whereas the Id. CIT-DR is pressing into service the judgement of the Hon'ble Supreme Court in the case of CIT vs. Calcutta Knitwears (supra) and various judgements of jurisdictional High Court of Delhi including the judgement in the case of CIT vs. V.K. Narang (supra). In our humble view, after the judgement of the jurisdictional High Court of Delhi in the case of CIT vs. V.K. Narang (supra), the issue is no more res integra as their Lordships, speaking for the Hon'ble jurisdictional High Court, after considering the judgement of the Hon'ble Supreme Court in the case of Manish Maheshwari (supra) and subsequent judgement in the case of CIT vs. Calcutta Knitwears (supra) has held as follows:-

"1. The present appeal is directed against the order of ITAT dated 11.12.2008. The question of law raised is whether in the circumstances the ITAT was correct in its view that there was inordinate delay in issuing the notice under Section 158BD to the assessee i.e V.K.Narang HUF.

2. At the outset it needs to be noted that this appeal too is a part of the case heard and decided by a common judgment reported as CITvs. Radhey Shyam Bansal 2011 337 ITR 217 (DLI). On that occasion the Court had accepted assessee's contention that in the circumstances of the case, the ITA 1064/2009 Page 1 notice under Section 158BD was unsustainable. The matter was carried in appeal to the Supreme Court which by the judgment reported as CIT vs. Calcutta Knitwears, Ludhina 362 ITR 673 (SC), inter alia, recorded as follows:

IT(SS)A No.42/Del/2009 "44. In the result, we hold that for the purpose of Section 158BD of the Act a satisfaction note is sine qua non and must be prepared by the assessing officer before he transmits the records to the other assessing officer who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages:

(a) at the time of or along with the initiation of proceedings against the searched person under Section 158BC of the Act; (b) along with the assessment proceedings under Section 158BC of the Act; and (c) immediately after the assessment proceedings are completed under Section 158BC of the Act of the searched person

45. We are informed by Shri Santosh Krishan, who is appearing in seven of the appeals that the assessing officer had not recorded the satisfaction note as required under Section 158BD of the Act, therefore, the Tribunal and the High Court were justified in setting aside the orders of assessment and the orders passed by the first appellate authority. We do not intend to examine the aforesaid contention canvassed by the learned counsel since we are remanding the matters to the High Court for consideration of the individual cases herein in light of the observations made by us on the scope and possible interpretation of Section 158BD of the Act."

3. In these circumstances, this Court has to decide the issue. The relevant facts are that the search operations were conducted on 17.12.1999 in the premises of Sh.V.K.Narang. Based upon the materials obtained, he was issued notice under Section 158BD. Subsequently, after considering the assessment returns for the period 01.04.1989 to 17.12.1999 filed by him, the block assessment was completed on 31.12.2001. In the present assessee's case a satisfaction note was recorded on 30.05.2002. The DCIT recorded undisclosed income in the case of present assessee, and further that the search proceedings of Sh.V.K.Narang reveal that present assessee had also invested in various properties which were undisclosed.

4. Having regard to the decision in CIT vs. Manish Maheshwari (2007) 289 ITR 341 (SC) this Court is of the opinion that the satisfaction note in the present case meets with the requirements of law. So far as the question of delay is concerned, the Court is of the opinion that in the facts and circumstances of the present case, it cannot be held that there was any delay in recording the satisfaction note. The assessment of the searched person was completed on 31.12.2001. The satisfaction note was recorded on 30.05.2002 i.e. just IT(SS)A No.42/Del/2009 about five months after the date of completion of searched person. Notice was issued on 03.06.2002, immediately after the satisfaction note was recorded to the present assessee.

5. Having regard to the declaration of law made by the Supreme Court which specified three possible points in time when notice under Section 158BD can be issued to third party/assessee, on the basis of material found on the premises of the searched person, the period of five months spent by the AO of the searched person in finalizing the satisfaction note, can be said ITA 1064/2009 Page 3 to have been proximate to the assessment proceedings. We also recollect the decision of this Court in Commissioner of Income Tax vs. Raghubir Singh Garg ITA No. 1420/2010 decided on 27.08.2014. In that case, the search took place on 29.08.2002 and the satisfaction note was recorded on 16.01.2003 i.e. within a period of 4 ½ months. The Court was of the opinion that the satisfaction note could be upheld. Following the said decision it is held that there was no delay in issuance of notice under Section 158BD in the facts of the case. So far as the merits of the appeal are concerned, Court notices that the ITAT had not dealt with the merits of the assessee's contentions with regard to the various additions made, and grounds urged in that regard. This is especially reflected from a reading of the judgment which has solely proceeded on the question of delay in the issuance of notice under Section 158BD. In these circumstances, the matter is remitted to the ITAT to decide the contentions on merits, on the facts of the case, as to the correctness or otherwise of the addition made by the AO of the present assessee. Considering that the satisfaction note and notice were issued in 2003, the ITAT shall consider and decide this appeal expeditiously. The rights and contentions of the parties shall not be prejudiced. The ITA stands disposed of being partly allowed."

8. We may also point out that in the case of CIT vs. Calcutta Knitwears (supra), in para 44, their Lordships categorically held that the satisfaction note for initiation of proceedings u/s 158BD could be prepared by the AO of searched person either of the three stages. The relevant para 44 reads as follows:-

"44. In the result, we hold that for the purpose of Section 158BD of the Act a satisfaction note is sine qua non and must be prepared by the assessing officer before

he transmits the records to the other IT(SS)A No.42/Del/2009 assessing officer who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages:

(a) at the time of or along with the initiation of proceedings against the searched person under Section 158BC of the Act; (b) along with the assessment proceedings under Section 158BC of the Act; and (c) immediately after the assessment proceedings are completed under Section 158BC of the Act of the searched person."

9. Respectfully following the judgement of the Hon'ble Supreme Court in the case of Calcutta Knitwears (supra) and the judgement of the jurisdictional High Court of Delhi in the case of CIT vs. V.K. Narang (supra), we hold that the Id.CIT(A) was not correct and justified in granting relief to the assessee by holding that non-recording of reasons by the AO before completion of assessment in the case of the person searched constitute legal infirmity, by which the initiation of assessment and assessment order u/s 158BD of the Act stand vitiated. Therefore, the findings arrived at by the Id.CIT(A) in the first part of para 4 are set aside and we hold that recording of satisfaction u/s 158BD on 14.01.2005 after completion of assessment order in the case of the person searched on 31.12.2004 is a valid jurisdiction and, thus, the AO had assumed valid jurisdiction to initiate the proceedings and to pass assessment order u/s 158BD of the Act in the case of the other person, i.e., the present assessee, Shri Ramesh Dhingra. Accordingly, ground No.4 of the Revenue is allowed. Grounds No.1 and 2.

10. The Id.CIT-DR submitted that the Id.CIT(A) has erred in annulling the assessment order on the ground of lack of jurisdiction ignoring the provisions of IT(SS)A No.42/Del/2009 section 124 of the Act where it is provided that only the AO, CIT, CCIT can decide the question of jurisdiction. The Id.CIT-DR also submitted that the Id. First appellate authority has also erred in ignoring the provisions of section 124(3) of the Act by which the assessee was prevented from questioning the jurisdiction of the AO after one month of filing his return of income. Therefore, the findings/conclusion arrived at by the Id.CIT(A) being based on misinterpretation of law and perverse may kindly be set aside.

11. The Id.CIT-DR also placed reliance on various judgements including the decision of the Hon'ble High Court of Delhi in the case of CIT vs. Kapil Jain dated 05.08.2010 vide ITA No.613 of 2009; decision of the Hon'ble Delhi High Court in the case of PCIT vs. Mega Corporation Ltd., ITA No.128/2016, dated 20.03.2017 and submitted that the assessee could have raised objection to jurisdiction only within a month having regard to the Notification which was issued on 01.08.2007. The Id. CIT-DR also submitted that the Id.CIT(A) has fell into error in interpreting the provisions of section 124(3) of the Act and holding that before initiation of proceedings by the AO, Circle-2, Meerut, there was no specific order u/s 127 of the Act by the concerned authority transferring the jurisdiction from ITO, Ward-2(2), Meerut to ACIT, Circle II, Meerut. The Id.CIT-DR strongly contended that the assumption of jurisdiction by ACIT, Circle-II, Meerut, who passed the impugned assessment order is a case of valid IT(SS)A No.42/Del/2009 assumption of jurisdiction as both the AOs were under the same jurisdiction, therefore, there was no requirement of any order u/s 127 of the Act.

12. Replying to the above, the Id. Counsel of the assessee submitted that in absence of any order u/s 127 for transferring jurisdiction from AO/ITO, Ward 2(2), Meerut to ACIT, Circle-II, Meerut, it has to be held that the AO was not having valid jurisdiction for passing assessment order u/s 158BD of the Act. Therefore, the same was rightly annulled by the Id.CIT(A).

13. Placing rejoinder to the above, the Id.CIT-DR drew our attention to the judgement of the Hon'ble jurisdictional High Court of Delhi in the case of PCIT vs. Mega Corporation Ltd., and submitted that undisputedly, the notice u/s 143(2) of the Act dated 13.03.2006 was served on the assessee on 16.03.2006 through notice server and through speed post on 20.03.2006 fixing the date of compliance as 04.04.2006 and no reply was filed by the assessee in this regard and the assessee did not call in question jurisdiction of AO within one month from the date of service of notice u/s 143(2) of the Act on 13.03.2006 on 16.03.2006. He also submitted that since both the AOs were under the jurisdiction of PCIT, Meerut, therefore, there was no need of passing any order u/s 127 of the Act. He also drew our attention to the order of the Office of the Commissioner of Income-tax, Meerut dated 24.03.2003 and submitted that both the officers were having concurrent jurisdiction under CIT, Meerut, therefore, the basis taken by the Id.CIT(A) for granting relief to the assessee by annulling IT(SS)A No.42/Del/2009 the impugned assessment order is unsustainable being based on incorrect interpretation and application of the provisions of the Act. The impugned order may, therefore, be set aside.

14. On careful consideration of the above submissions, first of all we may point out that in the present case, ACIT, Circle II, Meerut, passed the impugned assessment order u/s 158BD r.w. section 158BC on 30.01.2007 wherein in para 5, the AO noted that the notice u/s 143(2) of the Act dated 13.03.2006 was served on 16.03.2006 through notice server and through speed post on 20.03.2006. Therefore, as per the provisions of section 124(3)(a) of the Act, the assessee was entitled to call in question the jurisdiction of the AO within one month from the date of service of notice u/s 143(2) of the Act which has not been done. The Id. Counsel could not show us any instance wherein the assessee even till 31.03.2007 called in question the jurisdiction of the AO to pass the impugned assessment order. At this juncture, it is very useful to take respectful cognizance of the judgement of the jurisdictional High Court of Delhi in PCIT vs. Mega Corporation Ltd., wherein, their Lordships held as follows:-

"3. Learned counsel for the Revenue relied upon the decision of the Allahabad High Court in CIT v. British India Corporation Limited 337 ITR 64 as well as the judgment of this Court in CIT v. S.S. Ahluwalia [ITA Nos. 255/2002 and connected cases, decided on 14.03.2014] 2014 (46) taxmann.com 169 (Del). He drew our attention to Section 2(7A) and argued that the DCIT always possessed jurisdiction under Section 120(1) and 120(2) and that in the circumstances of the case, the notification dated 01.08.07 merely conferred additional jurisdiction upon the ACIT and did not denude the DCIT. This was in support of the submission that notice under IT(SS)A No.42/Del/2009 Section 143(2) was followed. As far as the assessment itself goes, learned counsel highlighted that the ACIT's jurisdiction could have been challenged, if at all, within the one month of his assuming it, i.e. within one month of August 2008. Since the assessee in this case failed to do so and did not even urge this in the



first instance before the CIT(A), it was precluded from doing so.

4. Sh. Salil Kapoor, learned counsel for the assessee urged that this Court should not interfere with the order of the ITAT. He relied upon the ruling in *Valvoline Cummins Ltd. v. DCIT* 307 ITR 103. Emphasising that even according to the Revenue, upon the ACIT being conferred with jurisdiction, the authority to complete the assessment was with him. It was submitted that when notice was issued under Section 143(2) on 15.10.2007, the DCIT had no authority to do so. It was further elaborated that having regard to the text of Section 120(4)(b), a specific authorisation under that Section alone was sufficient for the ACIT to act as an AO. In the circumstances, the Revenue could not have fallen back upon the notification under Section 120(2), which can be issued only in the case of specified authorities mentioned in that provision and that does not include AOs who are defined in a particular manner - the ACIT, DCIT, Deputy Director, Joint Director etc.

5. This Court has considered the submissions of the parties. The theme song of the assessee, as it were is that in the absence of a specific notification under Section 120(4)(b), the ACIT could not have possessed jurisdiction. This undermines the assessment order made on 29.12.2008. Proceeding further, but backwards, it is urged that because of the notification (which, it is urged, is erroneous and invalid in the first instance), due to lack of statutory authorisation, the notice issued earlier on 15.10.2007 is illegal and invalid as it was issued by an incompetent officer, i.e. DCIT. To this Court's mind, the assessee's logic appears to be circular. First, to deal with the issue of jurisdiction under Section 120 by virtue of Section 2(7A), it is not in dispute that the AO includes a DCIT. If so, the notice issued on 15.10.2007, was by a competent officer who always had jurisdiction to do so. The question then arises with respect to the validity of the assessment which was completed on 29.12.2008. The assessee urges here that the notification dated 01.08.2007 is under Section 120(2) rather than 120(4)(b).

6. This, to the Court's mind, again has two answers. The first is that the absence of reference to an incorrect provision per se cannot invalidate the authority conferred in the present case under Section IT(SS)A No.42/Del/2009 120(2) instead of Section 120(4)(b). Applying that principle, the assessee's argument that the ACIT did not possess jurisdiction cannot be countenanced. It appears that the second reason is more weighty. Section 124(3)(a) enacts a statutory bar as it were to the question of jurisdiction. It reads as follows:

"Jurisdiction of Assessing Officers.

124. XXXXXX XXXXXX XXXXXX (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;"

7. In this case, the assessee's submission with respect to this provision is that it cannot be operated having regard to the circumstances of the case. Learned counsel urged that on 15.10.2007, it was not open to the DCIT to issue notice. If so, at that first instance, the assessee could have raised the objection within a month having regard to the notification which existed on 01.08.2007. Secondly, even if for some reason, the assessee were unaware of the notification, it became aware that the ACIT was exercising jurisdiction when it received notice from that official in August 2008. Since that was in continuation of the proceeding by the DCIT it could well have been urged by the assessee within the stipulated time that the said officer, ACIT did not possess jurisdiction. Its failure to do so within the stipulated time, i.e. one month after receipt of notice which was in fact a condition of Section 143(2) proceeding and was treated as such by the assessee precluded it from urging lack of jurisdiction. The assessee, however, contended its omission by not urging this ground before the CIT(A) in the first ground but urging belatedly before the ITAT; precisely the situation which the provision seeks to eliminate."

15. In view of the above, we are compelled to hold that the ld.CIT(A) was not justified and correct in annulling the impugned assessment order dated IT(SS)A No.42/Del/2009 31.01.2007 on account of lack of assumption of jurisdiction. Therefore, the findings recorded by the ld.CIT(A) in second part of para 4 of the impugned first appellate order are also set aside. Accordingly, grounds No.1 and 2 of the Revenue are allowed.

#### Ground No.3

16. Apropos Ground No.3, the ld.CIT-DR submitted that the ld.CIT(A) has erred in holding that the jurisdiction over the assessee lie with the ITO, Ward 2(2), Meerut, disregarding the fact that the ACIT and ITO had overlapping jurisdiction and in any case jurisdiction over search cases lie with the ACIT in view of section 158BG.

17. The ld. Counsel submitted that without any order u/s 127 of the Act by competent authority, the ACIT, Meerut was not validly empowered to pass assessment order u/s 158BD of the Act. Therefore, the CIT(A) was right in annulling the assessment order on this count.

18. Since, by earlier part of this order, we have held that the ld. CIT(A) was not correct in annulling the assessment order for want of order u/s 127 of the Act, since as per order of the CIT, Meerut, dated 24.03.2003 both the officers were having concurrent and overlapping jurisdiction under same PCIT/CIT, Meerut. Therefore, the ld.CIT(A) was not correct in holding that only the ITO, Ward-2(2), Meerut was having jurisdiction over the assessee to pass assessment order u/s 158BD of the Act. Therefore, the said findings being perverse and IT(SS)A No.42/Del/2009 contrary to the administrative orders and provisions of the Act are set aside. Accordingly, ground No.3 of the

Revenue is allowed.

19. The ld.CIT(A) has granted relief to the assessee on legal grounds as per conclusion recorded in para 4 of the first appellate order. Since, by the earlier part of this order, we have allowed grounds of Revenue and have set aside the conclusion arrived at by the ld. First appellate authority in allowing relief to the assessee. Further, from the first appellate order, it is clearly discernible that the ld.CIT(A) has not adjudicated the grounds of the assessee on merits. Therefore, the matter is restored to the file of the CIT(A) for adjudication of grounds of the assessee on merits. Needless to say, the ld.CIT(A) shall provide due opportunity of hearing to the assessee before passing any order on the grounds of the assessee on merits.

#### Cross Objections of the Assessee

20. Cross Objections of assessee are only supportive to the order of the ld.CIT(A). Since, by the earlier part of this order, the order of ld.CIT(A) has been reversed and set aside, appeal of the Revenue is allowed and appeal is restored to the file of the AO for adjudicating the grounds of assessee on merits. Consequently, Cross Objection of the assessee being devoid of merits are dismissed.

IT(SS)A No.42/Del/2009

21. In the result, the appeal filed by the Revenue is allowed and Cross Objections of the assessee are dismissed.

Order pronounced in the open court on 30.09.2022.

Sd/-

(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Dated: 30th September, 2022.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi

