

ITAT couldn't adjudicate upon jurisdictional issue when it wasn't raised before assessing authority

Summary – The High Court of Allahabad in a recent case of All India Children Care & Educational Development Society, (the Assessee) held that Tribunal is not a competent authority to adjudicate upon jurisdiction of Assessing Officer when it is not raised before Assessing Authority.

Facts

- The assessee had filed its return of income, in response to the notices issued under section 142(1) and section 148. Its case was transferred to the Deputy /Joint Commissioner (Asstt.) as the return of loss for the assessment year 1997-98 was more than Rs. 10 lakhs.
- During assessment, the assessee claimed exemption under section 11 and subsequently under section 10(22).
- The Assessing Officer denied the exemption claimed by the assessee and the assessment was completed by determining the positive income.
- On appeal, the Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On second appeal, the Tribunal held that the Assessing Officer who framed the assessment/reassessment proceedings was not the competent authority and the reasons recorded for initiating the reassessment proceedings were bad.
- On appeal before the High Court, the revenue submitted that the question of jurisdiction was primarily required to be agitated first before the assessing authority itself, within the period prescribed under section 124.
- On the other hand, the assessee submitted that no opportunity before transfer of cases to the Joint Commissioner (Asstt.) was afforded.

Held

- The question of jurisdiction could have been raised before the Assessing Officer within the period of one month from the date of filing of return as envisaged under sub-section (3)(a) of section 124, but it was not raised. Even after assessment before the first appellate authority, any such plea was not put forward. No objection regarding jurisdiction or otherwise was raised during all these proceedings. The Assessing Officer has passed the assessment order on the basis of the return filed by the assessee and details furnished by the assessee during the proceedings in response to notices under section 143(2) and 143(1).
- Under section 124, a question as to the place of assessment, when it arises is determined by the Commissioner, by the Commissioners if more than one Commissioner is involved and then by the Board.
- The contention that no opportunity of hearing was given before transferring raised for the first time before the Tribunal could not be substantiated by producing any evidence. The assessee was the

appellant before the Tribunal and it was for him to establish that before transferring the cases, no opportunity of hearing was given and in which he failed. Mere raising the argument which requires determination of fact in absence of any supporting material is liable to be ignored.

- In view of the above, it is held that the question of jurisdiction of the assessing authority in view of section 124 could not have been raised by the assessee before the Tribunal and the Tribunal is not the competent authority to adjudicate upon when it was not raised in terms of section 124 before the assessing authority.