

आयकर अपीलिय अधिकरण

मुंबई पीठ "जे"

श्री विकास अवस्थी, न्यायिक सदस्य एवं

श्री एम. बालगणेश, लेखा सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "J", MUMBAI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &

SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आअसं. 7514/मुं/2011 (नि. व. 2007-08 )

ITA NO.7514/MUM/2011(A.Y.2007-08)

आअसं. 6781/मुं/2012 (नि.व. 2008-09)

ITA NO.6781/MUM/2012(A.Y.2008-09)

आअसं. 572/मुं/2014 (नि.व. 2009-10)

ITA NO.572/MUM/2014(A.Y.2009-10)

आअसं. 1106/मुं/2015 (नि.व. 2010-11)

ITA NO.1106/MUM/2015(A.Y.2010-11)

Tata Communications Ltd.

(Formerly Videsh Sanchar Nigam Ltd.)

Videsh Sanchar Nigam Bhavan,

M.G Road, Fort, Mumbai 400 001

PAN: AACCV-2808-C

..... अपीलार्थी /Appellant

बनाम Vs.

Additional Commissioner of Income Tax,

Range 1(3), Room No.540,

Aaykar Bhavan, M.K.Road,

Mumbai 400 020

..... प्रतिवादी/Respondent

आअसं. 1657/मुं/2014 (नि.व. 2009-10)

ITA NO.1657/MUM/2014(A.Y.2009-10)

आअसं. 1561/मुं/2015 (नि.व. 2010-11)

ITA NO.1561/MUM/2015(A.Y.2010-11)

The DCIT -1(3)

Room No.564,Aaykar Bhavan, M.K.Road,

Mumbai 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

Tata Communications Ltd.  
(Formerly Videsh Sanchar Nigam Ltd.)  
Videsh Sanchar Nigam Bhavan,  
M.G Road, Fort, Mumbai 400 001  
PAN: AACCV-2808-C

..... प्रतिवादी/Respondent

Assessee by : Shri J.D. Mistry, Sr. Advocate with  
S/Shri Harsh M. Kapadia and K.Damania

Revenue by : Shri. Vatsalya Saxena & Shri B.K.Bagchi

सुनवाई की तिथि/ Date of hearing : 26/11/2021

घोषणा की तिथि/ Date of pronouncement : 23/02/2022

आदेश/ ORDER

PER BENCH:

These four appeals by the assessee for Assessment Years 2007-08 to 2010-11 and two cross appeals by the Revenue for Assessment Years 2009-10 and 2010-11 are taken up together for adjudication as the legal issue and facts germane to the legal issue are identical. The appeal of assessee in ITA No.7514/Mum/2011 for Assessment Year 2007-08 is taken as lead case, hence, relevant facts to the legal issue raised are narrated therefrom.

**ITA NO.7514/MUM/2011,A.Y. 2007-08:**

2. Shri J.D.Mistry, Sr. Advocate appearing on behalf of the assessee submitted, that at this stage he is confining his submissions only to the legal issue raised in additional grounds of appeal challenging validity of final assessment order passed u/s 143(3) r.w.s. 144C of the Income Tax act, 1961 ( in short ' the Act'). The Id . senior Counsel asserted that the final assessment order is bad in law as the same has been passed by Additional Commissioner of Income Tax (Addl.CIT) without jurisdiction. The Id.Counsel submitted that this legal ground has been raised as additional ground of appeal. The Id.Counsel for the assessee contended that since no new documentary evidence is required to be adduced for adjudication of the legal issue

raised by way of additional ground of appeal, therefore, the legal ground raised as additional ground should be admitted. To support his contention for admission of additional legal ground, the Id.Counsel placed reliance on various decisions including:

- (i) Jute Corporation of India Ltd. vs. CIT, 187 ITR 688
- (ii) Ahmedabad Electricity Company Ltd. vs. ACIT, 199 ITR 351 (Bom)
- (iii) CIT vs. Pruthvi Brokers and Shareholders, 349 ITR 336 (Bom)

The Id.Counsel for the assessee pointed that similar legal ground was raised in assessee's appeal for Assessment Year 2002-03 in ITA No.7071/Mum/2005 the Tribunal vide order dated 30/06/2017 admitted the additional grounds and decided the legal ground in favour of the assessee.

3. The additional grounds of appeal raised by assessee vide application dated 10/09/2020 reads as under:

*"1. On the facts and in the circumstances of the case, the draft assessment order dated 19.12.2011 and the final assessment order dated 25.10.2012 passed by the Additional Commissioner of Income Tax under section 143(3) r.w.s. 144C of the Income-tax Act, 1961 ('the Act') are bad in law, illegal and without jurisdiction and / or in excess of jurisdiction, on the grounds amongst others that he failed to establish that he possessed legal and valid jurisdiction under the Act to pass the assessment order and consequently the Hon'ble Tribunal be pleased to quash the said orders.*

*2. The Additional Commissioner of Income Tax lacked jurisdiction to pass the draft assessment order dated 19.12.2011 and the final assessment order dated 25.10.2012 under section 143(3) r.w.s. 144C and to exercise the powers of performing the functions of an Assessing Officer without establishing that he possesses such jurisdiction conferred on him under section 120(4)(b) of the Act. Accordingly, in the absence of appropriate orders u/s. 120(4)(b):*

*a. From the Board, empowering the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, to confer jurisdiction on the Additional Commissioner of Income Tax, and*

*b. an order in writing from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, directing that the powers and functions of the assessing officer be exercised/ performed by an Additional Commissioner, the assessment order dated 25.10.2012 passed by him needs to be quashed.*

*3. Without prejudice to the above grounds, the assessment proceedings undertaken in the present case are bad in law and of no legal effect, for failure to comply with the provisions of the Statute including inter alia the absence of a valid notice under Section 143(2) of the Act.”*

4. The Id. Counsel for the assessee narrating the facts of the case submitted that the assessee filed its return of income for the Assessment Year 2007-08 on 31/01/2007. The return of the assessee was processed and intimation under section 143(1) of the Act signed by Assistant Commissioner of Income Tax (ACIT) was received by the assessee. Thereafter, the assessee filed a revised return of income on 30/03/2009. The assessee received notice issued u/s 143(2) of the Act dated 22/06/2009 from Addl.CIT. Against the revised return of income intimation u/s. 143(1) of the Act dated 22/03/2010 was received by the assessee duly signed by ACIT. Thereafter, the assessee received a communication dated 22/07/2010 from Addl. CIT for fresh hearing u/s. 143(3) r.w.s. 129 of the Act. A questionnaire dated 01/10/2010 was issued to the assessee by Addl.CIT. The draft assessment order dated 28/12/2010 for the impugned assessment year was framed by Addl.CIT. After the direction of the Dispute Resolution Panel (DRP) final assessment order u/s. 143(3) r.w.s. 144C of the Act dated 20/10/2011 was passed by the Addl. CIT. The Id.Counsel for the assessee submitted that the Addl.CIT was not the competent authority to pass the assessment order. Since, the assessment order has been passed by an officer, who has not been authorized to pass the assessment order, the assessment order is bad in law as it suffers from incurable defect. The Id.Counsel for the assessee referred to the definition of ‘Assessing Officer’ u/s. 2(7A) of the Act. The Id.Counsel for the assessee asserted that as per the provisions of section 2(7A), Assessing Officer means ACIT or DCIT or the Income Tax Officer who is vested with relevant jurisdiction by virtue of direction or orders issued u/s. 120(1) or (2) of the Act. The Addl. CIT or Joint Commissioner of Income Tax (JCIT) can be appointed as Assessing Officers, if directed u/s. 120(4)(b) of the Act. For assigning the powers of

Assessing Officer on Addl. CIT, the Board has to empower the Principal Commissioner of Income Tax (PCIT) to issue necessary directions. Thereafter, the PCIT has to pass order authorizing Addl. CIT to be the Assessing Officer. In the present case, the Addl. CIT has assumed jurisdiction of Assessing Officer without there being any direction u/s. 120(4)(b) of the Act. Neither the Board has empowered the PCIT nor the PCIT has passed any order authorizing Addl. CIT to be the Assessing Officer. Since, the draft assessment order and the final assessment order has been passed by an Addl. CIT having no authorization to discharge the duties of Assessing Officer, assessment order passed by Addl. CIT suffers from inherent defect of jurisdiction. The Id. Counsel for the assessee submitted that identical objection was raised by the assessee by way of additional ground of appeal in assessee's own case in the preceding Assessment Years. Similarly, in the case of other group companies, additional ground was raised assailing jurisdiction of Addl. CIT in passing the assessment order without authorization. The list of cases wherein additional ground of appeal assailing jurisdiction of Addl. CIT in passing the final assessment order was raised is as under:

S.No.	Particulars
1.	Tata Communications Ltd. (ITA No. 7071/M/2005) (Mum. Tribunal)
2.	Tata Communications Ltd. (M.A No. 785/M/2017) (Mum- Tribunal)
3.	Tata Communications Ltd. (ITA Nos. 3972/M/2007, 2891 & 1505/M/2010 & 1109/M/2008) (Mum – Tribunal)
4.	Tata Communications Ltd. (ITA Nos. 4452 & 3460/M/2011, 8769/M/2010) (Mum – Tribunal)
5.	Tata Sons Limited (162 ITD 450) (Mum- Tribunal)
6.	Tata Sons Limited (ITA Nos. 193, 3745 & 3658/M/2006) (Mum- Tribunal)
7.	Tata Sons Limited (ITA Nos. 2519 & 2639/M/2009) (Mum- Tribunal)
8.	Tata Sons Limited (ITA Nos. 5090 & 5572/M/2012) (Mum- Tribunal)
9.	Tata Sons Limited (ITA Nos. 4893, 2545, 4543 & 2487/M/2012) (Mum- Tribunal)
10.	Shri Kishore Vithaldas (ITA Nos. 7397/M/2016 & 5661/M/2017)

	(Mum- Tribunal)
11.	Tata Chemicals Limited (ITA Nos. 915 to 918/M/2012, 869 to 872/M/2013) (Mum –Tribunal)
12.	Tata Power Co. Ltd. (ITA Nos. 3037 & 3038, 3081 & 3082/M/2009, 2056 & 2057/M/2012) (Mum- Tribunal)
13.	Indian Hotels Company Ltd. ( ITA Nos.8570/M/2011, 565/M/2013, 2049/M/2014, 1910/M/2014) (Mum- Tribunal)

The Tribunal in all the aforesaid cases taking a consistent view admitted similar additional ground of appeal holding it to be legal issue and has thereafter, allowed the said ground holding that the Addl.CIT has no jurisdiction to pass the assessment order in the absence of authorization from the PCIT. The Id.Counsel for the assessee asserted that since the facts in the present appeal on this legal issue are identical, the draft and the final assessment order are liable to be quashed for parity of reasons.

5. Per contra, Shri. Vatsalya Saxena representing the Department vehemently opposed admission of additional ground of appeal raised by the assessee at the belated stage. The Id. Departmental Representative submitted that the appeal was filed by the assessee way back in the year 2011, the assessee has raised additional ground of appeal almost after nine years of filing of the appeal. Moreover, the additional ground raised is not purely legal in nature. Therefore, the additional ground raised should not be admitted in the first instance at this belated stage.

The Id. Departmental Representative further submitted that return of the assessee was processed u/s 143(1) of the Act by ACIT. Subsequently, when the return of the assessee was selected for scrutiny the assessment order was passed by Addl.CIT having jurisdiction over the assessee. The Id. Departmental Representative referred to the definition of “Joint Commissioner of Income Tax”(JCIT) in section 2(28C) of the Act. The Id.Departmental Representative pointed that a perusal of the definition would show that JCIT means a person appointed to be JCIT or Addl. CIT u/s.

117(1) of the Act. The Department has issued notifications authorizing JCIT/Addl.CIT to be the Assessing Officer having jurisdiction over the assessee.

5.1 The Id.Departmental Representative has further placed reliance on the written submissions. The relevant extract of the same is reproduced hereunder :

*"4.1 In the context of above, it is submitted that the additional grounds raised by the assessee are factually incorrect and legally untenable. The Additional Commissioner of Income Tax, indeed had jurisdiction to pass the said order under section 143(3) of the I.T.Act, 1961, in view of Notification (a) S.O. 732(e) - Notification No. 228/200 1 [ F.No.187/5/2001] dated 31/07/2001 of CBDT. On the strength of the said notification No. 228/2001 [F.No. 187/5/2001 1TA- 1] dated 31/07/2000, further orders were passed by the PCIT-1, Mumbai assigning the case of M/s. Tata Communications Ltd. (formerly M/s. VSNL Ltd.) to the Jt./ Addl. Commissioner of Income tax -1(3), Mumbai vide order no. CIT-1/Mum/ Assignment of case to Addl.CIT/2010-11/1034 dated 15.10.2010 ( enclosed herewith as Annexure -"A").*

*4.2 On the facts and circumstances of the case and in law, it is denied that the Additional Commissioner of Income Tax, lacked jurisdiction to exercise powers and functions of Assessing Officer since he was duly empowered u/s.120(b)(4) of the Act to perform functions of Assessing Officer by the CBDT's Notification in S.O. 889(E) - Notification No. 267/2001 { F.No. 187/5/2001 - ITA-1} dated 17/09/2001 read with (c) Corrigendum No. MCI/HQI/Jurisdiction/2001-02 dated 27/08/2001 (enclosed herewith as Annexure -"B").*

*5. The assessee has relied on various decisions of Hon'ble ITAT in its own case in ITA No. 7071/M/2005, MA No.785/M/2017, ITA Nos. 3972/M/2007, 2891& 1015/M/2010 & 1109/M/2008, ITA No.4452&3460/M/2011, 8769/M/2010 and various other group companies. The assessee in the above said AY's has relied on the decision in the case of M/s. Mega Corporation Ltd.- Vs. Addl.CIT (ITA No. 102/Del/2014) dated 22/09/2015 in which the ITAT has held- that Addl. Commissioner of Income-tax had not been empowered to perform the duties of the Assessing officer as per the CBDT's Notification No. 267of 2001 dated 17/09/2001.*

*The case law so relied upon by the assessee [Mega Corporation Ltd, vs. Addl. CIT Range - 6, New Delhi in ITANo102/Del/2014 dated 22.09.2015] was reversed by the Hon'ble Delhi High Court in its order in ITA No. 128/2016 and allowed the appeal of the Revenue holding that the order passed by the Addl. CIT was within jurisdiction quoting provision to Section 124(3)(a) of I.T Act where it is mentioned that the assessee cannot challenge the jurisdiction of the AO 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 subsection (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.*

*6. Further, the additional grounds so raised had never been raised by the assessee before any of the lower authorities. During assessment proceedings too, the assessee has never raised any objection in regard to validity of section 143(2).*

*7. During the assessment proceedings, the assessee was given several opportunities to prove its case on various issues where AO had proposed additions/disallowances. The AO has thus discharged his onus of following the principle of Natural Justice and only on facts he has made the said disallowances which were later sustained by the Ld. CIT(A).*

*7.1 The assessee after realising that the additions/disallowances were made on factual/legal grounds resorted to take refuge under false ground that the AO didn't had the jurisdiction to pass the said order in dispute despite the fact that under section 2(28C) of Income-tax Act, 1961 the term, Jt Commissioner of Income-tax includes an Addl. Commissioner of Income-tax and this definition was inserted by the Finance (No. 2) Act, 1998 w.e.f. 01/10/1998".*

5.2 The Id.Departmental Representative further in order to support his contentions placed reliance on the decision of Bangalore Bench in the case of Regional Oil Seed Growers Co-operative Society Union Ltd. vs. JCIT. The Id.Departmental Representative made alternate submission that though there is no defect in the jurisdiction of Addl. CIT exercising powers of Assessing Officer, even if it is assumed that there was any defect, the defect is rectifiable and not fatal.

6. Controverting the submissions made by Id.Departmental Representative, the learned counsel for the assessee submitted that the Co-ordinate Bench of the Tribunal while adjudicating the issue in favour of assessee has already considered the notifications referred to by the Id.Departmental Representative in the written submissions. And the decision rendered in the case of Regional Oil Seed Growers Co-operative Society Union Ltd. vs. JCIT (supra) has also been considered and distinguished. The Tribunal held that the notifications referred by the Revenue are not in context of delegation of powers authorizing Addl.CIT to perform the duties of Assessing Officer.

7. We have heard the submissions made by rival sides on admission of additional grounds raised by the assessee, as well as, on merits of the legal issue raised in the additional grounds of appeal.

8. The assessee in additional ground has challenged the jurisdiction of Addl. CIT to pass the assessment order in the absence of any order from the Board and subsequent authorization by the concerned CIT/PCIT u/s. 120(4)(b) of the Act. The contention of the assessee is that the additional ground raised is a legal issue, whereas the stand of Revenue is that the additional ground is a mixed question of law and fact; and has been raised at belated stage.

A perusal of the ground raised in the additional ground shows that it is a legal issue which goes to the root of validity of the assessment order. We observe that the Revenue had strongly opposed admission of the identical additional ground in the appeal by the assessee for preceding Assessment Years as well as the appeals in other group concerns of the assessee. The Tribunal in all the aforesaid cases (as tabulated in para – 4 above) admitted the additional ground rejecting the objections raised by Revenue. The Co-ordinate Bench in the case of Tata Sons Ltd. vs. ACIT, 162 ITR 450 (Mum) (Trib), one of the case in assessee's group concern wherein similar additional grounds were raised assailing assessment order passed by Addl. CIT in the absence of valid authorization, in para 3.11 to para 3.16 of the said order dealt with objections raised by the Revenue against the addition of additional ground and finally admitted the additional grounds holding the same to be purely legal.

Thereafter, in series of decisions by the Tribunal in assessee's own case and in assessee's group concern, the Tribunal for parity of reasons has admitted additional ground and thereafter, decided the appeal by the assessee solely on the legal issue raised in additional grounds of appeal. The issue in additional grounds raised in the present appeal is similar to the issue raised in additional grounds raised in other appeals mentioned in para – 4 above. For parity of reasons, objections raised by

the Revenue against admission of the additional grounds are dismissed. The additional grounds raised in the appeal are admitted for adjudication on merits.

9. In so far as the legal issue we find that the same is squarely covered in favour of assessee by the order of Tribunal in assessee's own case in ITA No.7071/Mum/2005 for Assessment Year 2002-03 decided on 30/06/2017. The Co-ordinate Bench while adjudicating this issue has placed reliance on the decision of Tata Sons Ltd. (supra). For the sake of brevity only the concluding findings of the Co-ordinate Bench are reproduced:

*"16.The ratio laid down in the decision of Tata Sons Ltd. (supra) and other decisions relied upon by the Bench therein clearly applies the facts of the present case. Therefore, adhering to the principle of judicial discipline we follow the decision of the Tribunal referred to above and hold that **in the facts of the present case, the Addl. CIT in the absence of a valid order under section 120(4)(b) as well as section 127(1) of the Act could not have exercised his power as an Assessing Officer to pass the impugned assessment order.** Accordingly, the impugned assessment order passed being wholly without jurisdiction is void ab initio, hence, deserves to be annulled / quashed. Accordingly, we do so."*

10. The Id. Departmental Representative has vehemently relied on some notifications in his written submissions which purportedly authorize Addl. CIT to discharge the duties of Assessing Officer. We find that the Id.Departmental Representative while making his submissions in ITA No.7071/M/2005(supra) had placed reliance on same set of notifications. The Co-ordinate Bench after examining the notifications referred to by the Id. Departmental Representative held that none of the notifications referred to by the Department validly authorize or empower the Addl.CIT to act as an Assessing Officer. The relevant extract of the findings of the Tribunal on the notification issued by the Department and referred to during the course of submissions are reproduced herein below:

“15. At this stage, we propose to deal with each of the aforesaid notification relied upon by the Department and establish the valid exercise of jurisdiction as an Assessing Officer by the Addl. CIT. The first notification being notification no.228 of 2001 dated 31<sup>st</sup> July 2001, corresponding to notification no.S.O. 732(E) dated 31<sup>st</sup> July 2001, is a notification issued under sub-section (1) and (2) of section 120 of the Act and obviously is not a notification issued under clause (b) of sub-section (4) of section 120. As observed earlier by us, the Addl. CIT was not included as an Assessing Officer either under section 2(7A) or under section 120(4)(b) earlier. Only by virtue of Finance Act, 2007, the aforesaid provisions were amended by including Addl. CIT as an Assessing Officer. However, even after such inclusion of Addl. CIT as an Assessing Officer with retrospective effect from 1<sup>st</sup> April 1994, section 2(7A), made it clear as far as Asstt. CIT, DCIT, Addl. DIT, DDIT, ITO, can act as an Assessing Officer if they are vested with relevant jurisdiction by virtue of directions and orders issued under sub-section (1) or sub-section (2) of section 120. Whereas, as far as Addl. CIT, ADIT, JCIT, JDIT are concerned, they can exercise powers and functions of an Assessing Officer only, if they are directed to do so under clause (b) of sub-section (4) of section 120. Thus, vesting of power of Assessing Officer on different income tax authorities have been specifically demarcated under section 120 of the Act. A conjoint reading of section 2(7A) and section 120 would make it clear, as far as Addl. CIT, Addl. DIT, DCIT, ADIT, DDIT and ITO are concerned, they have to be vested with the power of Assessing Officer under section 120(1) or (2), whereas, Addl. CIT, Addl. DIT, JCIT, JDIT can be vested with the power of Assessing Officer under section 120(4)(b). In a notification issued under section 120(1) and 120(2), Addl. CIT cannot be vested with power to act as an Assessing Officer. Therefore, notification no.228 of 2001 dated 31<sup>st</sup> July 2001, cannot be said to be in vesting power of Assessing Officer with the Addl. CIT. Similar is the situation with notification dated 1<sup>st</sup> August 2001, issued by the CIT, Mumbai, as it is a notification issued under section 120(1) and 120(2) and not under sub-section (4)(b). The third notification dated 8<sup>th</sup> August 2001, has been issued by the Addl. CIT, Range-1(3), Mumbai, vesting jurisdiction upon himself to act as an Assessing Officer. Certainly, this notification is not in conformity with the provisions contained under section 120(4)(b), inasmuch as, this notification has been issued under section 120(1) and 120(2) and not u/s. (4)(b) of section 120. The last notification relied upon by the Department is notification no.267/2001 dated 17<sup>th</sup> September 2001. A perusal of the aforesaid notification, a copy of which has been placed in the Departmental paper book shows that this notification has been issued by the Board under section 120(4)(b) directing JCIT/JDIT to exercise powers and functions of the Assessing Officer. It does not mention Addl. CIT / Addl. Director of Income Tax. In any case of the matter at the time of issuance of this notification, Addl. CIT was not treated as an Assessing Officer either under section 27(A) or under section 120(4)(b) as the amendment including Addl. CIT, as an Assessing Officer was brought to the statutory Act by Finance Act, 2007, though, with retrospective effect from 1<sup>st</sup> April 1994. Therefore, under no circumstances, the Board notification dated 17<sup>th</sup> September 2001, can be said to have conferred the jurisdiction of assessing officer on Addl.CIT. In this context, it is necessary to deal with the argument of the Department that as per the definition of JCIT under section 2(28C), it includes Addl. CIT. Therefore, the notification dated 17<sup>th</sup> September 2001, issued under section 120(4)(b) also covers the Addl. CIT. We are not convinced with the aforesaid submissions of the Department. Had it had been the intention of the legislature to treat the Addl. CIT as JCIT and, in turn, as Assessing Officer under section 2(7A) r/w section 120(4)(b), there was no necessity to amend the provisions of section 2(7A) and 120(4)(b) specifically including the Addl. CIT and Addl. DIT, since, JCIT and JDIT were already included

*as Assessing Officer under both the provisions. This clarifies the intention of legislature in not treating JCIT and Addl. CIT as one. Thus, the Department has failed to bring to our notice any notification issued in conformity with section 120(4)(b) empowering the Addl. CIT, Range-1(3), to act as an Assessing Officer in respect of present assessee. The notification relied upon by the learned Departmental Representative are not under section 120(4)(b). As far as notification dated 17<sup>th</sup> September 2001 of the Board is concerned, though, it is issued under section 120(4)(b) of the Act, however, it authorizes only the JCIT and JDIT to exercise the powers and function of the Assessing Officer and it is not in respect of Addl. CIT or Addl. DIT. Thus, none of these notifications can validly authorize or empower the Addl. CIT, Range-1(3) to act as an Assessing Officer in the present case.”*

11. Another argument raised by the Id. Departmental Representative is that in the order of Tribunal for assessee’s own case for Assessment Year 2002-03 reliance has been placed on the decision of Mega Corporation Ltd. Vs. Addl. CIT in ITA No.102/Del/2014 decided on 22/09/2015. The Id. Departmental Representative has pointed that aforesaid decision of the Tribunal has been reversed by the Hon'ble Delhi High Court in Income Tax Appeal No.128 of 2016 decided on 23/02/2017. Thus, in view of the order of Hon'ble Delhi High Court no further reliance can be placed on the decision of Tribunal in assessee’s own case for Assessment Year 2002-03(supra). The Id.Counsel for the assessee has pointed that the Tribunal in the case of Kishore Vittaldas vs.JCIT in ITA NO.7397/Mum/2016 for Assessment Year 2007-08 decided on 16/10/2019, wherein similar additional grounds challenging the jurisdiction of JCIT for passing the assessment order was raised, after considering the decision of Hon'ble Delhi High Court in the case of PCIT vs Mega Corporation Ltd. (supra) concluded that there is no application of the aforesaid decision to the facts of the present case. The relevant extract of the findings of Co-ordinate Bench on this issue are reproduced herein under:

*“16. Coming back to the case laws relied upon by the Ld. DR. The Ld. DR relied upon Hon'ble Delhi High Court decision in the case of Pr. CIT Vs. Mega Corpn., Ltd in ITA No. 128/2016 vide order dated 23,02.2017 and submitted that the ITAT, while deciding the issue in the case of TATA Sons Ltd., has relied upon the decision of ITAT Delhi in the case of Mega Corporation (supra), but said decision of the ITAT has been reversed by the Hon'ble Delhi High Court and held that once an order is passed u/s 120 (1) and (2) by virtue of Sec. 2(7A) of the Act, then there is no requirement of separate order u/s*

*120(4)(b) of the Act. We find that the matter before the "Hon'ble Delhi High Court in the said case was whether the DCIT who passed the assessment order was having valid jurisdiction / authority in absence of separate order u/s.120(4)(b) of the Act . The Hon'ble High Court, in light of the provisions of Sec. 2(7A) of the Act, the definition of the A.O and order u/s 120 (1) & (2) of the Act, came to the conclusion that the definition of A.O includes DCIT and hence once an order u/s 120 (1) & (2) of the Act, is on record authorizing the A.O to act as an A.O, then there is no requirement of separate order u/s 120(4)(b) of the Act. In those facts, the Hon'ble Delhi High Court came to the conclusion that the assessee cannot questioned the jurisdiction of the A.O in absence of separate order u/s 120(4)(b) of the Act. In this case, on verification of facts, we find that there is no order authorizing the JCIT u/s 120 (4)(b) of the Act, therefore the facts of the Hon'ble Delhi High Court has no application to the facts of the present case".*

In the present case as well the Revenue has not been able to produce the authorization u/s. 120(4)(b) of the Act.

12. Thus in view of the facts of the case and the decisions relied on by the assessee, we find merit in the additional grounds challenging validity of assessment order passed by Addl.CIT without proper authorization. The assessee succeeds on the additional ground of appeal. The impugned assessment order is held to be bad in law, passed without jurisdiction and hence, quashed.

13.. In the result, this appeal by the assessee is allowed.

**ITA No.6781/M/2012,A.Y. 2008-09;**  
**ITA No.572/M/2014, A.Y.2009-10; &**  
**ITA 1106/M/2015, A.Y.2010-11**

**-ASSESSEE'S APPEALS**

**ITA No.1657/M/2014, A.Y.2009-10 &**  
**ITA No. 1561/M /2015, A.Y.2010-11**

**- REVENUE'S APPEALS**

14. Both sides are unanimous in stating that the additional grounds raised in these appeals are identical to the grounds raised in Assessment Year 2007-08. Further, the facts germane to the issue raised in additional grounds are also identical to the facts in Assessment Year 2007-08. Therefore, in view of the above findings given by us while adjudicating the appeal of assessee in ITA NO.7514/Mum/2011(Supra) would *mutatis mutandis* apply to the present set of

appeals. Consequently, the appeals of the assessee in ITA No.6781/M/2012, ITA No.572/M/2014 and ITA No.1106/M/2015 are allowed for parity of reasons. As a corollary, corresponding appeals by the Revenue in ITA No.1657/Mum/2014 and ITA No.1561/Mum/2015 for A.Y. 2009-10 and 2010-11, respectively are dismissed.

**15. In the result, appeals by assessee are allowed and appeals by Revenue are dismissed.**

Order pronounced in the open court on Wednesday the 23rd day of February, 2022.

Sd/-

( M. BALAGANESH )

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 23/02/2022

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**