

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"E" BENCH, MUMBAI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.3733/Mum./2013**  
(Assessment Year : 2006-07)

**ITA no.3740/Mum./2013**  
(Assessment Year : 2005-06)

Dy. Commissioner of Income Tax  
Circle-7(1), Mumbai

..... Appellant

v/s

M/s. Sandoz Pvt. Ltd.  
Sandoz House, Dr. Annie Besant Road  
Worli, Mumbai 400 018 PAN - AAACH2914F

.....Respondent

**ITA no.3870/Mum./2013**  
(Assessment Year : 2006-07)

**ITA no.3871/Mum./2013**  
(Assessment Year : 2005-06)

M/s. Sandoz Pvt. Ltd.  
Plot no.8A/2, 8B TTC Industrial Area  
Kalwe Block Village Digha Thane Belapur Road  
Navi Mumbai 400 708 PAN - AAACH2914F

..... Appellant

v/s

Addl. Commissioner of Income Tax  
Circle-7(1), Mumbai

.....Respondent

Assessee by : Shri Nitesh Joshi  
Revenue by : Shri Prakash Mane

Date of Hearing - 13/09/2022

Date of Order - 09/12/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present cross appeals are against the separate impugned orders of even date 26/02/2013, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-12, Mumbai, [*learned CIT(A)*], for the assessment year 2005-06 and 2006-07.

**ITAs No. 3871 and 3870/Mum./2013**  
**Assessee's appeals – A.Y. 2005-06 and 2006-07**

2. During the hearing, at the outset, the learned Authorised Representative ('learned AR') wishes to press the applications dated 12/10/2021, filed by the assessee seeking admission of additional grounds of appeal for assessment years 2005-06 and 2006-07, whereby the assessee has challenged the jurisdiction of the Additional Commissioner of Income Tax ('Addl. CIT') in issuing notice under section 143(2) and passing the assessment order under section 143(3) of the Act, in absence of an order under section 120(4)(b) of the Act.

3. In its appeals, the assessee has raised, inter-alia, the following common additional grounds of appeal:

*"The following Grounds of Appeal are independent of, and without prejudice to each other and to the grounds of appeal filed earlier.*

5. *On the facts and in the circumstances of the case, the notice 7 August 2007 issued under section 143(2) of the Income-Tax Act, 1961(the Act) and the assessment order dated 22 December 2008 passed by the Additional Commissioner of Income Tax (Addl. CIT) under section 143(3) of the Act is bad in law, illegal and without jurisdiction and/or in the excess of jurisdiction, on the grounds amongst others, that he did not possessed legal and valid jurisdiction under the Act to pass the assessment order and consequently the Hon'ble tribunal he pleased to quash the said order.*
6. *On the facts and the circumstances of the case, the Addl. CIT lacked jurisdiction to pass the assessment order under section 143(3) of the Act dated 22 December 2008 and to exercise the powers of performing the functions of an assessing officer, without establishing that he possess such jurisdiction conferred on him under section 120(4)(b) of the Act. Accordingly, in the absence of an order under section 120(4)(b) conferring jurisdiction on the Addl. CIT the assessment order dated 22 December 2008 passed by him needs to be quashed.*
7. *On the facts and the circumstances of the case, the assessment proceedings have been initiated by issuing of a notice under section 143(2) of the Act by the Assistant Commissioner of Income Tax (lower authority), without establishing that the fact of an order transferring*

*jurisdiction under section 127 of the Act to the Addl. CIT, the order of assessment passed by the Addl. CIT (higher authority), is without jurisdiction and needs to be quashed.*

*The Appellant craves leave to add to, amend, delete, rectify, substitute and modify any of the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing the appeal."*

4. The learned AR submitted that for the assessment year 2005-06, return of income filed by the assessee on 30/10/2005 with the ACIT, Circle-7(1) Mumbai, was processed and intimation under section 143(1) was issued on 23/01/2007 by the ACIT, Circle-7(1) Mumbai. Thereafter, the assessee filed its revised return of income on 30/03/2007 with the ACIT, Circle-7(1) Mumbai. Subsequently, notice under section 143(2) of the Act along with a questionnaire was issued on 07/08/2007, by Addl. CIT, Range-7(1), Mumbai. Notice under section 142(1) of the Act along with questionnaire was issued on 22/08/2008, seeking further information by the Addl. CIT, Range-7(1), Mumbai. Another letter calling for information was issued on 26/11/2008 by the Addl. CIT, Range-7(1), Mumbai. Copy of the aforesaid forms part of the paper book titled as '*factual paper book*' dated 13/10/2021, having pages 1-19, for the assessment year 2005-06.

5. A similar factual paper book dated 13/10/2021, having 9 pages, was filed for the assessment year 2006-07, wherein the copy of the acknowledgment of return of income and revised return of income filed with DCIT, Circle-7(1), Mumbai is placed on record. From the said factual paper book, we find that in the assessment year 2006-07 notice under section 143(2) of the Act was initially issued by the DCIT, Circle-7(1), Mumbai on 17/11/2007. Thereafter, on 29/07/2008, notice under section 143(2) of the

Act was issued by the Addl. CIT, Range 7(1), Mumbai. Subsequently, notice under section 142(1) of the Act was also issued by the same incumbent officer. Thereafter, notices under sections 143(2) and 142(1) of the Act along with a questionnaire were issued to the assessee on 21/08/2009, by another incumbent Addl. CIT, Range 7 (1), Mumbai.

6. The learned AR by referring to the definition of 'Assessing Officer' as provided under section 2(7A) of the Act submitted that Addl. CIT can act as the Assessing Officer provided the order under section 120(4)(b) of the Act has been issued by the CBDT. However, no such order has been placed on record by the Revenue despite time being sought on previous occasions and therefore, notice issued under section 143(2) as well as assessment order passed under section 143(3) of the Act are without jurisdiction and bad in law. In support of its submissions, the learned AR placed reliance upon various decisions.

7. On the contrary, the learned Departmental Representative ('learned DR') submitted that it is not a case that no order is passed transferring the jurisdiction to the Addl. CIT. The learned DR, by referring to the assessment order for the assessment year 2006-07, submitted that the case was assigned to Addl. CIT for completion of scrutiny assessment vide order dated 05/05/2008 passed under section 120(4)(b) of the Act. However, such authorisation is not traceable in the assessment record due to time-lapse. The learned DR further submitted that the additional grounds challenging the jurisdiction have been raised by the assessee after a huge delay and the assessee has not provided any reasons for such a delay. It was submitted that

the assessee never challenged the jurisdiction of the Addl. CIT during the assessment proceedings or in its appeal before the learned CIT(A). In support of its submissions, the learned DR referred to certain notifications assigning jurisdictions to Addl. CIT, to exercise the powers and perform the functions under the Act except the functions relating to deduction and collection of tax at source.

8. In rebuttal, the learned AR submitted that there is no limitation period for filing the additional ground before the Tribunal. The learned AR further submitted that it is the plea of the Revenue that notification authorising the Addl. CIT is not traceable in the assessment record, however, such notification should be part of the assessment record as the same authorises the Addl. CIT to complete the scrutiny assessment. Learned AR also submitted that the authorisation dated 05/05/2008, as mentioned in the assessment order for the assessment year 2006-07 is still not produced by the Revenue.

9. We have considered the rival submissions in respect of the additional grounds of appeal and perused the material available on record. In the present case, the Revenue has objected to the admission of additional grounds of appeal filed by the assessee on the basis that no such ground was raised by the assessee either during the assessment proceedings or in its appeal before the learned CIT(A). Even in the present appeal, such a challenge has been raised vide application dated 12/10/2021, and thus there is a delay in raising the additional grounds of appeal before the Tribunal. On the contrary, the assessee in its application submitted that the additional grounds raised are the pure questions of law and the failure to raise the same at the time of filing of

the present appeal was neither deliberate nor contumacious but are arising out of the legal position which has come to the notice of the assessee subsequent to the filing of the present appeal. In support of its submission, the assessee has, inter alia, placed reliance upon the decision of the Hon'ble Supreme Court in CIT vs NTPC Ltd, 229 ITR 383 (SC). We find that in NTPC Ltd (supra) the Hon'ble Supreme Court observed as under:

*"Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee."*

10. Thus, in the aforesaid decision, the Hon'ble Supreme Court held that legal issues can be raised for the first time before the Tribunal, so long as the relevant facts are on record in the assessment proceedings for that issue. Since the statutory notices and the notification conferring power on the concerned officer to act as an Assessing Officer of the assessee constitutes part of the assessment record, therefore an investigation into fresh facts is not required. Thus, we find no merits in the submission of the Revenue that challenge on the legal aspect, which was not raised by the assessee during the assessment proceedings and also not raised in its appeal before the learned CIT(A), cannot be raised now in the present appeal before us. As regards the submission of learned DR that this issue has been raised after a huge delay i.e. 13 years from the assessment order, we find that a similar argument was rejected by the coordinate bench of the Tribunal and additional ground of appeal on similar issue filed by the assessee was admitted even after a gap of 10 years or 15 years in the following decisions:

- (i) *Tata Sons Ltd., in ITA No.4497/Mum/2005 dated 31/10/2006 reported in 162 ITD 450;*
- (ii) *Tata Communications Ltd., in ITA No.7071/Mum./2005 dated 30/06/2017;*
- (iii) *Tata Communications Ltd., in ITA No.2891/Mum/2010 and ITA No.1015/Mum./2010 dated 16/08/2019;*
- (iv) *Tata Sons Ltd., in ITA No.193/Mum./2006 dated 27/11/2017;*
- (v) *Kishor Vithaldas in ITA No.5661/Mum./2017 dated 16/10/2019.*

11. Further, the Hon'ble jurisdictional High Court in *Inventors Industrial Corporation Ltd vs CIT*, [1992] 194 ITR 548 (Bom.) held that the ground by which the jurisdiction to make an assessment itself is challenged can be urged before any authority for the first time, even in the 2<sup>nd</sup> round of proceedings. Therefore, in view of the above, since the issue raised by way of additional grounds of appeal is a legal issue, which can be decided on the basis of facts available on record, we admit the additional grounds of appeal filed by the assessee in its appeals for assessment years 2005-06 and 2006-07.

12. The grievance of the assessee is that notice under section 143(2) has been issued and the assessment order under section 143(3) of the Act has been passed by the Addl. CIT who doesn't have jurisdiction under the Act, in absence of the order under section 120(4)(b) of the Act. Undoubtedly, under the Act, only the Assessing Officer is empowered to conduct a scrutiny assessment and passed the assessment order under section 143(3) of the Act. The term '*Assessing Officer*' has been defined in section 2(7A) of the Act as under:

*"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.” (Emphasis supplied)

13. Thus, as per the provisions of section 2(7A) of the Act, Addl. CIT can exercise the powers of the Assessing Officer under the Act if the direction in this respect has been issued under section 120(4)(b) of the Act. As per section 120(4)(b) of the Act, CBDT may by general or special order empower the authorities mentioned under the provision to issue orders in writing that the powers and functions assigned to the Assessing Officer shall be exercised or performed, inter-alia, by the Addl. CIT. Further, section 120(4)(b) of the Act reads as under:

*"(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) .....*

*(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."*

14. As per the assessee, no such order under section 120(4)(b) of the Act has been passed in the present case. In order to verify the directions issued by the CBDT and the consequent orders passed authorising the Addl. CIT to act as

Assessing Officer under the aforesaid provision, time was sought by the Revenue on 07/02/2022. Thereafter, the Revenue filed written submissions on 06/04/2022 and 11/07/2022. In the written submission dated 06/04/2022, the learned DR, inter-alia, submitted that subsequent to the Cadre restructuring of the Income Tax Department in 2001, Addl. CIT's/JCIT's were empowered to pass order under section 143(3) of the Act. Further, it is submitted that in this connection, the Board has issued various notifications and the Commissioner of Income Tax had issued subsequent notifications empowering the Addl. CIT/JCIT to exercise all powers and functions of the Assessing Officers, in respect of territorial areas or persons or classes of income or cases or classes of cases. Learned DR, along with written submission dated 06/04/2022, has, inter-alia, placed on record a copy of notification dated 01/08/2001 issued by Commissioner of Income Tax, Mumbai City VII, Mumbai. We find that in the aforesaid notification Addl. CIT/JCIT were authorised to exercise the powers and perform all the functions excluding the functions under Chapter XVIIIB, XVIIIBB and XVIIID relating to deduction and collection of tax at source. However, we find that the aforesaid notification dated 01/08/2001 has been issued in the exercise of the power conferred under sub-section (1) and (2) of section 120 of the Act. We further find that the issue, whether the aforesaid notification can be considered to authorise the Addl. CIT to act as the Assessing Officer under section 2(7A) read with section 120(4)(b) of the Act, came up for consideration before the coordinate bench of the Tribunal in DCIT vs Tata communications Ltd., in ITA No. 6981 & 7071/Mum./2005, CO No. 40/Mum./2017, ITA No. 1108 & 1836/Mum./2008. The Co-ordinate Bench of the Tribunal vide its order dated 30/06/2017, observed as under:

"14. .... The specific contention of the assessee is, as per the provisions of section 2(7A), as it existed at the relevant period, Addl. CIT was not an Assessing Officer. It is further submitted, even otherwise also, there is no notification / order empowering the Addl. CIT to act as an Assessing Officer in terms of section 120(4)(b). To counter the aforesaid contention of the assessee, the learned Departmental Representative has relied upon the following notifications.

- i) Notification no.228 of 2001 date 31.07.2001;
- ii) Notification no.MIC/HQ-1/Jurisdiction/2001-02 dt 01.08.2001;
- iii) Notification no.ACIT, Range-1(3)/Jurisdiction/2001-02 dated 08.08.2001;
- iv) Notification no.267/2001 dated 17.09.2001.

15. At this stage, we propose to deal with each of the aforesaid notification relied upon by the Department to 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 July 2001, corresponding to notification no.S.O. 732(E) dated 31 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 1st April 1994, section 2(7A) made it clear, Asstt. CIT, DCIT, ADIT, 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, Addl. DIT, 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 7(7A) and section 120 would make it clear as far as ACIT, ADIT, 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 July 2001, cannot be said to be vesting power of Assessing Officer with the Addl. CIT. Similar is the situation with notification dated 1st 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)."

15. Further, in its written submission dated 11/07/2022, the learned DR stated as follows:-

"6. The only difficulty being faced by the department is that the copy of such order is presently not traceable".

The reason for non-traceability, as mentioned in the aforesaid submission, is that more than 13 years have elapsed since the passing of the assessment order. It is further submitted that it is a routine matter in the department that the file is moved from one office to the other due to change of jurisdiction, restructuring, or any other reason and there is a probability that the case records could not be located immediately. It is pertinent to note that from the date of the aforesaid submission, i.e. 11/07/2022, till the date of hearing of these appeals and even till the date of passing of this order, nothing has been brought on record by the Revenue to suggest that the Addl. CIT, Range-7(1), Mumbai who has passed the assessment order was authorised under section 120(4)(b) of the Act to perform functions and, exercise the powers of an Assessing Officer in the case of the assessee.

16. On one hand, in written submission dated 11/07/2022, it has been submitted by the learned DR that the assessee has brought nothing on record to even remotely show that no such order assigning jurisdiction to the Addl. CIT was passed. On the other hand, during the hearing, learned DR submitted that the order passed under section 120(4)(b) of the Act is an administrative order, and the same is not required to be served to the assessee. Thus, even if it is accepted that being an administrative order, the order passed under section 120(4)(b) of the Act is not required to be served to the assessee, however, we are of the considered view that when the jurisdiction of the Addl. CIT to conduct scrutiny assessment and pass the assessment order under section 143(3) of the Act is under challenge it is the bounden duty of the

Revenue to bring on record the copy of the aforesaid order to justify the basis of authority to perform functions and, exercise the powers of an Assessing Officer and pass the assessment order.

17. Further, reference has been made by the learned DR to the assessment order for the assessment year 2006-07, wherein reference has been made to the order dated 05/05/2008 passed under section 120(4)(b) of the Act. However, we find that apart from this sole statement in para 1 of the assessment order for the assessment year 2006-07, the Revenue has failed to produce such an order. It is surprising to note that the notification dated 01/08/2001 issued under sub-section (1) and (2) of section 120 of the Act was furnished by the learned DR, however, the order dated 05/05/2008 claimed to have been passed under section 120(4)(b) of the Act is still not brought on record despite the sufficient opportunity granted to the Revenue.

18. The issue in dispute has already been decided in favour of the assessee by various decisions of the coordinate bench of the Tribunal as noted above. Therefore, in absence of separate order passed under section 120(4)(b) authorising the Addl. CIT to perform functions and, exercise the powers of an Assessing Officer under section 2(7A), the notice issued under section 143(2) and assessment order passed under section 143(3) of the Act, in the case of the assessee, by the Addl. CIT for assessment years 2005-06 and 2006-07 are without the jurisdiction and hence are set aside. As a result, additional grounds of appeal filed by the assessee in its appeal for assessment years 2005-06 and 2006-07 are allowed.

19. Since the assessment orders framed for the assessment years 2005-06 and 2006-07 are quashed, the regular grounds of appeal raised on merits by the assessee have become academic in nature and hence, they are left open.

20. In the result, the appeals by the assessee for assessment years 2005-06 and 2006-07 are allowed.

**ITAs No. 3740 and 3733/Mum/2013**  
**Revenue's appeals – A.Y. 2005-06 and 2006-07**

21. In view of our decision rendered in assessee's appeal, the appeals filed by the Revenue have become infructuous and therefore are dismissed.

22. In the result, the appeals by the Revenue for assessment years 2005-06 and 2006-07 are dismissed.

23. To sum up, the appeals by the assessee are allowed, while the appeals by the Revenue are dismissed.

Order pronounced in the open Court on 09/12/2022

**Sd/-**  
**M. BALAGANESH**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 09/12/2022**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai