

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No.63/RPR/2018
(Assessment Years: 2007-2008)

Shri Amarjeet Singh Bhatia, B-19, Rajeev Nagar, Raipur	Vs	ACIT-3(1), Raipur
PAN No. :ADEPB 9326 N		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Sunil Kumar Agrawal & Smt. Laxmi Sharma, CAs
राजस्व की ओर से /Revenue by	:	Shri Piyush Tripathi, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	27/04/2023
घोषणा की तारीख/ Date of Pronouncement	:	07/07/2023

आदेश / ORDER

Per Arun Khodpia, AM :

The assessee has filed this appeal against the order passed by the CIT(A)-I, Raipur, dated 02.01.2018 for the assessment year 2007-2008, on the following ground :-

1. *That the original assessment was completed u/s143(3) and the notice issued u/s148 is beyond four years, hence, the same is illegal, bad in law and without jurisdiction as there is no failure on part of Assessee to produce relevant facts fully and truly.*
2. *That the Id CIT(A) has erred in facts as well as in law, in sustaining addition of Rs.21,49,054 on account of concealment of income.*
3. *The assessee craves leave to add, urge, alter, modify and withdraw any ground/grounds before or at the time of hearing of the appeal.*

2. Further, vide letter dated 02.08.2022, the assessee has filed revised grounds of appeal, including the additional grounds, which read as under:-

Revised Gr.No.1:

"1. On the facts and circumstances of the case and in law, reopening u/s.148 dt.21-3-14 is invalid as it is assessed u/s143(3) dt.24-12-09; it is beyond 4 years; there is no allegation on the reasons recorded that indicate any failure on the part of the

assessee to disclose fully & truly all material facts necessary for the assessment made u/s.143(3) dt.24-12-09; reopening u/s.148/147 is not permissible in the eyes of law as hit by first proviso to sec.147; is liable to be quashed."

Revised Gr.No.2:

"2. On the facts and circumstances of the case and in law, the Id CIT(A) has erred in sustaining the addition of Rs.21,49,054 made by the Id AO on the count of income of the assessee for the AY07-08 merely on presumption & surmises; which is unjustified, is liable to be deleted.

Additional Gr.No.1:

"1. On the facts and circumstances of the case and in law, reopening u/s148 & assessment made u/s.147, both are invalid & without having valid jurisdiction by the Id AOs i.e., DCIT-I(I)/ ACIT-3(1), as they were not having pecuniary jurisdiction over the assessee for recording reasons u/s!48 on 19-3-14 & for making assessment u/s147 on 11-2-15, as returned income was Rs.5,22,820; CBDT Instruction No.1/2011, dt.31-1-11, much binding on IT authorities u/s!19 and in contravention thereto, reopening u/s 148/147 by the Id AOs, who had not possessed valid jurisdiction over the assessee as on 19-3-14 at the time of recording reasons, is liable to be quashed."

Additional Gr.No.2:

"2. On the facts and circumstances of the case and in law, assessment made u/s!47 dt.11-2-15 is invalid on the count that the Id AO has not issued notice u/s143(2) before making assessment u/s147; in absence of notice u/s143(2), assessment made u/s147 is liable to be quashed."

Additional Gr.No.3:

"3. On the facts and circumstances of the case and in law, reopening u/s 148 dt.21-3-14 is invalid as it is based on mechanical approval granted by the Id PCIT u/s151(I) which is without application of mind on the part of the Id PCIT as he has not cared/ pointed out the glaring mistake of Id AO that Id AO was not having pecuniary jurisdiction for recording reasons & for making assessment u/s147 as returned income was Rs. 5,22, 820 which is in contravention to the CBDT Instruction No.1, dt.31-1-2011 which is much binding on IT authorities u/s.119; approval u/s151(I) is invalid; and thus, reopening u/s148/147 is liable to be quashed."

3. Ld. AR at the outset, argued only on the additional grounds. The revised grounds No.1 & 2 have not been pressed by the Id. AR of the

assessee before us and in this regard Id. AR has endorsed to it, therefore, both the grounds are dismissed as not pressed.

4. Ld. Sr.DR objected to the admissibility of additional grounds raised by the assessee before the Tribunal as the same were never raised before the revenue authorities.

5. In view of the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., reported in (1998) 229 ITR 383 (SC), it is open to the assessee to raise the points of law even before the Tribunal which was not raised earlier. Therefore, the arguments advanced by the Id. Sr. DR objecting to the additional ground of assessee, is not accepted and the legal grounds raised in the form of additional ground is admitted and taken on record.

6. Brief facts of the case are that the assessee derived income from liquor trading (retail) business. The assessee filed its return of income on 31.10.2007 declaring total income at Rs.5,22,820/-. The assessee's case was reopened by the Assistant Commissioner of Income Tax, Circle-3(1), Raipur on the basis that during the course of assessment proceedings for the assessment year 2008-2009, the assessee has submitted copy of confirmation of accounts in the name of Merline Infrastructure and Smt. Kewar Bai Dheewar. It has been noticed that there is an opening balance as on 01.04.2007 in the case of Merline Infrastructure amounting to Rs.7,77,500/- and in the case of Smt. Kewar Bai Dheewar amounting to Rs.13,71,554/-but the same have not been reflected in the balance sheet of the assessee filed for 31.03.2007. Being satisfied with the aforesaid

observation, the AO has formed the reason to believe that Rs.21,49,054/- has escaped from assessment. In this case, the order u/s.143(3) of the Act was also passed on 24.12.2009 and the income was assessed at Rs.6,15,800/- on returned income of Rs.5,22,820/-. Due to restructuring and reallocation of jurisdiction, the case of the assessee was transferred from DCIT-1(1), Raipur to ACIT-3(1), Raipur and due to change of incumbent, notice u/s.142(1) of the Act dated 08.12.2014 along with questionnaire dated 09.12.2014 were issued to the assessee. No response was made by the assessee. After several opportunities, the authorized representative of the assessee submitted a written reply to the Id. AO on 08.01.2015 and explained that opening balance sheet for the alleged two accounts are duly reflected in the books of accounts of the assessee. Thus, there is no escapement of income which is chargeable to tax as escaped assessment in the year under consideration. The explanation submitted by the AR of the assessee was not supported with documents, books of accounts, therefore, the Id. AO has observed that the onus cast upon the assessee was not discharged and inferred that the assessee has no explanation on discrepancies as detected and the assessee does not want to show anything in this matter. Finally, the Id. AO has added the amount of Rs.21,49,054/- in the income of the assessee, thereby making the total assessed income as Rs.27,64,854/-.

7. Dissatisfied with the order of the Id. AO, the assessee preferred appeal before the Commission of Income Tax (Appeal) but without success the appeal of the assessee was dismissed.

8. Now, the assessee is in appeal before us to challenge the decision of the Id. CIT(A).

9. Ld. AR argued on the additional ground No.1 assailing the validity of jurisdiction of the Id. AO i.e. DCIT-1(1), Raipur/ACIT-3(1), Raipur mentioning the reason that the AO was not having pecuniary jurisdiction over the assessee for recording reasons u/s.148 of the Act on 19.03.2014 and for making assessment u/s.147 of the Act on 11.02.2015 as the returned income of the assessee was Rs.5,22,820/- only. Ld. AR placed his reliance on CBDT Instruction No.1/2011, dated 31.01.2011 placing the argument that the instruction of CBDT was binding on the revenue authorities u/s.119 of the Act and in contravention thereto reopening u/s.148/147 of the Act by the AO, who had not possessed valid jurisdiction over the assessee while proceeding for reopening of assessment u/s.147/148 of the Act, which is liable to be quashed. Instruction No.1/2011, dated 31.01.2011 issued by the CBDT reads as under :-

INSTRUCTION NO. 1/2011 [F. NO. 187/12/2010-IT(A-I)],

***SECTION 119 OF THE INCOME-TAX ACT, 1961 - INCOME-TAX
AUTHORITIES - INSTRUCTIONS TO SUBORDINATE
AUTHORITIES***

***INSTRUCTION NO. 1/2011 [F. NO. 187/12/2010-IT(A-I)], DATED
31-1-2011***

References have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship.

An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:

	Income Declared (Mofussil areas)		Income Declared (Metro cities)	
	ITOs	ACs/DCs	ITOs	DCs/ACs
Corporate Returns	Upto Rs.20 lacs	Above Rs.20 lacs	Upto Rs.30 lacs	Above Rs. 30 lacs
Non-corporate returns	Upto Rs.15 lacs	Above Rs.15 lacs	Upto Rs.20 lacsq	Above Rs.20 lacs

Metro charges for the purpose of above instructions shall be Ahmedabad, Bangalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune.

The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from 1-4-2011.

10. Further, the Id. AR relied on the CBDT Instruction No.6/2011, dated 08.04.2011, wherein the Board has instructed the CCIT/DGIT to adjust the limits by an amount upto Rs.5 lakhs to ensure that the workload is equitably distributed amongst the Assessing Officers after recording reasons in this regard. The said Instruction No.6/2011 is as under :-

INSTRUCTION NO. 6/2011 [F.NO.187/12/2010-ITA-I],

***SECTION 119 OF THE INCOME - TAX ACT, 1961 - CENTRAL BOARD OF DIRECT TAXES - INSTRUCTIONS TO SUBORDINATE AUTHORITIES
INSTRUCTIONS - REGARDING INCOME LIMITS FOR ASSIGNING CASES TO DEPUTY COMMISSIONERS/ASSISTANT COMMISSIONERS/ITOS***


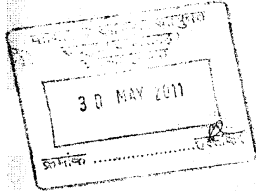

INSTRUCTION NO. 6/2011 [F.NO.187/12/2010-ITA-I], DATED 8-4-2011

Reference may kindly be made to Board's Instruction No. 1/11, dated 31-1-2011 which lays down revised monetary limit of cases to be assessed by DCsIT/ACsIT in metro cities and mofussil areas w.e.f. 1-4-2011. Some CCsIT have expressed the view that the limit fixed in the aforesaid Instruction, if strictly enforced would lead to unequal distribution of workload between the ACITs and the ITO in some of the charges.

2. In view of the above, the Instruction No. 1, dated 31-1-2011 has been reconsidered by the Board and it has been decided that if the application of above limits in any CIT charge leads to a substantially uneven distribution of workload between DCsIT/ACsIT am ITOs, the CCIT/DGIT may adjust the above limits by an amount of upto Rs. 5 lakhs to ensure that the workload is equitably distributed amongst the Assessing Officers after recording reasons in this regard.

3. It is further clarified that the mofussil areas referred to in the Instruction No. 1/2011 means all stations other than the metro cities. of Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Ahmedabad, Pune and Bangalore.

11. Based on the aforesaid instruction, the office of the Chief Commissioner Income Tax, Raipur issued an instruction to be followed by the range heads for assigning case to ITO and ACs/DCs with monetary limit as prescribed therein, copy of the same is reproduced hereunder :-

भारत सरकार वित्त मंत्रालय : राजस्व विभाग कार्यालय मुख्य आयकर आयुक्त केन्द्रीय राजस्व भवन, सिविल लाईन्स, रायपुर (छ.ग.) 492 001 Gram: AAYAKAR - Phone 5052792, 2331600 - Fax: 0771-2426347	 Government of India Ministry of Finance - Deptt. of Revenue Office of the Chief Commissioner of Income Tax Central Revenue Building Civil Lines, Raipur (C.G.) 492 001											
F.No.CCIT/RPR/2011-12	Date: 30.05.2011											
To												
The Commissioner of Income tax Raipur/ Bilaspur												
Sir												
Sub - CBDT Instruction NO.1/2011 dated 31/01/2011 and Instruction No.6/2011 dated 08/04/2011 - Income limits For assigning cases to Deputy Commissioners/ Asstt. Commissioners/ ITOs - Reg.-												
Kindly refer to the above.												
In this connection I am directed to refer to the Instruction No.1/2011 dated 31/01/2011 of CBDT wherein the existing monetary limits for assigning cases to ITOs and DCs/ACs have been revised and Instruction No.6/2011 dated 08/04/2011 wherein it has been stated that if there is uneven distribution of work load between DCs/IT/ACs and ITOs, the CCIT/ DGIT may adjust the above limits by an amount of upto Rs.5 lacs to ensure that the work load is equitably distributed amongst the Assessing Officers.												
In view of the above Instructions of the CBDT, and the discussions held in the matter, I am directed to request you to direct the Range heads to pass necessary notifications assigning cases to ITOs and ACs/DCs with revised monetary limit as under :												
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2"></th> <th colspan="2">Income declared</th> </tr> <tr> <th>ITOs</th> <th>ACs/DCs</th> </tr> </thead> <tbody> <tr> <td>Corporate returns</td> <td>Upto Rs.15 lacs</td> <td>Above Rs.15 lacs</td> </tr> <tr> <td>Non-corporate returns</td> <td>Upto Rs.10 lacs</td> <td>Above Rs.10 lacs</td> </tr> </tbody> </table>			Income declared		ITOs	ACs/DCs	Corporate returns	Upto Rs.15 lacs	Above Rs.15 lacs	Non-corporate returns	Upto Rs.10 lacs	Above Rs.10 lacs
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<u>The necessary notifications may be made effective from 01/06/2011.</u>												
	Yours faithfully  (MANOJ KR.SHARMA) Income tax Officer (Tech.) For Chief Commissioner of Income Tax, Raipur											

12. To explain the applicability of jurisdiction in accordance with the aforesaid instruction issued by the CBDT as well as the office of the CCIT, Raipur, the Id. AR submitted that the reasons for reopening were recorded by the DCIT-1(1), Raipur on 19.03.2014 for the assessment

year 2007-2008, since the assessee's returned income for the relevant assessment year was Rs.5,22,820/-, which is below the monetary limit as prescribed by the CBDT, therefore, the reopening itself was invalid and nonest because the DCIT-1(1) Raipur was not having pecuniary jurisdiction over the assessee as on 19.03.2014. To support his contentions, Id. AR relied upon the various cases law and some of such cases laws having similar facts and circumstances which are as under :-

- i) Durga Manikanta Traders, ITA No.59/RPR/2019, order dated 12.12.2022, wherein the Tribunal has held as under:-

17. On the basis of our aforesaid observations, we are of the considered view that as in the case of the present assessee before us the impugned assessment had been framed by the ITO-1(1), Bhilai vide his order passed u/s.143(3) dated 29.12.2016 on the basis of a notice u/s. 143(2), dated 24.09.2015 that was issued by the DCIT-1(1), Bhilai, i.e., an A.O who at the relevant point of time was not vested with jurisdiction over the case of the assessee, therefore, the assessment so framed cannot be sustained and is liable to be struck down on the said count itself. Apropos the notice issued u/s.143(2) of the Act, dated 05.05.2016 by the ITO-Ward 1(1), Bhilai, we are of the considered view that as the said notice was issued after the lapse of the stipulated time period, i.e., beyond the specified time frame which expired as on 30.09.2015, therefore, the assessment order so framed would also not be saved on the said basis. To sum up, as the impugned assessment u/s. 143(3), dated 29.12.2016 had been framed by the ITO- Ward 1(1), Bhilai de-hors the issuance of a valid notice u/s. 143(2) of the Act, therefore, the same cannot be sustained is liable to quashed. We, thus, in terms of our aforesaid observations quash the assessment framed by the A.O u/s.143(3), dated 29.12.2016 for want of valid assumption of jurisdiction on his part.

- ii) Sudhir Kumar Agrawal, ITA No.158/RPR/2017, order dated 17.10.2022, wherein the Tribunal has held as under:-

17. Consequent to our aforesaid deliberations, we are of the considered view that as in the present case before us the assessment had been framed by the Income Tax Officer, Ward-2(2), Bhilai u/s. 143(3), dated 30.03.2015 in clear contravention

of the CBDT Instruction No.1/2011, dated 31.01.2011, which divested him of his jurisdiction over the case of the assessee for the year under consideration i.e AY 2012-13, therefore, the same cannot be sustained and is liable to be struck down in terms of our aforesaid observations. We, thus, in terms of our aforesaid observations quash the order passed by the Income-Tax Officer, Ward-2(2), Bhilai for want of jurisdiction on his part.

- iii) Welcome Coir Industries, ITA Nos.266-269/Agra/2013, order dated 16.10.2017, wherein the Tribunal has held as under :-

11. Further, the issue that if there is an inherent defect in the jurisdiction of the AO over the assessee and in any particular year, during the assessment proceedings no objection was taken whether it would amount to acceptance of jurisdiction for other years, has been dealt with by the ITAT, Lucknow Bench, in the case of "[M.I. Builders Pvt. Ltd. vs. ITO Lucknow](#)", (2008) 115 ITD 419 (Luck) and it has been held that the validation of proceedings by virtue of [section 124\(3\)](#) of the Act is specific from proceeding to proceeding and [section 124\(3\)](#) cannot correct or create a jurisdiction in respect of other proceedings, if the Assessing Officer otherwise I.T.A No. 266 to 269/Agra/2013 does not have jurisdiction. Such defects also cannot get cured because of appearance of the present Director of the Company and the Counsel during the assessment proceedings for AY 2008-09, because as held in the case of "[M I Builders Pvt. Ltd. vs. ITO Lucknow](#)" (supra), the principles of estoppel are not applicable to income-tax proceedings and what may be acceptable or held in one year or in one proceeding cannot be in general held to be applicable to other proceedings. The reliance of the AO for validation of jurisdiction in the three assessment years on the basis of compliance made by the assessee in AY 2008-09, is, as correctly held by the CIT(A), also not legally tenable because erroneous assumption of jurisdiction cannot, in general, be validated. Such validation is specific in [section 124\(3\)](#) and failure of the assessee to object within the time allowed under [section 124\(3\)](#) is available to specific proceedings and not to every proceeding as also held in "M.I. Builders" (supra).

12. The CIT(A) has correctly observed that the provisions of [section 124\(3\)](#) are not applicable in the present case, because both clauses (a) & (b) of the said section are not applicable for the three reassessment orders. Clause (a) applies where after filing of return u/s 139(1), proceeding is initiated and not objected to within a month by the assessee calling in question the jurisdiction of the Assessing Officer after issuance of notice under [section 142\(1\)/143\(2\)](#). In that scenario, the order passed thereafter is protected on the question of jurisdiction. In the present case, I.T.A No. 266 to 269/Agra/2013 however, no proceeding has been initiated by

issuing notice u/s 143(2)/142(1) on the basis of return filed u/s 139(1) with the DCIT (CC), who is the AO for the three impugned assessment orders initiated u/s 147 of the Act. Since clause (a) does not apply to proceedings u/s 147 of the Act, it cannot protect the three reassessment orders. Clause (b) applies where the assessee has not filed return originally u/s 139(1) of the Act. In such a case, the Assessing Officer can issue notice under [section 148\(1\)](#) of the Act, asking the assessee to file the return and in that situation, if the assessee does not call in question the jurisdiction of the Assessing Officer issuing the notice under [section 148\(1\)](#) before the expiry of the time allowed by the notice, such proceedings and reassessment made thereafter is protected on the question of jurisdiction, but in the present case, undisputedly, return of income was originally filed by the assessee u/s 139(1) with its erstwhile Assessing Officer and as per the AO, while filling the form for obtaining the approval of the CIT, the assessment was also completed before reopening and therefore, the assessment orders are even not protected by clause (b).

- iv) Adarsh Rice Mill, ITA No.84/RPR/2022, order dated 29.11.2022, wherein the Tribunal has held as under :-

25. As in the present case before me the ITO-1(3), Raipur at the time of issuance of notice u/s.148 of the Act dated 25.03.2018 was not vested with any jurisdiction over the case of the assessee, which as per the Notification No.1/2014-15 dated 15.11.2014 remained with the ITO-1(1), Raipur, therefore, as the notice u/s.148, dated 25.03.2018 issued by the ITO-1(3), Raipur was nothing short of a notice issued by an A.O who lacked inherent jurisdiction, thus, the provisions of Sec. 124(3) could not have been triggered to fasten an obligation upon the assessee to call in question the jurisdiction of the said officer, i.e., ITO1(3), Raipur.

- v) Ravi Sherwani, ITA No.64/RPR/2020, order dated 29.05.2023, wherein the Tribunal has held as under :-

As the facts and the issue involved in the present appeal remains the same as were involved in the aforementioned orders of the Tribunal in the case of Durga Manikanta Traders Vs. ITO, ITA No.59/RPR/2019 dated 12.12.2022 and Chowaram Dhiwar Vs. ITO, ITA No.31/RPR/2022 dated 28.12.2022, therefore, respectfully following the same parity of reasoning, we are of the considered view that as the assessment framed in the case of the present assessee by the ACIT, Circle-4(1), Raipur vide order u/s.143(3) dated 29.03.2016 on the basis of notice issued by the ITO-1(3), Raipur i.e. a non-jurisdictional A.O is devoid and bereft of any force of law, thus, the 29 Ravi Sherwani Vs. ACIT-4(1), Raipur ITA No.64/RPR/2020 same cannot be sustained and is liable to

be struck down on the said count itself. Accordingly, the impugned assessment framed by the ACIT, Circle 4(1), Raipur u/s.143(3) dated 29.03.2016 is quashed for want of valid assumption of jurisdiction on his part.

13. As we have quashed the assessment framed by the A.O u/s.143(3), dated 29.03.2016 for want of valid assumption of jurisdiction, therefore, we refrain from adverting to and therein adjudicating the other contentions that have been advanced by the Ld. AR as regards the sustainability of the additions made by the A.O which, thus, are left open.

13. In view of the above submissions, it was the prayer of the Id. AR that since the reopening itself was invalid, the assessment order u/s.147 r.w.s143(3) of the Act, dated 11.02.2015 passed by the Id. AO having no pecuniary jurisdiction was invalid, nonest, bad in law, and deserve to be quashed.

14. On the contrary, Id.Sr. DR has filed his written submission, wherein he has submitted as under :-

**Assessment was earlier completed us 143(3) by DCIT circle(I)(I),Raipur and income was assessed at Rs.6,15,800/- on ITR income 5,22,820/-*

** The assessment order was accepted by the assessee and have not objected the jurisdiction on territorial and pecuniary ground.*

** Based on above material facts, the DCIT (I)(I),Raipur has reason to believe of escaped income and the case was reopened by the same AO.*

** The DCIT obtained approval under section 151 of the Act on 20-03-2014.*

The DCIT circle(I)(I),Raipur issued notice under section 148 of the Act on 21-03-2014 and served on 22-03-2014.

**The assessee has not objected the legality of notice, procedure and service of notice to the DCIT(Circle-1)(1) Raipur in view of section 124(3) of the Act.*

** The assessee also have not object the proceedings under section 143(3) and order passed us 143(3) in view of section 124(3) of the Act and there is also nothing on records, any objection in view of pecuniary and territorial ground.*

** The assessee did not respond notice u/s 148, failed to file ITR and written submission.*

Due to restructuring and reallocation of jurisdiction the case was transferred to ACIT Circle(3)(I),Raipur.

The AO issued query u/s 142(1) in continuation of reassessment proceedings transferred from the predecessor AO. The assessee failed to comply with the notice served on 8-12-2014. The assessee failed to comply with fixation notice served to him on 01-01-2015 and 15-01-2015.

The assessee furnished reply on 08-01-2015, denied escaped income, and explained that the assessee has reflected the same in his balance sheet but no enclosure or evidences. The AO categorically stated that the explanation of the assessee is not supported with the evidences and is contrary to the confirmation furnished during regular assessment proceedings. The assessee also failed to produce books of accounts.

The assessee failed to discharge his onus. The burden of proof was shifted to the assessee by notice issued u/s 142(1), it was also not responded. (Para-2 page -2) Hence the addition of Rs.21,49,054/-

The assessee failed to explain the escaped income, non-complied to the notices, and failed to discharge onus, hence addition was made.

16. Apart from the above submissions, Id. Sr. DR also submitted that the assessee is non responsive to assessment and appellate proceedings and has concealed the facts regular assessment proceedings. It was also submitted by the Id. Sr. DR that the assessee has never challenged the assessment proceedings on pecuniary and territorial basis. The assessee has not objected the notice issued under section 148, and also not objected proceedings in view of section 124(3) before assessing officer. The ground of appeal before CIT appeal and before ITAT is different. It was also the submission of Id. Sr. DR that the assessee has raised fresh issue before the ITAT. The AO/appellate authority below the court may be given equal opportunity to examine and consider the matter on additional ground raised by the assessee before final decision in the case. Reliance was placed on the decision of ITAT Hyderabad in the case of ACIT Vs Ascend Telcom Infrastructure (P) Ltd (ITAT Hyderabad),

wherein the Tribunal has held that deciding any ground based on any additional evidence before CIT(A), without calling for a remand report from the Assessing Officer, is untenable in law. It was, therefore, the submission of Id.Sr. DR that the assessee should not be allowed to raise such fresh issue before the ITAT for which no objection was taken before the revenue authorities or alternatively the same should be restored back for adjudication by the authorities below.

17. We have considered the rival submissions, perused the material available on record and the case laws pressed into our service. Regarding admissibility of additional legal ground of the assessee with respect to challenging the jurisdiction of the AO which was not challenged before the AO under the provisions of Section 124(3) of the Act within the stipulated time period of one month from the date of which the notice u/s.143(2) of the Act was served upon the assessee, as opposed by the Id.Sr. DR, we take guidance from the observation of the coordinate bench of this Tribunal in the case of Sudhir Kumar Agrawal, in ITA No.158/RPR/2017, order dated 17.10.2022, wherein it has been observed in para 14 as under :-

14. We shall now deal with the objection raised by the Ld. DR that as the assessee had not called in question the jurisdiction of the Income-Tax Officer, Ward-2(2), Bhilai within the stipulated time period of one month Shri Sudhir Kumar Agrawal, Durg Vs. ITO, Ward-2(2), Bhilai ITA No. 158/RPR/2017 from the date on which he was served with the notice(s) u/ss.143(2) and 142(1), dated 03.03.2015, therefore, it was not permissible for him to challenge the same for the first time in the course of the proceeding before the tribunal. Having given a thoughtful consideration to the aforesaid claim of the Id. DR we are unable to persuade ourselves to subscribe to the same. On a careful perusal of [Section 124](#) of the Act, it transpires that the same deals with the issue of "territorial jurisdiction" of an Assessing Officer. Ostensibly, sub-section (1)

of [Section 124](#) contemplates vesting with the A.O jurisdiction over a specified area by virtue of any direction or order issued under sub-section (1) and sub-section (2) of [Section 120](#) of the Act. On the other hand sub-section (2) of [Section 124](#) contemplates the manner in which any controversy as regards the territorial jurisdiction of an A.O is to be resolved. Apropos, sub-section (3) of [Section 124](#) of the Act, the same places an embargo upon an assessee to call in question the jurisdiction of the A.O where he had initially not raised such objection within a period 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 143](#). In sum and substance, the obligation cast upon an assessee to call in question the jurisdiction of the A.O as per the mandate of sub-section (3) of [Section 124](#) is confined to a case where the assessee objects to the assumption of territorial jurisdiction by the A.O, and not otherwise. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of Peter Vaz Vs. CIT, Tax Shri Sudhir Kumar Agrawal, Durg Vs. ITO, Ward-2(2), Bhilai ITA No. 158/RPR/2017 Appeal Nos. 19 to 30 of 2017, dated 05.04.2021 and that of the Hon'ble High Court of Gujarat in the case of CIT Vs. Ramesh D Patel (2014) 362 ITR492 (Guj.). In the aforesaid cases the Hon'ble High Courts have held that as [Section 124](#) of the Act pertains to territorial jurisdiction vested with an AO under sub-section (1) or sub-section (2) of [Section 120](#), therefore, the provisions of sub-section (3) of [Section 124](#) which places an embargo on an assessee to raise an objection as regards the validity of the jurisdiction of an A.O would get triggered only in a case where the dispute of the assessee is with respect to the territorial jurisdiction and would have no relevance in so far his inherent jurisdiction for framing the assessment is concerned. Also, support is drawn from a recent judgment of the Hon'ble High Court of Calcutta in the case of Principal Commissioner of Income-tax Vs. Nopany & Sons (2022) 136 taxmann.com 414 (Cal). In the case before the Hon'ble High Court the case of the assessee was transferred from ITO, Ward-3 to ITO, Ward-4 and the impugned order was passed by the ITO, Ward-4 without issuing notice u/s 143(2) and only in pursuance to the notice that was issued by the ITO, Ward-3, who had no jurisdiction over the assessee at the relevant time. Considering the fact that as the assessment was framed on the basis of the notice issued under Sec. 143(2) by the assessing officer who had no jurisdiction to issue the same at the relevant point of time, the Hon'ble High Court quashed the assessment. Apart from that, the aforesaid view is also supported by the order of the ITAT, Kolkata 'B' Bench in the case Shri Sudhir Kumar Agrawal, Durg Vs. ITO, Ward-2(2), Bhilai ITA No. 158/RPR/2017 of OSL Developers (p) Ltd. Vs. ITO, (2021) 211 TTJ (Kol) 621 and that of ITAT, Gauhati Bench in the case of Balaji Enterprise Vs. ACIT (2021) 187 ITD 111 (Gau.). Accordingly, on the basis of our aforesaid observations, we are of the considered view that as the assessee's objection to the validity of the jurisdiction assumed by the Income-Tax Officer, Ward-2(2), Bhilai is by no means an objection to his territorial jurisdiction, but in fact an objection to the assumption of jurisdiction

by him in contravention of the CBDT Instruction No.1/2011, dated 31.01.2011, therefore, the provisions of sub-section (3) of [Section 124](#) would not assist the case of the revenue.

18. Admittedly, the assessee has filed its return of income for the assessment year 2007-2008 with a returned income of Rs.5,22,820/-, which is below Rs.15 lakhs. As per the CBDT Instruction No.1/2011, dated 31.01.2011 and Instruction No.6/2011, dated 08.04.2011, the jurisdiction over the case of the assessee located in mofussil areas i.e at Raipur, Chhattisgarh. Therefore, the jurisdiction to assess the case of the assessee was vested with an officer in the rank of ITO, whereas the case of the assessee was reopened by the DCIT-1(1), Raipur, which was subsequently transferred to ACIT, Circle-3(1), Raipur. Since the jurisdiction assumed by the ACIT Circle-3(1), Raipur, who has framed the assessment of the assessee was not in accordance with the CBDT Instruction No.01/2011, dated 31.01.2011 and 06/2011, dated 08.04.2011, therefore, the instruction assumed was invalid in terms of non-following the binding instructions issued by the CBDT and, therefore, the order remained on the basis of such reopening was also void ab initio and needs to be struck down. In this regard, reliance can be placed on the decision of Hon'ble Supreme Court in the case of Indian Oil Corporation Ltd., reported in (2004) 267 ITR 272 (SC), wherein the Hon'ble Supreme Court, considering various earlier judgments, has held that the circulars/ instructions issued u/s.119 of the IT Act are binding on the revenue. The relevant observations of the Hon'ble Supreme Court are as under:-

7. This Court has, in a series of decisions, held that circulars issued under [Section 119](#) of the Income Tax Act, 1961 and 37B of

Central Excise Act are binding on the Revenue. (See *Navnit Lal C Jhaveri vs. K.K. Sen* (1965) 56 ITR 198 (SC); *Ellerman Lines Ltd. vs. CIT* 1972 CTR (SC) 71 (1971) 82 ITR 913 (SC); *K.P. Varghese vs. ITO* (1981) 24 CTR (SC) 358 : 1981 (4) SCC 17; *Union of India vs. Azadi Bachao Andolan* (2003) 184 CTR (SC) 450 : 2003 (8) SCALE 287, 308 *Collector of Central Excise vs. Usha Martin Industries* 1994 (94) ELT : 1997 (7) SCC 47 *Ranadey Micronutrients vs. CCE* 1996 (8) ELT 19 : 1996 (10) SCC 387; *Collector of Central Excise vs. Jayant Dalai (P) Ltd.* 1998 (100) ELT 10 : 1997 (10) SCC 402; *Collector of Central Excise vs. Kores India Ltd.* 1997 (89) ELT 441 : 1997 (10) SCC 338; *Paper Products Ltd. vs. Collector of Central Excise* 1999 (112) ELT 765 : 1997 (7) SCC 84; *Dabur India Ltd. vs. CCE* 2003 (157) ELT 129).

8. The somewhat different approach in *M/s. Hindustan Aeronautics V. Commissioner of Income Tax, Karnataka, Bangalore* 2000 (5) SCC 365 by two learned Judges of this Court, apart from being contrary to the stream of authority cannot be taken to have laid down good law in view of the subsequent decision of the Constitution Bench in *Collector of Central Excise, Vadodara V. Dhiren Chemical Industries*. After this Court had construed an exemption notification in a particular manner, it said (p. 130 of SCC and p. 557 of ITR) ::

"We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue"..

9. Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before a Bench of three Judges in *Central Board of Central Excise, Vadodara v. Dhiren Chemicals Industries*: (2002) 143 SCC 654 : 2002 (143) ELT 19 where the view of the Constitution Bench regarding the binding nature of circulars issued under *Section 37B* of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in *Simplex Castings Ltd. v. Commissioner of Customs, Vishakhapatnam* 2003 (5) SCC.

10. The principles laid down by all these decisions are :

- (1) Although a circular is not binding on a Court or an assessee, It is not open to the Revenue to raise the contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue

is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.

- (2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.*
- (3) A show cause notice and demand contrary to existing circulars of the Board are ab initio bad.*
- (4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars.*

19. In the case of Khirod Kumar Pattnaik, the Cuttack Bench of the Tribunal in ITA No.319/CTK/2019, vide order dated 10.12.2020, has held that, *“it was the duty of the revenue authorities to give effect to the circulars/instructions issued by the CBDT which are binding on them. If the CBDT Instruction No.1/2011, dated 31.01.2011 & No.6/2011, dated 08.04.2011 is not accepted by the revenue authorities, as has been occurred in the present case in hand, anyone can frame the assessment/reassessment even having no jurisdiction to enter into the same. The power conferred upon the CBDT to issue instructions and directions by [section 119](#) of the Act is for proper working of the Act, which should be followed by the revenue authorities in true spirit. Accordingly, the Tribunal quashed the reassessment framed by the ITO/AO, who was having no jurisdiction over the assessee.*

20. Further, the coordinate bench of the Tribunal in the case of Ravi Sherwani, in ITA No.64/RPR/2020, vide order dated 29.05.2023, in para 11 has held that, *“controversy involved in the present appeal lies in a narrow compass, i.e, sustainability of the assessment framed by the ACIT, Circle 4(1), Raipur vide his order passed u/s 143(3) of the Act, dated*

29.03.2016, which in turn was based on a notice u/s 143(2) of the Act, dated 08.09.2014 issued by the ITO-1(3), Raipur, i.e a non-jurisdictional officer. We find that the issue involved in the present appeal is squarely covered by the order of this Tribunal in the case of *Durga Manikanta Traders Vs. ITO*, ITA No.59/RPR/2019 dated 12.12.2022; wherein, it has been held, that in case an A.O vested with jurisdiction over the case of the assessee, had framed an assessment u/s.143(3) of the Act, by assuming jurisdiction to frame such assessment on the basis of notice u/s 143(2) of the Act issued by a non-jurisdictional officer, i.e an A.O who was not vested with pecuniary jurisdiction over the case of the assessee as per CBDT Instruction No.1 of 2011, then, the assessment so framed could not be sustained and was liable to be struck down for want of valid assumption of jurisdiction”.

21. In the backdrop of aforesaid observations, we are in agreement with the Id. AR that the reopening proceedings were initiated without having vested jurisdiction by the DCIT-1(1), Raipur and also the same was thereafter wrongly been framed by an officer, who was not having jurisdiction over the case of the assessee as per the criteria laid down by the CBDT Instructions, referred to supra. Since similar issues were decided by the coordinate bench of the Tribunal in several different cases, referred to above, alongwith observations in these cases as are extracted hereinabove, therefore, respectfully following the view taken in the above judicial pronouncements, we are of the considered opinion that the order framed u/s.147/143(3) of the Act by the ACIT, Circle-3(1), Raipur, dated

11.02.2015 for the assessment year 20047-2008 in the case of assessee, is liable to be quashed and we do so. Thus, the legal ground of assessee is allowed.

22. Since, we have decided the legal ground for want of valid assumption of jurisdiction by the AO and have struck down the assessment order itself, we, therefore, refrain ourselves from adverting to and to adjudicate the other grounds raised in the present appeal by the assessee with regard to the additions made by the AO and confirmed by the Id. CIT(A).

23. In the result, appeal of the assessee is allowed in terms of our observations hereinabove.

Order pronounced in the court on 07/07/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 07/07/2023

Prakash Kumar Mishra, Sr.P.S(on tour)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur