

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No. 236/RPR/2023

निर्धारण वर्ष / Assessment Year : 2015-16

Bharat Bhushan Verma
Main Road, Verma Transport Bharat,
Baikunth, P.O.-Baikunth,
Raipur (C.G.)-493 116

PAN : ACDPV7254J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-1(2),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 13.09.2023

घोषणा की तारीख / Date of Pronouncement : 11.10.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 11.05.2023, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 28.11.2017 for the assessment year 2015-16. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. On the facts and circumstances of the case, the Id. CIT(A) erred in sustaining the addition of Rs.20,82,777/- on account of short receipt shown in ITR, is liable to be deleted.
2. The assessee craves leave to add, urge, alter, modify and withdraw any ground/grounds before or at the time of hearing of the appeal.”

Also, the assessee has raised additional ground of appeal, which reads as follows:

“Additional Gr.No.1

1. On the facts and circumstances of the case and in law, assessment made u/s.143(3) dt.28-11-17 by ITO-1(2) would be invalid; notice issued u/s.143(2) by ACIT-1(1) on 19-9-16 who was not having pecuniary jurisdiction to issue such statutory notice for making assessment as returned income was Rs.6,56,820; CBDT Instruction No.1/2011 dt.31-1-11 & No.6/2011 dt.8-4-11 is binding on the IT authorities u/s.119; in absence of a valid statutory notice issued u/s143(2) by the correct jurisdictional AO u/s.2(7A) & sec120; the consequential assessment order passed would be invalid and is liable to be quashed.”

2. As the assessee, by raising the aforesaid additional ground of appeal, had raised a legal issue that involves purely a question of law, and the same would not require looking any further beyond the facts available on record; therefore, I have no hesitation in admitting the same. My view above that where an assessee had raised, though for the first time, an additional ground of appeal before the Tribunal which involves purely a question of law and requires no further verification of facts, then the same merits admission finds support from the judgment of the **Hon'ble Supreme Court** in the case of **National Thermal Power Company Ltd. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)**.

3. Succinctly stated, the assessee, who is engaged in the business as that of a transporter and mining contractor, had e-filed his return of income with the ITO-1(3), Raipur for A.Y.2015-16 on 28.09.2015 declaring an income of Rs.6,56,820/-. Subsequently, the case of the assessee was selected for scrutiny assessment. Notice u/s.143(2) of the Act dated 19.09.2016 was issued by the ACIT-1(1), Raipur.

4. During assessment proceedings, it was, inter alia, observed by the A.O that the assessee had in his "balance sheet" for the immediately preceding year, i.e. A.Y.2014-15 shown Chhattisgarh Ware Housing Corporation (CGWHC) as a debtor for Rs.80,12,198/-. On a perusal of the records, it was observed by the A.O. that the assessee had raised a bill of Rs.22,98,843/-

during the year under consideration on the party mentioned above i.e., CGSWC. However, the A.O. observed that in the assessee's balance sheet for the year under consideration, the party mentioned above i.e. CGSWC was not reflected as a debtor. Based on the facts above, the A.O was of the view that the entire amount of Rs.1,03,11,041/- [Rs.80,12,198/- (+) Rs.22,98,843/-] was received by the assessee during the year under consideration. Referring to the "Form 26AS" of the assessee, the A.O. observed that the same revealed a payment to the assessee of Rs.1,23,93,818/-. Backed by the facts mentioned above, the A.O concluded that the difference in the aforementioned amounts, i.e., Rs.20,82,777/- [Rs.1,23,93,818/- (-) Rs.1,03,11,041/-] was the unaccounted/short receipt of the assessee for the year under consideration. Accordingly, the A.O. vide his order passed u/s.143(3) dated 28.11.2017 determined the assessee's income at Rs.27,39,600/-.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success.

6. The assessee, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before me.

7. As the Ld. Authorized Representative (for short "AR") has assailed the validity of the jurisdiction that was assumed by the A.O, i.e. ITO-1(2),

Raipur, for framing the impugned assessment u/s.143(3) dated 28.11.2017; therefore, I shall first deal with the same.

8. At the very threshold of hearing, it was the claim of the Ld. AR that as the assessee had filed his return of income for the year under consideration, i.e. A.Y.2015-16 declaring an income of Rs.6,56,820/-, therefore, the pecuniary jurisdiction over his case remained vested with the ITO-1(3), Raipur with whom the return of income was filed. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that pursuant to the CBDT Instruction No.1/2011 dated 31.01.2011 r.w. CBDT instruction No.6/2011 dated 08.04.2011, the jurisdiction in case of non-corporate assessees residing in the mufassil areas and declaring income up to Rs.10 lacs was exclusively vested with the ITOs. The Ld. AR drew my attention to the CBDT Instructions (supra), Pages 6 to 8 of APB. Carrying his contention further, it was submitted by the Ld. AR that as the jurisdiction over the case of the assessee remained with ITO-1(3), Raipur, therefore, the impugned assessment framed u/s.143(3) dated 28.11.2017 by the ITO-1(2), Raipur based on notice u/s. 143(2) dated 19.09.2016 issued by the ACIT-1(1), Raipur, i.e. non-jurisdictional officer, could not be sustained and was liable to be struck down for want of valid assumption of jurisdiction for framing the assessment. It was, thus, the claim of the Ld. AR that as the ITO-1(2), Raipur, i.e. A.O having jurisdiction over the case of the assessee, had not

issued any notice u/s.143(2) of the Act, therefore, the assessment thereafter framed by him u/s.143(3) dated 28.11.2017 could not be sustained and was liable to be quashed. To sum up, it was the claim of the Ld. AR that in the absence of notice u/s.143(2) of the Act having been issued by the ITO-1(2), Raipur, i.e. the A.O having jurisdiction over the case of the assessee, the assessment framed by him was liable to be quashed for invalid assumption of jurisdiction. In support of his aforesaid claim, the Ld. AR had relied on a host of judicial pronouncements as follows:

- (i) Ravi Sherwani Vs. ACIT, ITA No.64/RPR/2020 dated 29.05.2023
- (ii) Mata Road Carriers Vs. DCIT, ITA No.79/RPR/2016 dated 10.07.2023.
- (iii) Mickey Shrivastava Vs. ACIT, ITA No.122/RPR/2019 dated 12.07.2023
- (iv) Sudhir Kumar Agrawal Vs. ITO, ITA No.158/RPR/2017 dated 17.10.2022
- (v) Durga Manikanta Traders Vs. ITO, ITA No.59/RPR/2019 dated 12.12.2022
- (vi) Bhagyalaxmi Conclave P. Ltd., ITA No.2517/Kol/2019 dated 03.02.2021
- (vii) Ashok Devichand Jain Vs. UOI, 452 ITR 43 (Bom HC)
- (viii) Pankajbhai Jaysukhlal Shah Vs. ACIT (2020) 425 ITR 70 (Guj HC)

9. Per contra, the Ld. Departmental Representative (for short, 'DR') relied on the orders of the lower authorities. The Ld. DR took me through the "Written submissions" filed by the ITO-1(2), Raipur, dated 11.09.2023. For

clarity, the written submissions of the ITO-1(2), Raipur as had been relied upon by the Ld. DR are culled out as follows:

“4.1 Comments on jurisdiction over the case in view of section 124, 120, and 2(7A) of the Act:- The AO has proper jurisdiction over the assessee in view of the section 124, 120 and section 2(7A) of the Act due to the following reasons:-

4.1.1 It is also pertinent to mention here that notice u/s 143(2) of the Act was issued to the assessee on 19.09.2016 by ACIT Circle 1(1), Raipur. Further, the assessment was completed by the AO i.e. ITO-1(2), Raipur and assessee has not raised any objection in respect of issuance of notice u/s 143(2) by the Jurisdictional AO i.e. by the ITO-1(2), Raipur. Thus, the assessee is not entitled to call in question the jurisdiction as per provision of section 124(3) of the Act. For sake of convenience, the said section is reproduced below:-

"Section: 124(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer- (a) where he has made a return under sub- section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub- section (1) of section 142 or subsection (2) of section 143 or after the completion of the assessment, whichever is earlier"

In the present case, the assessee has not raised objection in respect of issuance of notice by jurisdictional assessing officer during assessment proceeding, therefore, the assessee has no right to call in question of jurisdiction of the AO in respect of issuance of notice u/s 143(2) after completion of assessment proceeding for a long time.

4.1.2 It is important to mention here that the assessee is well informed for the jurisdictional assessing officer of his case as he is filing his ITR for past many years. Further, he attended assessment proceedings through the authorized representative. The authorized representatives are very experienced and have through knowledge of income tax law and procedure. He is well aware of the jurisdiction over the case and remedial action for correction and rectification of jurisdictional issue. During the entire assessment proceedings, the assessee as well as the learned counsel for the reasons best known to them, have also not objected the validity of the notice and assessment proceedings in the case. The Act has protected the liberty of choosing his jurisdiction or furnish objection on jurisdictional issues under section 124 of the Act. He has sufficient opportunities and time to object validity of proceedings and issuance of statutory notices. Therefore objection on jurisdictional issue furnished after completion

of assessment proceedings and after 263 proceeding at this stage cannot be said out of omission or ignorance of law and procedure.

4.1.3. In the present, the case the assessment proceeding u/s 143(3) was completed as on 28.11.2017. The assessee had neither challenged the jurisdiction before AO during the assessment proceeding and also it appears that the same was not challenged before the id. CIT(A) during the appeal proceeding. Thus, it is evident that the assessee has challenged the jurisdiction only in order to escape from tax liability on account of issue arisen during review proceeding. Further, the provisions of Section 124(3) are very clear. Where the appellant is of the view that the jurisdiction is not justifiable, the appellant is free to challenge the same before the AO. If the assessee was in the opinion that notice u/s 143(2) was not issued by the jurisdictional AO, the same was also to be objected during assessment proceeding. But where the appellant does not exercise such an option, it cannot be questioned later on. The same observation was made by the Hon'ble High Court of Delhi in the case of Abhishek Jain vs Income Tax Officer, Ward - 55(1), New Delhi (WRIT PETITION (CIVIL) No. 11844/2016) that "As far as territorial or pecuniary jurisdictions are concerned, objection should be taken at the earliest possible opportunity and /or before the settlement of issues and not at the subsequent stage. Jurisdiction as to the subject matter is distinct and stands on a different footing." Thus, the ground of the assessee regarding jurisdiction at this junction are infructuous and to be dismissed.

4.1.4 The issue of jurisdiction was also considered by the various appellate courts in various cases which are discussed as under:-
4.1.4.1 In the case of Hindustan Transport Co vs IAC, 189 ITR 326 (Allahabad), the Hon'ble HC dealt extensively with the various provisions of the Act and held that the allocation of jurisdiction is a measure of administrative convenience. In such a situation, the concept of jurisdiction cannot be imported and, certainly, not in the sense of invalidating the resultant action on account of the defect in the exercise of functions. The Legislature did not intend collection of revenue to be bogged down on account of technical plea of jurisdiction. It has, therefore, prescribed the limit up to which the plea of jurisdiction may be raised. As provided in section 124(5)(a), the right is lost as soon as the assessment has been completed. Even where the right is exercised before the assessment is completed, the question is to be decided by the Commissioner or by the Board. Courts do not come into the picture.

4.1.4.2 In the case of CIT vs Siri Paul Oswal, [2007] 293 ITR 273 (Punjab &, Haryana), it was held by Hon'ble HC that a distinction has to be made between a situation when there is inherent lack of

jurisdiction and a situation where jurisdiction is irregularly assumed and plea of want of jurisdiction can be waived by a party. In the latter situation, the question arises whether party who could waive the plea of jurisdiction, raised such a plea and whether such a party had been prejudiced on account of erroneous assumption of jurisdiction. The present case, the assessee participated in assessment proceedings by the Assessing Officer to whom assessment proceedings under the Income-tax Act were transferred and who exercised jurisdiction to assess wealth-tax also with the participation of the assessee without any objection by the assessee. If the assessee had raised an objection, the proceedings could have been transferred back to the concerned Wealth-tax Officer. The Assessing Officer having proceeded further and assessment having been finalized, plea of lack of jurisdiction could not be raised for the first time in appeal, without showing error in the order on the merit and without showing any prejudice to the assessee by exercise of jurisdiction by the Assessing Officer."

4.1.4.3. In the case of CIT vs All India Children Care 85 Educational Development Society, [2013] 357 ITR 134 (Allahabad), the Hon'ble Allahabad HC has held that Tribunal is not a competent authority to adjudicate upon jurisdiction of Assessing Officer when it is not raised before Assessing Authority. Such a decision has been arrived at after looking at various judicial precedents and provisions of law including 5.124. Similar view had been held in various judicial decisions including (i) Subhash Chander v. CIT [2008] 166 Taxman 307, P86H HC, (ii) 25 taxmann.com 464 (Jodhpur ITAT), Vaishali Builders 86 Colonizers vs Addl.CIT[2012], (iii) ACIT vs Punjab Urban Development Authority, Mohali, [2014] 42 taxmann.com 160 (Chandigarh - Trib.) and various other decisions.

4.1.4.4. On the contrary, the case of CIT vs SS Ahluwalia, [2014] 46 taxmann.com 169 (Delhi), is more appropriate and relevant. In this case, the Hon'ble Delhi HC has laid down several propositions including (i) Sections 120, 124 and 127 recognize flexibility and choice, both with the assessee and the authorities i.e., the Assessing Officer before whom return of income could be filed and assessment could be made. The Assessing Officer within whose area an assessee was carrying on business, resided or otherwise income had accrued or arisen, has jurisdiction. Similarly, the Assessing Officer also has authority due to class of income or nature and type of business. The Act, therefore, recognized multiple or concurrent jurisdictions. (ii) Provisions of section 124 ensure and prevent two assessments by different assessing officers, having or enforcing concurrent jurisdiction. There cannot be and the Act does not envisage two assessments for the same year by different officers. (Reassessment order can be by a different officer). (iii) Each year is separate and distinct year and in case the assessee shifts his residence or place of

business or work etc. Assessing Officer of place where the assessee has shifted or otherwise, will have jurisdiction and it is not necessary that an order under section 127 should be passed. This, however, does not mean that the Assessing Officer where the returns of income were earlier filed ceases to have jurisdiction, provided the assessee has residence in his area, place of business, class, income etc. Residence can mean permanent residence as well as current or temporary residence of some permanence. (iv) The question of jurisdiction or the place of filing has to be examined each year with reference to provisions of section 124. Section 124 provides flexibility and postulates multiple and concurrent jurisdiction including filing of return and where the assessee has permanent or current residence or where he has sole/only source of income. (v) An assessment order passed without making reference to Commissioner/Commissioners under section 124 is not a nullity for want of jurisdiction but it results in irregularity which can be rectified by order of remit and directing the Assessing Officer to continue with the proceedings from the stage where the error had occurred.

4.1.5. In the present case, the assessee not challenged the issue of issuance of notice by jurisdictional AO before the AO during the course of assessment proceedings. Even the assessee was having sufficient opportunity during assessment proceeding as well as during the appeal proceeding. Thus, it clearly indicates that the assessee had not come with clean hands for raising an additional issue of challenging jurisdiction before the Hon'ble ITAT. Thus, the assessee has suppressed the fact before the AO and also it appears that the same was not challenged before the Id. CIT (A) during the appeal proceeding. It indicates that the assessee has not approached to the Hon'ble ITAT on the issue of jurisdiction over the case with clean mind, clean heart and clean objective therefore, the this ground is liable to be dismissed in limine. The Hon'ble High Court of Karnataka in the case of Ratnachudamani s. Utnal Vs. Income Tax Officer (2004) 269 ITR 272 dismissed the writ as the petitioner had not approached the Court with clean hands and held that the petitioner has intentionally and deliberately suppressed the material facts. If the petitioner wants any relief at the hands of this court, he has to approach the court with clean hands and it is duty cast on the petitioner to state the true facts and make out a case. Similarly the Indore Bench of the Madhya Pradesh High Court in the case of Ajit Kumar Pitaliya v. Income Tax Officer (2008) 318 ITR 0182 dismissed the appeal of the assessee in limine for failure to come with clean hands and held that he must come to the court with clean hands. The Doctrine of Clean Hands is not only applicable to the High Court and Apex Court but also before other courts and judicial forum. The Hon'ble Apex Court in the case of Ramjas Foundation v. Union of India & others in Civil Appeal No. 6662 of 2004 removed the

misconception that these principles (Doctrine of Clean Hands) are only applicable to Writs & SLPs before the Apex Court and High Courts. The Phrase “but also to the cases instituted in others courts and judicial forums” This judgment lays down the principle that it is obligatory for a petitioner /appellant/applicant to approach any court or judicial forum with clean hands or face the ire of the courts/judicial forums who will not hesitate in applying the doctrine of clean hands and rejecting his appeal/revision.”

10. I have heard the ld. Authorized representatives of both the parties, perused the orders of the lower authorities and material available on record as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

11. I have thoughtfully considered the issue above and find substance in the claim of the Ld. AR. As stated by the Ld. AR and, rightly so, I find that the multi-facet issues pertaining to the assumption of jurisdiction by the A.O in light of the pecuniary/monetary limits contemplated in CBDT Instruction No.1/2011 (supra) r.w. CBDT Instruction No.6/2011 (supra) was exclusively looked into by the Division Bench of the Tribunal, Raipur, in the case of **Durga Manikanta Traders Vs. ITO, ITA No.59/RPR/2019 dated 12.12.2022**. Also, the objections that the A.O has raised as regards valid assumption of jurisdiction of the A.O i.e. ITO-1(2), Raipur within the stipulated period in the backdrop of the mandate of Section 124(3)(a) of the Act had also looked into at length in the order mentioned above. For the sake of clarity, the relevant observations of the Tribunal are culled out as follows:

“13. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

14. Admittedly, it is a matter of fact borne from record that the CBDT vide Instruction No. 1/2011, dated 31.01.2011 had, inter alia, revised the existing monetary limits for assigning cases to ITOs and DCs/ACs. For the sake of clarity, we deem it fit to cull out the CBDT Instruction No.1/2011 dated 31.01.2011, Page 1 of APB, which reads as under:

“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.30 lacs	Upto Rs.30 lacs	Above Rs.30 Lacs
Non-corporate returns	Upto Rs.15 lacs	Above Rs.15 lacs	Upto Rs.20 lacs	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.**”

(emphasis supplied by us)

As stated by the Ld. AR, and, rightly so, the CBDT vide its aforesaid Instruction No.1/2011, dated 31.01.2011 had, inter alia, revised the earlier existing monetary limit for assigning the cases to ITOs/ACs/DCs w.e.f. 01.04.2011. On the basis of the aforesaid CBDT Instruction No.1/2011 (supra) w.e.f 01.04.2011, the case of a non-corporate assessee located in a mofussil area having declared an income above Rs.15 lacs in his return of income is to be assigned to the ACs/DCs. As the case of the present assessee for the A.Y.2012-13 was selected for scrutiny assessment vide notice issued u/s. 143(2), dated 24.09.2015, therefore, the aforesaid CBDT Instruction No.1/2011, dated 31.01.2011 that was applicable w.e.f. 01.04.2011 duly applied to his case. Also, as per the areas earmarked in the aforesaid Instruction No.1/2011, dated 31.01.2011 as the assessee is not located in any of those cities/stations which have been held to be metro cities, therefore, his case would be as that of a non-corporate assessee who is located in a mofussil area. Also, as is borne from the record the assessee had filed his return of income for the A.Y.2014-15 declaring an income of Rs. 6,57,380/-.

15. On the basis of the aforesaid facts, we are of the considered view, that as stated by the Ld. AR, and, rightly so, as per the CBDT Instruction No.1/2011, dated 31.01.2011 the jurisdiction over the case of the assessee who is located in a mofussil area i.e. Bhilai and had filed a non-corporate return for the year under consideration, i.e., A.Y.2014-15 declaring an income of Rs.6,57,380/- was vested with the ITO, Ward 1(1), Bhilai. Although notice u/s. 143(2), dated 24.09.2015 had been issued within the stipulated time period, i.e., within six months from the end of the relevant assessment year which would have expired as on 30.09.2015, however, the same was issued by the DCIT-1(1), Bhilai, i.e., an A.O who pursuant to the CBDT Instruction No.1 of 2011, dated 31.01.2011 was not vested with the jurisdiction over the case of the assessee for the year under consideration. On the other hand the ITO-1(1), Bhilai, who as per the aforesaid CBDT Instruction (supra) was vested with the exclusive pecuniary jurisdiction over the case of the assessee for the year under consideration had issued the notice u/s. 143(2) of the Act, dated 05.05.2016, i.e., beyond the stipulated time period, therefore, no valid jurisdiction could have been assumed on the basis of the same for framing the assessment vide order under Sec. 143(3), dated 29.12.2016.

16. On the basis of our aforesaid deliberations, we are in agreement with the Ld. AR that the ITO-1(1), Bhilai could not have validly assumed jurisdiction and framed the assessment vide his order passed u/s. 143(3) of the Act, dated 29.12.2016 on the basis of the notice issued u/s. 143(2), dated 24.09.2015 by the DCIT-1(1), Bhilai i.e. a non jurisdictional A.O. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of Ashok Devichand Jain Vs. UOI in W.P. No.3489 of 2019, dated 08.03.2022. In the said case the Hon'ble High Court by referring to the CBDT Instruction No.1 of 2011, dated 31.01.2011, had observed, that

as the pecuniary jurisdiction over the case of the assessee before them who had returned an income of Rs.64.34 lacs was vested with the DCs/ACs, therefore, the notice issued u/s.148 of the Act by the ITO who during the year under consideration had no pecuniary jurisdiction over the assessee's case was bad in the eyes of law. Considering the aforesaid lapse in the assumption of jurisdiction the Hon'ble High Court had quashed the notice that was issued by the ITO u/s.148 of the Act. Also, a similar view had been taken by the Hon'ble High Court of Gujarat in the case of Pankajbhai Jaysukhlal Shah Vs. ACIT, Circle-2 (2019) 110 taxmann.com 51 (Guj.). In the said case, though the A.O who had jurisdiction over the case of the assessee had recorded the 'reasons to believe' but notice u/s.148 of the Act was issued by another officer, therefore, the notice so issued u/s.148 of the Act was quashed by the Hon'ble High Court. At this stage, we may herein observe, that the aforesaid order of the Hon'ble High Court had thereafter, been upheld by the Hon'ble Supreme Court in the case of ACIT, Circle-1 Vs. Pankajbhai Jaysukhlal Shah[2020] 120 taxmann.com 318 (SC). Also, we find that the similar view had been taken by this Tribunal in its recent order passed in the case of Shri Sudhir Kumar Agrawal, Durg Vs. ITO, Ward-2(2), Bhilai in ITA No.158/RPR/2017 dated 17.10.2022, wherein dealing with the multi-facet contentions that were raised by the department, the Tribunal had observed as under:

"13. On the basis of our aforesaid deliberations, we are in agreement with the Ld. AR that though the assessment proceedings were rightly initiated and initially embarked upon by Dy. CIT, Circle-1, Bhilai i.e. the officer who was vested with the jurisdiction over the case of the assessee, but the same thereafter had wrongly been framed by an officer who as observed by us hereinabove did not have jurisdiction over the case of the assessee in so far the year under consideration was concerned. As the criteria laid down vide the CBDT Instruction No.1/2011, dated 31.01.2011 for conferring the varied jurisdictions with the ITOs/DCs/ACs on the basis of income declared by the assessee in his return of income is binding upon the department and has to be scrupulously followed, therefore, there can be no escape from the same for justifying assumption of jurisdiction by an officer other than that prescribed in the said instruction. Our aforesaid view is fortified by the Judgments of the Hon'ble Supreme Court in the case of UCO Bank Vs. CIT (1999) 237 ITR 889 (SC) and Commissioner of Customs etc. Vs. Indian Oil Corporation Ltd. & Anr. (2004) 267 ITR 272 (SC). In the aforesaid judgments it was held by the Hon'ble Apex Court that though the CBDT/CBEC circulars are not binding on court or the assessee, but the departmental authorities are bound by them and cannot act in contravention of the same. Also, support is drawn from the judgment of the Hon'ble High Court of Chhattisgarh in the case of Dy. CIT Vs. Sunita Finlease Ltd. [2011] 330 ITR 491 (Chhattisgarh). In its said order it was observed by the Hon'ble Jurisdictional High Court that the administrative

instructions issued by CBDT are binding on the Income-tax authorities. On the basis of our aforesaid observations, we are of the considered view that as the framing of the assessment in the case of the present assessee by the Income-Tax Officer, Ward-2(2), Bhilai is clearly found to be in contravention of the CBDT Instruction No.1/2011, dated 31.01.2011, therefore, the same cannot be justified.

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 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 ld. 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 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 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.

15. We shall now deal with the contention of the Ld. DR that as both the officers in question i.e. Dy. CIT, Circle-1, Bhilai and the Income Tax Officer, Ward-2(2), Bhilai as per sub-section (5) of Section 120 were vested with concurrent jurisdiction over the assessee, therefore, initiation of the assessment proceedings by the Dy. CIT, Circle-1, Bhilai vide notice issued u/s.143(2) dated 24.09.2013, which thereafter had culminated into an assessment framed by the Income-Tax Officer, Ward-2(2), Bhilai vide his order passed u/s.143(3), dated 30.03.2015 does not suffer from any infirmity. In our considered view the aforesaid contention of the Ld. DR is absolutely misplaced and in fact devoid and bereft of any merit. As the aforesaid CBDT Instruction No.1/2011, dated 31.01.2011 exclusively vests the pecuniary jurisdiction over the case of the assessee for the year under consideration i.e. A.Y.2012-13 with the ACs/DCs, therefore, in our considered view despite vesting of concurrent jurisdiction with the Income- Tax Officer, Ward-2(2), Bhilai and the Dy. CIT, Circle-1, Bhilai the assessment in his case for the year under consideration could only have been framed by the Dy. CIT, Circle-1, Bhilai. Neither is there any reason discernible from the orders of the lower authorities nor demonstrated before us by the ld. DR which would by any means justify framing of the assessment vide impugned order u/s 143(3), dated 30.03.2015 by the Income-Tax Officer, Ward-2(2), Bhilai. Apart from that, we find that as per the

mandate of sub-section (1) of section 127 of the Act, where a case is to be transferred by authorities therein specified from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him, then he is under an obligation to record his reasons for doing so after giving the assessee a reasonable opportunity of being heard in the matter wherever it is possible to do so. For the sake of clarity sub-section (1) of Section 127 is culled out as under:

“(1) The [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.”

On a careful perusal of the aforesaid mandate of law, it transpires, that even in a case where jurisdiction over the case of an assessee that is vested with one A.O (having concurrent jurisdiction over the case of the assessee) is to be transferred to another A.O (having concurrent jurisdiction over the case of the assessee), even then the authority specified under sub-section (1) of Section 127 is obligated to record his reasons for doing so. Considering the aforesaid position of law, we are of the considered view that now when in the present case the assessment proceedings were initiated by the Dy. CIT, Circle-1, Bhilai vide notice u/s.143(2), dated 24.09.2013, which thereafter were taken up and culminated by the Income-Tax Officer, Ward-2(2), Bhilai vide his order passed u/s.143(3) dated 30.03.2015, then, as per the mandate of sub-section (1) of Section 127 of the Act, the specified authority i.e. Commissioner or above was obligated to have recorded his reasons for transferring the case from the aforesaid Dy. CIT, Circle-1, Bhilai to the Income-Tax Officer, Ward-2(2), Bhilai. However, nothing has been brought to our notice which would justify the transfer of jurisdiction over the assessee's case from the Dy. CIT, Circle-1, Bhilai to Income-Tax Officer, Ward-2(2), Bhilai.

16. Be that as it may, we are of the considered view that as in the case of the assessee the assessment order u/s.143(3), dated 30.03.2015 had been passed by a non-jurisdictional officer i.e. the Income-Tax Officer, Ward-2(2), Bhilai, which is in clear contravention of the CBDT Instruction No.1/2011 dated 31.01.2011, therefore, the same cannot be sustained and is liable to be struck down on the said count itself. Before parting, we may herein observe that a similar

issue as regards the validity of an assessment framed by an A.O who had invalidly assumed jurisdiction in contravention to the CBDT Instruction No.1/2011, dated 31.01.2011 had came up in a host of cases before the various benches of the Tribunal, wherein the respective assessments framed were struck down, for the reason that the same were passed by officers who were not vested with the requisite jurisdiction as per the CBDT Instruction No.1/2011, dated 31.01.2011. Our aforesaid view is fortified by the order of the ITAT, Kolkata Bench 'SMC' in the case of Anderson Printing House (P) Ltd. Vs. ACIT (2022) 192 ITD 548 (Kolkata-Trib.). In its order the Tribunal had after drawing support from the order of the ITAT, Kolkata in the case of Bhagyalaxmi Conclave (P) Ltd. Vs. DCIT, ITA No.2517 (Kol) of 2019, dated 03.02.2021 which in turn had relied on the earlier orders passed in the case of Hillman Hosiery Mills Pvt.Ltd. Vs. DCIT, ITA No.2634/Kol/2019; Soma Roy Vs. ACIT, ITA No.463/Kol/2019 dated 08.01.2020; and Shri Sukumar Ch. Sahoo Vs. ACIT, ITA No.2073/Kol/2016 dated 27.09.2017, had struck down the assessment for want of valid assumption of jurisdiction by the A.O who had framed the assessment in contravention of the CBDT Instruction No.1/2011, dated 31.01.2011, observing as under:

“5. A perusal of the aforesaid statutory provisions would reveal that the jurisdiction of Income Tax Authorities may be fixed not only in respect of territorial area but also I.T.A. No.339/Kol/2021 Assessment Year: 2016-17 Anderson Printing House Pvt. Ltd having regard to a person or classes of persons and income or classes of income also. Therefore, the CBDT having regard to the income as per return has fixed the jurisdiction of the Assessing Officers. The ld. Counsel in this respect has relied upon the CBDT Instruction No.1/2011 [F.No.187/12/2010-IT(A-I)], for the sake of convenience is reproduced as under:

"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)
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	ITOs	ACs/DCs	ITOs	DCs/ACs
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Corporate returns	Upto Rs.20 lacs	Above Rs.30 lacs	Upto Rs.30 lacs	Above Rs.30 Lacs
Non-corporate returns	Upto Rs.15 lacs	Above Rs.15 lacs	Upto Rs.20 lacs	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.

6. Now, in this case, the assessment has been framed by the ACIT. At this stage, it will be appropriate to refer to the provisions of section 127 of the Act as under:

Power to transfer cases (1) The [Principal Director General or] Director General or [Principal Chief Commissioner or] Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

7. A perusal of the above statutory provisions would reveal that jurisdiction to transfer case from one Assessing Officer to other Officer lies with the Officers as mentioned in section 127(1) who are of the rank of Commissioner or above. No document has been produced on the file by the Department to show that the case was transferred by the competent authority from Income Tax Officer to ACIT. The notice u/s 143(2) has been issued by ACIT which was beyond his jurisdiction and the same is therefore, void ab initio. Under the circumstances, the assessment framed by ACIT, is bad in law as he did not have any pecuniary jurisdiction to frame the assessment. The issue relating to the pecuniary jurisdiction also came into consideration before the Coordinate Bench of the Tribunal in ITA No.2517/Kol/2019 and Others vide order dated 03.02.2021, wherein the Tribunal further relying upon various other decisions of the Coordinate Benches of the Tribunal has decided the issue in favour of the assessee and held that the assessment framed by Assessing Officer who was not having pecuniary jurisdiction to frame such assessment was bad in law. The relevant part of the order dated 03.02.2021 passed in ITA No.2517/Kol/2019 and Others is reproduced as under:

"5.2. The assessee relied on the recent decision of this Tribunal in the case of Hillman Hosiery Mills Pvt. Ltd. vs. DCIT, in ITA No. 2634/Kol/2019, order dated 12.01.2021. We find that the issues that arise in this appeal are clearly covered in favour of the assessee. This order followed the principles of law laid down in a number of other decisions of the ITAT, Kolkata Bench on this issue.

5.3. Kolkata "B" Bench of the Tribunal in the case of Hillman Hosiery Mills Pvt. Ltd.(supra) held as follows:

"10. In this case, the ITO Ward-3(3), Kolkata, issued notice u/s 143(2) of the Act on 04/09/2014. In reply, on 22/09/2014, the assessee wrote to the ITO, Ward-3(3), Kolkata, stating that he has no jurisdiction over the assessee. Thereafter on 31/07/2015, the DCIT, Circle-11(1), Kolkata, had issued notice u/s 142(1) of the Act to the assessee. The DCIT, Circle-11(1), Kolkata, completed assessment u/s 143(3) of the Act on 14/03/2016. The issue is whether an assessment order passed by DCIT, Circle-11(1), Kolkata, is valid as admittedly, he did not issue a notice u/s 143(2) of the Act, to the assessee. This issue is no more res-integra. This Bench of the Tribunal in the case of Soma Roy vs. ACIT in ITA No. 462/Kol/2019; Assessment Year 2015-16, order dt. 8th January, 2020, under identical circumstances, held as under:-

"5. After hearing rival contentions, I admit this additional ground as it is a legal ground, raising a jurisdictional issue and does not require any investigation into the facts. The Id. Counsel for the assessee submitted that as per Board Instruction No. 1/2011 [F. No. 187/12/2010-IT(A-I)], dt. 31/01/2011, the jurisdiction of the assessee is with the Assistant Commissioner of Income Tax, Circle-1, Durgapur, as the assessee is a non- corporate assessee and the income returned is above Rs.15,00,000/- and whereas, the statutory notice u/s 143(2) of the Act, was issued on 29/09/2016, by the Income Tax Officer, ward-1(1), Durgapur, who had no jurisdiction of the case. He submitted that the assessment order was passed by the ACIT, Circle-1(1), Durgapur, who had the jurisdiction over the assessee, but he had not issued the notice u/s 143(2) of the Act, within the statutory period prescribed under the Act. Thus, he submits that the assessment is bad in law.

5.1. On merits, he rebutted the findings of the lower authorities. The Id. Counsel for the assessee relied on certain case-law, which I would be referring to as and when necessary.

6. The Id. D/R, on the other hand, submitted that the concurrent jurisdiction vests with the ITO as well as the ACIT and hence the assessment cannot be annulled simply because the statutory notice u/s 143(2) of the Act, was issued by the ITO and the assessment was completed by the ACIT. He further submitted that the assessee did not object to the issue of notice before the jurisdictional Assessing Officer and even otherwise, Section 292BB of the Act, comes into play and the assessment cannot be annulled. On merits, he relied on the orders of the lower authorities.

7. I have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, I hold as follows:-

8. I find that there is no dispute in the fact that the notice u/s 143(2) of the Act dt. 29/09/2016 has been issued by the ITO, Wd-1(1), Durgapur. Later, the case was transferred to the jurisdiction of the ACIT on 11/08/2017. Thereafter, no notice u/s 143(2) of the Act was issued by the Assessing Officer having jurisdiction of this case and who had completed the assessment on 26/12/2017 i.e., ACIT, Circle-1(1), Durgapur. Under these circumstances, the question is whether the assessment is bad in law for want of issue of notice u/s 143(2) of the Act.

9. This Bench of the Tribunal in the case of Shri Sukumar Ch. Sahoo vs. ACIT in ITA No. 2073/Kol/2016 order dt. 27.09.2017, held as follows:-

"5. From a perusal of the above Instruction of the CBDT it is evident that the pecuniary jurisdiction conferred by the CBDT on ITOs is in respect to the 'non corporate returns' filed where income declared is only upto Rs.15 lacs ; and the ITO doesn't have the jurisdiction to conduct assessment if it is above Rs 15 lakhs. Above Rs. 15 lacs income declared by a non- corporate person i.e. like assessee, the pecuniary jurisdiction lies before AC/DC. In this case, admittedly, the assessee an individual (non corporate person) who undisputedly declared income of Rs.50,28,040/- in his return of income cannot be assessed by the ITO as per the CBDT circular (supra). From a perusal of the assessment order, it reveals that the statutory notice u/s. 143(2) of the Act was issued by the then ITO, Ward-1, Haldia on 06.09.2013 and the same was served on the assessee on 19.09.2013 as noted by the AO. The AO noted that since the returned income is more than Rs. 15 lacs the case was transferred from the ITO, Ward-1, Haldia to ACIT, Circle-27 and the same was received by the office of the ACIT, Circle-27, Haldia on 24.09.2014 and immediately ACIT issued notice u/s. 142(1) of the Act on the same day. From the aforesaid facts the following facts emerged:

- i) The assessee had filed return of income declaring Rs.50,28,040/-. The ITO issued notice under section 143(2) of the Act on 06.09.2013.
- ii) The ITO, Ward-1, Haldia taking note that the income returned was above Rs. 15 lacs transferred the case to ACIT, Circle-27, Haldia on 24.09.2014.
- iii) On 24.09.2014 statutory notices for scrutiny were issued by ACIT, Circle-27, Haldia.

6. We note that the CBDT Instruction is dated 31.01.2011 and the assessee has filed the return of income on 29.03.2013 declaring total income of Rs.50,28,040/-. As per the CBDT Instruction the monetary limits in respect to an assessee who is an individual which falls under the category of 'non corporate returns' the ITO's increased monetary limit was upto Rs.15 lacs; and if the returned income is above Rs. 15 lacs it was the AC/DC. So, since the returned income by assessee an individual is above Rs.15 lakh, then the jurisdiction to assess the assessee lies only by AC/DC and not ITO. So, therefore, only the AC/DC had the jurisdiction to assess the assessee. It is settled law that serving of notice u/s. 143(2) of the Act is a sine qua non for an assessment to be made u/s. 143(3) of the Act. In this case, notice u/s. 143(2) of the Act was issued on 06.09.2013 by ITO, Ward-1, Haldia when he did not

have the pecuniary jurisdiction to assume jurisdiction and issue notice. Admittedly, when the ITO realized that he did not had the pecuniary jurisdiction to issue notice he duly transferred the file to the ACIT, Circle-27, Haldia on 24.09. 2014 when the ACIT issued statutory notice which was beyond the time limit prescribed for issuance of notice u/s. 143(2) of the Act. We note that the ACIT by assuming the jurisdiction after the time prescribed for issuance of notice u/s. 143(2) of the Act notice became quorum non judice after the limitation prescribed by the statute was crossed by him. Therefore, the issuance of notice by the ACIT, Circle-27, Haldia after the limitation period for issuance of statutory notice u/s. 143(2) of the Act has set in, goes to the root of the case and makes the notice bad in the eyes of law and consequential assessment order passed u/s. 143(3) of the Act is not valid in the eyes of law and, therefore, is null and void in the eyes of law. Therefore, the legal issue raised by the assessee is allowed. Since we have quashed the assessment and the appeal of assessee is allowed on the legal issue, the other grounds raised by the assessee need not to be adjudicated because it is only academic. Therefore, the additional ground raised by the assessee is allowed.

7. In the result, appeal of assessee is allowed.”

Apart from that, we find that a similar view had been taken by the ITAT, Cuttack Bench, Cuttack in the case of Kshirod Kumar Pattanaik Vs. ITO, Angul Ward, Angul, ITA No.380/CTK/2019 dated 10.12.2020.

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.”

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.”

12. As the facts and the issues based on which jurisdiction has been assumed by the A.O, i.e. ITO-1(2), Raipur in the present case before me remains the same as were there before the Division bench in the case of Durga Manikanta Traders Vs. ITO (supra); therefore, I respectfully follow the same.

13. Given the facts above, I concur with the claim of the Ld. AR that as the A.O i.e., ITO-1(2), Raipur having jurisdiction over the case of the assessee, had framed the assessment vide his order passed u/s.143(3) of the Act dated 28.11.2017 without issuing notice u/s.143(2) of the Act; therefore, the same cannot be sustained and is liable to be quashed at the very threshold for want of valid assumption of jurisdiction for framing the said impugned assessment.

14. As I have quashed the assessment for want of valid assumption of jurisdiction by the A.O, I refrain from adverting to and therein adjudicating the other contentions that the Ld AR has advanced qua the sustainability of the additions made by the A.O, which, thus, are left open.

15. In the result, the assessee's appeal is allowed in terms of the observations above.

Order pronounced in open court on 11th day of October, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 11th October, 2023.

**SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.