

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. 214/RPR/2023

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Arun Agrawal
85, Pandri Textile Market,
Raipur-492 001 (C.G.)

PAN :ACJPA2323D

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax-3(1),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Veekaas S. Sharma, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 25.09.2023

घोषणा की तारीख / Date of Pronouncement : 16.10.2023

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 03.04.2023, which in turn arises from the order passed by the A.O under Sec. 147 r.w.s.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 28.10.2016 for the assessment year 2010-11. The assessee has assailed the impugned order on the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the assessment order passed u/s 147 r.w.s. 143(3) by the Learned ACIT-3(1), Raipur is illegal, bad in law and void ab initio inasmuch as the jurisdiction over the assessee vested with ITO and not with ACIT-3(1), Raipur.

Hence, it is prayed that the assessment order passed by the ACIT-3(1) Raipur who did not have jurisdiction over the assessee in view of monetary threshold limit laid down vide CBDT Instruction No.1/2011 [F. No. 187/12/2010-IT(A-I)] dated 31.01.2011 read together with instruction no.6/2011 dated 08.04.2011, therefore, the assessment order passed by non-jurisdictional income tax authority may kindly be held to be illegal, bad in law and the entire proceedings may kindly be quashed and consequential addition of Rs.21,75,000/- made to the total income may kindly be directed to be deleted.

2. On the facts and in the circumstances of the case, the assessment order passed by the Learned ACIT-3(1), Raipur u/s. 147 r.w.s. 143(3) is bad in law inasmuch as the assessment ought to have been framed under Section 153C of the Income Tax Act, 1961 inasmuch as Section 153C overrides the provisions of Section 147 and 148, hence, the assessment order passed u/s 147 r.w.s. 143(3) is bad in law, illegal and void ab initio. Hence it is prayed that the assessment order passed u/s 147 r.w.s. 143(3) may kindly be declared as illegal, bad in law and consequential enhancement of Rs.21,75,000/- made to the total income may kindly be directed to be deleted.

3. On the facts and in the circumstances of the case, the Learned ACIT-3(1), Raipur has erred on facts and in law by making an

addition of Rs.21,75,000/- by invoking Section 69 of the Income tax Act, 1961 on several grounds, the addition so made is illegal, arbitrary and contrary to facts and law, hence, it is prayed that the addition of Rs.21,75,000/- made to the total income may kindly be directed to be deleted.

4. Without prejudice to the above, alternatively, it is submitted that on the facts and in the circumstances of the case, the Learned CIT (Appeal) is not justified in passing the order and confirming the addition in an ex-parte order without providing sufficient opportunity of being heard to the assessee and thereby violating the principles of natural justice. Hence, the impugned order passed by the Learned CIT (Appeal) is liable to be declared as illegal and bad-in-law. It is prayed that the order passed by the Learned CIT (Appeal) may kindly be declared as illegal and bad-in-law on account of violation of principles of natural justice.

5. The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of Appeal.”

2. Succinctly stated, the assessee, who is engaged in the business of retail & wholesale trading of cloth items, etc., had e-filed his return of income for A.Y. 2010-11 on 15.10.2010 with the ITO, Ward 1(2), Raipur, declaring an income of Rs. Nil, Page No. 1 of APB. The A.O. received information that search and seizure proceedings were conducted u/s.132 of the Act in the case of “Sharma Group” at Malviya Road, Raipur, which revealed that the assessee as per contents of an incriminating document, viz. Page No.41 of the loose papers LPS-1/1, had made cash transactions aggregating to Rs.21.75 lacs from his unexplained sources. Based on the aforesaid information, the A.O. reopened the case of the assessee and issued notice u/s.148 of the Act dated 30.03.2016. In response, the assessee, vide his letter dated 02.05.2016,

requested that his original return that was filed on 15.10.2010 be treated as a return of income filed in response to notice u/s.148 of the Act.

3. During the course of the assessment proceedings, the A.O. observed that the incriminating document, viz. LPS-1/1 (LPS No. 39 to 42, forming a part of a bunch of loose papers) revealed certain cash loans that the assessee and Shri Shyam Sundar Sharma had advanced. Observing that the cash transactions aggregating to Rs.21.75 lacs were not accounted for by the assessee in his books of accounts, the A.O. held the same as the assessee's deemed income u/s.69 of the Act. Accordingly, the A.O. vide his order passed u/s. 147 r.w.s. 143(3) of the Act, dated 28.10.2016 assessed the income of the assessee at Rs. 21,26,700/-.

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

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

6. At the threshold of hearing of the appeal, it was submitted by the Ld. Authorized Representative (for short 'AR') for the assessee that the A.O, i.e., ACIT, Circle-3(1), Raipur, had wrongly assumed jurisdiction and framed the impugned assessment in the case of the assessee. Elaborating on his

aforesaid contention, it was averred by the Ld. AR that as the assessee had e-filed his return of income on 15.10.2010, declaring an income of Rs. Nil, therefore, the ACIT, Circle-3(1), Raipur had wrongly assumed jurisdiction and framed the assessment vide his order passed u/s.147 r.w.s. 143(3) dated 28.10.2016. Carrying his contention further, the Ld. AR had taken us through the CBDT Instruction No.1/2011 [F. No.187/12/2010-IT(A-1)] dated 31.01.2011 and CBDT Instruction No.6/2011 [F.NO.187/12/2010-ITA-I] dated 08.04.2011, Page 1 & 2 of APB. The Ld. A.R submitted that on a conjoint perusal of the aforesaid CBDT Instructions, the pecuniary jurisdiction for framing an assessment in the case of an assessee who had declared an income up to Rs.15 lac was exclusively vested with the ITOs. The Ld. A.R submitted that as the present assessee had filed his return of income declaring Nil income, the jurisdiction to frame assessment in his case was exclusively vested with the ITO, Ward-1(2), Raipur. The Ld. A.R further submitted that as neither the A.O having jurisdiction over his case, i.e., ITO, Ward-1(2), Raipur had issued any notice u/s.143(2) of the Act nor framed the assessment, therefore, the assessment order passed u/s.147 r.w.s. 143(3) dated 28.10.2016 by the ACIT, Circle-3(1), Raipur was liable to be struck down for want of valid assumption of jurisdiction on his part. The Ld. A.R in support of his aforesaid contention, had relied on the following judicial pronouncements:

- (i) Durga Manikant Traders Vs. ITO, ITA No.59/RPR/2019 dated 12.12.2022
- (ii) Ravi Sherwani Vs. ACIT, ITA No.64/RPR/2020 dated 29th May, 2023
- (iii) PCIT Vs. Shri Shopper Ltd., ITAT No.39 of 2023, IA No.GA/1/2023
- (iv) Ashok Devichand Jain Vs. Union of India, (2023) 151 taxmann.com. 70 (Bom.)
- (v) CIT Vs. Ramesh D Patel, (2014) 362 ITR 492 (Guj.)
- (vi) Sudhir Kumar Agrawal Vs. ITO (2023) 221 TTJ (Raipur) 687
- (vii) Louis Dreyfus Company Asia Pte. Ltd. Vs. CIT, WP (C) 9713/2019 & CM No.40084/2019
- (viii) Dr. Hari Singh Channdel Vs. ITO, (2022) 220 TTJ (Raipur) 839

6.1 Apart from his aforesaid contention, it was submitted by the Ld. AR that as the assessment proceedings in the case of the assessee were initiated based on information that as per certain impounded documents i.e. LPS-1/1, Page-41 seized in the course of search proceedings conducted on “Sharma Group” at Malviya Road, Raipur, the assessee had carried out unexplained cash transactions aggregating to Rs.21.75 lacs, therefore, the A.O could have only framed the assessment under Section 153C of the Act. The Ld. A.R submitted that as the assessment in the case of the assessee had wrongly been framed u/s.147 r.w.s. 143(3) of the Act dated 28.10.2016, i.e., by invoking a wrong statutory provision, the same, thus, could not be sustained and was liable to be quashed.

6.2 On being queried by the Bench that as the document that was seized in the course of the search proceeding conducted on 'Sharma Group', viz. LPS-1/1, Page 41 did not "belong" to the assessee but to the most contents of the same "pertained" to him, therefore, as per the pre-amended section 153C of the Act, i.e., prior to the amendment vide Finance Act, 2015 w.e.f. 01.06.2015 how any infirmity could be attributed to the assumption of jurisdiction by the A.O. for framing the assessment, vide his order passed u/s.147 r.w.w. 143(3) of the Act dated 28.10.2016, Shri Veekaas S Sharma, the Ld. AR submitted that the aforementioned amendment to Section 153C vide the Finance Act, 2015 shall be applicable to the searches conducted u/s.132 of the Act before 01.06.2015, i.e., the date of the amendment. Ld. AR, to fortify his aforesaid claim, had drawn my attention to the judgment of the **Hon'ble Supreme Court** in the case of **ITO Vs. Vikram Sujitkumar Bhatia, (2023) 149 taxmann.com 123 (SC)**. The Ld. AR submitted that the Hon'ble Apex Court had observed that amendment to Section 153C vide the Finance Act, 2015 shall be applicable to searches conducted u/s. 132 before 01.06.2015, i.e., prior to the date of amendment.

7. Per contra, the Ld. Departmental Representative (for short, 'DR') relied on the orders of the lower authorities. The Ld. DR drew my attention to the written submissions that were filed by the A.O, i.e., DCIT-1(1), Raipur, on both

the aforesaid issues on the basis of which the impugned order has been assailed before me. For the sake of clarity, the “written submissions” of the A.O are culled out as follows:

“Issue of Jurisdiction

- a) Consequent upon Search & Seizure Operation in the case of Sharma Group and Others, the DDIT (Central Circle), Raipur vide his letter dated 04/02/2014 had forwarded the said case to ITO-1(2), Raipur for taking appropriate action u/s 153C/148 of the Act. He in-turn transferred the same to DCIT-1(1), Raipur on 05/02/2014 stating that the jurisdiction vests with this office.
- b) In the mean time during 2014-15 there was Restructuring in the Department consequent to which two new offices of Addl.CIT/JCIT, Range-3 and Range-4 were created by splitting erstwhile Range-1 and Range-2, Raipur. Territorial jurisdiction of few areas were transferred from one Range to another Vide CIT-1, Raipur's Notification No 1/2014-15 dated 15/11/2014 and subsequent JCIT, Range-3, Raipur's Notification No. 1/2014-15 dated 15/11/2014. Due to this change, the jurisdiction of the above assessee was transferred to DCIT/ACIT-3(1), Raipur. Since the Order u/s 120 of the Act was passed transferring one territory from one Range to another, specifying the jurisdiction, therefore, there is no need for passing of order u/s 127 of the Act relating to transfer of cases consequent to above notification.
- c) Moreover, it is pertinent to mention here that the assessee had complied to the notices, queries etc. raised during the assessment/re-assessment proceeding but he never challenged the issue of jurisdiction at that time. The assessee was well aware of all the facts because he was provided the reasons of reopening vide this office letter dated 23/06/2016.
- d) During the entire proceedings, the assessee denied that the said transactions were neither related to him nor done by him, but he never challenged the jurisdiction.
- e) Section 124(3)(a) precludes the assessee from questioning the jurisdiction of the Assessing Officer, if he does not do so within 30 days of receipt of notice under section 142(1).
- f) Reliance is placed on the following judgements :
- (i) In the case of Abhishek Jain Vs. ITO, It is held by Hon'ble Delhi HC that "In terms of section 124(3)(b) jurisdiction of an Assessing Officer cannot be called in question by an assessee after expiry of one month from date on which he was served with a notice for reopening assessment under section 148." [2018] 94 taxmann.com 355 (Delhi)

(ii) In the case of Vaishal Builders & Colonizers Vs. Addl CIT, it is held by Hon'ble ITAT, Jodhpur that "Where assessee did not raise objection relating to jurisdiction of AO to pass assessment order in course of assessment proceedings within specified time period, such an objection could not be raised for first time in appellate proceedings." [2012] 25 taxmann.com 464 (Jodh.)

(ii) In the case of Subhash Chander Vs. CIT, Rohtak, it is held by Hon'ble Punjab & Haryana HC that "Jurisdiction of - Assessment year 1992-93 - Whether in terms of section 124(3) (b), jurisdiction of an Assessing Officer cannot be called in question by an assessee after expiry of one month from date of which he was served with a notice under section 142(1) or after completion of assessment, whichever was earlier." [2008] 166 Taxman 307 (Punjab & Haryana)

(iv) In the case of Bal Chand Jain & Sons Vs. DCIT, it is held by Hon'ble HC of Allahabad that Provisions of sub-section (3) of section 124 bar an assessee from raising question of jurisdiction before first appellate authority or Tribunal if such an objection has not been raised before assessing authority at very first stage." [2014] 41 taxmann.com 524 (Allahabad)

(v) In the case of Farrukhabad Investment India Ltd. Vs. ACIT, Hon'ble Agra Bench of ITAT held that "Where additional ground of grievance against Assessing Officer's order was not raised before Commissioner (Appeals) raising of same before Tribunal was not sustainable." [2013] 34 taxmann.com 220 (Agra - Trib.)

g) Considering the above facts and circumstances of the case the objection raised by the assessee regarding jurisdiction is not acceptable.

Matter relating to 147/153C/153A

3. The issue regarding completion of assessment u/s 148 of the Act is justified on the part of AO for the following reasons :

- a) During the course of Search in the premises of Shri Magan Lal Agrawal, Fashion House etc, in the case of Sharma Group and Others, cash amounting Rs. 9,77,450/- was found in the bedroom of Shri Arun Agrawal, S/o Shri Mannulal Ji Agrawal. Consequent to this, the statement of Shri Arun Agrawal was recorded u/s 132(4) of the Act.
- b) The then ACIT-3(1), Raipur moved the proposal for re-opening the case for AY-2010-11 vide his letter dated 18/01/2016. The competent authority accorded the approval after considering /verifying all the facts.
- c) In the provisions of section 147, the Assessing Officer is having power to re-open the assessment, if he is of the opinion that the income chargeable to tax has escaped assessment. Before doing so, the AO is required should satisfy himself that, there is material which suggests that there is an escapement of income.

The AO can exercise these powers with a reasonable belief coupled with some material which suggest the escapement of income. Once the conditions precedent for assumption of jurisdiction to commence the reassessment proceedings, he has to cross the hurdles attached with reassessment by way reasons for reopening of assessment, time limit for issue of notice and provision for obtaining sanction of higher authority in certain circumstances.

- d) The AO had supplied the reasons recorded and the evidences collected during the search enquiries to the Ld. AR of the assessee during the assessment proceedings. The completion of assessment under the provisions of sec.147 instead of sec.153C does not disentitle the AO to forgo the powers vested u/s 147 and 148 and therefore the AO rightly invoked the jurisdiction u/s 147 for reopening the assessment.
- e) The assessee during assessment proceedings complied but had not challenged the section under which the assessment proceedings were carrying on.

f) Reliance is placed on the following judgements :

(i) In the case of Raymond Woolen Mills Vs. ITO & Others, Hon'ble SC held that "In determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage." [1999] 236 ITR 34 (SC)/[1999] 152 CTR 418 (SC)]

(ii) In the case of Yogendra Kumar Gupta Vs. ITO, Hon'ble SC held that "Where subsequent to completion of original assessment, Assessing Officer, on basis of search carried out in case of another person, came to know that loan transactions of assessee with a finance company were bogus as said company was engaged in providing accommodation entries, it being a fresh information, he was justified in initiating reassessment proceeding in case of assessee." [51 taxmann.com 383 (SC)/[2014] 227 Taxman 374]

(iii) In the case of Devi Electronics Pvt. Ltd. Vs. ITO, Hon'ble Mumbai HC held that "the likelihood of a different view when materials exist of forming a reasonable belief of escaped income, will not debar the AO from exercising his jurisdiction to assess the assessee on reopening notice." [2017 -TIOL-92-MUM-IT]

4. The matter was escalated before CIT(A) also, but the assessee had never challenged the issue of jurisdiction or Section of assessment before him also.

5. The assessee at this juncture instead of challenging the Question of Law, he is making back door entry by raising the

issue of jurisdiction and section of assessment for which he had not objections earlier. This clearly shows that it is an after thought of the assessee to escape from the clutches of taxation and hence, Hon'ble ITAT may be requested to kindly not to admit the objections.

Encl: Case record in 01 Volume
[Pages 01 to 94]

Yours faithfully,
Sd/-
(Tapan Kuma Chatterjee)
Deputy Commissioner of
Income Tax-1(1), Raipur

8. I have heard the Ld. authorized representatives of both parties, perused the orders of the lower authorities as well as 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.

9. I have thoughtfully considered the aforesaid issues and shall first deal with the contention of the Ld. A.R that the A.O, i.e., ACIT, Circle-3(1), Raipur, had wrongly assumed jurisdiction and framed the assessment u/s. 147 r.w.s. 143(3) of the Act dated 28.10.2016.

10. As stated by the Ld. AR and, rightly so, I find that the multi-facet issues pertaining to the assumption of jurisdiction by an 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) had been looked into at length by the "Division bench" of the ITAT, Raipur, in the case of **Durga Manikanta Traders Vs. ITO, ITA No.59/RPR/2019 dated 12.12.2022**. Also,

the objections that have been raised by the A.O as regards the validity of the jurisdiction assumed by the A.O, i.e., ACIT, Circle-3(1), Raipur, without raising of any objection by the assessee within the stipulated time period contemplated in Section 124(3)(a) of the Act had also been looked into at length in the aforementioned order. For the sake of clarity, the relevant observations of the Tribunal are culled out as follows:

“13. We have heard the Id. 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 (Chattisgarh). 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 Id. 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)
-------------------------------------	-----------------------------------

	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.

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 ld. 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.”

11. As the facts and the issues based on which jurisdiction has been assumed by the A.O, i.e., ACIT, Circle-3(1), 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.

12. Before parting, I may herein observe that the A.O vide his written submissions dated 05.09.2023, had stated that consequent to the search and seizure operation in the case of the “Sharma Group” information was shared by the DDIT (Central Circle), Raipur vide his letter dated 04.02.2014 with the

ITO-1(2), Raipur for taking appropriate action u/ss. 153C/148 of the Act. In turn, the ITO, Ward-1(2), Raipur, had transferred the case to the DCIT, Circle-1(1), Raipur, on 05.02.2014, stating that the jurisdiction over the case of the assessee was vested with the latter's office. It is further stated by the A.O. that pursuant to the restructuring in the department vide Notification No.1/2014-15 dated 15.11.2014, two new offices of Addl. CIT/JCIT, Range-3, and Range-4 were created by splitting erstwhile Range-1, Raipur and Range-2, Raipur. Referring to the aforesaid restructuring, it is stated by the A.O that the territorial jurisdiction of a few areas was transferred from one Range to another vide CIT-1, Raipur Notification No. 1/2014-15, dated 15/11/2014 and subsequent JCIT, Range-3, Raipur Notification No. 1/2014-15, dated 15/11/2014. It is stated by the A.O. that the jurisdiction over the case of the assessee pursuant to the aforesaid restructuring was transferred to DCIT/ACIT-3(1), Raipur. Based on the aforesaid facts, it is stated by the A.O that since the case of the assessee was transferred from one Range to another pursuant to order u/s 120 of the Act, therefore, there was no need for the passing of an order u/s 127 of the Act.

13. At the very threshold, I am unable to comprehend on what basis the case of the assessee de-hors any order as per the mandate of Section 127 of the Act was initially transferred by the ITO, Ward-1(2), Raipur on 05/02/2014

to the DCIT, Circle-1(1), Raipur. At this stage, it would be relevant to observe that as per sub-section (3) of Section 127 of the Act, even in case there is a transfer of any case from any A.O or AOs (whether with or without concurrent jurisdiction) to any other A.O or AOs (whether with or without concurrent jurisdiction), the requirement of passing an order of transfer under the aforesaid statutory provision is required and the same cannot be dispensed with. I may further observe that the order of transfer of the assessee's case by the ITO-Ward 1(2), Raipur to DCIT-Circle 1(1), Raipur on 05.02.104 was much prior to Notifications No. 1/2014-15, dated 15.11.2014 and Notification No. 1/2014-15, dated 15.11.2014, based on which jurisdiction over the case of the assessee was vested with the DCIT/ACIT-3(1), Raipur, as brought to our notice by the A.O.

14. Be that as it may, I am of the view that as the assessment in the case of the assessee had been framed by the ACIT, Circle-3(1), Raipur, who in light of the CBDT Instruction No.1/2011 (supra) r.w. CBDT Instruction No.6/2011 (supra) was not vested with any jurisdiction for framing of assessment in the case of the assessee who had declared Nil income; therefore, the order so passed by him cannot be sustained and is liable to be struck down on the said count itself. Thus, the **Ground of Appeal No.1** raised by the assessee is allowed in terms of my aforesaid observations.

15. As I have quashed the assessment for want of valid assumption of jurisdiction by the A.O, I refrain from advertng to and therein dealing with the other contentions that the Ld.AR had advanced, i.e., both as regards the validity of the order passed by the A.O u/s.153C of the Act as well as those qua the merits of the case, which, thus, are left open.

16. In the result, the appeal of the assessee is allowed in terms of the aforesaid observations.

Order pronounced in open court on 16th day of October, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 16th 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 फाइल / Guard File.

आदेशानुसार / BY ORDER

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.