

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos. 1354 & 1355/Bang/2016
Assessment Years : 2012-13 & 2013-14

M/s. Regional Oilseeds Growers Co-operative Societies Union Ltd., Plot No. 74/A, KIADB Industrial Area, Kelagote, Chitradurga – 577 501. PAN: AACFR0370E	Vs.	The Joint Commissioner of Income Tax, Davangere Range, Davangere.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sandeep Chalapathy, CA
Revenue by	:	Shri Subramanian .S, JCIT DR

Date of Hearing	:	30-11-2023
Date of Pronouncement	:	30-01-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arises out of the order dated 18.07.2023 by *Hon'ble Karnataka High Court* in *ITA No. 30/2019*. The *Hon'ble Karnataka High Court* has remanded the following issues to this *Tribunal* for necessary verification

2. The *Hon'ble High Court* as per para 9 has directed this *Tribunal* to verify and examine if there was an order u/s. 120(4)(b) of the Act. The *Hon'ble High Court* has also specified that the remand

order shall be limited only to A.Ys. 2012-13 and 2013-14. The observations of the *Hon'ble High Court* are reproduced as under for the sake of convenience.

“8. We have carefully considered rival contentions and perused records.

9. Admittedly, the assessee's case falls within the range headed by the JCIT. The JCIT had further a vacated the case to the AO. The assessment order has been passed by the JCIT himself. In this factual matrix, the ITAT has remitted the matter to the AO to examine whether there was an order under Section 120(4)(b) of the Act. In our considered view, the ITAT itself could have examined the aspect of JCIT's jurisdiction. Therefore, the matter requires reconsideration in the hands of the ITAT. Hence, the following;

ORDER

- (i) Appeal is allowed in part;*
 - (ii) Assessment orders for A.Ys.2010-11 and 2011-12 are quashed;*
 - (iii) The first question of law is answered in favour of the assessee and against the Revenue;*
 - (iv) Without expressing any opinion on merits on questions No.2 and 3, the matter is remitted to the ITAT to pass a fresh order wholly uninfluenced by the observations made in the impugned order;*
 - (v) Remand order passed by the ITAT shall be limited only so far as A.Ys.2012-13 and 2013-14; and*
 - (vi) All contentions kept open including the contentions raised in this appeal.*
- No costs.”*

We have perused the submissions advanced by both sides in the light of records placed before us.

2.1. The Ld.AR and Ld.DR has furnished the written submissions and supportive documents vide paper book dated 01.12.2023 and 04.12.2023 respectively. The submissions of the Ld.AR are reproduced as under:

WRITTEN SUBMISSIONS

The appellant herein seeks the leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to file the following written submissions in support of issue regarding the directions of the High Court on validity of jurisdiction of Joint Commissioner of Income-Tax, Davangere Range to pass the assessment order in absence of order u/s. 120(4)(b) of the Act.

1. The appellant is regularly assessed to Income Tax by the learned Income Tax officer, Ward – 1, Chitradurga. For the assessment year 2012 - 2013, the assessee filed the return of income with the said officer. A notice u/s 143(2) dated September 26, 2013 was issued by Income Tax officer, Ward – 1, Chitradurga.
2. For the assessment year 2013-14, the appellant filed a return declaring a total income of Rs. Nil after setting-off of unabsorbed depreciation and claiming deduction u /s 80P(2)(a)(iv) of the Act. Later, a revised return was filed declaring a gross total income of Rs. 4,37,00,195/- and the total income of Rs. 1,61,03,690/- after claiming deduction u/s 80P of the Act.

3. On December 5, 2013, the assessee received a communication from the learned Joint Commissioner of Income Tax informing the assessee by way of a letter dated December 4, 2013 that he has assumed jurisdiction. The notice dated December 4, 2013 refers to an Action Plan for the financial year 2013 - 2014. The copy of the said Action Plan was never brought on record and the same was not provided to the appellant.

4. The learned Commissioner of Income-Tax (Appeals) upheld the jurisdiction of the Joint Commissioner of Income-Tax and passed the order accordingly. The Hon'ble Tribunal remanded the matter to the assessing officer to provide a fresh opportunity of being heard to the assessee and pass the order accordingly (Para 5.3.1 to 5.3.5 at page nos. 19 to 6 of ITAT Order). On further appeal, the Hon'ble Karnataka High Court agreed with the contentions of the assessing officer and remanded the matter back to the Hon'ble Karnataka High Court directed the Hon'ble Tribunal to verify the existence of order u/s. 120(4)(b) of the Act in the assessment records (Para 9 at page 5 of High Court Order). In absence of such order, the Joint Commissioner of Income Tax will not have jurisdiction and the assessment order passed is invalid in law. The relevant portion of the order of the High Court is provided below; The submissions are as under;

9. Admittedly, the assessee's case falls within the range headed by the JCIT. The JCIT had further allocated the case to the AO. The assessment order has been passed by the JCIT himself. In this factual matrix, the ITAT has remitted the matter to the AO to examine whether there was an order under Section 120(4)(b) of the Act.

2.1. It is submitted that the learned Assessing Officer who initiated the assessment proceedings by issuing the notice u/s 143(2), alone should pass the order u/s 143(3). It is submitted that once an officer assumes a valid jurisdiction, another officer cannot assume jurisdiction. It is submitted that the concurrent jurisdiction does not mean simultaneous jurisdiction. The assessee relies on the decision of the Hon'ble Delhi High Court in Valvoline Communications Ltd Vs. DCIT (307) ITR 103. It was held therein as under : [paragraph 29]

It appears to us quite clearly that there is a distinction between concurrent exercise of power and joint exercise of power. When power has been conferred upon two authorities concurrently, either one of them can exercise that power and once a decision is taken to exercise the power by any one of those authorities, that exercise must be terminated by that authority only. It is not that one authority can start exercising a power and the other authority having concurrent jurisdiction can conclude the exercise of that power. This perhaps may be permissible in a situation where both the authorities jointly exercise power but it certainly is not permissible where both the authorities concurrently exercise power. One example that immediately comes to the mind is that of grant of anticipatory bail. Both the Sessions Judge and the High Court have concurrent power. It is not as if a part of that power can be exercised by the High Court and the balance power can be exercised by the Sessions Judge. If the High Court is seized of an application for anticipatory bail it must deal with it and similarly if the Sessions Judge is seized of an anticipatory bail, he must deal with it. There can be no joint exercise of power both by the High Court as well as by the Sessions Judge in respect of the same application for anticipatory bail.

30. In the facts of the present case, since the Additional Commissioner had exercised the power of an Assessing Officer, he was required to continue to exercise that power till his jurisdiction

in the matter was over. His jurisdiction in the matter was not over merely on the passing of the assessment order but it continued in terms of section 220(6) of the Act in dealing with the petition for stay. What has happened in the present case is that after having passed the assessment order, the Additional Commissioner seems to have washed his hands of the matter and left it to the Deputy Commissioner to decide the stay petition filed under section 220(6) of the Act. We are of the opinion that this was not permissible in law.

The ratio of the above decision squarely applies to the facts of the present case.

- 2.2. No doubt u/s 120 of the Act the Board may, by Notification in the official gazette, direct any income tax authority to exercise jurisdiction over any assessee as may be specified in that Notification. Even if the Joint Commissioner of Income-tax, has been authorized by Notification u/s 120, he ought to have initiated the assessment proceedings by issuing the notice u/s 143(2). The provision of S. 120 only confers a concurrent jurisdiction. It is necessary that such a concurrent jurisdiction should have been exercised by issuing a notice u/s 143(2). On the facts of the present case, it is clear that the notice u/s 143(2) was initially issued by the learned Income Tax Officer, Ward – 1, Chitradurga. Hence it is beyond dispute that the said officer has assumed jurisdiction validly. There cannot be any dispute that he had the initial jurisdiction and the Joint Commissioner had only a concurrent jurisdiction. Since the person having the initial jurisdiction has already assumed the jurisdiction by issuing notice u/s 143(2), the officer having concurrent jurisdiction cannot exercise such a concurrent jurisdiction. The decision of the Hon'ble High Court in Valvoline squarely applies to the facts of the present case.
- 4.3 It is further submitted that the Hon'ble Delhi Tribunal in *Mega Corporation Ltd v. Additional CIT 155 ITD 1019* has clearly held that in absence of order u/s. 120(4)(b) of the Act, the Additional Commissioner of Income-Tax lacks jurisdiction to exercise the functions of the assessing officer

and therefore, the order of assessment is framed without jurisdiction. The relevant portion of the judgment is reproduced below;

7.1 On careful consideration we find merit in the said submission. This order apparently is neither an order under section 120(4)(b) of the Act and nor it otherwise directs the Additional Commissioner to exercise or perform all or any of the powers and functions conferred on or assigned to an Assessing Officer under the Act. As regards the notification no. 267/2001 dated 17.9.2001 we notice that such notification by CBDT u/s 120(4)(b) of the Act directs that Joint Commissioner of Income Tax or Joint Director shall exercise the power and function of an Assessing Officer in respect of specified cases in respect of which such Joint Commissioner or authorized by Commissioner of Income Tax vide CBDT notification dated 14.9.2001 and 31.7.2001. It is thus apparent that the said notification is applicable in respect of Joint Commissioner authorized by Commissioner of Income Tax under notification as specified therein and no more. In the instant case it is admitted position that none of the notifications as specified therein confer powers of an Assessing Officer to the Additional Commissioner of Income Tax, Range 6, New Delhi.

(Underlining is ours)

4.4 We also rely on the decision of Mumbai Tribunal in Tata Sons Ltd v. ACIT (2016) 76 Taxmann.com 126 (Mumbai – Trib) for the identical proposition held above. The relevant portion of the decision is reproduced below;

3.33. Similar issue has been decided by the Lucknow bench of ITAT in the case of Prachi Leather (P.) Ltd. v. Addl. CIT [IT Appeal No. 26(L) of 2010, dated 8.12.2010] relying upon its earlier order in ITA No.744/2004/Lucknow for assessment year 2001-02 decided this issue on the similar lines after considering and following the decision of Hon'ble Delhi High Court in the

case of Dr. Nalini Mahajan (supra). It is also noted that this decision has also been considered by Delhi Bench in the case of Mega Corporations Ltd, supra and relevant portion of the order as discussed therein is reproduced below:—

"16.2 From the contents of the aforesaid provisions, it is quite clear that so far as Addl. Commissioner is concerned, firstly he has been included in the definition of "Assessing Officer" given under section 2(7A) of the Act with effect from 1.6.1994 as a result of retrospective amendment made by the Finance Act, 2007 but at the same time, it is also clear that the Addl. Commissioner will be Assessing Officer as envisaged in section 2(7A) so amended only if he is directed under clause (b) of sub-section (4) of section 120 to exercise or perform all or any of the powers and functions concerned on or assigned to an Assessing Officer; meaning thereby that the Addl. CIT can function or can exercise the powers and perform the functions of an Assessing Officer if he is empowered by the CBDT as required under clause (b) of sub-section (4) of section 120.

18.1 So far as the issue before us in the present appeal is concerned, it is now clear from the provisions as discussed hereinbefore that the Additional CIT could act and exercise the powers of an AO only in consequence upon delegation of such authority by the Board, Chief Commissioner of Income-tax or Commissioner of Income-tax as envisaged in the provisions of section 120(4)(b) of the Act. However, the power given to the Chief Commissioner of Income-tax or Commissioner of Income-tax being in consequence upon the delegation of power duly authorized by the Legislature, the Chief Commissioner of Income-tax or Commissioner of Income-tax were duty bound, if at all they were to exercise such delegated power to act according to the provisions of law; meaning thereby that it was incumbent upon the Chief Commissioner of Income-tax or the Commissioner of Income-tax, as the case maybe, if at all they wanted to authorize the Additional CIT to act and perform the functions of an AO, to pass a proper order delegating such functions/powers upon him. This view of ours is fully supported by the decision of the Hon'ble Delhi High Court in the case of Dr. Nalini Mahajan v. DIT [2001] 252 ITR 123/[2002]122 taxman 897 wherein the Hon'ble High Court, while discussing the powers of Additional Director Investigation, held as under:

"It is now well-settled that when a power is given to do a certain thing in a certain manner, the same must be done in that manner or not at all. A delegation of power is essentially a legislative

function. Such a power of delegation must be provided by the statute. The director himself for certain matters is the delegating authority. He, unless the statute expressly states, cannot sub-delegate his power to any other authority. In any event, if an authority, which had no jurisdiction to issue such an authorization, did so, the same would be liable to be quashed as ultra vires. Thus, unless and until an amendment is carried out, by reason of the redesignation itself, read with the provisions of the General Clauses Act, the Addl. Director does not get any statutory power to issue authorization to issue warrant. Therefore, the Addl. Director (Investigation) cannot be said to have any power to issue any authorization or warrant to Joint Director. Consequently, notification dt. 6th Sep. 1989 is not valid in law to the said extent.

18.2 So far as the present case is concerned, though we are concerned with the powers of Additional CIT but the proposition of law laid down by the Hon'ble High Court which was, though in relation to powers of Additional Director (Investigation), is fully applicable to the present case.

18.3 In view of the aforesaid facts, circumstances and the discussion and following the law laid down by the Hon'ble Delhi High Court in the case of Dr. Nalini Mahajan (supra), first of all we are of the opinion that the Addl.CIT, Range-6, Kanpur having not been empowered to exercise or perform the powers or functions of an Assessing Officer, the assessment framed by him was illegal and void ab initio....."

3.34. It is further noted that similar view has been expressed by Jodhpur Bench of ITA in the case City Garden v. ITO [2012] 21 taxmann.com 373/51 SOT 195 (URO) wherein it has been held that in the absence of a specific order issued in pursuance to Section 120(4)(b) specifically authorizing Joint Commissioner of Income Tax to exercise the powers and perform the function as conferred on or assigned to an Assessing Officer by or under the Act or a notification under section 120 of the Act, he is not competent to act as an Assessing Officer and pass an assessment order.

3.35. Similar view has been taken by Lucknow Bench of ITAT in the case of Microfin Security (P.) Ltd. v. Addl. CIT [2005] 3 SOT 302 wherein it was held that in absence of any allocation being made in favour of Additional Commissioner to make an assessment, he cannot assume for himself such an authority so as to pass an assessment order.

3.40. Thus, in view of the legal discussion made above and facts of the case, it is clear that impugned assessment order has been passed without authority of law in as much as Revenue has not been able to demonstrate that the Additional Commissioner of Income tax who had passed the assessment order had valid authority to perform and exercise the powers and functions of an Assessing Officer of the assessee and to pass the impugned assessment order. Under these circumstances, we have no other option but to hold the same as nullity and, therefore, the impugned assessment order is quashed having been passed without authority of law.

4.5 In view of the above submissions, the Hon'ble Karnataka High Court directed the Hon'ble Tribunal to verify the existence of order u/s. 120(4)(b) of the Act in the assessment records. In absence of such order, the Joint Commissioner of Income Tax will not have jurisdiction and the assessment order passed is invalid in law.

2.2. Per contra, the submissions of the Ld.DR are as under:

माननीय आयकर अपीलिय प्राधिकरण 'बी' बेंच, बंगलूरु के समक्ष
Before The Hon'ble Income - Tax Appellate Tribunal, 'B' Bench, Bangalore.

REVENUE'S WRITTEN SUBMISSION

In the case of

M/S. REGIONAL OIL SEEDS GROWERS CO-OPERATIVE SOCIETIES UNION LTD

IN

2. ITA No. 1354/BANG/2016
2. ITA 1355/BANG/2016

AYs 2012-13 & 2013-14

Date of Hearing : 30.11.2023

यह आपके सम्मान में प्रस्तुत है। *May it please Your Honours* :

In the above mentioned case, in conformity with the direction issued during the course of the hearing, by the Hon'ble Members of the ITAT, 'B' Bench, Bengaluru, regarding the mention made by the Hon'ble Karnataka High Court in the order passed on 18.07.2023 in ITA No. 30 of 2018 arising out of order dated 05.09.2018 passed in ITA No. 1352 to 1355/BANG/2016 for AY 2010-11 to 2013-14 as at Para No. 9 as to any order passed u/s. 120(4)(b) of the Act, 1961, in this case, the following submission is made for kind consideration.

3. In this regard, it is submitted that the jurisdictional Commissioner of Income-tax, Davagere, in F.No.Jursdn./CIT/DVG/03-04 dated 03.04.2003 has passed the NOTIFICATION regarding the jurisdiction of the Davanagere Range, in exercise of the powers conferred in the Board's Notifications as conveyed in Board's D.O.F.No.187/13/2002-ITA-I dated 18-07-2001 and No.30/2003/F.No.187/13/2002-ITA-I dated 04.02.2003. In the said order, it is specifically notified that the Additional Commissioner of Income-tax/Joint Commissioner of Income-tax will exercise concurrent jurisdiction with all the Assessing Officers of the Range, subject to orders, instructions and guidelines

issued by Central Board of Direct Taxes/Chief Commissioner of Income-tax/commissioner of Income-tax.

4. It is further submitted that by an earlier Notification No.267/2001 [F. No.-187/5/2001-ITA-I] dated 17-09-2001 u/s.120 of the Income Tax Act governing the jurisdiction of Income Tax Authorities, directing that the JCIT shall exercise the powers and the functions of the assessing officers, in respect of territorial area or persons or classes of persons or incomes or classes of income or cases, or classes of cases, in respect of which such Joint Commissioners of Income-tax are authorised by the Commissioner of Income-tax.
5. In the light of the above stated factual position, it is submitted that the assessment orders passed by the Joint Commissioner of Income-tax, Davanagere Range, Davanagere, passed u/s 143(3) of the Income-tax Act on 08.01.2014 for the Asst. Years 2012-13 and 2013-14 is in conformity with the mandated requirements and the provision of the Income-tax Act, 1961.
6. As regards the written submissions made by the appellant vide submissions dated 01.12.2023, it is submitted that the appellant has placed reliance on three judgments in his written submissions for supporting his case.
7. It is submitted that the facts of the case of **Valvoline Cummins Ltd. v. Dy. CIT [2008] 307 ITR 103/171 Taxman 241 (Delhi)** will not be applicable to the present case, as it was in respect of recovery proceedings initiated by the Deputy Commissioner of Income Tax subsequent to the completion of assessment by the Addl. Commissioner of Income Tax. For this reliance is placed on the case of **Harvinder Singh Jaggi v. Assistant Commissioner of Income-tax [2016] 67 taxmann.com 109 (Delhi - Trib.)**. The relevant paragraph is extracted below:

9. In ground no. 3, the assessee has raised that there was no order under Section 127 of the Act transferring the case to the Addl. Commissioner of Income Tax in exercise of the concurrent jurisdiction vested in her. The learned Authorized Representative submitted that the order passed by the Addl. Commissioner of Income Tax is without jurisdiction. He further relied on the judgment of the Hon'ble Delhi High Court in the case of Valvoline Cummins Ltd. v. Dy. CIT [2008] 307 ITR 103/171 Taxman 241 (Delhi).

9.1 On the other hand, learned Sr. Departmental Representative submitted that the order passed by the Addl. Commissioner of Income Tax was well within his jurisdiction and he distinguished the judgment in the case of Valvoline Cummins Ltd. (supra) stating that the said judgment was in respect of recovery proceedings initiated by the Deputy Commissioner of Income Tax subsequent to the completion of assessment by the Addl. Commissioner of Income Tax and therefore the facts of the case were not applicable to the facts of the assessee's case.

9.2 We have heard the rival submissions and perused the record. We are agreed with the contention of the learned DR that the ratio of Valvoline Cummins Ltd. (supra) is not applicable to the facts in the assessee's case. As regard to the contention of the learned Authorized Representative that no order under Section 127 of the Act was passed by the Commissioner of Income Tax, the Id. Sr. DR has submitted that the Addl. Commissioner of Income Tax was provided concurrent jurisdiction over the cases through the order of the Commissioner of Income-tax and, therefore, no separate order under section 127 of the Act was required to be passed by the Commissioner of Income-tax. However, no such order of the Commissioner of income-tax conferring the concurrent jurisdiction to the Addl. Commissioner of Income-tax over the cases of the Income-tax Officer is either available on assessment record, or was produced before us by the Revenue. Thus, in absence of any such order, it can't be established that said assessment order passed was within the jurisdiction of the Addl. Commissioner of Income-Tax. Thus, we hold that the assessment completed by the Additional Commissioner of Income-tax in the case being without jurisdiction, is void ab initio. Accordingly, the ground of appeal of the assessee is allowed.

Hence, in the instant case since a specific order has been passed by the jurisdictional commissioner of income tax, davangere, the case law cited by the appellant is infact not applicable to the present case.

8. With regard to the case of Mega Corporation Ltd. V. Addtl. CIT [2015] 155 ITD 1019 it is not applicable in the present case. Instead I would like to reproduce the relevant extract from the judgment which supports the stands of the Respondent.

7. Having regard to statutory position the finding of the learned CIT(A) is not in accordance with law. During the course of arguments the Id. counsel for the assessee has contended that the order dated 1.8.2007 by CIT, Delhi-II, New Delhi is not an order u/s 120(4)(b) of the Act and is an order u/s 120(2) of the Act Moreover there are no direction in the said order so as to confer and assign the Additional Commissioner with the powers of an Assessing Officer and exercise the functions of an Assessing Officer.

7.1 On careful consideration we find merit in the said submission. This order apparently is neither an order under section 120(4)(b) of the Act and nor it otherwise directs the Additional Commissioner to exercise or perform all or any of the powers and functions conferred on or assigned to an Assessing Officer under the Act. As regards the notification no. 267/2001 dated 17.9.2001 we notice that such notification by CBDT u/s 120(4)(b) of the Act directs that Joint Commissioner of Income Tax or Joint Director shall exercise the power and function of an Assessing Officer in respect of specified cases in respect of which such Joint Commissioner or authorized by Commissioner of Income Tax vide CBDT notification dated 14.9.2001 and 31.7.2001. It is thus apparent that the said notification is applicable in respect of Joint Commissioner authorized by Commissioner of Income Tax under notification as specified therein and no more. In the instant case it is admitted position that none of the notifications as

specified therein confer powers of an Assessing Officer to the Additional Commissioner of Income Tax, Range 6, New Delhi.

It is submitted that the decision has taken cognizance of the notification no. 267/2001 dated 17.9.2001 and held that, it is apparent that the said notification is applicable in respect of Joint Commissioner and in the present case the Respondent is Joint Commissioner and has very well jurisdiction. In Mega Corporation Ltd. V. Addtl. CIT [2015] 155 ITD 1019 the issue was about whether the ACIT had jurisdiction and the notification cited was only applicable to JCIT and in that sense it was held in favor of appellant. Whereas in the present case the Notification is applicable to JCIT and he holds the jurisdiction of the case.

9. With regard to the case of Tata Sons Ltd. v. Assistant commissioner of Income-tax [2016] 76 taxmann.com 126, which held that ACIT can perform functions and, exercise powers of an Assessing Officer only if he is specifically directed under section 120(4)(b) of the Act. In the present case, the Respondent has received the direction through notification No.F.No.Jursdn./CtT/ DVG/03-04 dated 03.04.2003, for perusal of the same a copy is attached. There is no ground for the appellant to place reliance on this case when the necessary requirements of instruction form the CIT has been received as per the section 120(4)(b) of the Act.

प्रस्तुत/Submitted: Case Heard on 30.11.2023

3. The contentions raised by the Ld.AR is that in the absence of order u/s.124(b), the assessment order passed by the Ld.AO is without jurisdiction. Before us, the Ld.AR submitted that, there is no order under section 120(4)(b) of the Act, so as to confer jurisdiction on the JCIT, Davengare to frame the impugned assessment. It was submitted that in absence of order under section 120(4)(b) read with section 2(7A) of the Act, the JCIT, Davengare cannot exercise the power and perform the functions of the Assessing Officer. The assessment thus framed by the JCIT Davengare is without jurisdiction and unsustainable.

3.1. According to the assessee, it is incumbent under the scheme of statute to vest the JCIT, Davengare,u/s 120(4)(b) of the Act to

exercise or perform all or any of the powers and functions of Assessing Officer under the Act.

3.2. On the contrary, the Ld.DR vehemently relied on Notification No. 267/2001 dated 17.09.2001 in support of the contention that the Joint Directors of Income Tax shall exercise the powers and functions of the AO in respect of territorial area or persons or class of persons in respect of which such Joint Commissioner of Income Tax are authorised by the Commissioner of Income Tax.

3.3. The Ld.DR in the paper book at page 14 has placed the Notification No.267/2001 dated 17.09.2001 wherein it is directed by the CBDT u/s.120(4)(b) that the JCIT or the JDIT shall exercise the powers and functions of the assessing officers in respect of territorial area or persons or classes of persons or incomes or classes of income or cases, or classes of cases, in respect of which such JCIT are authorised by the CIT vide CBDT Notification No.S.O.732(E) dated 31.07.2001, S.O.880(E) dated 14.09.2001, S.O.881(E) dated 14.09.2001, S.O.882(E) dated 14.09.2001 and S.O.883(E) dated 14.09.2001 published in the Gazette of India, Part II, Section 3, sub-section (ii), Extraordinary. It is an admitted position as observed by *Hon'ble High Court* in para 9 that the case of the assessee falls within the range headed by the JCIT and that the JCIT had allocated the case to the assessing officer.

3.4. To examine the above contentions raised by both sides, we consider it appropriate to firstly extract section 2(7A) of the Act which reads as under:

*"2(7A) Assessing Officers
(7A) "Assessing Officer" means the Assistant
Commissioner or Deputy Commissioner or Assistant*

Director or Deputy Director or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act ;”

3.5. A plain reading of the aforesaid provision would show that it is in two parts;

- The first part provides that Assessing Officer means the “Assistant Commissioner” or “Deputy Commissioner” or “Assistant Director” or “Deputy Director” or “Income Tax Officer” who is vested with the relevant jurisdiction by virtue of directions or orders issued under section 120(1) or 120(2) or any other provision of this Act.
- The second part provides that Assessing Officer means the "Additional Commissioner" or "Additional Director" or "Joint Commissioner" or "Joint Director" who is directed under section 120(4)(b) of the Act to exercise or perform all or any of the powers and functions conferred on or assigned to an Assessing Officer under this Act.

3.6. In other words, Assessing Officer *inter alia* means, a “Assistant Commissioner” or “Deputy Commissioner” or “Assistant Director” or “Deputy Director” or “Income Tax Officer” who is who is vested with the relevant jurisdiction by virtue of directions or orders issued under section 120(1) or 120(2) ; or; is directed under section 120(4)(b) of the Act to exercise or perform all or any of the powers and functions conferred on or assigned to

an Assessing Officer under the Act. This interpretation also derives strength from the provisions contained in section 120(4) (b) of the Act which reads as under:

“120. Jurisdiction of income-tax authorities

(4) Without prejudice to the provisions of sub-sections (1) and (2) , the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,-

(b) empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by [an Additional Commissioner or] [an Additional Director or] a Joint Commissioner [[or a Joint Director,]] and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such [Additional Commissioner or] [Additional Director or] Joint Commissioner [[or a Joint Director, 1] by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.”

3.7. It will be seen that the said provision provides that Board may by general or special order and subject to such conditions, restrictions or limitations as may be specified therein empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on or as the case may be, assigned to, **the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases shall be exercised or performed by an Additional Commissioner or an Additional Director or a**

Joint Commissioner or a Joint Director and where any order is made under this clause, reference in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or a Joint Director by whom, the powers and functions are to be exercised or performed under such order and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.

(Emphasis supplied)

3.8. Further on perusal of the provisions of section 120(1) to 120(3), we note that the income tax authorities shall exercise all or any of the powers and perform all or any functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities. Thus section 120(1) stipulates that powers and functions of an income tax authority shall be confined and restricted to the powers and functions conferred or assigned by Board under the Act. Further section 120(2) enables the Board u/s 120(1) to even authorize an income tax authority to issue an order in writing for exercise of powers and function by subordinate income tax authorities. In other words, section 120(2) does not in any manner provide that CIT can authorize an Additional Commissioner of Income Tax to perform the functions and, exercise the powers of an Assessing Officer.

3.9. Now coming to the present facts of the case. The JCIT has assumed concurrent jurisdiction for the years under consideration by virtue of Notification no.276/2001 dated 17/09/2001. the said notification and the Notification no.30 [f.no.187-13-2002-ITA-I]dated 04/02/2003 issued under section 120(1) of the Act by the CBDT makes this position further clear. Thus in our opinion as observed by us in the para 3.7. above, as the Board by general/special order and subject to such conditions, restrictions or limitations as may be specified therein empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director and where any order is made under this clause, reference in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or a Joint Director by whom, the powers and functions are to be exercised or performed under such order and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.

3.10 There is one more aspect which needs to be emphasised herein regarding Section 120(3) that provides for issuing

directions or orders under sub clause (1) and sub clause (2), the Board shall consider the territorial area, persons or class of persons, incomes or classes of income and cases or classes of cases. As regards the notification no. 267/2001 dated 17.9.2001 we notice that such notification by CBDT u/s 120(4)(b) of the Act directs that Joint Commissioner of Income Tax or Joint Director shall exercise the power and function of an Assessing Officer in respect of specified cases in respect of which such Joint Commissioner or authorized by Commissioner of Income Tax vide CBDT notification dated 14.9.2001 and 31.7.2001.

Now coming to section 120(4) which is a without prejudice class and provides that the Board may in general or by special order subject to certain restrictions/conditions/limitations may authorise the Principal Director General or Director General to perform the functions of any other Income Tax authority as may be assigned to him by the Board.

In sub clause (b) of clause (4), the Board further empowers Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner to issue orders in writing that the powers and functions conferred on such officer by the Board as the case may be by assigning to the assessing officer shall also include Additional Commissioner or Joint Commissioner, Additional Director or Joint Director. In the present facts the notification No.276 comes to rescue of the revenue and we do not find any merit in the arguments advanced by the ld.DR on this issue.

We have also perused the provisions of section 124 wherein the jurisdiction of assessing officers have been considered under the

act. For the sake of convenience, section 124 has been reproduced as under:

“Jurisdiction of Assessing Officers.

124. (1) *Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—*

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Principal Director General or Director General or the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner; or where the question is one relating to areas within the jurisdiction of different Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners, by the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.

(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 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 115WE or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115WD or sub-section (1) of section 142 or under

sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier;

(c) where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.

(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.

(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120.”

3.11 Further, the section 120(4) is in respect of the directions or orders issued u/s.120(1) or (2) and casts a limitation of the assessee to challenge the jurisdiction of the authority who has passed the assessment order within a period of one month, sub clause (3) of 124 of the act is very clear on this limitation expressed by the legislature.

Hon'ble Allahabad High Court in case of CIT vs. British India Corporation Ltd. reported in (2011) 337 ITR 64 has held that the question of jurisdiction of the assessing authority cannot be disputed after the completion of the assessment proceedings. The facts in the case were that assessee filed its return of income

for the assessment year 1974-75 which was processed by the Assessing Officer, namely, Income Tax Officer, Central Circle-I, Kanpur who completed the assessment under section 143(3)/144B of the Act on September 7, 1977 after making certain additions and disallowances to the returned income. On appeal assessee contended that the assessing authority had no jurisdiction to pass the assessment order inasmuch as the assessment file stood transferred from Income Tax Officer, Central Circle-I, Kanpur to the Inspecting Assistant Commissioner Range-D, Kanpur by the order dated July 1, 1977 and thus the assessment order by the Income Tax Officer was void-ab-initio. The Tribunal allowed the appeal on the ground that the Income Tax Officer, Central Circle-I had no jurisdiction in view of the transfer order dated July 1, 1977 transferring the case to the Inspecting Assistant Commissioner. The *Hon'ble High Court* held as under:

“18. It is reasonable to deduce that the question of jurisdiction of the assessing authority cannot be disputed after the completion of the assessment proceedings. Alternatively, if such a question arises, the said question can be addressed by the Commissioner or the Board, as the case may be, in view of sub-section (4) of section 124 and this by necessary corollary excludes the jurisdiction of the first appellate authority or the court.”

Recently, the *Hon'ble Karnataka High Court* in case of *Adarsh Developers vs DCIT* reported in (2024) 158 *taxman.com* 81 also have concurred that the same view in respect of the challenge of jurisdiction of the assessing authority who has passed the assessment order to be limited to one month.

3.12 Coming to the present facts of the case, the assessee has raised this challenge in the first round of appeal before this *Tribunal when this* issue had already become time barred by virtue of the provisions of section 124(3). We therefore do not find any merit in the contentions raised by the assessee at this juncture belatedly.

Accordingly the issue remitted by *Hon'ble High Court* for necessary verification is held against the assessee for the years under consideration.

In the result, the appeals filed by the assessee on this issue stands dismissed.

Order pronounced in the open court on 30th January, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 30th January, 2024.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)-12 |

By order

Assistant Registrar,
ITAT, Bangalore