

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
(DELHI BENCH 'C' NEW DELHI)**

**BEFORE SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No. 3643/Del/2023, (A.Y. 2015-16)**

J Mitra and Bros Double Storey Market, New Rajinder Nagar, Delhi <b>PAN: AAFJ0083C</b>	Vs.	ACIT Circle 50(1) Civic Centre, New Delhi
<b>Appellant</b>		<b>Respondent</b>

Assessee by	Shri R.S. Singhvi, CA and Sh. Satyajeet Goel, Adv and Sh. Rajat Garg, CA
Revenue by	Mr. Waseem Arshad CIT(DR)

Date of Hearing	01/04/2024
Date of Pronouncement	10/04/2024

**ORDER**

**PER YOGESH KUMAR, U.S. JM:**

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals) Delhi, ["Ld. CIT(A)", for short], National Faceless Appeal Centre, dated 06/11/2023 for the Assessment Year 2015-16.

2. Grounds of the Assessee are as under:-

*“1. (1) That on the facts and circumstances of the case and in law, the CIT(A) was not justified in upholding the jurisdiction of the Assessing Officer to initiate scrutiny proceedings in total disregard to the mandatory CBDT instructions no. 1/2011 dated 31/01/2011.*

*(ii) That the Appellant firm having filed the return of income showing NIL income, the jurisdiction to issue Notice u/s 143(2) of the Act in respect of income declared upto 20 lacs lies with the Income Tax Officer and as such the said Notice issued by ACIT, Circle 50(1), Delhi is illegal and void ab initio.*

*iii) That in the light of contravention and in the absence of any evidence of the Assessing officer assuming jurisdiction based on any other administrative and judicial notification, the impugned order is illegal and required to be quashed.*

*2(i) That on the facts and circumstances of the case, the CIT(A) was not justified in upholding the disallowance of exhibition and conference expenses of Rs. 40,86,718/- made u/s 37(1) of the Income Tax Act, 1961 without appreciating the nature of trade and genuineness of expenses incurred.*

*(ii) That the Appellant having incurred these expenses for demonstration and imparting of knowledge regarding use and application of machines/medical equipments, the CIT(A) in total disregard to the explanation offered by the Appellant has erred in treating the same as freebies to medical practitioners.*

*iii) That Appellant being a dealer in medical equipments i.e. neither a pharmaceutical company nor engaged in allied health sector industry, the reliance placed by the*

*lower authorities on the CBDT circular no. 5/2012 is arbitrary and not warranted under law.*

*(iv) That the alleged disallowance is based on wrong understanding and appreciation of CBDT circular and the decision of Hon'ble Supreme Court in the case of Apex Laboratories Private Limited.*

*3(i) That on the facts and circumstances of the case, the CIT(A) was not justified in confirming the disallowance of foreign travelling expenses to the extent of Rs. 88,64,363/ u/s 37(1) of the Income Tax Act, 1961 without properly appreciating the documents filed by the Appellant.*

*ii) That the Appellant having furnished documents giving complete details /purpose of foreign travel, the observations made by the CIT(A) are whimsical and without pointing out any specific defect or raising any query with regard to any expense.*

*iii) That the CIT(A) has erred in disallowing the foreign travel expenses without appreciating the fact that these expenditures were incurred exclusively for the purpose of its routine business and are not hit by the provisions of explanation I to section 37 of the Act.*

*4(i) That on the facts and circumstances of the case, the CIT(A) was not justified in sustaining the disallowance of car repair and maintenance expenses of Rs. 4,37,092/- without even looking into the supporting documents submitted by the Appellant.*

*(ii) That the Assessing Officer having not disputed the genuineness and commercial expediency of car running expenses and the disallowance being merely on account of non-furnishing of ledger account, the action of the CIT(A) in not considering the ledger account filed by the Appellant is illegal and arbitrary.*

*5(i) That on the facts and circumstances of the case, the CIT(A) was not justified in sustaining 5% ad hoc disallowance of Rs. 9,61,761/- made on account of claim of expenses under the head Advertising, Computer Stationery, Maintenance and Business promotion expenses.*

*(ii) That all the expenses are related to business activities and fully supported & verifiable from the documents already placed on record, there is thus no basis for sustaining the disallowance @5% of total claim.*

*6(i) That on the facts and circumstances of the case, the CIT(A) was not justified in upholding the ad-hoc disallowance of Rs. 5,65,419/-incurred on account of entertainment, festival, car maintenance expenses, etc. on the alleged ground of personal element without any evidence or material.*

*(ii) That these expenses having been incurred exclusively for the purpose of business, the ad-hoc disallowance of Entertainment, Festival, Car maintenance expenses are merely on the basis of conjectures and surmises and not sustainable on facts and under the law particularly when the same is contrary to past history.*

*7. That orders passed by the lower authorities are not justified on facts and same are bad in law.*

*That the appellant craves leaves to add, alter, amend, forgot any of the grounds of appeal at the time of hearing.”*

3. Brief facts of the case are that, the assessee filed e-return for Assessment Year 2015-16 on 30/09/2015 declaring NIL income. Later on, the case of the assessee was selected for scrutiny through

CASS and statutory notices were issued to the assessee. The assessment order came to be passed by ACIT Circle, 15(1) New Delhi, by making addition of Rs. 1,58,77,115/- as against returned NIL income. Aggrieved by the assessment order dated 31/12/2017 passed by the Assistant Commissioner of Income Tax, Circle, the assessee preferred an appeal before the CIT(A), wherein the assessee apart from raising the grounds on merit also raised the issue of jurisdiction of the Assessing Officer. The Ld. CIT(A) vide order dated 06/11/2023, partly allowed the Appeal by restricting the advertisement expenses @ 5.1% instead of 10% and confirmed the rest of the additions.

4. The Ld. AR arguing Ground No. 1 its sub grounds and submitted that the ld. CIT(A) was not justified in upholding the jurisdiction of the Assessing Officer to initiate scrutiny proceedings in total disregarding to mandatory CBDT Instruction No.1/2011 dated 31/01/2011, further submitted that the assessee has filed return showing NIL income, the jurisdiction to issue notice u/s 143(2) of the Act in respect of income declared up to 20 lacs as the lies of the Income Tax Officer, therefore, the notice issued by the

ACIT circle 15(1) , Delhi is illegal and void ab initio. The Ld. Counsel for the assessee has relied on the order of the Coordinate Bench in the case of Cavin International Vs. DCIT in ITA 5363/Del/2017 and sought for allowing Ground No. 1 and its sub Grounds and also prayed for setting aside the Assessment Order.

5. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities sought for dismissals of the Ground No. 1 and its sub Grounds.

6. We have heard both the parties and perused the material available on record. As could be seen from the records the assessee has filed return for the Assessment Year 2015-16 on 30/09/2015 declaring NIL income. A notice u/s 143(2) has been issued by the ACIT, Circle 50 (1), New Delhi on 28/07/2016 subsequently, the impugned assessment order has also been passed by the ACIT, Circle 50(1) New Delhi on 31/12/2017. As per the Instruction No. 1/2011[F. No. 187/12/2010-IT(A)-1] dated 31/01/2011 the issued by the CBDT instructions regarding income limits for assigning cases to Deputy

Commissioners/Assistant Commissioners/ITOs, wherein the corporate returns up to 20,00,000/-comes under the jurisdiction of income tax officer. The Instruction No. 1/2021 is reproduced as under:-

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

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

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

Income Declared (Mofussil areas)		Income Declared (Metro cities)	
ITOS	ACS/DCs	ITOS	DCS/ACS
Corporate returns Upto Rs. 20 lacs		Above Rs. 20 lacs	
Upto Rs. 30 lacs		Above Rs. 30 lacs	
Non-corporate returns Upto Rs. 15 lacs		Above Rs. 15 lacs	
Upto Rs. 20 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.”*

7. From the above it is evident that as per CBDT Instruction No. 1/2011 dated 31/01/2011, the Jurisdiction to issues notice u/s 143(2) in the case when the taxable income is less than 20,00,000/- comes under the ITO. The identical issue has been decided by the Coordinate Bench of the Tribunal in the case of M/s. Kelvin International Vs. DCIT (ITA NO. 5363/Del/2017) dated 22.12.2023, wherein the notice has been issued contrary to the CBDT Circular No. 1/2011, therefore, the same has been declared as having issued without jurisdiction and consequently the assessment order has been quashed in following manners:-

*“6. From the above, it is evident that as per the CBDT Instruction 1/2011 dated 31.01.2011, the moment the return of income has been filed by the assessee disclosing taxable income more than 15 lakhs or 20 lakhs for Mofussil and metro areas respectively, as the case may be, the scrutiny notice u/s 143(2) of the Act could be issued only by the authority in the rank of ACIT/ DCIT and not by ITO. In this regard, the Id DR vehemently argued that notice u/s 143(2) of the Act was issued under the Computer Assisted Selection of Cases for Scrutiny (CASS) and not manually by any officer of the department. Even if this argument of the Id. DR is to be appreciated and accepted, still it is bounden duty on the part of the Id DCIT to have issued notice u/s 143(2) of the Act within the prescribed time provided in the statute after having*

*assumed jurisdiction over the assessee, which is admittedly not done in the instant case by the Id DCIT. Hence, it could be safely concluded that the entire scrutiny assessment framed u/s 143(3)144 of the Act on 24.03.2015 by DCIT, Circle Haridwar without issuing a valid and legal notice u/s 143(2) of the Act become void abinitio and deserves to be quashed.*

*7. The Id DR before us stated that department would be rescued by the provisions of section 292BB of the Act and that the assessee would be precluded from raising this preliminary ground in the second appellate proceedings. We are unable to comprehend ourselves to agree to this argument of the revenue in as much as in our considered understanding, the provisions of section 292BB applies only in case of improper service/ wrong service of notice and not to objection not taken by the assessee during assessment proceedings. Section 292BB of the Act does not save the defect of non-issue of valid notice u/s 143(2) of the Act by the jurisdictional officer. Hence, in the absence of valid and legal notice issued by the jurisdictional officer, the assessment framed on the assessee requires to be quashed. This view of ours is further fortified by the following decisions:-*

*a) Decision of the Hon'ble Punjab and Haryana High court in the case of CIT v. Cebon India Ltd reported in 347 ITR 583 (P&H).*

*b) Decision of the Hon'ble Allahabad High Court in the case of CIT Vs. Greater Noida Industrial Development Authority reported in 347 ITR 14 (All).*

*c) Decision of the Hon'ble Madras High Court in the case of CIT Vs. Gitson Engineering Company reported in 370 ITR 87 (Mad).*

*d) Decision of Hon'ble Supreme Court in the case of CIT Vs. Laxman Das Khadelwal reported in 266 taxman 171 (SC).*

*8. Respectfully following the aforesaid decisions and in view of the fact that notice u/s 143(2) of the Act has been issued in the instant case by an officer not having jurisdiction over the assessee and also in view of the fact that the new incumbent i.e. DCIT, Haridwar had not issued any further notice u/s 143(2) of the Act within the prescribed time thereon, we have no hesitation to quash the entire assessment proceedings for want of jurisdiction. Accordingly, additional grounds raised by assessee are allowed.”*

8. By respectfully following the aforesaid order of the Tribunal and the various Judgments referred in the said order of the Tribunal in the case of M/s. Kevin International Vs. DCIT (supra) we are of the considered view in the present case as notice u/s 143(2) has been issued by the Assessing Officer having no jurisdiction over the assessee and subsequently the assessment order has been passed in consequence to the said defective notice, we have no hesitation to quash the assessment order passed in violation of the circular No.1/2011 dated 31.01.2011. Accordingly, we allow the Ground No. 1 of the assessee.

9. Since we have quashed the assessment order by allowing Ground No. 1 on the legal issue, other Grounds are not adjudicated as the same are un-necessary.

10. In the result, Appeal filed by the assessee is allowed.

**Order pronounced in the open court on 10<sup>th</sup> April, 2024.**

**Sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

*Date:- 10.04.2024*

\*R.N, Sr.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI