

IN THE INCOME TAX APPELLATE TRIBUNAL

"H" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.225/Mum./2014
(Assessment Year : 2007-08)

ITO(IT)TDS-2

Room No. 113, Scindia House,
1st Floor, Ballard Estate,
N.M. Road, Mumbai-400038

..... Appellant

v/s

M/s. Tata Steel Ltd

24, Bombay House, Homi
Mody Street, Fort,
Mumbai-400001
PAN – AA ACT2803M

..... Respondent

ITA no.8707/Mum./2011
(Assessment Year : 2007-08)

M/s. Tata Steel Ltd

24, Bombay House, Homi
Mody Street, Fort,
Mumbai-400001
PAN – AA ACT2803M

..... Appellant

v/s

**Additional Commissioner of
Income Tax-2(3)**

Aayakar Bhawan, M. K. Road
Mumbai-400020

..... Respondent

Assessee by : Shri J. D. Mistry a/w
Shri Nishant Thakkar,
Ms Jasmin Amalsadvala
Revenue by : Shri P. C. Chhotaray

Date of Hearing – 12/03/2024

Date of Order – 07/06/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present cross appeal has been filed against the impugned final assessment order dated 28/10/2011 passed under section 143(3) read with section 144C(13) of the Income Tax Act, 1961 ("*the Act*"), pursuant to the directions issued by the learned Dispute Resolution Panel-II, Mumbai, [*learned DRP*], under section 144C(5) of the Act, for the assessment year 2007-08.

2. During the hearing, at the outset, the learned Sr. Counsel, appearing for the assessee, wishes to argue the additional grounds raised vide consolidated application dated 28/07/2023 for admission of additional grounds of appeal, for the assessment year 2007-08, whereby the assessee has challenged the jurisdiction of the Additional Commissioner of Income Tax ("*Addl. CIT*") in passing the assessment order under section 143(3) read with section 144C(13) of the Act, in the absence of jurisdiction conferred on him vide order under section 120(4)(b) of the Act and also in the absence of an order transferring the jurisdiction under section 127 of the Act. The learned Sr. Counsel submitted that the aforesaid grounds were initially raised vide application dated 12/09/2016, however, subsequent to the direction of the bench vide order sheet dated 26/06/2023, the assessee has filed a consolidated application in respect of all additional grounds earlier raised by the assessee vide its separate applications dated 10/03/2015, 12/09/2016, and 22/07/2021.

3. The additional grounds, in respect of the aforesaid issue, are in Part-B of the Exhibit-E, of the aforesaid consolidated application and the same are reproduced as under:-

"B-1 On the facts and in the circumstances of the case, the assessment order dated 28.10.2011 passed by the Additional Commissioner of Income Tax under section 143(3) is bad in law, illegal and without jurisdiction and/ or in excess of jurisdiction, on the grounds amongst others, that he failed to establish that he possessed legal and valid jurisdiction under the Act to pass the assessment order and consequently the Hon'ble Tribunal be pleased to quash the said order.

B-2 The Additional Commissioner of Income Tax lacked jurisdiction to pass the Order of Assessment u/s 143(3) dated 28.10.2011 and to exercise the power of performing the functions of an Assessing Officer, without establishing that he possess such jurisdiction conferred on him under section 120(4)(b) of the Act. Accordingly, in the absence of an order u/s 120(4)(b) conferring jurisdiction on the Additional Commissioner of Income Tax, the assessment order dated 28.10.2011 passed by him needs to be quashed.

B-3 The proceedings having been initiated by issue of a Notice u/s 143(2) on 18.08.2008 by the Assessing Officer, in the absence of an Order transferring jurisdiction u/s 127 to the Additional Commissioner of Income Tax, the Order of Assessment dated 28.10.2011 passed by the Additional Commissioner of Income Tax, is without jurisdiction and needs to be quashed.

B-4 The proceedings having been initiated by the lower authority (viz. Assessing Officer) in the absence of an Order transferring jurisdiction u/s 127 to the Additional Commissioner of Income Tax, the Order of Assessment passed by the higher authority (viz. Additional Commissioner of Income Tax) is without jurisdiction and needs to be quashed.

B-5 As held in Mega Corporation Ltd. vs. Addl. CIT [2015] 155 1TD 1019 Del. in case where the proceedings have been initiated by one officer and the assessment order is passed by another officer, the assessment order is bad in law and illegal and therefore the Impugned Assessment Order in this case should be quashed."

4. During the hearing, the learned Sr. Counsel submitted that for the assessment year 2007-08, the scrutiny proceedings were initiated by the DCIT, Circle-2(2), Mumbai, by issuing notice dated 18/08/2008 under section 143(2) of the Act. In response thereto, the assessee filed submission on 12/09/2008 before the DCIT, Circle-2(2), Mumbai. Thereafter, notice under section 142(1) of the Act was issued by the ACIT, Circle-2(3), Mumbai, seeking

certain information from the assessee, which was duly responded by the assessee on 07/11/2008. Thereafter, on 30/06/2009, another incumbent DCIT, Circle-2(3), Mumbai, informed the assessee about taking over the charge from the ACIT, Circle-2(3), Mumbai. On 02/07/2009, notice under section 142(1) of the Act was issued by the DCIT, Circle-2(3), Mumbai, seeking information from the assessee. On 13/08/2009, the assessee, for the first time, received a letter from the Addl. CIT, Range-2(3), Mumbai, informing that the assessee's case has been assigned to him by the CIT-2, Mumbai, vide assignment order dated 03/08/2009, for completion of the assessment for the assessment year 2007-08. On the same date, i.e. 13/08/2009, notice under section 143(2) of the Act was issued by the Addl. CIT, Range-2(3), Mumbai. Thereafter, on 21/05/2010, notice under section 142(1) of the Act was again issued by the DCIT, Circle-2(3), Mumbai. On 11/08/2010, the assessee again received a letter from the Addl. CIT, Range-2(3), Mumbai, informing that the assessee's case has been assigned to him by the CIT-2, Mumbai, vide assignment order dated 05/08/2010, for completion of the assessment for the assessment year 2007-08. On the same date, i.e. 11/08/2010, notice under section 142(1) of the Act was issued by the Addl. CIT, Range-2(3), Mumbai. Copy of the aforesaid documents form part of the paper book filed by the assessee having pages 1-15. The Addl. CIT, Range-2(3), Mumbai, passed the draft assessment order on 24/12/2010 and impugned final assessment order on 28/10/2011.

5. The learned Sr. Counsel by referring to the provisions of section 143(2) as well as section 143(3) of the Act submitted that only the Assessing Officer can ask for the details from the assessee to complete the scrutiny assessment

and pass the assessment order. Further, it was submitted that under section 2(7A) of the Act, the Addl. CIT can act as an Assessing Officer, provided the PCCIT or CCIT or another officer mentioned has issued any order under section 120(4)(b) of the Act in pursuance of the authorisation given by the CBDT either by general or special order. Thus, two orders are contemplated under section 120(4)(b) of the Act. However, no such orders have been placed on record by the Revenue. Further, the assignment orders, as referred to in the letters dated 13/08/2009 and 11/08/2010, have also not been furnished by the Revenue despite specific requests by the assessee vide its letter dated 22/11/2022 and 24/08/2023. The learned Sr. Counsel, by referring to the provisions of section 127 of the Act, submitted that the case can only be transferred to the Assessing Officer. However, it is not shown that the Addl. CIT is an Assessing Officer in terms of section 120(4)(b) of the Act. The learned Sr. Counsel further submitted that when jurisdiction of the Assessing Officer is challenged, the Revenue is required to furnish the orders to justify the exercise of the jurisdiction. Since no such order has been placed on record by the Revenue, therefore, impugned assessment order under section 143(3) read with section 144C(13) of the Act is non-est in law. The learned Sr. Counsel placed reliance upon various decisions of the coordinate bench of the Tribunal, wherein similar additional ground was admitted in light of the decision of the Hon'ble Supreme Court in CIT vs NTPC Ltd, 229 ITR 383 (SC), and was decided in favour of the assessee.

6. On the contrary, the learned Departmental Representative ("*learned DR*") referred to the order dated 09/03/2022 passed by the Hon'ble jurisdictional High Court admitting Revenue's appeal in Principal CIT v/s M/s

Tata Sons Ltd., in ITA No. 1403 of 2017, against the decision of the coordinate bench of the Tribunal on a similar issue. The learned DR submitted that since the Hon'ble High Court has doubted the correctness of the decision of the Tribunal, therefore the same cannot be relied upon, and the additional ground raised by the assessee cannot be admitted. The learned DR further submitted that the additional grounds challenging the jurisdiction have been raised by the assessee after delay and the assessee has not provided any reason for such a delay. The learned DR submitted that in NTPC Ltd. (supra), the Hon'ble Supreme Court has referred to the question of law, however, in the present case, there is no question of law and the issue whether the Addl. CIT has jurisdiction to pass the assessment order is only a question of fact as the same depends upon the order passed under section 120(4)(b)/section 127 of the Act. The learned DR further submitted that in NTPC Ltd. (supra), the issue was determination of tax liability and all the facts were available on record, unlike in the present case. It was submitted that the assessee participated in the assessment proceedings before the Transfer Pricing Officer/Assessing Officer/DRP, however, did not raise any objection regarding the jurisdiction of the Assessing Officer. Even the appeal for the assessment year 2007-08 was filed by the assessee on 23/12/2011, wherein this ground was not raised by the assessee. Thus, it was submitted that if the Assessing Officer does not have the jurisdiction then why the assessee participated in all the assessment proceedings. The learned DR further submitted that the assessee filed the aforesaid additional grounds on the basis of the decision of the coordinate bench in Mega Corporation Ltd v/s the Addl. CIT, [2015] 155 ITD 1019 (Del.),

which has been reversed by the Hon'ble Delhi High Court, and thus the additional grounds raised by the assessee are without any basis.

7. In rebuttal, the learned Sr. Counsel submitted that mere admission of appeal cannot alter the decision rendered by the Tribunal, as there is no stay of operation of the Tribunal's order. It was submitted that in all the cases relied upon by the assessee, this issue was raised for the first time. The learned Sr. Counsel submitted that the decision of the Hon'ble Supreme Court in NTPC Ltd. (supra) is squarely applicable to the present case for admission of the additional grounds raised by the assessee, since by exercising the jurisdiction to pass the assessment order the Assessing Officer has increased the tax liability of the assessee by seeking to tax more than the returned income. Thus, it was submitted that the additional ground raised by the assessee challenging the jurisdiction of the Addl. CIT in passing the assessment order goes to the root of the matter. It was further submitted that the Addl. CIT may be capable of passing the assessment order but in absence of clear authority, no such order can be passed, and therefore, the Addl. CIT does not also have any concurrent jurisdiction.

8. We have considered the submissions, including the written submissions, of both sides in respect of the additional grounds of appeal and perused the material available on record as well as the case laws relied. In the present case, the assessee has raised additional grounds challenging the jurisdiction of the Addl. CIT in passing the assessment order under section 143(3) read with section 144C(13) of the Act, in absence of orders passed under section 120(4)(b) or section 127 of the Act. The Revenue has objected to the

admission of the additional grounds of appeal on the basis that no such ground was raised by the assessee before the lower authorities, and even in the present appeal, such a challenge was raised for the first time vide application dated 12/09/2016, and thus there is a delay in raising the additional grounds of appeal before the Tribunal. Further, it is the plea of the Revenue that the additional ground raised by the assessee is a question of fact and therefore cannot be raised by way of additional ground. On the contrary, the assessee in its application submitted that the additional grounds raised go to the very root of the matter and deal with the very jurisdiction and authority of the Assessing Officer to pass the assessment order. In support of its submission, the assessee has, inter alia, placed reliance upon the decision of the Hon'ble Supreme Court in NTPC Ltd. (supra). We find that in NTPC Ltd (supra), the Hon'ble Supreme Court observed as under:

"Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee."

9. Thus, in the aforesaid decision, the Hon'ble Supreme Court held that legal issues can be raised for the first time before the Tribunal, so long as the relevant facts are on record in the assessment proceedings for that issue. As per the Revenue, the existence or otherwise of the jurisdiction of the Addl. CIT to pass the assessment order is a question of fact and to ascertain that fact the documents, i.e. the order passed under section 120(4)(b) or section 127 of the Act, need to be called for. Therefore, the precondition as laid down by the Hon'ble Supreme Court in NTPC Ltd. (supra) is not satisfied in the present

case. We, at the outset, are not in a position to persuade ourselves to agree with the aforesaid submission of the Revenue, as any challenge to the jurisdiction of the authority under the Act to pass any order or issue any notice or initiate any proceeding against the assessee is a pure question of law, and particularly when such an authority has passed the assessment order computing the tax liability of the assessee, which is the entire basis of the present appeal before us, we are of the view that such a challenge goes to the very root of the matter. We are further of the considered view that since the statutory notices and the notification conferring power on the concerned officer to act as an Assessing Officer of the assessee constitutes part of the assessment record, therefore an investigation into fresh facts is not required. In light of the settled legal position that there is no embargo on any party to raise a legal ground before the Tribunal provided that the requisite material already exists on record and no further investigation of fact is required, we find no merits in the submission of the Revenue that challenge on the legal aspect, which was not raised by the assessee during the assessment proceedings, cannot be raised now in the present appeal before us. As regards the submission of learned DR that this issue has been raised after a delay, we find that a similar argument was rejected by the coordinate bench of the Tribunal and additional ground of appeal on similar issue filed by the assessee was admitted even after a gap of 10 years or 15 years in the following decisions:

- (i) *Tata Sons Ltd., in ITA No.4497/Mum/2005 dated 31/10/2006 reported in 162 ITD 450;*
- (ii) *Tata Communications Ltd., in ITA No.7071/Mum./2005 dated 30/06/2017;*

- (iii) *Tata Communications Ltd., in ITA No.2891/Mum/2010 and ITA No.1015/Mum./2010 dated 16/08/2019;*
- (iv) *Tata Sons Ltd., in ITA No.193/Mum./2006 dated 27/11/2017;*
- (v) *Kishor Vithaldas in ITA No.5661/Mum./2017 dated 16/10/2019.*

10. We further find that in *All Cargo Global Logistics Ltd. v/s DCIT, [2012] 16 ITR(T) 380 (Mumbai) (SB)*, the Special Bench of the Tribunal admitted the ground challenging the jurisdiction as an additional ground of appeal, though raised in the memorandum of appeal, on the basis that the said ground was not raised before any of the lower authorities and thus not decided by any of them. In order to come to the aforesaid conclusion, the Special Bench placed reliance upon the decision of the Hon'ble Supreme Court in *NTPC Ltd. (supra)*. Thus, we find no basis in the submission of the Revenue that since the assessee has participated in the assessment proceedings before the Transfer Pricing Officer, Assessing Officer, and DRP, without raising any ground challenging the jurisdiction of the Addl. CIT in passing the assessment order, no such ground can be raised before the Tribunal for the first time.

11. As regards the decision in *Ultratech Cements Ltd v/s Addl. CIT, [2018] 408 ITR 500 (Bom.)*, relied upon by the Revenue, we find that following question of law arose for consideration of the Hon'ble jurisdictional High Court:-

"Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in refusing to admit the additional ground of the appellant of claim of deduction under Section 80IA of the Act on the income earned by the Appellant on operation and maintenance of the Jetty / Port?"

12. Therefore, from the above, it is evident that the additional ground of appeal raised by the taxpayer before the Tribunal was not pertaining to any

challenge against the invocation of jurisdiction under the Act, and rather the same pertains to claim of deduction under section 80-IA of the Act. Accordingly, the Hon'ble jurisdictional High Court held that the additional ground, which is raised, is not a pure question of law, but would depend upon the satisfaction of the authority as to the facts existing in the subject assessment year for allowing the benefit of section 80-IA of the Act. Thus, we are of the considered view that the aforesaid decision of the Hon'ble jurisdictional High Court is distinguishable on facts, and thus is not applicable to the present case. It is further pertinent to note that even in the aforesaid decision, the Hon'ble jurisdictional High Court reiterated the settled legal position that where only a pure question of law arises from facts which are already on record, then there is no reason why the appellate authority should not consider the question of law so as to determine the correct tax liability of the assessee in accordance with law.

13. The learned DR referred to the order dated 09/03/2022 passed by the Hon'ble jurisdictional High Court admitting Revenue's appeal in Principal CIT v/s M/s Tata Sons Ltd., in ITA No. 1403 of 2017, against the decision of the coordinate bench of the Tribunal admitting additional ground on a similar issue. It was submitted that since the Hon'ble High Court has doubted the correctness of the decision of the Tribunal, therefore the same cannot be relied upon, and the additional ground raised by the assessee cannot be admitted. From the perusal of the aforesaid order, we find that the Hon'ble jurisdictional High Court admitted the Revenue's appeal on the following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in admitting the additional ground when the assessee had not raised issue of jurisdiction of the Assessing Officer before the Assessing Officer and CIT(A)?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified to the conclusion that the Additional Commissioner of Income Tax, Range-2(3), Mumbai, had no jurisdiction to pass the assessment order?"

14. However, we find that apart from admitting the aforesaid substantial questions of law, the Hon'ble High Court has neither directed the stay of the operation of the Tribunal's order nor reversed the findings of the Tribunal admitting additional ground of appeal on a similar issue. It is trite law that unless the decision has been stayed or reversed in appeal, the same is a binding precedent, and mere pendency of the appeal does not affect the binding nature of the decision. In this regard, we find support from the decision of the Hon'ble jurisdictional High Court in Siemens India Ltd. vs. ITO, [1983] 143 ITR 120 (Bom.), wherein it was held that merely because an appeal has been filed or a special leave application is pending against it does not denude a decision of its binding effect, and until set aside, that decision is binding on all upon whom it operates as a binding precedent, unless where the operation of that judgment has been stayed. Therefore, we find no merits in the aforesaid submission of the learned DR and mere pendency of the appeal does not impede against the admission of similar additional grounds of appeal, in the absence of stay or reversal of the Tribunal's earlier order. It is pertinent to note that mere admission of appeal and formulation of substantial questions of law cannot be treated as doubting the correctness of the decision rendered by the coordinate bench of the Tribunal. By formulating the substantial questions of law, the Hon'ble High Court has merely framed the issues on

which the Revenue's appeal is to be heard, and undisputedly the final decision of the Hon'ble High Court is awaited. Further, the decision of the Hon'ble Supreme Court in U.P. Rashtriya Chini Milladhikari Parishad, Lucknow v/s The State of U.P. and others, 1995 SCC (4) 738, relied upon by the learned DR, also supports the aforesaid settled legal position, as the Hon'ble Supreme Court observed as under:-

"The judgment hold good till it is set aside or its correctness is doubted by the higher Court. Once the correctness of a judgment is doubted by the higher court the judgment no longer remains the law of the land and is treated as non- est."

15. It is further pertinent to note that the Hon'ble jurisdictional High Court in Inventors Industrial Corporation Ltd v/s CIT, [1992] 194 ITR 548 (Bom.) held that the ground by which the jurisdiction to make an assessment itself is challenged can be urged before any authority for the first time, even in the second round of proceedings. Therefore, once the issue raised by way of additional grounds of appeal has been found to be a legal issue, which can be decided on the basis of facts available on record, we admit the additional grounds of appeal, as mentioned in Part-B of the Exhibit-E of the aforesaid consolidated application dated 28/07/2023, filed by the assessee in its appeal for assessment year 2007-08.

16. The grievance of the assessee is that the Addl. CIT has passed the impugned final assessment order under section 143(3) read with section 144C(13) of the Act, in the absence of jurisdiction conferred on him vide order under section 120(4)(b) of the Act and also in the absence of an order transferring the jurisdiction under section 127 of the Act. Undisputedly, under

the Act, only the Assessing Officer is empowered to conduct a scrutiny assessment and passed the assessment order under section 143(3) of the Act.

The term "Assessing Officer" has been defined in section 2(7A) of the Act as under:-

"(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." (Emphasis supplied)

17. Thus, as per the provisions of section 2(7A) of the Act, the Addl. CIT can exercise the powers of the Assessing Officer under the Act if the direction in this respect has been issued under section 120(4)(b) of the Act. As per section 120(4)(b) of the Act, CBDT may by general or special order empower the authorities mentioned under the provision to issue orders in writing that the powers and functions assigned to the Assessing Officer shall be exercised or performed, inter-alia, by the Addl. CIT. Section 120(4)(b) of the Act reads as under:-

"(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,—

(a)

(b) empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal 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 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."

18. As per the assessee, no such orders under section 120(4)(b) of the Act has been passed in the present case. In addition to the aforesaid submissions, it is the plea of the assessee that the assessee's case was transferred from the DCIT to the Addl. CIT and again back to the DCIT, and thereafter again to the Addl. CIT, without issuance of any order under section 127 of the Act.

19. On the contrary, the learned DR by referring to the letters of intimation dated 13/08/2009 and 11/08/2010 submitted that by virtue of the assignment order dated 03/08/2009 and 05/08/2010 passed by the CIT-2, Mumbai, the assessee's case was assigned to the Addl. CIT, Range-2(3), Mumbai, for the completion of assessment in assessee's case. It was further submitted that pursuant to the aforesaid intimation letters, notice under section 143(2) as well as section 142(1) of the Act were issued by the Addl. CIT, however no objection on the issue of jurisdiction was raised by the assessee during the assessment proceedings. The learned DR submitted that even the draft assessment order dated 24/12/2010, for the assessment year 2007-08, passed by the Addl. CIT mentions that the case was assigned to the Addl. CIT by the CIT-2, Mumbai, vide assignment order dated 05/08/2010 for the completion of the assessment. However, no objection was filed by the assessee before the learned DRP challenging the jurisdiction of the Addl. CIT to complete the assessment. The learned DR, further, by referring to the

provisions of section 124(3) of the Act submitted that the assessee can question the jurisdiction of the Assessing Officer only within a period of one month after the receipt of notice under section 142(1) or section 143(2) or after the completion of the assessment, whichever is earlier. However, no such objection was raised by the assessee, and therefore the challenge to jurisdiction now raised by the assessee is barred by limitation as provided under section 124(3) of the Act.

20. From the perusal of the documents placed on record by the assessee, we find that vide letter dated 22/11/2022, the assessee requested the Revenue to provide the copy of assignment orders dated 03/08/2009 and 05/08/2010 as referred to in the aforesaid intimation letters dated 13/08/2009 and 11/08/2010. Thereafter, again on 24/08/2023, the assessee requested the Revenue to provide the copy of aforesaid assignment orders. Vide aforesaid letter dated 24/08/2023, the assessee also requested the Revenue to provide the orders, if any, passed under section 127 of the Act transferring the case to/from the DCIT to/from the Addl. CIT. However, in its written submission dated 18/01/2024, the learned DR stated as follows:-

"7. Since the matter is very old, it has not been possible to produce the order of the Commissioner of Income Tax authorising the Additional Commissioner of Income Tax to pass the assessment order....

.....

.....

....

12.

(iv) These documents which are available now establish the fact the Commissioner of Income Tax had passed the assignment order assigning the jurisdiction of assessment to the Additional Commissioner, even though the exact assignment order is not available on record due to lapse of long time."

21. Therefore, it is evident from the record that the aforesaid assignment orders have neither been furnished to the assessee nor been placed on record before us by the Revenue. Thus, nothing has been brought on record by the Revenue to suggest that the Addl. CIT, Range-3(2), Mumbai, who has passed the assessment order was authorised under section 120(4)(b) of the Act to perform functions and, exercise the powers of an Assessing Officer in the case of the assessee. We are of the considered view that when the jurisdiction of the Addl. CIT to conduct scrutiny assessment and pass the assessment order under the Act is under challenge, the Revenue is under an obligation to bring on record the copy of the aforesaid order(s) to justify the basis of authority of the Addl. CIT to perform the functions, and exercise the powers of an Assessing Officer and pass the assessment order. Thus, apart from the sole statement in the intimation letters dated 13/08/2009 and 11/08/2010 as well as in para 1 of the draft and final assessment order for the assessment year 2007-08, the Revenue has failed to produce any such order.

22. Further, as regards the submission of the learned DR that as per the provisions of section 124(3) of the Act, any challenge to the jurisdiction of the Assessing Officer can be raised within a period of one month, we find that the Hon'ble jurisdictional High Court in *Bansilal B. Raisoni & Sons v/s ACIT*, [2019] 101 taxmann.com 20 (Bom.) held that the time limit for raising objection to the jurisdiction of the Assessing Officer prescribed under sub-section (3) of section 124 has a relation to Assessing Officer's territorial jurisdiction and the said time limit would not apply to a case where the assessee contends that the action of the Assessing Officer is without authority of law, and therefore,

wholly without jurisdiction. The relevant findings of the Hon'ble jurisdictional High Court, in the aforesaid decision, are reproduced as under:-

"7. We are also in agreement with the contention of the Counsel for the petitioner that the petitioner's objection to the jurisdiction of the Assessing Officer on the ground that if no search was initiated, notice under Section 153A of the Act could not have been issued, cannot be curtailed on the ground that such objection was raised beyond the period referred to in sub-section (3) of Section 124 of the Act. Section 124 of the Act pertains to jurisdiction of Assessing Officers. Sub-section (1) of Section 124 lays down territorial jurisdiction of the Assessing Officer. Sub-section (2) of Section 124 provides that where the question arises under said section, as to whether an Assessing Officer has jurisdiction to assess any person, such question shall be determined by the authority prescribed under the said sub-section. Sub-section (3) of section 124 provides time limits for a person to call in question jurisdiction of an Assessing Officer. Clause (c) of sub-section (3) of section 124 provides that no person shall be entitled to call in question jurisdiction of an Assessing Officer where an action has been taken under Section 132 or section 132A, after the expiry of one months 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 of the Act or after the completion of the assessment, whichever is earlier. In clear terms, the time limit for raising objection to the jurisdiction of the Assessing Officer prescribed under sub-section (3) of section 124 has a relation to the Assessing Officer's territorial jurisdiction. The time limit prescribed would not apply to a case where the assessee contends that the action of the Assessing Officer is without authority of law and, therefore, wholly without jurisdiction."

23. Since the aforesaid decision has been rendered by the Hon'ble jurisdictional High Court, the same is binding on us, instead of the decisions of the other Hon'ble High Courts relied upon by the learned DR. Accordingly, the reliance placed by the learned DR on the decision of Hon'ble jurisdictional High Court in CIT v. Smt. Godavaridevi Saraf, [1978] 113 ITR 589 (Bom.) is also misplaced. Therefore, in light of the aforesaid decision of the Hon'ble jurisdictional High Court in Bansilal B. Rasoni & Sons (supra), we find no merits in the aforesaid submission of the learned DR.

24. The reliance placed by the Revenue on the decision of the Hon'ble jurisdictional High Court in N.Rajgopal v/s Addl. CIT, in ITA No. 1454 of 2016,

dated 29/01/2019, also does not support its case, as in that case there was no dispute regarding the non-fulfilment of the conditions of section 120(4)(b) of the Act. Hence, the aforesaid decision is distinguishable on facts, and not applicable to the present case. In the present case, the issue is not regarding the competency of the Addl. CIT in passing the order, but whether the Addl. CIT is duly authorized as per the provisions of section 120(4)(b) of the Act to perform the functions, and exercise the powers of an Assessing Officer under section 2(7A) of the Act.

25. The learned DR placed reliance upon the decision of the coordinate bench of the Tribunal in ACIT v/s Stock Traders Pvt. Ltd., in ITA No.4493/Mum./2003, wherein a similar additional ground raised by the taxpayer was dismissed. From the perusal of the aforesaid order, it is evident that the coordinate bench though admitted the similar additional ground raised by the taxpayer, however, on the basis that there is no information in the possession of the assessee that the internal procedure of the department regarding transfer and posting of officers has not been complied with, dismissed the same. However, it is evident that in the present case, the Revenue despite specific request from the assessee, failed to furnish the assignment order and have admitted in its written submissions, para 7 and para 12(iv), that it is not possible to produce the order of the Commissioner of Income Tax authorising the Addl. CIT to act as an Assessing Officer and pass the assessment order. Therefore, we are of the considered view that the decision in Stock Traders Pvt. Ltd. (supra) has been rendered in its own facts, which are different from the present case, and thus does not support the case of the Revenue. Further, we find that the coordinate bench of the Tribunal in

Vertiv Energy Pvt Ltd. v/s Addl. CIT, ITA No.1975/Mum./2014 and M/s Tata International Ltd. v/s Addl. CIT, in ITA No. 1605/Mum./2012, after considering the decision in Stock Traders Pvt. Ltd. (supra), decided similar issue in favour of the taxpayer. In any case, as noted in the foregoing paragraph, Revenue's appeal is pending consideration before the Hon'ble jurisdictional High Court in Principal CIT v/s M/s Tata Sons Ltd., in ITA No. 1403 of 2017. Therefore, in view of our aforesaid findings, we also do not find any merit in the submissions of the Revenue in para-17 of the written submission.

26. From the careful perusal of various submissions, both orally and in writing, made by the learned DR, it is pertinent to note that the Revenue has made no submission with respect to the absence of necessary orders under section 127 of the Act transferring the jurisdiction from the DCIT to the Addl. CIT as contemplated under section 127 of the Act. Thus, apart from objecting to the admission of additional ground no.B-3 and B-4 raised by the assessee, the Revenue has neither made any submission on its merit nor brought any order passed under section 127 of the Act on record. Therefore, we are of the considered view that on both counts, i.e. absence of requisite orders authorising the Addl. CIT under section 120(4)(b) of the Act to act as an Assessing Officer as well as absence of requisite order under section 127 of the Act transferring the jurisdiction to the Addl. CIT, prejudice is caused to the assessee as the impugned final assessment order was passed without any jurisdiction.

27. The issue in dispute has already been decided in favour of the assessee by various decisions of the coordinate bench of the Tribunal as noted above.

Therefore, in absence of separate orders passed under section 120(4)(b) authorising the Addl. CIT to perform the functions, and exercise the powers of an Assessing Officer under section 2(7A) and also in absence of an order transferring the jurisdiction under section 127 of the Act, the impugned final assessment order passed under section 143(3) read with section 144C(13) of the Act, in the case of the assessee, by the Addl. CIT for assessment year 2007-08 is without the jurisdiction, and hence is set aside. As a result, the additional grounds of appeal, as mentioned in Part-B of the Exhibit-E of the aforesaid consolidated application dated 28/07/2023, filed by the assessee in its appeal for assessment year 2007-08 are allowed.

28. Since the assessment order framed for the assessment year 2007-08 is quashed, the regular grounds of appeal raised on merits by the assessee have become academic in nature, and hence, they are left open.

29. In view of our decision rendered in assessee's appeal, the appeal filed by the Revenue has become infructuous, and therefore is dismissed.

30. In the result, the appeal by the assessee is allowed, while the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 07/06/2024

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

MUMBAI, DATED: 07/06/2024

Vijay Pal Singh, (Sr. PS)

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

True Copy

By Order

Assistant Registrar
ITAT, Mumbai

