

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1405/Bang/2024
Assessment Year: 2016-17

Changaai Mangalote Ibrahim #81, Benson Cross Road Benson Town Bangalore 560 046 PAN NO : AACPI5672G	Vs.	ITO Ward-1(2)(4) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Ravi Shankar S.V., A.R.
Respondent by	:	Sri D.K. Mishra, D.R.

Date of Hearing	:	08.10.2024
Date of Pronouncement	:	13.11.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of assessee is directed against the order of CIT(A)/NFAC dated 13.6.2024 vide DIN & Order No. ITBA/NFAC/S/250/20242-25/1065620403(1) passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the Assessment year (in short “AY”) 2016-17. The assessee has raised following grounds of appeal:

- 1. The order passed by the learned Commissioner of Income Tax (Appeal), NFAC under section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.*
- 2. The appellant denies himself to be assessed at an income of Rs.8,59,29,271/- as against the returned income of Rs.59,29,270/-, on the facts and circumstances of the case.*

3. *Grounds on disallowance of deduction claimed u/s 54F, Rs.8,00,00,001/-:*
- a. *The learned CIT(A) has erred in upholding the addition of Rs.8,00,00,001/- under the head 'capital gains' on the facts and circumstances of the case.*
 - b. *The authorities below have failed to appreciate that the appellant has utilised a sum of Rs.7,74,00,000/- for reinvestment in house property and is eligible for deduction under section 54F of the Act, on the facts and circumstances of the case.*
 - c. *The authorities below have failed to appreciate that deduction under section 54F of the Act is allowable if the sale consideration is utilized towards reinvestment within the specified time, on the facts and circumstances of the case.*
 - d. *The authorities below have failed to appreciate that the purchase deed could not be executed as a portion of the schedule land was subject to a prohibition to enter the property subsequent to the agreement entered by the appellant, thus, there was impossibility of performance on the part of the appellant to execute the sale deed, on the facts and circumstances of the case.*
 - e. *The learned CIT(A) ought to have awaited for the release of remaining land by and the period to reinvest in the house property should be reckoned from the date of such order, on the facts and circumstances of the case.*
 - f. *Without prejudice and not conceding that the sale consideration has been utilised within the time specified, the capital gains on sale of land could not have exceeded Rs.7,85,55,036/- on the facts and circumstances of the case,*
 - g. *The appellant denies the liability to pay interest under section 234A, 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the learned assessing officer. Without prejudice the rate, period and on what quantum the interest has been levied are not in accordance with law and further are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.*
 - h. *The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*
 - i. *In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed and appropriate relief be granted in the interest of justice and equity.*

2. The assessee has also raised following additional grounds of appeal:

1. *“The notice issued under section 143(2) of the Act by the learned Income Tax Officer, Ward 1(2)(4), is without jurisdiction, on the facts and circumstances of the case.*
2. *The issuance of 143(2) by the non-jurisdictional assessing officer renders the order of assessment passed as invalid in the eyes of the facts and circumstances of the case.*
3. *The notice issued by a non-jurisdictional assessing officer is an incurable defect as it goes to the root of assumption of jurisdiction on the facts and circumstances of the case.*
4. *The Appellant craves to add, alter, modify, substitute, change and delete any or all of the grounds and to file a paper book at the time of hearing the appeal.*
5. *In the view of the above and other grounds that may be urged at the time of the hearing of appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”*

3. The brief facts of the case are that the assessee is an individual deriving income from salary & house property. He filed his return of income for the assessment year 2016-17 on 15.8.2016 declaring total income of Rs.59,29,270/-. Thereafter, the case was selected for scrutiny under CASS to verify “whether the deduction from capital gains has been claimed correctly.” Accordingly, the statutory notices u/s 143(2) & 142(1) of the Act were issued and in response to notices, the assessee furnished the details as called for. The assessee has sold agricultural dry land bearing Survey No.78/7 at Nagawara Village, Kasaba Hobli, Bangalore on **11/12/2015** for consideration of Rs.8,00,00,001/-. This property was acquired by the assessee during 1998-99. The assessee has arrived at capital gains of Rs.7,65,51,146/- after claiming the benefit of Indexation. The assessee has later entered into an agreement of sale with M/s. Karnataka State Muslim Federation (hereinafter referred to as

KSMF), Bangalore executed on **3/8/2016** to invest in a property bearing No.7/31,32,33 at Kadugondanahalli, Nagawara Main Road, Arabic College Post, Bangalore for Rs_9,81,18,900/-. The assessee has stated that he has already paid Rs.7,74,00,000/- towards purchase of the said property and balance amount would be paid at the time of registration of sale deed. The assessee has also stated that the registration of the property has not taken place due to interference of government organizations and the assessee has also furnished the copy of letter received from M/s. KSMF, Bangalore addressed to the assessee dated **28/10/2018**. The assessee has claimed exemption u/s 54F for having invested in this land for the construction of residential house.

3.1 During the course of the assessment proceedings the AO observed that although the assessee has paid a sum of Rs.7,00,00,000/- on 3.8.2016 and Rs.74,00,000/- on 30.9.2015 towards the purchase of 17 guntas of land at Nagawara village Kasba Hobli, Bangalore vide sale agreement dated 3.8.2016 with M/s. KSMF however, the transfer of property from M/s. KSMF is not complete. After discussing the provisions of Sec 54F of the Act, the AO was of the opinion that the law does not permit the claim of deduction unless the conditions laid down under the provisions of IT Act are satisfied. Accordingly the AO held that the assessee is not eligible for claim of exemption u/s 54F of the Act since the assessee has neither constructed nor purchased habitable residential house property within the time stipulated under the Income tax act. Further, in the opinion of AO the possession of the property in question as mentioned by the assessee is a vacant plot of land and not a residential house property and accordingly, the entire net consideration received amounting to Rs.8,00,00,001/- is brought to tax under the head “ Long term capital gains”.

3.2 Aggrieved by the assessment completed u/s 143(3) of the Act, the assessee preferred an appeal before the Id. CIT(A)/NFAC.

4. The Id. CIT(A)/NFAC dismissed the appeal of the assessee on that ground that in the present case as there is not even Sanction Plan from BMRCL due to various legal issues such as claim of encroachment of Storm Water Drain Department and the upcoming Metro Project by BMRCL. In absence of any such even start of construction if the benefit of Section 54F is granted to the appellant it would mean that the clear cut conditions as laid down in Section 54 would be overlooked. In the opinion of the Id.CIT(A), he does not hold any such jurisdiction to overlook the provisions as clearly laid out in Section 54 and hence, humbly differing from the jurisdiction High Court case on facts and hence, not applying the same in appellant's case.

4.1 Further in the opinion of the Id. CIT(A), It is an agreed fact that the construction of a residential home in a metro region [taking into account the various Govt. Agencies approvals necessary before construction of the house] takes a long time but as per the categorical provisions, conditions and the time limit laid down in Section 54F,[though very short for a metro regions residential house], has to be complied as they cannot be overlooked. In future the Government may consider amending the Act and extending the timelines as laid down in Section 54F from the date of approval of Sanction Plan by the Govt. Agencies. Based on the above discussion of facts and circumstances, the Id CIT(A)/NFAC confirmed the decision taken by the AO and accordingly dismissed the appeal of the assessee.

4.2 Aggrieved by the order of Id. CIT(A)/NFAC, the assessee has filed the present appeal before the Tribunal. The assessee has filed

a paper book comprising 107 pages enclosing therein following copies:

1. Copy of agreement to sell dated 3.8.2016, for advance paid to purchase property in Sy.No.7/21.32.33 measuring 24,500 sq.ft.
2. Copy of registered agreement to sell dated 10.12.2018, for advance paid to purchase property in Sy.No.7/21,32,33 measuring 24,500 sq.ft.
3. Copy of paper publication in the Hindu dated 17.10.2018, in respect of the notification for acquisition of a portion of the property for Metro Station.
4. Copy of letter issued by BMRCL, dated 21.1.2019, for acquisition of 2046.36 sq.mtrs. of land for Metro Station (Kannada Vernacular)
5. Copy of letter issued by BBMP dated 22.3.2019 and BMRCL, dated 15.3.2019, informing of possession of the entire property until completion of the metro work (in kannada vernacular) along with free English translation.
6. Copy of submissions made before the CIT(A), dated 14.3.2019.
7. Copy of map downloaded from Google earth, depicting the vacant land adjacent to the Metro station along with a sketch of the same.
8. Details of case Laws relied upon by the Assessee.

5. Before we proceed further we must first consider the additional grounds of the appeal raised by the assessee before the Tribunal.

5.1 We have heard the both the parties on admission of the additional grounds raised by the assessee. In our opinion, by way

of the additional grounds of appeal, the assessee has raised pure question of law. Further all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of adjudication of above grounds. Accordingly, by placing reliance on the judgment of Hon'ble Karnataka High Court in the case of Gundathur Thimmappa & Sons Vs. CIT reported in 70 ITR 70 as well as judgment of the Hon'ble Supreme Court in the case of NTPC Vs. CIT reported in 229 ITR 383 (SC) we inclined to admit the additional grounds of appeal for the purpose of adjudication as there was no investigation of any fresh facts otherwise on record and the action of the assessee is bonafide as the assessee has raised the pure question of law which arises from the facts as found by the authorities below.

6. Now before we proceed with the merit of the case we deemed it proper to first consider & adjudicate the question of law as raised by the assessee by way of additional grounds.

6.1 Before us the ld. AR of the assessee vehemently submitted that the notice issued U/s 143(2) of the Act by the ld. ITO, Ward-1(2)(4) is without jurisdiction and the issuance of Notice by the non-jurisdictional assessing officer renders the order of assessment passed u/s 143(3) as invalid in the eyes of law. Further the AR of the assessee submitted that the notice issued by the non-jurisdictional AO is an incurable defect as it goes to the root of assumption of jurisdiction. He also draws our attention to Instruction No.1/2011 [F.NO. 187/12/2010-IT(A-I), dated 31/01/2011 placed on page 98 of the paper book filed by the assessee. The ld. AR of the assessee highly relied on the judgment of the High Court of Bombay in the case of Ashok Devichand Jain v. Union of India [2023] reported in 452 ITR 43 (Bom) as well as Order of the coordinate bench of ITAT, Kolkata in the case of

Krishnendu Chowdhury v. Income Tax Officer reported in [2017] 78 taxmann.com 89 (Kolkata- Trib).

6.2 The ld. DR on the other hand although accepted that there is a defect in issuing Notice U/s 143(2) of the Act in terms of the Instruction No.1/2011 [F.NO. 187/12/2010-IT(A-I) dated 31/01/2011 but vehemently submitted that the said defect is curable in terms of the provisions contained in Section 292B as well as Section 292BB of the Act and also submitted that the assessee has appeared & cooperated in the proceedings before the lower authorities.

7. We have heard the rival submissions & perused the material available on record. It is an undisputed fact that the notice U/s 143(2) of the Act in the case of the assessee is issued by the Income Tax Officer, Ward-1(2)(4), Bangalore on dated 04/07/2017. It is also an undisputed fact that the Assessment Order in the case of the assessee is passed by the ld. Income Tax Officer, Ward-1(2)(4), Bangalore on 26/12/2018. It is also an undisputed fact that the assessee had filed his return declaring total Income of Rs. 59,29,270/- for the Asst. year 2016-17. The AO has also observed in the assessment Order that this case has been received on transfer from ACIT, Circle- 1(2)(1), Bangalore on **29/08/2018** consequent to ld. JCIT's Notification Order U/s 120(5) of the Income Tax Act dated **27/08/2018** whereas the Notice u/s 143(2) of the Act was actually issued on **04/07/2017** i.e. way before the ld. JCIT's Notification Order U/s 120(5) of the Act dated 27/08/2018.

7.1 We are of the consider opinion that notice u/s 143(2) of the Act is the jurisdictional notice and any inherent defect therein is not curable. In the present facts of the case, after considering the

instruction No.1/2011 cited (supra), the notice u/s 143(2) dated 04/07/2017 having been issued by an Income Tax Officer who had no jurisdiction over the assessee, such notice in our view has not been issued validly and is issued without authority in law. The revenue also could not controvert the same by submitting any other Notifications/Circular/Instruction to this effect. As per the Instruction No.1/2011 dated 31.1.2011 by the Board as in the present case, the total income declared by the assessee is Rs.59,29,270/- for the assessment year 2016-17 and therefore, the notice ought to have been issued by ld. AC/DC himself instead of transferring the same to the ITO, Ward-1(2)(1) in consequence to JCIT's Notification Order u/s 120(5) of the Act dated 27/08/2018. In the present case, the ITO, ward-1(2)(4), Bangalore had issued the notice U/s 143(2) on 04/07/2017 & thereafter the case was transfer from ACIT, Circle- 1(2)(1), Bangalore on 29/08/2018 consequent to ld. JCIT's Notification Order U/s 120(5) of the Income Tax Act dated 27/08/2018. Therefore the notice issued U/s 143(2) of the Act dated 04/07/2017 is illegal, bad in law & without jurisdiction. We are also of the view that under the similar facts and circumstances, the Hon'ble High Court of Bombay in the case of Ashok Devichand Jain Vs. UOI cited (supra) has held as follows:

“2. *The primary ground that has been raised is that the Income-tax Officer who issued the notice under section 148 of the Act, had no jurisdiction to issue such notice. According to Petitioner as per instruction No. 1/2011 dated 31st January, 2011 issued by the Central Board of Direct Taxes, where income declared/returned by any Non-Corporate assessee is up to Rs. 20 lakhs, then the jurisdiction will be of ITO and where the income declared returned by a Non Corporate assessee is above Rs. 20 lakhs, the jurisdiction will be of DC/AC.*

3. *Petitioner has filed return of income of about Rs. 64,34,663/- and therefore, the jurisdiction will be that of DC/AC and not ITO. Mr. Jain submitted that since notice under section 148 of the Act has been issued by ITO, and not by DC/AC that is by a person who did not have any jurisdiction over Petitioner, such notice was bad on the count of having been issued by an officer who had no authority in law to issue such notice.*

4. We have considered the affidavit in reply of one Mr. Suresh G. Kamble, ITO who had issued the notice under section 148 of the Act. Said Mr. Kamble, ITO, Ward 12(3)(1), Mumbai admits that such a defective notice has been issued but according to him, PAN of Petitioner was lying with ITO Ward (12)(3)(1), Mumbai and it was not feasible to migrate the PAN having returned of income exceeding Rs. 30 lakhs to the charge of DCIT, Circle 12(3)(1), Mumbai, as the time available with the ITO 12(3)(1) was too short to migrate the PAN after obtaining administrative approval from the higher authorities by 31st March, 2019.

5. The notice under section 148 of the Act is jurisdictional notice and any inherent defect therein is not curable. In the facts of the case, notice having been issued by an officer who had no jurisdiction over the Petitioner, such notice in our view, has not been issued validly and is issued without authority in law.

6. In the circumstances, we have no hesitation in setting aside the notice dated 30th March, 2019.

7. Consequently the order dated 18th November, 2019 rejecting Petitioner's objection is also quashed and set aside.”

7.2 Further under the similar facts and circumstances, the coordinate bench of ITAT Kolkata in the case of Krishnendu Chowdhury Vs. ITO Ward-1 cited (supra) has also held as under:

8. We have heard rival submissions and gone through facts and circumstances of the case. We have also perused the assessment records. The crux of the issue in the case is that the notice under section 143(2) of the Act was not issued by the ITO in terms of the instruction No. 1/2011 [F.NO. 187/12/2010-IT(A-I)], dated 31.1.2011. As per the instruction the notice was to be issued by the ITO but the notice was issued by the ACIT. Therefore in view of above the notice issued by the ACIT is invalid and consequently the assessment framed by the ITO becomes void. Now the issue before us arises so as to whether the notice issued by the ACIT u/s. 143(2) of the Act is without jurisdiction in terms of the aforesaid instruction. In this connection we consider it fit to incorporate the relevant portion of Instruction No. 1/2011 dated 31.1.2004 of the CBDT Circular in respect of issuance of notice to non-corporate assesses which reads as under:—

'INSTRUCTION NO. 1/2011 [F.No.187/12/2010-IT(A-I)] DATED 31-1-2011

Reference 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 of 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)	
	ITOs	ACs/DCs
Corporate returns	Upto Rs. 20 lacs	Above Rs. 20 lacs
Non-corporate returns	Upto Rs.10 lacs	Above Rs.15 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.

The notice u/s. 143(2) and order sheet entries which were referred by the Id. counsel for assessee are placed at Annexure no. 2 & 5 of the paper book respectively. Admittedly the notice u/s. 143(2) in the instant case was issued by the Id. ACIT to initiate the assessment proceedings which was later transferred to ITO. However, the ITO did not further issue any notice u/s. 143(2) of the Act. Therefore, ITO assumed the charge without issuing notice and consequently completed assessment u/s. 143(3) of the Act without jurisdiction. In similar facts and circumstances, the Co-ordinate Bench of this Tribunal has decided the issue in favour of assessee in the case of Ajanta Financial Services (P.) Ltd. v. ITO in ITA No. 1426/Kol/2011. We consider it fit to incorporate the relevant portion of the Tribunal order which is as under:-

'5. We find that the Hon'ble Chattishgarh High Court in the case of DCIT v. Sunita Finlease Ltd. (2011) 330 ITR 491 (Chh) has considered the same Instruction No.9/20004 dated 20.9.2004 which are applicable in the present case also and quash the selection of scrutiny and completion of assessment by holding as invalid. Hon'ble Chattishgarh High Court in Sunita Finlease Ltd. 's case (supra) has considered section 119 of the Act by stating that Section 119 of the Act, empowers the Board of Direct Taxes to issue orders, instructions or directions for the proper administration of the Act or for such other purposes specified in sub-section (2) of the section. Hon'ble High Court further held that such an order, instruction or direction cannot

override the provisions of the Act. Direction by issuing instructions to the officers for the process of selection of cases for scrutiny for returns for a particular financial year and allowing time of three months for completion of the same cannot be considered to override or detract from the provisions of the Act. It only directs that the above exercise should be completed within three months of the date of filing of return by the assessee, which amounts to an assurance to the assessee that the return filed by him can be scrutinized by the Assessing Officer within three months of filing of the return. The Hon'ble High Court, dismissing the appeal held that Instruction No. 9 of 2004 dated September 20, 2004, was applicable in the present case, in view of the specific stipulation in the circular that "for returns filed during the current financial year 2004-05, the selection of cases for scrutiny will have to be completed within three months of the date of filing the returns" and considering that the return had 5 ITA 1426/K/2011 Ajanta Financial Services Pvt. Ltd.

A.Y. 03-04 admittedly, been filed by the assessee on October 29, 2004, i.e., during the current financial year 2004-05. The selection for scrutiny of the assessee's case and completion of the assessment was not valid.

6. We find that the Hon'ble Chhatishgarh High Court in Sunita Finlease Ltd. 's case (supra) has also considered the decision of Hon'ble Supreme Court in the case of UCO Bank (1999) 237 ITR 889 and quoted from page 896 as under:

"Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Income-tax Act, which are binding on the authorities in the administration of the Act. Under section 119(2) (a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."

The facts and circumstances in the present case are that the selection of scrutiny in this case is also completed beyond the prescribed period as prescribed in Instruction No. 9/2004 dated 20.09.2004. The assessee's case was selected for scrutiny first time on 18.10.2004, as per copy of order sheet

entry, and notice was issued fixing the hearing on 18.10.2004 itself. As per Instruction No. 9/2004 dated 20.09.2004, the process of selection of cases for scrutiny for returns filed up to 31.03.2004, in the present case assessee filed its return of income on 01.12.2003 must be completed by 15.10.2004. The factual position as noted by CIT (A) in his appellate order that notice u/s. 143(2) is dated 10.10.2004, is not supported by Ld. Sr. DR at the time of hearing rather assessee contested that this finding of fact is erroneous and actual case was selected by issuing notice as on 18.10.2004. Even the basis of recording this fact is only from the assessment order wherein it is mentioned that notice u/s. 143(2) is dated 10.10.2004 and the same was served on the assessee on 19.10.2004 fixing the date of hearing on 16.12.2004. When going through the order sheet entry, which is taken by assessee from the assessment records clearly reveals that factually notice u/s. 143(2) was first time issued on 18.10.2004 and not on 10.10./2004. This fact has not been contested by Ld. Sr. DR. Respectfully following the decision of Hon'ble Chhatisgarh High Court in the case of Sunita Finlease Ltd. (supra), we quash the issuance of notice u/s. 143(2) of the Act and subsequent assessment framed u/s. 143(3) of the Act. Appeal of assessee is allowed.'

Keeping in view of the above and the facts relating to ITA No. 1426/Kol/2011 this Tribunal has squashed the assessment framed u/s. 143(1) of the IT Act since the issuance of notice u/s. 143(2) of the Act is beyond the dates specified in Instruction No. 9 dated 20th September, 2004. At this juncture, we would like to clarify that Instruction No. 9/2004 dated 20th September, 2004 referred by the Tribunal in Ajanta Financial Services (P.) Ltd. 's case (supra) as well as the Hon'ble Chattishgarh High Court in the case of Dy. CIT v. Sunita Finlease Ltd. [2011] 330 ITR 491/11 taxmann.com 241 are in respect of the corporate assesses. However, in the case of the non-corporate assesses similar instruction has been issued in Instruction No. 10 dated 20.09.2004. In this case also as per the order sheet entries incorporated in the preceding paragraphs, it is observed that the selection of scrutiny was made on 20.06.2005 and notice u/s. 143(2)(ii) and 142(1) was issued on 11.07.2005 i.e. beyond the period of the scrutiny as specified in Instruction No. 10/2004 dated 20.09.2004. Therefore, keeping in view Of the decision of Hon'ble Chattishgarh High Court in the case of Sunita Finlease Ltd. (supra) as well as Tribunal's order in ITA No. 1426/Kol/2011 in the case of Ajanta Financial Services (P.) Ltd. (supra).

8.1 In view of above we set aside the orders of the revenue authorities by squashing the order of the assessment framed u/s. 143(3) of the Act since the issue of notice u/s. 143(2) of the Act was not done by the ITO as specified in CBDT Instruction No. 1/2011 dated 31.1.2011. As the assessment proceedings u/s. 143(3) of the Act have been held as invalid, therefore in our considered view the other issues raised by the assessee do not require any adjudication. Hence the ground raised by the assessee is allowed

9. In the result, assessee's appeal stands allowed."

7.3 In view of the above, we set aside the order of the revenue authority by quashing the order of the assessment framed u/s 143(3) of the Act dated 26/12/2018 since the issue of notice u/s 143(2) of the Act dated 04/07/2017 was not issued by the jurisdictional Id. AC/DC as specified in the CBDT Instruction No.1/2011 dated 31.1.2011 which is not a curable defect. Hence, the additional ground raised by the assessee is allowed.

8. In the result, appeal filed by the assessee stands allowed.

Order pronounced in the open court on 13th Nov, 2024

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 13th Nov, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.