



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.65/CTK/2023
Assessment Year : 2011-12

M/s. Altrade Minerals Pvt Ltd., C/O. Kadmawala & Co., C.A., Budhram Market, Rourkela.	Vs.	Asst. Commissioner of Income Tax, Central Circle, Sambalpur
PAN/GIR No.AAFCA 7136 F		
(Appellant)	..	(Respondent)

Assessee by : Shri M.R.Sahu, CA
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 16/12/2024
Date of Pronouncement : 16/12/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id
CIT(A)-2, Bhubaneswar dated 22.12.2022 in Appeal
No.Sambalpur/10037/2017-18 for the assessment year 2011-12.

2. Shri M.R.Sahu, Id AR appeared for the assessee and Shri S.C.Mohanty, Sr. DR appeared for the revenue.

3. The assessee has raised the following grounds:

"1. That on the facts and in the circumstances of the case the assessment order dated 24.03.2014 passed by the Joint 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 CIT(A) be pleased to quash the said assessment order dated 24.03.2014.

2. That The Joint Commissioner of Income Tax lacked jurisdiction to pass the Order of Assessment u/s 143(3) dated 24.03.2014 and to exercise the powers 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 Joint Commissioner of Income Tax the assessment order dated 24.03.2014 passed by him deserves to be quashed.

3. That the proceedings having been initiated by issue of a Notice u/s 143(2) on 18/09/2012 by the Asstt. Commissioner of Income Tax, in the absence of an Order transferring jurisdiction u/s.127 to the Joint Commissioner of Income Tax, the Order of Assessment dated 24.03.2014 passed by the Joint Commissioner of Income Tax is without jurisdiction and needs to be quashed.

4. That based on facts of the case and provisions of law, it is submitted that mere participation of the assessee in the assessment proceedings does not entrust a valid jurisdictional authority to the ICIT thus assessment order passed by the JCIT, Range Rourkela is bad in law and liable to be quashed.

GROUND OF APPEAL RELATING TO FACTS AND MERTIS OF THE CASE:

5. That based on facts and circumstances of the case and in law, CIT(A) erred in confirming disallowance of interest expense amounting Rs.34,61,462/- made u/s. 14A r.w.r BD incurred for earning exempt dividend income without appreciating the fact that

only net interest expenses not the entire finance charges has to be considered for computation of disallowance u/s.14A r.w.r BD and disregarding the rejoinder filed against the remand report of AO stating the fact that assessee's own interest free funds were exceeding the investment made for earning exempted income thus assessee prays for deletion of the disallowance of Rs.34,61,462/- in full.

6. That on based on facts and circumstances of the case and in law, CIT(A) erred in confirming the disallowance of Rs. 13,00,227/- arrived by the AD under section 14A r.w.r 8D(2)(iii) without recording his satisfaction that claim of the assessee that no expenditure was incurred for earning exempt income is not correct, accordingly assessee prays for deletion of Rs.13,00,227/- confirmed by the CIT(A) in full.

7. Without prejudice to grounds of appeal no.6, it is objected that CIT(A) erred in confirming the disallowance of Rs. 13,00,227/- arrived by the AO under section 14A r.w.r 8D(2)(ii) without appreciating the fact that only average value of investments on which exempt income was earned has to be taken in to account for computing disallowance under section 14A r.w.r 8D(2)(iii), thus assessee prays for fresh computation of disallowance under section 14A r.w.r 8D(2)(iii).

8. Without prejudice to grounds of appeal no.5,6,7, it is objected that CIT(A) erred in confirming disallowance of Rs.47,61,689/- made by the AO under section 14A r.w.r 80 without appreciating the fact that disallowance under section 14A r.w.r can not exceed the total exempt income, thus assessee prays restriction of the disallowance under section 14A r.w.r 8D the maximum equivalent to the exempt income earned by the assessee during the year under consideration.

9. That based on facts and circumstances of the case and in law, CIT(A) erred in confirming disallowance of interest on TDS of Rs.66,103/- by applying Supreme Court decision in the case of 'Bharat Commerce Industries Ltd Vs. CIT [230 ITR 733] without appreciating the fact that in this decision interest on account of delay in deposit of advance tax was considered and disregarding the fact that interest on delayed deposit of TDS not penal and compensatory in nature thus assessee prays for deletion of Rs. 66,103/- in full.

10. That the grounds of appeal are independent to each other and the assessee craves leave to amend add, delete, replace, alter, vary

or withdraw any or all the grounds of appeal either during the course of hearing or at any time before hearing of this appeal.

RELIEF PRAYED FOR:

1.To accept and adjudicate the additional legal grounds of appeal under Rule 11 of the ITAT Rules, 1963 having regard to the ratio of the decision of the Hon'ble Supreme Court in the case of "National Thermal Power Corporation vs. CIT (1998) 229 ITR 383 (SC)", VMT Spinning Co. Ltd Vs. CIT (2016) 389 ITR 326 (P&H)" and Orissa High Court in the case of 'Siksa O Anusadhan Vs. CIT (336 ITR 112)(Orissa HC)'

2.To delete the addition amounting Rs.47,61,689/- made by the AO u/s 14A r.w.r 8D and confirmed by the CIT(A)."

4. Subsequently, the assessee has raised the modified grounds of appeal vide letter dated 21.6.2023, which reads as follows:

"1. That on the facts, and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming disallowance of Rs.47,61,689/- made u/s. 14A r.w.r 8D being expenses incurred for earning exempt dividend income without appreciating the fact that assessee's own interest free funds was exceeding the investment made for earning exempted income and in similar facts disallowances made in the assessment orders for the A.Y's. 2012-13 & 2013-14 was deleted by the Ld.CIT(A), thus assessee prays for deletion of the disallowance for the assessment year 2011-12 of Rs.47,61,689/ in full under the principles of consistency.

2. That on the facts, and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming disallowance of interest on late deposit of TDS of Rs.66,103/- by applying the Supreme Court decision in the case of 'Bharat Commerce Industries Ltd Vs. CIT [230 ITR 733] without appreciating the fact that in this decision interest on account of delay in deposit of advance tax was considered and disregarding the fact that interest on delayed deposit of TDS not penal and compensatory in nature thus assessee prays for deletion of Rs.66,103/-in full.

3. That the assessee craves leave to amend add, delete, replace, alter, vary or withdraw any or all the grounds of appeal either during the course of hearing or at any time before hearing of this appeal.

RELIEF PRAYED FOR:

(i). To delete the addition amounting Rs.47,61,689/- made by the AO u/s. 14A r.w.r. 8D and confirmed by the CIT(A).

(ii). To delete the addition amounting Rs.66,103/- interest on late Deposit of TDS made by the AO and confirmed by the CIT(A).

(iii). Any other relief as deemed fit in circumstances of the case.”

5. Subsequently, additional grounds had also been raised as follows:

“1. That on the facts, and in the circumstances of the case and in law, the assessment order dated 24.03.2014 passed by the Joint Commissioner of Income Tax, Rourkela (here in after referred as JCIT, Rourkela) 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 accordingly the said assessment order dated 24.03.2014 deserves to be held as null, void and to be annulled.

2. That on the facts, and in the circumstances of the case and in law, the JCIT lacked jurisdiction to pass the order of Assessment u/s 143(3) dated 24.03.2014 and to exercise the powers of performing the functions of an Assessing Officer, without establishing that the JCIT 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 JCIT the assessment order dated 24.03.2014 passed by him deserves to be quashed.

3. That on the facts, and in the circumstances of the case and in law, the assessment proceedings having been initiated by issue of a notice u/s.143(2) on 18/09/2012 by the Asstt. Commissioner of Income Tax, Rourkela and in the absence of an order of transferring jurisdiction u/s.127(1) to the JCIT, the order of assessment dated 24.03.2014 passed by the JCIT is lack of jurisdiction and deserves to be quashed.

4. That on the facts, and in the circumstances of the case and in law, it is well settled in law that mere participation of the assessee in the assessment proceedings does not entrust a valid jurisdictional authority to the JCIT thus assessment order passed by the JCIT, is bad in law and deserves to be held as null and void".

(B). Additional grounds raised above by the assessee are purely legal in nature and are emanating out of the facts appearing in the impugned assessment order. The legal grounds do not require any investigation and all materials are already on record before the Tribunal.

(C). It is humbly prayed before your honour to admit and adjudicate the legal additional rounds raised above. Reliance in this regard is placed in the decisions in the cases of "National Thermal Power Corporation vs. CIT (1998) 229 ITR 383 (SC)", "VMT Spinning Co. Ltd Vs. CIT (2016) 389 ITR 326 (P&H)", "Siksa O Anusadhan Vs. CIT (2011) 336 ITR 112 [Orissa HC)".

6. It was submitted by Id AR on behalf of the assessee that the return of income had been filed by the assessee for the relevant assessment year on 24.9.2011. Notice u/s.143(2) of the Act came to be issued by the Asst. Commissioner of Income Tax, Circle-1(1), Rourkela and the assessment proceedings were continued by the Jt. Commissioner of Income Tax, Rourkela Range, Rourkela. It was the submission that the JCIT, Rourkela Range, Rourkela issued notice u/s.142(1) of the Act and the assessment order came to be passed on 24.3.2014 by the JCIT, Rourkela Range, Rourkela. It was the submission that against the said assessment order, appeal had been filed before the Id CIT(A)-2, Bhubaneswar on 28.4.2014. It was the submission that in the course of first appellate hearing, the assessee had filed a detailed written submission, wherein, the issue of

jurisdiction was raised and additional grounds were taken which were shown at pages 6 to 26, which read as follows:

BEFORE THE HON'BLE COMMISSIONER OF INCOME TAX (A),
BHUBANESWAR-2

IN THE MATTER OF

M/s. Altrade Minerals Pvt Ltd

Vs. JCIT, Rourkela Range,
Rourkela

A-6, Commercial Estate
Civil Township, Rourkela
Dist: Sundergarh-769004
PAN AAFC7136F

APPELLANT

RESPONDENT

Assessment Year	2011-12
Assessing Officer	JCIT,Rourkela Range Rourkela
Date of assessment order	24/03/2014
Order under section	143(3) of the Act
Appeal Nos.	CIT(A),Sambalpur/10037/2017-18
AR of the Assessee	CA Rajesh Kumar Agarwal CA Rahul Raj

(1).STATEMENT OF FACTS:

(1.1).In this case return of income was filed on 24/09/2011 declaring total income of Rs 39,16,34,900/- before the ACIT, Rourkela Circle, Rourkela (here in after referred as ACIT)

(1.2). Return was selected for scrutiny and notice u/s.143(2) dated 18/09/2012 was issued by the ACIT

(1.3).Neither order u/s 127(1) was passed for transfer of the case from ACII to Joint Commissioner of Income Tax (JCIT), Rourkela Range, Rourkela nor notice

u/s.143(2) was issued by the JCIT, however the assessment order dated 24/03/2014 was passed u/s.143(3) by the JCIT.

(1.4). The JCIT without establishing the fact that he possess the jurisdiction conferred on him under section 120(4)(b) to act as Assessing Officer (AO) passed the assessment order dated 24/03/2014 under section 143(3).

(1.5). Being aggrieved by the assessment order dated 24/03/2014 passed u/s143(3) raising demand amounting Rs.23,87,090/-, assessee had filed the before the CIT(A) raising grounds of appeal as given in the statement of 'GROUNDS OF APPEAL.

ENCLOSURES FOR REFERENCE BY CIT (A):

(A) Income Tax Return Acknowledgement dated 24/09/2011 filed for the AY 2011-12 before CIR-1(1), Rourkela (Enclosed at Annexure-A).

(B). Notice dated 18/09/2012 issued u/s 143(2) by the ACIT, CIR-1(1), Rourkela (Enclosed at Annexure-B).

(C) Assessment order dated 24/03/2014 passed u/s.143(3) by the JCIT, Rourkela Range. Rourkela along with demand notice dated 24/03/2014 amounting Rs.23,87,090/- (Enclosed at Annexure-C).

2. GROUNDS OF APPEAL BEFORE CIT(A):

Replaced Grounds of appeal are as under:

(2.1). On the facts and in the circumstances of the case the assessment order dated 24.03.2014 passed by the Joint 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 CIT(A) be pleased to quash the said assessment order dated 24.03.2014.

(2.2). The Joint Commissioner of Income Tax lacked jurisdiction to pass the Order of Assessment u/s 143(3) dated 24.03.2014 and to exercise the powers 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 Joint Commissioner of Income Tax the assessment order dated 24.03.2014 passed by him deserves to be quashed.

(2.3). The proceedings having been initiated by issue of a Notice u/s 143(2) on 18/09/2012 by the Asstt. Commissioner of Income Tax, in the absence of an Order transferring jurisdiction u/s.127 to the Joint Commissioner of Income Tax, the

Order of Assessment dated 24.03.2014 passed by the Joint Commissioner of Income Tax is without jurisdiction and needs to be quashed.

(2.4). That based on facts of the case and provisions of law, it is submitted that mere participation of the assessee in the assessment proceedings does not entrust a valid jurisdictional authority to the JCIT thus assessment order passed by the JCIT.Range Rourkela is bad in law and liable to be quashed.

(2.5). That based on facts of the case and provisions of law, AO erred in making disallowance of interest expense amounting Rs. 34,61,462/-u/s. 14A r.w.r 8D incurred for earning exempt dividend income without appreciating the fact that assessee's own interest free funds was exceeding the investment made for earning exempted income thus disallowance of Rs.34,61,462/-deserves to be deleted in full.

(2.6). That based on facts of the case and provisions of law. AO erred in making disallowance of Rs. 13,00,227/- under section 14A r.w.r 8D without correlating the direct and indirect expenses incurred for earning exempt dividend income thus assessee prays for deletion of Rs.13,00,227/.

(2.7). That based on facts of the case and provisions of law, AO erred in making disallowance of Rs.3,45,262/ u/s. 40(a)(ia) due to non deduction of tds on interest without appreciating the fact that amendment made by the Finance (No.2) Act,2014 towards 30% disallowance of the expenditure is applicable retrospectively, thus it is prayed to grant the benefit of disallowance equivalent to 30% of the disallowance

(2.8). That based on facts of the case and provisions of law, AO erred in making disallowance of Rs.41,940/- being interest on service tax without appreciating the fact that interest on service tax being compensatory in nature is allowable u/s.37 of the 1.T Act 1961.

(2.9). That based on facts of the case and provisions of law, AO erred in making disallowance of Rs.66,103/- being interest on TDS without appreciating the fact that interest on TDS, not being tax as defined u/s.2(43) of the 1.T Act, 1961 and compensatory in nature is allowable u/s.37 of the IT Act, 1961.

(2.10).Assessee itself denies to be charged interest u/s 234B and u/s.234C of the LT Act.1961 which may be kindly be held accordingly.

(2.11). Assessee itself denies to be imposed penalty u/s.271(1) of the IT Act, 1961 which may be kindly be held accordingly.

(2.12). That the assessee reserves its right to add, delete, replace, amend either all or any of the grounds of appeal with the permission of the CIT(A).

WRITTEN SUBMISSION REGARDING MERITS OF EACH AND EVERY GROUNDS OF APPEAL:

(3).Grounds of appeal nos.2.1 & 2.2 are relating to the fact that the 'JCIT' can not be held as 'AO' without ensuring order u/s. 120(4)(b), accordingly assessment order dated 24/03/2014 passed by the JCIT was in excess of jurisdiction deserves to be quashed.

Written Submission:

(3.1).It is submitted that assessee filed return of income on 24/09/2011 with ACIT Rourkela Circle, Rourkela. Notice u/s.143(2) dated 18/09/2012 was issued by the ACIT. There after proceedings were taken by JCIT, Rourkela Range, Rourkela and the assessment order u/s.143(3) dated 24/03/2014 was passed by the JCIT.

(3.2). We would like to refer to Section 2(7A) of the 1. T.Act, 1961, which provides definition of "Assessing Officer" which reads as under:

Section 2 (7A) -

2. In this Act, unless the context otherwise requires

(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.

(3.3).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.

In other words, it is manifest that Assessing Officer inter-alia means Joint Commissioner 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 the Act. In other words, a Joint Commissioner can only be directed u/s.120(4)(b) of the Act to "Assistant Commissioner" or "Deputy

Commissioner" or "Assistant Director" or "Deputy Director" or Income Tax Officer" under the Act to act as Assessing Officer

(3.4). 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,-

(a).....

(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 there under 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."

(3.5). 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, 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 there under 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.

(3.6). 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 [IT Appeal No. 744 (Luck.) of 2004, dated 29-3-2010] 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 v. DIT (2002) 257 ITR 123 (Del.HC). It is also noted

that this decision has also been considered by the ITAT, Delhi Bench in the case of Mega Corporations Ltd vs. Addl.CIT (2015) 62 taxmann.com 351 (Del.Trib) 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 (Del.HC) 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 resignation 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....."

(3.7). It is further submitted that similar view has been expressed by Jodhpur Bench of ITAT in the case City Garden v. ITO (2012) 21 taxmann.com 373 (Jodh.Trib) 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.

(3.8). Order of Delhi Bench of the Tribunal in the case of 'Bindal Apparels Ltd Vs. ACIT (2006)8 SOT 498 (Del.Trib)' in which it was held as under:

"Section 2(7A), read with section 120, of the Income-tax Act, 1961 - Assessing Officer Assessment year 1999-2000 Whether in view of definition of 'Assessing Officer' contained under section 2(7A), an Additional Commissioner cannot be an authority to exercise or perform all or any of powers and functions of an Assessing Officer to make assessment of income - Held, yes.

Para.23. In overall conspectus, we are satisfied that in view of the definition contained under sub-section (7A) of section 2 of the Act, an Additional Commissioner of Income-tax cannot be an authority to exercise or perform all or any of the powers and functions of an Assessing Officer to make assessment of income and as such the assessment made on

appellant by such Additional Commissioner of Income-tax, Range-20, New Delhi is liable to be quashed."

(3.9) Similar view has been taken recently in another judgment by the Delhi bench of the ITAT in the case of Harvinder Singh Jaggi v. Asstt. CIT (2016) 157 ITD 869 (Del.Trib). Relevant part of observations of the Bench is reproduced below:-

"Para 9.2..... As regard the contention of the assessee that no order under section 127 was passed by the Commissioner of Income-tax the revenue has submitted that the Ad.dl. 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 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 Adl. Commissioner of Income Tax over the cases of the Income tax officer is either available on assessment record, or was produced 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 Adl. Commissioner of Income Tax. Thus, the assessment completed by 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."

(3.10) Similar view has been taken recently in another judgment by the Mumbai Bench of the ITAT in the case of 'Tata Sons Ltd Vs. ACIT (2016) 76 taxmann.com 126 (Mum. Trib)'. Relevant part of observations of the Bench is reproduced below:-

"Additional Commissioner of Income Tax can perform functions and, exercise powers of an Assessing Officer only if he is specifically directed under section 120(4)(b). (Heading).

"Para.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."

(3.11).REMARKS AND CONCLUSION AND PRAYER BEFORE THE CIT(A):

In view of above facts of the case and provisions of law including that of judicial precedents, in the present case assessment order dated 24/03/2014

passed u/s.143(3) was passed by the Joint Commissioner of Income Tax, Rourkela Range, Rourkela on whom jurisdiction u/s.120(4)(b) was not conferred to act as the Assessing Officer, hence in absence of order u/s.120(4)(b) conferring jurisdiction upon the JCIT, he was lack of jurisdiction, assessment order dated 24/03/2014 passed u/s.143(3) by the JCIT is bad in law and deserves to be quashed.

(4).Grounds of Appeal No.2.3. is relating to the fact that notice u/s.143(2) dated 18/09/2012 was issued by the ACIT, Rourkela and assessment order dated 24/03/2014 was passed by JCIT and in absence of order u/s.127 transferring the case from ACIT to JCIT, assessment order dated 24/03/2014 passed by JCIT u/s.143(3) has to be held as without jurisdiction and bad in law.

Written Submission:

(4.1). In the present case jurisdictional notice dated 18/09/2012 was issued u/s.143(2) by the ACIT, Rourkela for initiation of scrutiny assessment proceedings and assessment order dated 24/03/2014 was passed by the JCIT u/s.143(3).

(4.2). Assessment order dated 24/03/2014 was silent regarding the transfer of the case from ACIT to JCIT by passing order u/s.127(1).

(4.3). Assessment has to be completed by authority who has initiated proceedings for making assessment and any other authority can take over proceedings only after a proper order of transfer under section 127(1) or 127(2) of proceedings and in absence of order u/s.127(1) the authority passing the assessment order has to be held as lack of jurisdiction and assessment order to be held as bad in law. Now this issue is no longer res integra have been decided by various courts that in absence of transfer order u/s.127(1), the assessment order has to be held as bad in law.

(4.3). The above proposition is supported by the following land mark judgments.

Sl No	Case Laws	Citation	Forum
1	Pr.CIT(Central) Vs. Rohtas Project Ltd	(2018) 100 taxmann.com 384	SC
2	Ajantha Industries Vs. CBDT	(1976) 102 ITR 281	SC
3	Dillip Kumar Chetterjee Vs. ACIT	(2018) 97 taxmann.com 283	Cuttack.Trib
4	Mega Corporation Ltd Vs. Addl.CIT	(2015) 62 taxmann.com 351	Del.Trib

(4.3.1).Hon'ble Supreme Court in the case of 'Pr.CIT (Central) Vs Rohtas Projects Ltd (supra) has held as under.

"Hon'ble Supreme Court in the case of Pr.CIT (Central) Vs. Rohtas Projects Ltd (supra) in which departmental appeal was dismissed confirming the

decision of the Hon'ble Allahabad High Court in the case of 'Rohtas Project Ltd Vs. Pr.CIT (Central) (2018) 100 taxmann.com 383 in which the Hon'ble Allahabad High Court followed its earlier decisions in the case of 'Smt.Chandra Prabha Kushwaha Vs.CIT (2014) 47 taxmann.com 240, Vinay Kumar Jaiswal Vs. CIT (1996) 221 ITR 568 and it has been held that before exercising power under Section 127(2) of Income-tax Act, 1961, it is mandatory on the part of authority concerned to record reasons for transferring assessment cases from one jurisdiction to other and also to give opportunity of hearing to the assessee. Denial of opportunity of hearing and lack of 'reasons for transfer order of transfer is bad".

(4.3.2).Hon'ble Supreme Court in the case of Ajantha Industries Vs. CBDT (supra) has held as under:

"While making an order of transfer under section 127 the requirement of recording reasons of transfer under section 127(2) is a mandatory direction under law and non communication of same to assessee would not be saved by showing that reasons existed in file although not communicated to the Assessee. Thus transfer of the case under section 127 is not valid".

(4.3.3).Hon'ble Cuttack Tribunal in the case of Dillip Kumar Chatterjee Vs. ACIT (supra) has held as under:

Where assessment proceedings under section 143(2) were initiated by Assistant Commissioner, Circle -2(1), Bhubaneswar but taken over in middle of proceedings by Assistant Commissioner, (OSD), Range, 2 Bhubaneswar and completed by him, since there was no any valid transfer of jurisdiction as required under section 127, impugned assessment order so passed was unjustified. (Head Note).

The operative para's of the said order reads as under:

"Para.18. The issue involved in this appeal can also be viewed from one another angle. The issue involved is that the Assistant Commissioner of Income Tax, Circle-2(1), Bhubaneswar, having jurisdiction over the case of the assessee, issued notice u/s.143(2) of the Act in exercise of that jurisdiction.

After exercise of that jurisdiction which was conferred upon him under law, can the case of the assessee be transferred to another officer i.e. ACIT(OSD), Range-2, Bhubaneswar without passing any order u/s.127 of the Act merely on the ground that the other officers also had concurrent jurisdiction over the case of the assessee.

Para.19. We find that the issue is squarely covered by the decision of Hon'ble Delhi High Court in the case of Valvoline Cummins Ltd. v. Dy. CIT (2008) 307 ITR 103 (Del.HC) wherein it has been held as under: -

"When a 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 either 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 exercise of that power."

Further in para 29, the Hon'ble High Court has held as under :-

"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."

Para.20. In view of the above decision of Hon'ble Delhi High Court, the ACIT(OSD), Range-2, Bhubaneswar could not have jurisdiction to pass the assessment order in case of the assessee as the ACIT, Circle-2(1), Bhubaneswar had already exercised the jurisdiction by issuing notice u/s.143(2) of the Act when admittedly no order u/s.127 of the Act was passed by the competent authority under that section.

Para.21. Accordingly, we hold that the order passed by the Additional Commissioner of Income Tax, dated 25th November, 2008 re-assigning the cases to the ACIT(OSD), who is the Assessing Officer in the present case, is not maintainable and consequently, the orders passed by the AO and confirmed by the CIT(A) in the case of present assessee are hereby quashed. We order accordingly.

Para.22. In the result, appeal of the assessee is allowed."

(4.3.4).Hon'ble Delhi Tribunal in the case of Mega Corporation Ltd Vs. Addl.CIT (supra) has held as under:

Assessment has to be completed by authority who has initiated proceedings for making assessment and any other authority can take over proceedings only after a proper order of transfer under section 127(1) or 127(2) of proceedings. (Head Note).

The operative para's of the said order reads as under:

"Para.9.1 We therefore hold that applying the above judicial position that assessment has to be completed by the authority who has initiated the proceedings for making assessment and any other authority can take over the proceedings only after a proper order of transfer u/s 127(1) or 127(2) of the proceedings. The revenue has not brought any order for transfer of the proceedings from Dy. CIT, Circle-6(1), New Delhi to the Additional CIT, Range-6, New Delhi and therefore it is quite evident that the Additional CIT, Range-6 took over the assessment proceedings without there being an order u/s 127(1). In the case of Prachi Leathers (P.) Ltd Vs. Addl.CIT [IT Appeal No. 744 (Luck.) of 2004, dated 29-3-2010], it has been held as under:

"19. We are further of the opinion that the notice under section 143(2) of the Act having been issued by the Income-tax Officer, Range 6(2), Kanpur on 16.8.2002, it was Income-tax Officer alone who could frame the assessment subject however to the fact that that the assessment could be framed by any other officer also provided there was an order of transfer of jurisdiction over assessee's case from Income-tax Officer, Range-6(2), Kanpur to that officer under section 127(4) of the Act, but so far as present case is concerned, the Revenue has not brought to our notice any order under section 127 passed after 6.8.2002 transferring jurisdiction over the assessee's case from the Income-tax Officer, Range 6(2), Kanpur to the Addl. CIT, Range 6. Kanpur and therefore, the assessment framed by the Addl.CIT, Range-6, Kanpur irrespective of the fact as to whether he was authorized to perform the functions of an AO or not, is illegal and void ab initio for want of jurisdiction. Consequently, we are of the opinion that the assessment order in the present case dated 31.3.2003 passed by the Addl.CIT, Range (6), Kanpur was illegal and void ab initio for want of jurisdiction. Consequently, the assessment order is quashed."

Para.9.2.Consequently on this count also, the assessment made on 29.12.2008 by the Additional Commissioner is illegal and bad in law for want of jurisdiction."

(4.4).REMARKS AND CONCLUSION AND PRAYER BEFORE THE CIT(A):

In view of above facts of the case and provisions of law including that of judicial precedents, in the present case assessment proceeding was initiated by the ACIT by issuing notice u/s.143(2) dated 18/09/2012 and assessment order dated 24/03/2014 passed u/s.143(3) was passed by the Joint Commissioner of Income Tax, Rourkela Range, Rourkela without transfer order u/s.127 (1), accordingly JCIT was lack of jurisdiction thus assessment order dated 24/03/2014 passed u/s.143(3) was passed without valid jurisdiction deserves to be quashed.

(5).Grounds of appeal no.2.4. is relating to the fact that mere participation of the assessee in the assessment proceedings does not entrust a valid jurisdictional authority upon the JCIT for passing assessment order.

Written Submission:

(5.1).It is a settled position in law that mere participation in proceedings or acquiescence will not confer jurisdiction. In the present case it is true that jurisdiction issue was not raised before the JCIT, Range Rourkela and assessee had participated in the assessment proceedings.

(5.2).It is also well settled in law that jurisdictional issue being a legal issue which goes to the root of the matter can be raised at any stage before the appellate authorities.

For the above propositions reliance is placed upon the following judicial pronouncements:

Sl No	Citation	Forum	Forum
1	CIT Vs. Green World Corporation	(2009) 314 ITR 81	SC
2	Deepchand Kothari Vs. CIT	(1988) 171 ITR 381	Raj.HC
3	ACIT Vs. Greater Noida Industrial Development	(2015)397 ITR 14	Alld.HC
4	CIT Vs. Lalitkumar Bardia	(2018) 404 ITR 63	Bom.HC
5	Smt.Prabha Rani Agarwal Vs. ITO	(2013) 351 ITR 275	Alld.HC

(5.2.1).Hon'ble Supreme Court in the case of 'CIT Vs. Green World Corporation (supra)' has held as under:

"Para.18. Objection in regard to jurisdiction may be taken at any stage. (See Chief Engineer, Hyde! Project v. Ravinder Nath, (2008) 2 SCC 350) wherein inter alia the decision of this Court in Kiran Singh v. Chaman Paswan, [AIR 1954 SC 340] was followed, stating:

"26. The Court also relied upon the decision in Kiran Singh v. Chaman Pawan [AIR 1954 SC 340) and quoted (in Harshad Chiman Lal case [(2005) 7 SCC 791], SCC pp. 804-805, para 33) therefrom: (Kiran Singh case (supra), AIR p. 342, para 6)

6.... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

(5.2.2).Hon'ble Rajasthan High Court in the case of 'Deepchand Kothari Vs. CIT (supra) has held as under:

"It was held that the Assessing Officer who was having no jurisdiction to initiate the proceedings then such proceedings are ab-intio- void. Further the Hon'ble High Court relying on the Judgement of the Hon'ble Supreme Court in the case of Kiran Singh v. Chaman Paswan [1954] AIR 1954 SC 340, it was held that the Jurisdictional issue can be taken up at any stage of the proceedings, even at the time of execution of decree".

(5.2.3).Hon'ble Allahabad High Court in the case of 'ACIT Vs. Greater Noida Industrial Development (supra)' has held as under:

"The Hon'ble Allahabad High Court following the decision of the Hon'ble Supreme Court in the case of 'R.K.Upadhyaya Vs. Shanabhai P.Papel (1987) 166 ITR 163 (SC) held as under:

"The mandate of section 148(1) of the Act is that reassessment shall not be made until there has been a service of notice which is a condition precedent to making an order of assessment. The Supreme Court further held that the requirement of issue of notice is satisfied when a notice is actually issued and that service under the Act, 1961, is not a condition precedent to conferment of jurisdiction on the Income-tax Officer to deal with the matter but it is only a condition precedent to the making of the order of assessment Even the participation of the assessee would not provide the benefit under Section 29288 to the Revenue. The requirement that a notice be issued is mandatory and the Assessing Officer has no other option but to issue the notice before commencing the jurisdiction.

(5.2.4).Hon'ble Bombay High Court in the case of 'CIT Vs. Lalitkumar Bardia (supra)' at Para-18 of the order has held as under:

"Para.18.It is a settled position in law that mere participation in proceedings or acquiescence will not confer jurisdiction. The Apex Court in Kanwar Singh Saini (supra) made observations, which are apposite to the issue at hand and which read as under:

"22. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decreed having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/ in executable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. (Vide United Commercial Bank Ltd v. Workmen, Nai Bahu v. Lala Ramnarayan, Natraj Studios (P) Ltd. v. Navrang Studios, Sardar Hasan Siddiqui v. STAT, A.R. Antulay v. R.S. Nayak, Union of India v.. Deoki Nandan Aggarwal, Karnal Improvement Trust v. Parkash Wanti, UP Rajkiya Nirman Nigam Ltd. v. Indure (P) Ltd., State of Gujarat v. Rajesh Kumar Chimanlal Barot, Kesar Singh v. Sadhu, Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and CCE v. Flock (India) (P) Ltd.)".

(5.2.5).Hon'ble Allahabad High Court in the case of 'Smt. Prabha Rani Agarwal Vs. ITO (supra)' at Para -14 of the order has held as under:

"Para.14. In the case of Laxmi Narain Anand Prakash 46 STC 71 (All) [FB]: [1980] U.P. Tax Cases 125 (All.), a Full Bench of this Court has held that further notice under section 21 of the UP. Sales Tax Act, 1948, having been improperly served the initiation, of proceedings was without jurisdiction and it could not be validated by participation of the assessee in the proceedings

and the invalidity of the notice goes to the very root of the matter and the whole proceedings has been vitiated in law. If it is found that the notice instead of being addressed to the dealer was addressed to an entity which did not exist. the defect in the notice was fatal to the assumption of jurisdiction by a Sales Tax Officer."

(5.3).PRAYER BEFORE CIT(A) TO QUASH THE ASSESSMENT ORDER DATED 24/03/2014.

In view of above facts including that of judicial precedents it is judicially settled that mere participation of the assessee in the assessment proceedings does not confer any valid jurisdiction upon the JCIT (Assessing Officer). Assessment made by JCIT, Range Rourkela suffers form lack of jurisdiction accordingly entire proceedings initiated by the JCIT was without jurisdiction, are also ab initio void thus assessment order passed by JICT,Range Rourkela deserves to be quashed.

(6).Grounds of appeal no.2.5. is relating to the fact that assessee's own interest free funds was exceeding the investment made for earning the exempted dividend income, thus no disallowance of interest expenses can be made u/s.14A r.w.r 8D.

Written Submission:

(6.1). In the present case assessee's own interest funds as at 31/03/2011 was exceeding the investments made for earning exempt dividend income which was under.

F.Y. (A.Y).	Investment (Rs)	Own Interest free Funds (Share Capital Plus Reserve & Surplus). (Rs.).
2010-11.(A.Y.2011-12)	39,43,35,181/-	44,27,51,185/-

(6.2). Thus, it is presumed that the investment has been made by the assessee out of its own interest funds without utilizing the borrowed money. Accordingly there cannot be any disallowance on account of interest expense. In holding so we find support and guidance from the following judgments:

Sl No	Case Laws	Citation	Forum
1	CIT Vs. UTI Bank Ltd	(2013) 32 taxmann.com 370	Guj.HC
2	CIT Vs. HDFC Bank Ltd	(2014) 366 ITR 505	Bom.HC
3	CIT vs. Micro Labs Ltd	(2017) 79 taxmann.com	Kar.HC

Thus the TDS amount does not represent the tax of the assessee but it is the tax of the party which has been paid by the assessee. Thus any delay in the payment of TDS by the assessee cannot be linked to the income tax of the assessee and consequently the principles laid down by the Hon'ble Apex Court in the case of Bharat Commerce Industries Ltd. v. CIT (1998) reported in 230 ITR 733 cannot be applied to the case on hand.

Thus, in our considered view, the principle laid down by the Hon'ble Supreme Court in the case of Bharat Commerce Industries Ltd. (supra) is not applicable in the instant facts of the case. Thus, we hold that the Assessing Officer in the instant case has wrongly applied the principle laid down by the Hon'ble Supreme Court in the case of Bharat Commerce Industries Ltd. (supra). We also find that the Hon'ble Supreme Court in the case of Lachmandas Mathura (Supra) has allowed the deduction on account of interest on late deposit of sales tax u/s 37(1) of the Act. In view of the above, we conclude that the interest expenses claimed by the assessee on account of delayed deposit of service tax as well as TDS liability are allowable expenses u/s 37(1) of the Act. In this view of the matter, we find no reason to interfere in the order of the Id. CIT(A) and we uphold the same. Hence, this ground of Revenue is dismissed."

(10.5). REMARKS AND CONCLUSION FOR CONSIDERATION OF CIT(A) TO DELETE DISALLOWANCE OF Rs.66,103/- BEING INTEREST ON TDS:

In view of above discussions including that of judicial precedents, it is requested kindly allow Rs.66,103/-being the interest on tax suffered by the deductor because such interest does not come under the definition of tax as defined u/s.2(43) and it is compensatory in nature and allowable u/s 37 of the I.T Act, 1961.

(11). Grounds of appeal no.2.10. is consequential in nature may kindly be held accordingly.

(12) Grounds of appeal no.2.11. is consequential in nature may kindly be held accordingly.

(13). Grounds of appeal no.2.12 is general in nature not pressed for.

(14).REQUEST FOR PERSONAL HEARING:

It is humbly requested to grant personal hearing for any clarification and before taking any adverse remarks against the assessee.

Acknowledgement Number : 283757301030322

e-Proceedings Response Acknowledgement

INCOME TAX DEPARTMENT

PROCEEDING DETAILS

PAN/TAN	AAFCA7136F
Name	ALTRADE MINERALS PRIVATE LIMITED
Financial Year	2010-11
Assessment Year	2011-12
Proceeding Name	First Appeal Proceedings
Notice/Communication Reference ID	100044003637
Notice Section	250
Description	[ITBA]Hearing Notice u/s 250of Income Tax Act 1961.
Notice Issue Date	12-Feb-2022
Due Date for Submission	18-Feb-2022
Communication Sent date	
Document Reference ID	ITBA/APL/F/APL_1/2021-22/1039686762(1)

RESPONSE SUBMITTED

Remarks	In regards of ongoing first appeal proceeding before your honour, we are hereby submitting our written reply along with supporting documents vide Annexure A to Annexure C. Kindly find the same in order & oblige. Thanking You Yours Faithfully AR of Appellant CA Rajesh Kumar Agarwal
Hash * Value Of Remarks	b11703556fe5ea7910c897b7b72d6b1419a0fae54949cbe4c736b c3a61fc4565

SI No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
1	WRITTEN RESPONSE.pdf	WRITTEN RESPONSE	451757	aac7acdbcfaa0501f 6b7c651a5fbc04bef dfc142e9bcbef0c3f 59140385707b7
2	ANNX_A.pdf	ANNEXURE A	53288	0a443c4d407dc389 a280c6aa972ddb5a 30592d9ee49d3601 fa4710c12008867c
3	ANNX_B.pdf	ANNEXURE B	166217	b3fd36c29ffa6ca90 a2ca9df0785a15536

23

SI No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
				4e37b99822c95
4	ANNX_C.pdf	ANNEXURE C	1734679	4404ebc387e2e143 8939f7b7a0b08315 397eae0562ee21e9 12c36d2b271cebca

This is a system generated acknowledgement and does not require signature

* Hash : This value will uniquely identify the uploaded files and remarks.

24

Gmail Kadmawala & Co. <kadmaitax@gmail.com>

Submission regarding Appeal order dated 22/12/2022 in case of M/s.Altrade Minerals Pvt Ltd. PAN NO: AAFC7136F AY 2011-12
1 message

Kadmawala & Co. <kadmaitax@gmail.com>
To: BHUBANESWAR.CIT.APL2@incometax.gov.in
Cc: rourkelaooffice@altradegroup.com
Bcc: M Sahu & Associates <msahu.fca16@gmail.com>


Wed, Mar 1, 2023 at 4:26 PM

Honorable Sir,
In respect of the above cited subject we are submitting herewith our submission.
Kindly find the same in order and oblige.

Thanking you

For Altrade Minerals Pvt. Ltd

CA Rajesh Kumar Agarwal
Authorised Representative

 CIT(A) Order Received date and GOA not considered.pdf
226K

Dated 01/03/2022

To,

Ld.CIT (A), Bhubaneswar-2
Aayakar Bhawan Annexe
Nr. Satsang Vihar
Bhubaneswar-751001
Email Id: **BHUBANESWAR.CIT.APL2@INCOMETAX.GOV.IN**

Sub: CIT(A), Bhubaneswar-2 order dated 22/12/2022,
DIN: ITBA/APL/M/250/2022-23/1048641954(1), dated 11/01/2023.
Appeal No: CIT(A),Sambalpur/10037/2017-18 for the A.Y.2011-12.

Ref: M/s.Altrade Minerals Pvt Ltd. PAN NO: AAFC7136F. Assessment Order dated 24/03/2014 was passed u/s.143(3) by the Jt.CIT,Range Rourkela for the A.Y.2011-12.

Sir,

We have gone through the above appeal order passed by your goodself and we would like to draw your kind attention to the following points:

1.Regarding date on which the appeal order dated 22/12/2022 was served upon the assessee:

It is submitted that as DIN was created on 11/01/2023 in the ITBA system, hence we are considering 11/01/2023 as the date on which the appeal order was served upon the assessee.

2. Regarding non adjudication of grounds of appeal relating to Jurisdiction of Jt.CIT,Range Rourkela:

It is submitted that the jurisdiction of the **Jt.CIT,Range Rourkela** for passing assessment order dated 24/03/2014 u/s.143(3) relying upon the notice u/s.143(2) dated 18/09/2012 issued by the **ACIT, Rourkela** was challenged by the assessee in its written submission dated 03/03/2022 , E filled vide Acknowledged 283757301030322 which was not adjudicated at all.

3.Regarding non adjudication of objection to remand report of ACIT, Central Circle, Sambalpur, dated 28/10/2022:

Remand report dated 28/10/2022 was served upon the assessee by Email dated 18/11/2022. Objection/Rejoinder to the remand report dated 28/10/2022 was E filled on 21/11/2022 vide E filling Acknowledgement No:812239871211122 which was *not* adjudicated at all.

Page 1 of 2

4.We are drawing the attention of the Tribunal regarding non adjudication of above points in our appeal memo while filling appeal before the Tribunal against your appeal order dated 22/12/2022 served upon the assessee on 11/01/2023.

5.This is for your information and necessary action please.

Thanking you,

For Altrade Minerals Pvt Ltd

RAJESH
KUMAR
AGARWAL

(CA Rajesh Kumar Agarwal)
Authorised Representative

7. It was the submission that at page 25 dated 1.3.2022, specific submission had been made to the Id CIT(A) challenging the assessment order passed by the Id JCIT, Rourkela Range, Rourkela when the notice u/s.143(2) of the Act was issued by the Id ACIT, Rourkela. It was the submission that no order u/s.127 of the Act has been passed giving the authority or transferring authority from the ACIT, Rourkela to JCIT, Rourkela Range, Rourkela and, therefore, as JCIT, Rourkela Range, Rourkela was not the assessing authority and the assessment order passed by him was without jurisdiction and thus bad in law and liable to be quashed. Ld AR also placed reliance on the decision of the Co-ordinate Bench of this Tribunal Delhi Bench in the case of Mega Corporation Ltd vs Addl. CIT, (2015) 62 taxmann.com 373 (Del.Tri), wherein, the Co-ordinate Bench of the Tribunal has taken a view that where the assessment

proceedings has been taken over without there being an order u/s.127(1) of the Act, same was illegal and bad in law for want of jurisdiction and was liable to be quashed. Ld AR also placed reliance on the decision of the Co-ordinate Bench of this Tribunal Cuttack Bench in the case of Dillip Kumar Chatterjee vs ACIT (2018) 97 taxmann.com 283 (Cuttack-Trib), wherein, then Tribunal has categorically held that where the assessment proceedings u/s.143(2) was initiated by the ACIT, Circle-2(1), Bhubaneswar but were taken over in middle of proceedings by Assistant Commissioner (OSD, Range-2, Bhubaneswar, since there was no valid transfer of jurisdiction as required u/s.127 of the Act, the impugned assessment order so passed was unjustified and is liable to be set aside. At this point, it was informed to Id counsel for the assessee that the issue has not been adjudicated by Id CIT(A) though the issue has been raised before him. It was also brought to the attention of Id AR that proper additional ground had not been raised before the Id CIT(A) and, therefore, the issue has not been adjudicated by the Id CIT(A) and if necessary the Bench could restore the issue to the file of the Id CIT(A) for proper adjudication on this issue. To this, Id AR drew our attention to the decision of the Hon 'ble Jurisdictional High Court in the case of Siksha "O" Anusandhan vs CIT (2011) 336 ITR 112 (Orissa), wherein, the Hon'ble Jurisdictional High Court has held as follows:

"Section 252 of the Income Tax Act, 1961-Appellate Tribunal – General –Assessment Years 2000-01 to 2006-07. Where assessee challenged proceedings initiated under section 153A for want of

search warrant issued to it and Tribunal directed revenue to produce records of search, Tribunal was not justified in remanding matter to Commissioner (Appeals) to decide same instead of deciding same itself (Matter remanded).

The assessee challenged the assessment orders passed against it under section 153A before the Commissioner (Appeals) and being unsuccessful before the said forum, it preferred appeals before the Tribunal. Where the assessee raised an additional ground that as no search warrant was served on it proceedings initiated under section 153A were not legal. The Tribunal by the impugned order remitted the matter to the Commissioner (Appeals) with a direction to first decide the additional ground raised by the assessee in accordance with law.


Held that, admittedly after being satisfied that the additional ground raised by the assessee was a question of law and went to the root of the matter, vide an order dated 5-5-2009 the Tribunal directed the departmental representative to produce the records of search to examine as to whether a search warrant was issued in the name of the assessee or not and adjourned the case to 6-5-2009. At that stage, there was no reason as to why the Tribunal being the final fact finding authority, could not have recorded its finding on the aforesaid vital jurisdiction issue, when consciously the Tribunal called for the records of search, This action of the Tribunal seemed to be unjust.

In the fact situation, the tribunal had to decide the matter in the light of the legal position highlighted above after verifying the records with regard to the stand taken by the assessee. Because of the inadequate factual findings, the Tribunal was to be directed to rehear the matter."

8. It was the submission that the Tribunal having been seized with the facts now should pass an order and as the facts are clear that there was no jurisdiction and there was no order u/s.127 of the Act, the assessment is liable to be quashed.

9. In reply, Id Sr DR drew our attention to the decision of Hon'ble Supreme Court in the case of Kalinga Institute of Industrial Technology in

SLP No.29304/2019 dated 1st May, 2023, wherein, the Hon'ble Supreme Court has held that in respect of issue of jurisdiction having been challenged after the returns had been filed but records also reveals that the assessee had participated pursuant to the notice issued u/s.142(1) of the Act and had not questioned the jurisdiction of the Assessing Officer. Section 124(3)(a) of the Income Tax Act precludes the assessee from questioning the jurisdiction of the Assessing Officer, if he does not do so within 30 days of receipt of notice under section 142(1) of the Act. He also relied on the decision of the Co-ordinate Bench of this Tribunal Mumbai Bench in the case of M/s. Novartis India Limited vs ACIT in ITA No.6832/Mum/2010 for A.Y. 2002-03 order dated 20.3.2024, wherein, the Co-ordinate Bench has held that questioning the non-issuance of notice u/s.127 of the Act and the Revenue had not been able to produce such order u/s.127 after a long time of 16 years, the assessee should not be given the opportunity of raising such issue as long challenging the jurisdiction. Ld Sr D.R. drew our attention to the correspondence from Pr. CIT wherein, the Pr. CIT vide his communication dated 20.5.2024 has categorically held that the despite the best efforts, documents could not be traced. The communication of the pr. CIT reads as follows:


भारत सरकार/GOVERNMENT OF INDIA
कार्यालय प्रधान आयकर आयुक्त / O/o. THE PRINCIPAL COMMISSIONER OF INCOME TAX,
आयकर भवन, अईंठापाली, सम्बलपुर 04-/ AAYAKAR BHAWAN, AINTHAPALI, SAMBALPUR-04
[e-mail : sambalpur.pcit@incometax.gov.in]

No. Pr. CIT/SBP/Judl.&Tech/ITAT/2024-25/ 691. Date. 20.05.2024

To,
The Addl. Commissioner of Income Tax (ITAT)-1,
3rd Floor, ITAT Building, Sector-1,
CDA, Cuttack- 753014

Sir,
Sub: Certified copies of documents in the case of Altrade Minerals P. Ltd. (PAN-AAFCA7136F) for the A.Y. 2011-12 - matter regarding.
Ref: Letter vide F.No 65/23 received through e-mail dtd. 09.05.2024

Kindly refer to the above.

2 With reference to the subject cited above, I am directed to state that, vide your above referred letter, certified copies of the following documents in the case of M/s Altrade Minerals P. Ltd. (PAN-AAFCA7136F) for the A.Y. 2011-12 were requisitioned:

Sl No	Documents requisitioned	Comments of the A.O.	Comments of the Range Head	Comments of the Pr.CIT, Sambalpur
I	Jurisdiction order in respect of AOs including the officer having issued the notice u/s 143(2) together with corrigenda/amendments etc. effective for the assessment order dtd 24/03/2014;	--	Not traceable	Despite of best of efforts made, the desired documents could not be traced. However, efforts are being made to trace out the same, which will be submitted later on.
II	Jurisdiction order in respect of Range heads including Rourkela Range together with corrigenda/amendments etc. effective for the assessment order dtd 24/03/2014;	Not available as the case record has been transferred to the Central Circle, Sambalpur	Not traceable	-do-
III	Order u/s 120(4)(b) of Income Tax Act in respect of JCIT, Rourkela Range including corrigenda/ amendments etc. effective for the assessment order dtd 24/03/2014.	-do-	Not traceable	-do-

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IV	Order u/s 127 of the Income Tax Act transferring the case to the JCIT, Rourkela Range, if any.	Not available as the case record has been transferred to the Central Circle, Sambalpur	Not traceable	-do-
V	In situ promotion order, if any, in respect of Mr A. K. Pandey, the then JCIT, Rourkela Range to that grade.	N A	N A	Vide order No. 163 of 2012 Sri Anand Kumar Pandey was promoted as JCIT(OSD) and on promotion he was transferred from Lucknow [CCA-UP (E)] to Bhubaneswar CCA, Odisha. In view of the above transfer posting order, Sri A.K.Pandey has taken over the charge of Rourkela Range on 05.09.2012 in pursuance of CCIT, Bhubaneswar order No.47/2012-13 dated 22.08.2012 (Copy enclosed)

3 Further, I am directed to state that, a brief/ comment has been sought on the order u/s 7 of the RTI Act communicated by the ACIT, Central Circle, Sambalpur. In this regard, I am directed to inform that the ACIT, Central Circle, Sambalpur, not being under the jurisdiction of the Pr. CIT, Sambalpur, any comments/ brief in this regard cannot be offered by this office.


4 As regards to the circumstances under which the JCIT came to pass the assessment order, I am directed to refer a copy of order dated 29.09.2014 (copy enclosed) passed by the CIT, Sambalpur wherein the CIT, Sambalpur assigning the jurisdiction over selected cases to JCIT, Range-1, Sambalpur from DCIT, Circle-1(1), Sambalpur by passing a order u/s 127(2) of the IT Act, 1961. Therefore, it is obvious that similar order u/s127 of the Act would have also been passed in the case of M/s Altrade Minerals Pvt Ltd for the A Y 2011-12 for assigning the jurisdiction to the JCIT, Rourkela Range from ACIT, Rourkela Circle, Rourkela. However, the copy of the relevant order is being searched and will be submitted later on.

5 This is for your kind information and necessary action.

Encl: As above

Yours faithfully

(Signature)
(L B Prasad)
ITO(Judl &Tech)
Sambalpur



GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF INCOME-TAX
AAYAKAR BHAWAN, AINTHAPALLI, SAMBALPUR
Phone No.0663- 2541791 / Fax No. 0663- 2541795

COMMISSIONER OF INCOME TAX
RECEIVED
17/10/11
CIRCLE-2(1), SAMBALPUR

Jurisdiction: 0/15/17

CORRIGENDUM ORDER

Dated, Sambalpur the 17th October, 2011.

No. CIT/SBP/Tech./IV-12/2011-12/..... In partial modification of the Notification u/s.120(2), Dtd. 13th October,2011, which was communicated vide this office Memo No. CIT/SBP/Tech/IV-12/2011-12/3842-44, Dtd.13.10.2011, and in exercise of the power conferred by sub-section(2) of Sec.120 of the Income Tax Act, 1961 and all other powers enabling me in this behalf, I hereby assigns the jurisdiction over the cases hitherto assessed to tax by the Asst. Commissioner of Income Tax, Circle-1(1) & Circle 2(1), Sambalpur mentioned in Col.4 to the Jt. Commissioner of Income Tax, Range-1 & 2, Sambalpur respectively mentioned in Col.No.5 as per Schedule hereunder, with immediate effect :-

Sl. No.	PAN	Name of the Assessee	Assessing Officer From	Assessing Officer To	Assessment Year.
1	2	3	4	5	6
1	AABCP3278P	M/s Patnaik Minerals Pvt. Ltd.,	ACIT, Circle-1(1), Sambalpur	Jt.CIT, Range-1, Sambalpur	2009-10
2	AAACB9156F	M/s Bonai Industrial Co.Ltd.,	-do-	-do-	2009-10
3	AAACT6494Q	M/s Tata Refractories Ltd.	-do-	-do-	2009-10
4	AAACE3944J	M/s East India Minerals Ltd.	-do-	-do-	2009-10
5	AAACB9152B	M/s Banspani Iron Ltd.	-do-	-do-	2009-10
6	ABFPP3817J	Jitendranath Patnaik	-do-	-do-	2009-10
7	AASPP6230H	Saroj Kumar Patnaik	-do-	-do-	2009-10
8	AAQFS7009F	M/s S.C. Padhee	-do-	-do-	2009-10
9	AAACJ9143D	M/s Idcol Kalinga Iron Works Ltd.	-do-	-do-	2009-10
10	ABVPG6677K	Charanjit Singh Grewal	-do-	-do-	2009-10
11	AACCM1393H	M/s Mangalam Carbide Ltd.	-do-	-do-	2009-10
12	AABCM5188P	Mahanadi Coalfield Ltd.	ACIT, Circle-2(1), Sambalpur	Jt.CIT, Range-2, Sambalpur	2005-06
13	AABCM5188P	Mahanadi Coalfield Ltd.	-do-	-do-	2006-07
14	AABCM5188P	Mahanadi Coalfield Ltd.	-do-	-do-	2007-08
15	AABCM5188P	Mahanadi Coalfield Ltd.	-do-	-do-	2009-10

memo No. CIT/SBP/Tech/IV-12/2011-12/3924-28
Dated. 17th Oct. 2011

Sd/-
(P. K. Dash)
Commissioner of Income Tax
Sambalpur.

To
The Assessing Officers Concerned.
Copy submitted to the Chief Commissioner of Income Tax, Orissa, Bhubaneswar.

CERTIFIED TO BE TRUE COPY

(एल बी प्रसाद)
(L.B. PRASAD)
आयकर अधिकारी (न्या एच तक)
Income Tax Officer (Judl.&Tech.)
सम्बलपुर /Sambalpur

(P. K. Dash)
Commissioner of Income Tax
Sambalpur.

GOVERNMENT OF INDIA
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE
2ND FLOOR, AAYAKAR BHAWAN, AINTHAPALI, SAMBALPUR-768004, ODISHA
Email: Sambalpur.dcit.cen@incometax.gov.in

F. No. ACIT(Central)/SBP/ITAT/2024-25/ 394

Date.01/08/2024

To,
The Additional Commissioner of Income Tax
(ITAT)-1, Cuttack

Sir,

Subject: - Information in respect of ITA No. 65/CTK/2023 in the case of M/s Altrade Minerals Pvt. Ltd. (PAN: AAFC7136F) for AY 2011-12: Matter regarding.

Reference: office of the Addl. CIT(ITAT)-1 email dated 09/05/2024

Kind reference is invited to the above.

With due respect, this is to submit that the ACIT, Central Circle, Sambalpur has been directed vide communication under reference to furnish the following:

Sl. No.	Information Called for	Remarks
i.	Certified copy of the order appointing the ACIT, Central Circle, Sambalpur	The specific order appointing ACIT, Central Circle, Sambalpur as CPIO is not available on records. However, replies have been furnished by the predecessors in the capacity of CPIO in respect of the RTI applications filed earlier. As such, the reply to the application of M/s Altrade Minerals P. Ltd. dated 09/03/2023 was supplied.
ii.	Clarification/ elaboration of the phrase 'in record' in the order of the ACIT, Central Circle, Sambalpur under RTI Act cited above in view of the information sought not relating to the Central hierarchy.	'In the record' as mentioned in the reply to the RTI application is in respect of the information in the Assessment Record of M/s Altrade Minerals P. Ltd. for AY 2011-12 and that available in the online database (such as ITAB, CPC etc.) accessible to the ACIT, Central Circle, Sambalpur in the capacity of jurisdictional Assessing Officer.

This is for kind information and necessary action.

Your's faithfully,

(Rabindra Kumar Chaudhary)
Asst. Commissioner of Income Tax
Central Circle, Sambalpur

Page 1 of 1

Ld SR DR also placed the jurisdiction order under section 120 of the I.T.Act dated 15.11.2014 of Id CIT, Sambalpur , wherein, it has been stated that

Addl/Jt. Commissioner of Income Tax shall perform all the function of Assessing Officer under the Income Tax Act, 1961, which reads as under:

F.No.CIT/Sbp./Jurisdiction-01/2014-15
GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF INCOME TAX,
AAYAKAR BHAWAN, AINTHAPALLI,
SAMBALPUR – 768 004

JURISDICTION ORDER UNDER SECTION 120 OF THE INCOME TAX ACT, 1961.

In exercise of the powers conferred by Sub-Section (1) & (2) of Section 120 of the Income Tax Act, 1961 (43 of 1961) and Notification No.S.O.2752(E) dated 22nd October, 2014 issued by the Central Board of Direct Taxes, I, the Commissioner of Income Tax, Sambalpur hereby direct that the Addl./Jt. Commissioner of Income Tax, mentioned in Column 2 of the Schedule attached herewith shall perform all the functions of Assessing Officer under the Income Tax Act, 1961 (43 of 1961) in respect of such areas, persons or classes of persons, cases or classes of cases as specified in the corresponding entries in Columns No.4, 5 & 6 respectively of the Schedule.

2. It is hereby further ordered that the Deputy/Asst. Commissioners of Income Tax, Income Tax Officers and Tax Recovery Officers as mentioned in corresponding Column No.3 of the Schedule will exercise concurrent jurisdiction of Assessing Officer in respect of such areas, persons or classes of persons, cases or classes of cases as specified in the corresponding entries in Columns No.4, 5 & 6 respectively of the Schedule, with the respective Addl./Joint Commissioner of Income Tax as mentioned in Column 2 of the Schedule.

3. It is clarified that different Assessing Officers who are lower in rank and who are holding concurrent jurisdiction with Assessing Officer(s) higher in rank in respect of same area, persons or classes of persons and cases or classes of cases will exercise the powers and functions of Assessing Officer as per orders in writing passed by any higher authority amongst them as per the provisions of Sub-Section (5) of Section 120 of the Income Tax Act.

4. This order shall come into force **with immediate effect.**

(K. Ajay Kumar)
Commissioner of Income Tax

Memo No.CIT/Sbp./Jurisdiction-01/2014-15/ 4386-4400
Dated, Sambalpur the 15th November, 2014.

Copy to:

- 1) The Secretary, CBDT, New Delhi.
- 2) The Pr. Chief Commissioner of Income Tax, Odisha, Bhubaneswar.
- 3) The Director General of Income Tax (Inv.), Kolkata.
- 4) The Director of Income Tax (Inv.), Bhubaneswar.
- 5) The Commissioner of Income Tax, Cuttack.
- 6) The Commissioner of Income Tax-1, Bhubaneswar.
- 7) The Commissioner of Income Tax-2, Bhubaneswar.
- 7) All the Commissioner of Income Tax (Appeals) of Odisha Region.
- 8) The CIT (TDS), Bhubaneswar.
- 9) The CIT (Audit), Bhubaneswar.
- 10) All the Addl./Joint CsIT under this charge.
- 11) All Heads of Offices of Odisha Region
- 12) The Chairman, ICAI, Bhubaneswar.

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ललन
(इल बी प्रसाद)
(L.B. PRASAD)
आयकर अधिकारी (न्या एव संक)

Ashutosh Pradhan
(Ashutosh Pradhan)
Dy. Commissioner of Income Tax (Hqrs.),
O/o the Commissioner of Income Tax,
Sambalpur.

3.	Add: CIT/JCIT, Rourkela Range, Rourkela	A. DCIT/ACIT, Rourkela Circle, Rourkela B. ITO, Ward-1, Rourkela C. ITO, Ward-2, Rourkela D. ITO, Ward-3, Rourkela E. ITO Ward-4 Rourkela F. ITO, Ward-5, Rourkela	Revenue district of Sundargarh excluding Sadar sub-division but including areas under Rajgangpur and Kansbahal Police Station	<p>(a) Persons referred to in column (6), being companies registered under the Companies Act, 1956, and having registered office in the area mentioned in column(4).</p> <p>b) Persons referred to in column (6), other than companies deriving income from business or profession.</p> <p>c) Persons referred to in column(6), who are companies deriving income from business or profession & income other than salary and bonus within the specified areas mentioned in column(4)</p>
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As per...

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प्रसाद

(एल बी प्रसाद)
(L.B. PRASAD)
आयकर अधिकारी (जाय वी एन)
Income Tax Officer (Jaidi & Tech.)
Bhubaneswar/Sambalpur

It was the submission that the assessment order is liable to be upheld. Ld Sr DR drew our attention to sub-section(5) of Section 120 which specified that Sr Officer of the same rank is entitled to do the assessment and there is no necessity of order u/s.127 of the Act.

10. In reply, Id AR of the assessee submitted that the decision of the Hon'ble Supreme Court in the case of Kalinga Institute of Industrial Technology (supra) had no applicability insofar as the provisions of section 124 was in respect of territorial jurisdiction and now the assessee has challenged the non-issuance of order u/s.127 of the Act. It was further submitted that the decision of the Co-ordinate Bench of Mumbai Bench in the case of Novartis India Ltd (supra) had no applicability insofar as that was a case where there was delay of 16 years whereas the assessee has been raising the issue right from the Id CIT(A) side itself. It was the submission that the assessment order is liable to be quashed. Ld AR has filed written submissions in two sets as follows:

"MAY YOUR HONOUR PLEASE BE' consider the following as our written submission before the Tribunal in addition to the written submission dated 30/05/2024 placed before the Tribunal for hearing fixed on 26/06/2024.

(A). BEFORE HTE CIT(A) LEGAL AND JURISDICTIONAL GROUNDS OF APPEAL RAISED BY REPLACING THE GROUNDS OF APPEALS RAISED IN THE APPEAL MEMO IN FORM NO.35

It is submitted that the following legal and jurisdictional grounds of appeal are raised before the CIT(A) by replacing the grounds of appeal raised in the appeal Memo in form No. 35 and written submission, documentary evidences were filed before the CIT(A) on 03/03/2022 vide E-filing Acknowledgement No:28375701003022. **[Copy Enclosed DPB pg. NO. 24 to 26]**

(b). EVEN A RIGHT DECISION IN A WRONG FORUM IS 'NO DECISION- NO EXISTENCE IN THE EYES OF LAW- IS A NULLITY':

The Hon'ble Supreme Court in the case of "Pandurang v. State of Maharashtra AIR 1987 SC 535" held as under:-

"When a matter required to be decided by a Division Bench of the High Court is decided by a learned Single Judge, the judgement would be a nullity, the matter having been heard by a Court which had no competence to hear the matter, it being a matter of total lack jurisdiction. The accused was entitled to be heard by at least two learned judges constituting a Division Bench and had a right to claim a verdict as regards his guilt or innocence at the hands of the two learned Judges. This right cannot be taken away except by amending the rules. SO long as the rules are in operation it would be arbitrary and discriminatory to deny him this right regardless of whether it is done by neither be invoked as an alibi, nor can cure the infirmity it illegality, so as to rob the judges cannot be done by one learned Judge. Even if the decision is right on merits , it is by a forum which is lacking in competence with regard to the subject matter. Even a 'right ` decision by a 'wrong ` forum is no decision . it is non-existent in the eye of law. And hence a nullity. The judgement under appeal is therefore no judgment inn the eye of law."

(C). LEGAL JURISDICTIONAL GROUNDS OF APPEAL RAISED BEFORE HTE TRIBUANL AND TRIBUNAL ASKED FOR THE RECORDS FROM THE DEPARTMENT SHALL B E ACCEPTED AND DECIDED WITHOUT REMANDING THE MATTER:

We may gainfully rely upon the decision of the binding decision of the jurisdictional Orissa High Court in the case of "Siksha O Anusadhan Vs. CIT[2011} 336 ITR 112 (Orissa. HC)". In the decided case question came for consideration before the Hon'ble High Court was as under:

"2.(iii). Whether on the facts and circumstances of the case, the income-tax Appellate Tribunal is justified in remanding the matter to the Commissioner of Income-tax (Appeals) is adjudicate on a question of law raised before instead of deciding the issue itself?"

The Hon'ble Orissa High Court is answering the question, held as follows:

"Held that, admittedly, the Tribunal after being satisfied that hte additional ground raised by the assessee was a question of law and went o the root of the matter, vide an order dated 5-5-2009 the Tribunal directed the departmental representative to produce the records of search to examine as to whether a search warrant was issued in the name of the assessee of not and adjourned the case to 6-5-2209. At that stage, there was no reason as ot why the Tribunals being the final fact finding authority, could not have recorded its finding on the aforesaid vital jurisdiction issue, when

consciously the Tribunal called for the records of search. This action of the Tribunal seemed to be unjust.

In the fact situation, the Tribunal has to decide the matter in the light of the legal position highlighted above after verifying the records with regard to the stand taken by the assessee. Because of the inadequate factual findings, the Tribunal was to be directed to rehear the matter.”

The operative para’s of the said order started from Para. Nos.18 to 29 and the para.20 including the concluded para.29 reads as under:

’20. The order dated May5,2009 (annexure 8) passed by the learned Income –tax Appellate Tribunal in I.T.A No. 71 of 2009 reveals that the Tribunal had directed the learned Departmental representative to produce the records of the search to examine as to whether search warrant was issued in the name of the assessee or not, and adjourned the case to May6, 2009 . The order of the Tribunal further reveals that both parties argued at length on the applicability of the provisions of sections 153A and 153C. Thereafter, the learned Tribunal relying on the decision of the Madhya Pradesh High Court in CIT v. Tollaram Hassomal [2008] 298 itr 22(mp), remitted the matter to the Commissioner of income-tax (Appeals) with a direction to decide first the additional ground taken by the assessee in accordance with law and , if required, the other grounds on the merits after giving due opportunity of being heard to the assessee.

29. In the fact situation, since we have already laid down the law, the Tribunal has to decide the matter in the light of the legal position highlighted above after verifying the records with regard to the stand taken by the appellant. Because of the inadequate factual findings, we direct the learned Tribunal to rehear the matter----.”

(c). LEGAL JURISDICTIONAL GROUNDS OF APPEAL RAISED BEFORE THE HIGH COURT WAS ACCEPTED AND ADJUDICATED WITHOUT REMANDING THE MATTER:

Reliance is placed upon the binding decision of the Hon’ble Orissa High Court in the case of” Sri Bijoy Kishore Mohanty Vs. Pr.CIT , in ITA Nos. 29 and 30 of 2021 , dated 08/03/2022 (Orissa.HC). In the decided case, the question came up for consideration before the hon’ble High Court, which is reproduced as under:

”2.(iii). Whether the reassessment was bad in law for failure to issue notice to the Assessee under section 143(2) of the Act?”

The Hon’ble Orissa High Court is answering the question, held as follows:

”3. As far as Question No.(iii) is concerned , Mr. Satapathy, learned Senior Standing Counsel for the Department raises preliminary objection that this issue was not raised by the Assessee at any of the stages of the

proceedings before the AO, CITA and ITAT and therefore, it should be permitted to raise such question at this stage.

4. In response, Mr. Ray, learned counsel for the Appellant draws attention of this Court to the following observations of the Supreme Court of India in Saurav Jain v. A.B.P. Design AIR 2021 SC 3673:

"34.based on the position of law, we find it just to allow the appellant to raise the ground of jurisdiction before us. Allowing the ground to be raised would not require the submission of additional evidence since it is a pure question of law and strikes at the heart of the matter. We shall now turn to the merits of this argument."

5.Consequently, the preliminary objection of the learned Senior Standing Counsel for the Department is overruled. In any event, once this court while admitting the appeal, framed a question and that order has not been challenged by the Department, it cannot raise an objection at this stage to the framing of such question by this court.

6. as far as Question No. (iii) is concerned , the matter is squarely covered in favour of the Assessee by several judgements of the Supreme Court and the High Court including Assistant Commissioner of Income Tax v. Hotel Blue Moon (2010) 321 ITR 362(SC) and the Delhi High Court in Pr. Commissioner of Income Tax v. Shri Jay Jay Shiv Shankar Traders Pvt.Ltd.(2016) 383 ITR (Del) 448 and the order dated 25th February 2022 of this Court in ITA No.20 of 2017 (Principal Commissioner of Income Tax, Bhubaneswar v. Orissa Mining Corporation Ltd.)

7. With the admitted position being that on facts in the present case, notice under section 143(2) of the Income Tax Act,1961 (Act) was not issued to the petitioner while reopening the assessment under section 147 of the Act, Question No. (iii) as answered in the affirmative, by holding that the re-assessment is bad in law, in favour of the Assessee and against the Department.

8.In view of the answer to Question No.(iii) , the Court is not required to answer Question nos.(i) and (ii) since the re-assessment proceedings already stand invalidated.

9.The appeals are accordingly disposed of in the above."

(E). HEARING IS CONTINYED SINCE 10/05/2023 and in many occasions Tribunal had directed the LD.DR to produce the relevant orders passed u/s.120(4)(b) including order u/s.127(1) by virtue of which the JCIT, Range Rourkela assume valid jurisdiction for concluding the assessment and passing the assessment order u/s.143(3), dated 24/03/2014 where the jurisdictional notice u/s.143(2), dated 18/09/2012 was issued by the ACIT, Circle Rourkela.

Some of the relevant dated where LD.AR had taken time to bring relevant records are as under:

Sl. No	D.O.H	Direction of Tribunal and Ld.DR seek time.
1	28/11/2023	Tribunal directed the LD.DR to verify the correctness of the RTI order dated 13/04/2023 placed at pg. No. 30 of the paper book and LD.DR seeks time for verification and the matter was adjourned to 209/01/2024
2	22/04/2024	DO. The matter was adjourned to 22/05/2024
3	22/05/2024	Do. Instruction was given to AR for filing written submission for additional jurisdictional grounds of appeal. The mater was adjourned to 26/06/2024
4	26/06/2024	Sr.DR produced no orders before the Tribunal. The matter was adjourned to 29/07/2024.
5	29/07/2024	Sr.Dr produced order of the CIT, Sambalpur u/s.120, dated 15/11/2014 and as the order was passed after the date of the assessment order dated 31/03/2104, Tribunal held that the order dated 15/11/2014 is not relevant orde4rrs. The matter was adjourned to 02/09/2024

In the present case, in many occasions instruction was given to the Ld.DR for filing orders regarding validity of the jurisdiction of the It. CIT, Range Rourkela who completed the assessment, accordingly by virtue of binding decisions of the Orissa High Court it is requested before the Tribunal to

admit and adjudicate the legal grounds of appeal and pass appropriate order as per the law.

(F) JURISDICTIONAL NOTICE U/S.143(2) ISSUED BY ACIT, CIRCLE ROURKELA AND ASSESSMENT ORDER PASSED BY THE JT.CIT, RANGE ROURKELA WITHOUT ISSUING SECTION 143(2) NOTICE AND IN ABSENCE OF ORDER U/S 127(1), JURISDICTION ASSUMED BY JT.CIT, RANGE ROURKELA FOR COMPLETION OF ASSESSMENT AND PASSING ASSESSMENT ORDER IS NOT LEGALLY VALID AND DESERVES TO BE HELD AS NULL AND VOID:

(F.1). The validity of the jurisdiction of the Jt. CIT, Range Rourkela can be judged in another angle. Assuming that valid order u/s 120(4)(b) is passed by the competent authority to treat the It.CIT as Assessing Officer u/s.2(7A), now the question arise whether the It.CIT can conclude the assessment and pass the assessment order without issuing notice u/s.143(2) and in absence of order u/s.127(1).

(F.2).In the present case the notice u/s.143(2),dated 18/09/2012 was issued by the ACIT, Circle Rourkela and assessment has been concluded and order dated 24/03/2024 passed by the Jt.CIT.

(F.3). Now the question arises so as to whether the non-issue of notice under section 143(2) of the Act by the Jt.CIT shall make the assessment invalid. At this juncture, we want to produce the relevant portion 143(2) of the Act.

Provision of section 143(2) provides that

"[(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income- tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.

[F.4).On a plain reading of the above provision, it is manifest that it contemplates that when an assessee files a return under section 139 of the Act, and the Assessing Officer finds that any claim as described therein is inadmissible, he is mandatorily required to serve a notice u/s 143(2) to the

assessee specifying particulars of such claim and a date on which he should produce or caused to be produced, any evidence or particulars specified therein on which the assessee may rely in support of such claim.

(F.5). Once It. CIT assumes the position of Assessing Officer u/s 2(7A) by virtue of an order u/s.120(4)(b) for conducting assessment proceedings he is mandatorily required to serve a notice u/s.143(2).

In the instant case, we find that notice u/s.143(2) has not been issued by the It.CIT as required in the Statute and no order u/s.127(1) was passed for transferring jurisdiction from the ACIT to JT.CIT.

At this stage it will be appropriate to refer the provisions of section 127 of the Act as under:

Section 127 power to transfer cases:

"Sec.127 (1). The (Principal Director General or] Director General or Principal Chief Commissioner or Chief Commissioner or [Principal Commissioner or] Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(3). Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

Continuation Sheet

(4). The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not be render necessary the reissue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case has been transferred"

Under the aforesaid provision of section 127, the Appropriate Authority not below than CIT can transfer any case at any stage of the proceedings from one Assessing Officer subordinate to him to another. This section expressly provides that on such a transfer it is not necessary to reissue any notice when the same has been issued by the Assessing Officer from whom the

case is transferred and the Assessing Officer to whom the case is transferred is entitled to proceed from the stage at which he receives the case from his predecessor.

(F.6). We may rely upon the decision of the Punjab & Haryana High Court in the case of "Lt. Col. Paramjit Singh Vs. CIT [1996] 89 Taxman 536 (P&H.HC)" where it was held as under:

"It is clear that in absence of any transfer order no Assessing Officer other than who initiated the proceedings or completed the assessment shall have jurisdiction to continue with the proceedings or even to reopen a concluded assessment" (Copy enclosed at CLPB-2.Pg. Nos.- 75 0 771

(F.7). Further reliance is placed upon the decision of the Cuttack Tribunal in the case of "Dilip Kumar Chatterjee Vs.ACIT [2018] 97 taxmann.com 283 (Cuttack. Trib)". The Head note of the said judgment reads as under:

"Section 127 read with sections 120 and 124, of the Income-tax Act, 1961- Income- tax authorities Powers to transfer cases Assessment year 2006-07- Whether where assessment proceedings under section 143(2) were initiated by Assistant Commissioner, circle-2(1), Bhubaneswar but were taken over in middle of proceedings by Assistant Commissioner, (OSD), Range-2, Bhubaneswar and completed by him, since there was no any valid transfer of jurisdiction as required under section 127, impugned assessment order so passed was unjustified and had to be set aside - Held, yes [Para 20] [In favour of assessee]"

The operative para's of the said order reads as under:

"18. The issue involved in this appeal can also be viewed from one another angle. The issue involved is that the Assistant Commissioner of Income Tax, Circle-2(1), Bhubaneswar, having jurisdiction over the case of the assessee, issued notice u/s.143(2) of the Act in exercise of that jurisdiction. After exercise of that jurisdiction which was conferred upon him under law, can the case of the assessee be transferred to another officer i.e. ACIT(OSD), Range-2, Bhubaneswar without passing any order u/s.127 of the Act merely on the ground that the other officers also had concurrent jurisdiction over the case of the assessee.

19. We find that the issue is squarely covered by the decision of Hon'ble Delhi High Court in the case of Valvoline Cummins Ltd. v. Dy. CIT (2008) 171 taxman 241/307 ITR 103 wherein it has been held as under

"When a 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 either 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 exercise of that power.

Further in para 29, the Hon'ble High Court has held as under:-

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 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."

20. In view of the above decision of Hon'ble Delhi High Court, the ACIT(OSD), Range-2, Bhubaneswar could not have jurisdiction to pass the assessment order in case of the assessee as the ACIT, Circle-2(1), Bhubaneswar had already exercised the jurisdiction by issuing notice u/s.143(2) of the Act when admittedly no order u/s.127 of the Act was passed by the competent authority under that section.

21. Accordingly, we hold that the order passed by the Additional Commissioner of Income Tax, dated 25th November, 2008 re-assigning the cases to the ACIT(OSD), who is the Assessing Officer in the present case, is

not maintainable and consequently, the orders passed by the AO and confirmed by the CIT(A) in the case of present assessee are hereby quashed. We order accordingly.

22. In the result, appeal of the assessee is allowed. "

F.B) Further we may rely upon the decision of the Calcutta High Court in the case "Kusum Goyal Vs. ITO (2010) 329 ITR 283 (Cal.HC)" where it was held as under: "Section 127 of the Income-tax Act, 1961-Income-tax authorities Power to transfer cases Assessment years 2006-07 to 2008-09- Whether Assessing Officer on his own cannot transfer an income-tax file to another officer as he is required to pass an order to that effect under section 127(3) Held, yes"

The operative para's of the said order reads as under

"8. From a reading of the language of section 127(3) it is evident that when a file is transferred from one Assessing Officer to another whose offices are located in the same city, locality or place, though other statutory formalities are required to be complied with, the opportunity of hearing as postulated in section 127(1) and (2) in case of inter city transfer, is not required.

9. Now, keeping the position of law in mind let the letter/notice dated October 21, 2009 issued by respondent No. 2 be examined in order to appreciate the issue it is necessary to refer to the relevant portion of the impugned intimation issued by respondent No. 2 which is as under:

"Since your income has exceeded minimum threshold limit of Rs.10 lakhs for the assessment year 2007-08, the jurisdiction to/of your case automatically gets vested with the jurisdictional DCIT-Circle-54, Kolkata as per above directives

You are kindly informed hereby that no order under section 127 of the Income-tax Act, 1961, by the learned Commissioner of Income-tax XIX, WB is required to be passed for getting the assessment records transferred from Income-tax Officer, Ward-54(2), Kolkata to DCIT Circle-54, Kolkata by virtue of the provisions of sub-section (3) of section 127 of the Income-tax Act, 1961. For your ready reference the provisions of the said section is appended below.

Section 127 sub-section (3) of the Income-tax Act, 1961 states/reads as

From the foregoing provisions it is clear that the Commissioner of Income-tax is not required to pass any order transferring the case from/to any Assessing Officer(s) if the offices of all such officers are situated in the same city, locality or place." (emphasis1 supplied)

10. It is evident that respondent No. 2 had sought to justify his action by stating that the jurisdiction automatically gets vested with the jurisdictional officer and no order under section 127 is required to be passed. In my view, the letter/notice dated October 21, 2009 is patently illegal since it has been held in this judgment that in case of transfer within the same city, locality or place although the opportunity of hearing as postulated in section 127(1) and (2) has been dispensed with, other statutory formalities which includes issuing an order are required to be complied with. Similarly transfer of files for the assessment years 2007-08, 2008-09 and the earlier years as intimated in the letter/notice dated July 30, 2009 issued by respondent No. 1 is also bad in law. The argument of the respondents that in case of intra city transfer no order is required to be passed, cannot be accepted in view of the settled position of law in Kashiram Agarwalla [1965] 56 ITR 14 (SC) and in S.L Singhania (1992) 193 ITR 275 (Del.HC) wherein the validity of the orders were under challenge, meaning thereby an order recording transfer has to be on the records. The Judgment in Subhas Chandra Bhaniramka (2010) 320 ITR 349 (Col.HC) where it has been held that in case of transfer of file under section 15880 resort has to be made to section 127 also applies in the instant case. The judgment in M. A. E. K. K. Varma (1981) 129 ITR 31 (AP.HC) relied on by the Revenue is not applicable as it dealt with the question whether in case of intra city transfer notice is required to be served and whether separate orders of transfer are required under the Wealth-tax Act, 1957 and the Gift-tax Act, 1958. Therefore, since it has been held in this judgment that it is imperative on part of the respondents to issue order under section 127(3), the letters/notices under challenge are set aside and quashed. The writ petition is allowed. Consequential proceedings are also set aside and quashed. Accordingly, the notice dated 6th January, 2010 regarding the penalty proceedings under section 271(1)(c) for the assessment year 2006-07 is also set aside and quashed. The application being G. A. No. 81 of 2010 is also allowed.

11. No order as to costs. [Copy Enclosed CLPB-2.Pg.Nos.

(H'). TIME LIMIT SPECIFIED U/S.124(3) IS APPLICABLE WHERE OBJECTION IS RAISED RELATING TO TERRITORIAL JURISDICTION OF THE ASSESSING OFFICER AND IT HAS NO APPLICATION WHERE OBJECTION IS RELATING TO SECTION 127 ORDER AND LACK OF JURISDICTION OF THE ASSESSING OFFICER:

(H.1). The time limit specified u/s.124(3) is applicable where objection is relating to Territorial Jurisdiction. In the present case objection is relating to absence of section 127 order transferring the case from the ACIT to Jt.CIT. The time limit specified u/s.124(3) has no applicability where objection is relating to transfer of the case u/s.127.

(H.2). Hon'ble Kerala High Court in K. Kader Haji v. CIT [2004] 268 ITR 465 (Kerala.HC) clarified distinction between sections 120 and 127. It was held that section 120 uses the expression 'jurisdiction' whereas section 127 uses the expression 'power' having different meaning and content. While exercising section 127 gives power to the Chief Commissioner to transfer case from one officer to another officer whereas section 120 gives jurisdiction to the Assessing Officer to make assessment over the assessee assigned to them.

(H.3). Reliance is placed upon the decision of the Agra Tribunal in the case of "ACIT Vs. Welcome Coir Industries Ltd. ITA Nos.269 & 270/Agra/2013, dated 16/10/2017 reported in [2018] 91 taxmann.cm 60 (Agra. Trib)" where at Para.14" it was held as under:

"14. Further, the CIT(A) is correct in observing that on going through the provisions of section 124, it can be seen that the said assessment orders cannot be protected by any provision of section 124, because the provisions of section 124 apply to the cases in which the Assessing Officer gets jurisdiction by virtue of any order issued under sub-section (1) or sub-section (2) of section 120. However, in the present case, the Assessing Officer has claimed jurisdiction over the assessee by virtue of an order u/s 127 of the Act, which has been found to be neither passed as per law, nor passed specifically in the case of the present assessee. Therefore, the assessment orders are neither protected by the provisions of section 124, nor sustainable under law, having been passed, without jurisdiction in view of a defective order passed u/s 127 of the Act. "[PB.Pg.Nos.top-1

(H.4). Further reliance is also placed upon the decision of the Delhi Tribunal in the case of "Mega Corporation Ltd Vs. Addl.CIT [2015] 62 taxmann.com 351/155 ITD 101 (Del.Trib)" where it was held as under:

"8.5 Further more reliance on provisions contained in section 124 of the Act is of no help to the revenue inasmuch as here is a case where the Additional Commissioner of Income Tax lacks jurisdiction and is not a case of either irregular exercise of jurisdiction or territorial jurisdiction. The Hon'ble Delhi High Court in the case of "Valvoline Cummins Ltd. Vs. Dy.CIT [2008] 307 ITR 103 (Del.HC)" has held as under:

"This is well settled, that mere acquiescence in the exercise of power by a person who does not have jurisdiction to exercise of power by a person who does not have jurisdiction to exercise that power, cannot work as an estoppels against him."

(1).COORDIANTE BENCH OF THE TRIBUNAL CAN NOT OVERRULE THE EARLIER JUDGMENT OF THE COORDIANTE BENCH OF THE SAME TRIBUNAL WITHOUT REFERRING THE MATTER TO A LARGER BENCH:

In order to maintain judicial discipline and harmony the Tribunal could not differ with the view of an earlier Coordinate Bench and when a co-ordinate Bench doubts the correctness of the decision of the another co-ordinate Bench of the same Tribunal, a reference can be made to the President for constitution of a Larger Bench.

The above proposition is fortified by the decision of the Hon'ble Delhi High Court in the case of "Thirani Chemicals Ltd Vs. DCIT [2006] 153 Taxman 45 (Del.HC)" where it was observed as under:

"Coordinate Bench of Tribunal cannot disagree with view taken by an earlier Coordinate Bench of same Tribunal and in case it finds itself in disagreement with earlier Coordinate Bench decision, to refer matter to a larger Bench for adjudication on point of disagreement"

Mumbai Tribunal in the case of Mehratex India Lid V. DCIT (2005) 3 SOT 539 (Mum. Trib)" held as under:

"No doubt that when a co-ordinate Bench doubts the correctness of the decision another co ordinate Bench, a reference can be made to the President for constitution of a larger Bench" (CPB-2.Pg.Nos.

(LAW DECLARED BY NON-JURISDICTIONAL HIGH COURT WAS FINAL LAW OF LAND IN ABSENCE OF CONTRARY DECISION GIVEN BY JURISDICTIONAL HIGH COURT:

Hon'ble Bombay High Court in CIT v. Smt. Godavaridevi Sorof [1978] 113 ITR 589, wherein it has been laid down that the law declared by non-jurisdictional High Court was final law of land, in the absence of any contrary decision of another High Court. It was further pointed out that until contrary decision was given by any other Competent High Court which was binding on the Tribunal in the State, then it has to be proceeded on the footing with the law declared by the High Court, though of another State was final law of land.

Hon'ble Guahati High Court in the case of "CIT Vs. Highway Construction Co. (P.) Ltd [1996] 217 ITR 234 (Gauhati.HC)" observed that "In absence of jurisdictional High Court Order and no contrary decisions of other High Courts Tribunal shall follow the decisions of High Courts of the other State".

Reference is drawn to the decision of the Hon'ble Gujarat High Court in the case of "CIT VS. Sarabhai Sons Ltd [1983] 143 ITR 473 (Guj.HC)" where it was observed that Income-tax being an all India Statute and it is desirable in interest of uniformity that one High Court should follow the decision of another High Court and it was not prudent to differ from the views taken by the other High Courts"

Where two views are expressed by different High Courts on interpretation of certain provisions the interpretation favours the assessee shall be adopted. Reference is made to the decisions of the Supreme Court in the case of " CIT v. Madho Pd. Jatia [1976] 105 ITR 179 (SC), CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 and CIT v. Kulu Valley Transport Co. (P.) Ltd. (1970) 77 ITR 518 (SC)."

(1). HUMBLE PRAYER BEFORE THE TRIBUNAL TO HELD THE ASSESSMENT ORDER DATED 24/03/2014 AS NULL AND VOID:

In view of above discussion including that of judicial precedents it is humbly prayed before the Tribunal to adjudicate the legal jurisdictional grounds of appeal relating to jurisdiction of the Jt.CIT, Range Rourkela who is lack of

jurisdiction in absence of order u/s.120(4) clause (b) and order u/s 127 to assume valid jurisdiction to act as the Assessing Officer for passing assessment order dated 24/03/2014, accordingly the assessment order may kindly be held as non-est illegal and deserves to be quashed without remanding back the same to the ACIT who initiated the assessment proceeding.

W.S FOR GROUNDS OF APPEAL -DISALLOWANCE OF EXPENDITURE U/S.14A:

"MAY YOUR HONOUR PLEASE BE' consider the following as our written submission in relation to the merits of the legal and jurisdictional grounds of appeal raised before the Tribunal

(A) GROUNDS OF APPEAL RAISED BEFORE THE TRIBUNAL RELATING TO DISALLOWANCE OF EXPENDITURE:

That vide letter dated 21/06/2023, the assessee appellant replaced the grounds of appeal raised in the appeal memo filed on 07/03/2023. The replaced grounds of appeal relating to disallowance of expenditure of Rs. 47,61,689/- made in the assessment order and confirmed by the CIT(A) reads as under:

"1. That on the facts, and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming disallowance of Rs. 47,61,689/- made u/s. 14A r.w.r 80 being expenses incurred for earning exempt dividend income without appreciating the fact that assessee's own interest free funds was exceeding the investment made for earning exempted income and in similar facts disallowances made in the assessment orders for the A.Y's. 2012-13 & 2013-14 was deleted by the Ld.CIT(A), thus assessee prays for deletion of the disallowance for the assessment year 2011-12 of Rs.47,61,689/- in full under the principles of consistency."

(B) ASSESSEE'S FREE FUNDS ARE MORE THAN INVESTMENT MADE FOR EARNING EXEMPTED INCOME NO DISALLOWANCE U/S.14A- AS HELD BY THE SUPREME COURT IN THE CASE OF SOUTH INDIAN BANK LTD VS. CIT (2021] 130 TAXMANN.COM 178 (SC):

During the F.Y.2011-12 the assessee's investment yielded tax free dividend income of Rs. 25,48,667/-. In the absence of suitable explanation, the AO took a view that the Investment from which tax free dividend income was earned might have been made out of Interest bearing funds and assessee

might have incurred certain expenses for earning tax free income. [PB.Pg.Nos.36.Audited Financials for F.Y.2010-11).

AO without recording his satisfaction for applying Rule SD and without bringing any material for justification of his disallowance u/s.14A r.w.r 8D made disallowance of Rs.47,61,689/-which was confirmed by the CIT(A).

In the present case assessee's free funds as at 31/03/2011 was exceeding the investments made for earning exempt income which was under:

F.Y.(A.Y).	Investment (Rs.)	Own Interest free Funds (Share Capital Plus Reserve & Surplus).(Rs.)
2010-11.(A.Y.2011-12).	39,43,35,181/-	44,27,51,185/-

[PB.Pg.Nos.31-Audited financials for the F.V.2010-11]

Hon'ble Supreme Court in the case of South India Bank Ltd Vs. CIT [2021] 130 taxmann.com 178 (SC) wherein it was held no disallowance of expenses is warranted if the own fund of the assessee exceeds the amount of investment

The relevant extract of the head note is reproduced as under:

"Section 14A of the Income-tax Act, 1961 Expenditure incurred in relation to exempt income not includible in total income (General) - Assessee-scheduled banks earned income from investments made in tax-free securities Assessing Officer made proportionate disallowance of interest attributable to funds invested to earn tax free income under section 14A on grounds that separate accounts were not maintained for investment in tax-free securities Whether since interest free own funds available with assessee exceeded their investments; investments would be presumed to be made out of assessee's own funds and proportionate disallowance was not warranted under section 14A on ground that separate accounts were not maintained by assessee for investments and other expenditure incurred for earning tax-free income Held, yes [Para 27] [In favour of assessee]. [Copy enclosed].

(C).CIT(A) DELETED THE(C).CIT(A) DELETED THE DISALLOWANCES UNDER SECTION 14A FULLY FOR THE A.Y.2012- 13 AND A.Y.2013-14 APPLYING THE DECISION OF THE SUPREME COURT IN THE CASE OF " SOUTH INDIAN BAK VS. CIT (SUPRA):

(C.1). For the F.Y.2011-12 relevant to A.Y.2012-13, assessee earned tax free dividend income of Rs.58,87,803.59 and AO disallowed Rs. 49,62,140/- which was deleted by the CIT (A) vide order dated 30/03/2023 in Appeal No:Sambalpur/10032/2015-16 with the observation that own free funds are more than the investments made for earning tax free income and no expenditure are incurred by the Assessee for earning exempt income and AO has not recorded his satisfaction for applying Rule 8D. [PB.Pg.Nos.78 to 80).

The position of own free funds and the investment made for earning exempt income as at 31/03/2012 are as under:

F.Y.(A.Y).	Interest free funds available for making investment for earning tax free dividend income (Rs.)	Interest free funds advanced to sister Concerns	Own Interest free Funds (Share Capital Plus Reserve & Surplus). (Rs.).	Investment (Rs.)
2011- 12. (A.Y.2012-13).	47,68,37,177/-	69,54,489/-	48,37,91,666/-	6,87,43,035/-

[Pg.Nos.508 62 of the Audited Financials).

(C.2). For the F.Y.2012-13 relevant to A.Y.2013-14, assessee earned tax free dividend income of Rs.13,10,958/-and AO disallowed Rs.32,44,683/- which was deleted by the CIT (A) vide order dated 30/03/2023 in Appeal No:Sambalpur/10033/2017-18 with the observation that own free funds are more than the investments made for earning tax free income and no expenditure are incurred by the Assessee for earning exempt income and AO has not recorded his satisfaction for applying Rule BD. [PB.Pg.Nos. 100 to 102).

The position of own free funds and the investment made for earning exempt income as at 31/03/2012 are as under:

F.Y. (A.Y).	Interest free funds available for making investment for earning tax free dividend income (Rs.)	Investment (Rs.).
2012- 13.(A.Y.2013- 14).	45,44,06,351/-	1,05,12,937/-

[Pg.Nos.50& 62 of the Audited Financials).

(D).HUMBLE PRAYER BEFORE THE TRIBUNAL TO DELETE THE DISALLOWANCES OF Rs.47,61,689/-MADE U/S.14A R.W.R 8D:

In view of above discussion and CIT (A) order for A.Y.'s-2012-13 & 2013-14 including that of judicial precedents it is humbly prayed before the Tribunal to delete the disallowances of Rs. 47,61,689/-made by the AO and confirmed by the CIT(A)."

11. On merits, it was submitted by Id AR that the Assessing Officer and Id CIT(A) has not considered the fact of availability of non-interest bearing funds in the form of capital and reserve, wherein, he has made the disallowance by applying the provisions of section 14A w.r.Rule 8D of I.T.Rules.

12. Ld SR DR submitted that the Assessing Officer has considered all these issues, wherein, he has made the disallowance and Id CIT(A) confirmed the same.

13. We have considered the rival submissions. In regard to technical grounds raised by the assessee, the crux of the arguments is that the ACIT, Circle-1(1),Rourkela has issued notice u/s.143(2) of the Act, whereas the assessment has been basically completed by the Id JCIT, Rourkela Range, Rourkela. A perusal of the return of income filed by the assessee shows that the return has been filed with ACIT, Circle-1(1), Rourkela. Notice u/s.143(2) of the Act shows that the notice has been issued from the office of ACIT, Circle-1(1), Rourkela and the signing authority is ACIT, Rourkela, Circle, Rourkela. A perusal of the assessment order and the demand notice

u/s.156 shows that the order has been signed by JCIT, Rourkela Range, Rourkela. A perusal of the assessment order shows that the assessee has cooperated in the assessment proceedings in its entirety. There is no dispute regarding representation of the opportunities in the course of assessment proceedings. A perusal of the provisions of section 127 of the Act shows that order u/s.127 of the Act is required when there is change in the jurisdiction of the Assessing Officer whether it is with or without concurrence jurisdiction. When the Assessing Officer changes when it is within the same city/locality or place, no opportunity also needs to be given to the assessee. One needs to understand the reason for issuance of order u/s.127 of the Act and an order u/s.127 of the Act is to bring to the attention of the assessee and to hear the assessee in regard to the difficulty he may face or has to face whether one place to another place, the assessee can have cause of challenge just because the assessment is being done by one officer or another officer when the officers are in the same locality or place. This is why the provisions of section 120(5) has also been provided that there is no authority taking over in doing assessment in same place there is no reason to challenge or questioning the jurisdiction. A secondary protection has been given to the assessee in the form of provisions of section 124(3) that once assessment proceedings is started by wrong officer, opportunity is granted to the assessee to challenge such mistake especially so that that mistake in jurisdiction can be corrected. It

does not lie in the mouth of the assessee that after cooperating in the assessment proceedings and then turn around and challenge the jurisdiction saying that the correct officer has not done the assessment as especially when in the present case the Superior Officer has passed the assessment and there is no change in the location of the Superior Officer when completing the assessment. Further, a perusal of the communication dated 20.5.2024 of the Pr. CIT, Sambalpur also clearly shows that the concerned order is not traceable. In other cases having similar issue speaking orders have been passed and copies of such orders have been produced before the Tribunal. Just because one order having similar direction is not produced because it is not traceable cannot be held against the Revenue especially when Pr. CIT has shown the cause that in other cases of similar nature, orders have been passed.

14. Coming to the decision of the decision of the Hon'ble Supreme Court in the case of Kalinga Institute of Industrial Technology (supra), it must be mentioned here that there is no distinction given regarding territorial jurisdiction or technical jurisdiction. The provisions of section 124(3) of the Act specifically require a challenge to any jurisdiction, if it is so challenged by the assessee within 30 days of the issuance of the notice or the assessment order whichever is earlier. This is a protection not only for the assessee but also for the revenue insofar as even assuming that the assessment order is passed by a Wrong Assessing Officer and same is

challenged by an order u/s.124(3), it has come into existence, the liberty always available with the Assessing Officer subject to condition of time limit is upon the Assessing Officer to initiate proceedings by the Correct Assessing Officer by applying the due process of law. It is not permissible to let time slide makes the assessment time barred just because both parties given opportunity. In the assessee's case though the assessee has repeatedly mentioned that the issue of jurisdiction has been raised before the Id CIT(A), it must be mentioned here that the appeal has been filed before the Id CIT(A) on 28.4.2014 and the issue of challenge to the jurisdiction has been taken in March, 2022 that too in the written submission without following due procedure of law of raising additional ground of appeal. From 28.4.2014 till March 2022, the assessee unfortunately was silent in regard to the technicality. When an opportunity was afforded to the assessee to take the matter before the Id CIT(A) and obtain order from the Id CIT(A), the assessee has chosen to tide the hands of the Tribunal with a favourable order. The Tribunal admittedly has limited resource in respect of information which is placed before it. Pr. CIT has categorically passed an order to transfer the jurisdiction. Pr. CIT has placed similar orders in other cases and, therefore, the Tribunal is not in a position to take a view that such order in assessee's case would be non-existent. Presumption was that a Government order should be read from the complete facts as a reason in similarly placed case also and the Revenue

has successfully shown similarly placed case where necessary orders have been produced and passed. We are also not inclined to follow the decision of the Co-ordinate Bench of this Tribunal in the case of Mega Corporation Ltd (supra) as also other cases referred (supra) by Id AR of the assessee insofar as the provisions of section 124(3) of the Act has not been considered in its perspective nor as provisions of section 120(5) read alongwith section 127 of the Act in its perspective. The decision of the Coordinate bench of Mumbai Tribunal in the case of Novartis (supra) is also applicable insofar as the assessment in the present case was completed as earlier as in 2014 and after nearly 8 years, the assessee has taken up to challenge the jurisdiction to a Superior Officer functioning from the same Range and same location. This being so, the issue of technicality is held against the assessee. All the additional grounds of appeal taken are dismissed.

15. In regards to the merits of the case, the facts of the case are that the Assessing Officer has made the disallowance of Rs.47,61,689/- u/s 14A read with Rule 8D by holding that the assessee has made investments which had earned tax free income and since interest bearing funds were involved, therefore, the provisions of section 14A are applicable to the instant case.

16. Before us, Id AR submits that the assessee is having sufficient interest free funds in the shape of share capital plus reserves and surplus to

the tune of Rs.44,27,51,185/- as against which total investments were made to the tune of Rs.39,43,35,181, thus the investments have been made out of own interest free funds without utilising the borrowed funds. Therefore, he submits that no disallowance could be made in the hands of the assessee. Besides this, the assessee has made written submissions on this issue, which has been reproduced hereinabove, wherein, reliance is also placed on certain judicial pronouncements. He further submits that in the subsequent assessment years i.e. A.Y. 2012-13 and 2013-14, the disallowance made u/s.14A of the Act was deleted by the Id CIT(A) and copy of the orders are placed on record. Thus, in view of the principle of consistency also, the disallowance so made deserves to be deleted and he prayed accordingly.

17. Per contra, Id Sr DR vehemently supported the orders of lower authorities and further submits that though the assessee is having sufficient interest free funds at the end of the year, however, from the perusal of balance sheet, it could be seen that the assessee is having opening balance of reserves and surplus to the extent of Rs.14,77,20,330.80, which has increased to Rs.42,48,31,185.31 at the end of the previous year i.e. on 31.3.2011. Thus, there is an increase in the amount of reserve and surplus to the extent of Rs.27,71,108.55 during the year. Simultaneously, the investments from which the assessee has earned interest free income, was increased from Rs.42.35 lakhs to Rs.39.43 lakhs at the end of the previous

year. Thus, there is substantial increase of Rs.39,01,00,171 in the amount of investments during the year. Merely the amounts of reserves and surplus is incremental, it cannot be said that the reserves ad surplus has resulted into the source of investment made more particularly when the Assessing Officer in the remand report has specifically stated that there was increase in the total assets to the tune of Rs.22.41 crores. Accordingly, Id Sr DR submits that it is a case where increase in the reserve and surplus were utilised for increasing in the assets of the company besides this, there were substantial increase in the amount of secured loans which were increased from Rs.130,655,237. To Rs.218,076,676.01 at the end of the year. Id Sr DR submits that the increase in secured loans clearly suggest that interest bearing funds were utilised in making investments having exempt income. Thus, it is prayed by Id Sr DR that the disallowance so made deserves to be upheld.

18. We have considered the rival submissions. From the arguments putforth by both the sides, we find that the assessee though had sufficient interest free funds in the shape of share capital plus reserves and surplus at the end of the year, however, there was substantial increase of Rs.39.01 crores in the value of the investments yielded tax free income. We are also in agreement with Id Sr DR that there was substantial increase in the assets of the company as well as borrowed funds from the banks and financial institutions. The assessee has failed to establish any nexus between

interest free funds and investments made thereon. It is also a matter of fact that during the year under appeal, the assessee had earned tax free income in the shape of dividend to the tune of Rs.25,48,667/- which was claimed as exempt. Section 14A specifically provides that any expenditure incurred for earning the exempt income should not be allowed. In the instant case, the facts as stated above clearly indicate that there must be some interest bearing funds which were utilised in making investments for earning exempt income. Accordingly, we are of the view that provisions of section 14A are applicable in the present case. However, it is seen that the disallowance made by the AO after invoking the provisions of Rule 8D of IT Rules comes to Rs.47,61,689/- and the assessee is having exempt income of Rs.25,48,667/-. The Hon'ble Delhi High Court in the case of Chemvist Limited, 378 ITR 33 (Del) has held that when the assessee is having no exempt income, no disallowance could be made in the hands of the assessee. Further, the Hon'ble Supreme Court in the case of Maxopp Investment vs CIT, 402 ITR 640 (SC) has held that disallowance u/s.14A should not be made on the interest free amount used for exempt income. In the present case though the amount of disallowance worked out as per Rule 8D is higher than the amount of exempt income earned by the assessee. The Hon'ble Supreme Court in the case of State bank of Patiala reported in (2018) 99 taxmann.com 286 (SC) and Hon'ble Delhi High Court in the case of CIT vs. CIT vs Joint Investment Pvt Ltd., reported in 372 ITR

69(Del) held that disallowance u/s.14A is to be restricted to the extent of exempt income earned by the assessee. Thus, respectfully following the aforesaid judgments of Hon'ble Supreme Court and Hon'ble Delhi High Court, the disallowance u/s.14A is restricted to the exempt income i.e. Rs.25,48,667/- and remaining amount is hereby deleted. This ground of appeal is partly allowed.

19. Ground No.2 taken by the assessee through modified grounds of appeal is not pressed by Id AR thus, same is dismissed as not pressed.

20. As a result, additional legal grounds raised by the assessee are dismissed and modified Ground No.1 is partly allowed and modified Ground No.2 is dismissed.

21. In the result, appeal of the assessee is partly allowed.

Order dictated and pronounced in the open court on 16/12/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 16/12/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : M/s. Altrade Minerals Pvt Ltd., C/O. Kadmawala & Co., C.A., Budhram Oram Market, Kachery Road, Rourkela
2. The respondent: Asst. Commissioner of Income Tax, Central Circle, Sambalpur
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.Secretary
ITAT, CUTTACK

