

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 58/RPR/2024
(निर्धारण वर्ष Assessment Year: 2011-12)

Dolphin Promoters and Builders, A-1, Near Sai Mandir, Devendra Nagar Road, Sai Nagar, Raipur, C.G.-492001	v s	Addl. CIT, Range-1, C R Building, Civil Lines, Raipur, C.G.- 492001
PAN: AAefd2588E		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Sunil Kumar Agrawal & Vimal Kumar Agrawal, CA's
राजस्व की ओर से /Revenue by	:	Shri S. L. Anuragi, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	19.12.2024
घोषणा की तारीख /Date of Pronouncement	:	30.01.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals), NFAC, Delhi, (in short "Ld. CIT(A)"), u/s 250 of the Income Tax Act, 1961 (in short "the Act"), passed on 28.07.2023, which in turn arises from the order passed by Additional Commissioner of Income Tax, Range-I, Raipur (in short "Ld. AO") u/s 144 of the Act, dated 03.02.2014, for AY. 2011-12.

2. The grounds of appeal raised by the assessee, are as under:
1. *On the facts and circumstances of the case and in law, Id. CIT(A) has erred in sustaining the addition of **Rs.1,58,73,094** on **denying the deduction claimed u/s801B(10)** under Chapter- VI-A, which is unjustified and is liable to be allowed.*
 2. *On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining the addition of **Rs.4,35,42,600** on the count of '**unsecured loans**' treating it as **unexplained cash credits u/s68**, which is unjustified and is liable to be deleted.*
 3. *On the facts and circumstances of the case and in law, Id. CIT(A) has erred in sustaining the addition of **Rs.6,29,720** on the count of **interest** on unsecured loans, which is unjustified and is liable to be deleted.*
 4. *On the facts and circumstances of the case and in law, Id. CIT(A) has erred in sustaining the addition of **Rs.1,68,00,000** on the count of '**sale proceeds** of immovable property sold on 4-11-20, treating it as **undisclosed business receipts**, which is unjustified and is liable to be deleted.*
 5. *On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining the addition of **Rs.50,00,000** made by the Id. AO on account of ad hoc basis, which is unjustified and is liable to be deleted.*
 6. *The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.*

3. The brief facts of the case, as described by the Ld. CIT(A), are extracted as under:

4. Brief facts of the case are that the appellant firm derives income from Real Estate business and construction. The return of income for the A.Y. 2011-12 was filed electronically on 30.09.2011 declaring total income of Rs.79,15,730/-. Net agricultural income was shown as Nil but still the aggregate income was shown as Rs.82,60,200/-. Subsequently the assessee revised the return, twice, on 23/3/2012. In the latest return of income, the assessee declared total income of Rs.79,15,730/-. Net agricultural income was shown as Nil and the aggregate income was shown as Rs.79,15,730/-. The case was selected for scrutiny through CASS and the first notice u/s 143(2) dated 1/08/2012 was issued by ACIT-1(1), Raipur and duly served on the assessee through Regd. Post on 6.8.2012 fixing the case on 21/08/2012. However, none attended in response thereto.

4.1 During the course of assessment proceedings, the AO issued various notices from time to time, calling for relevant details. The appellant did not make adequate compliance with the notices issued. A show cause notice dated 21/1/2014 was issued and duly served on the appellant on 22/1/2014 requiring the appellant to show cause as to why the assessment may not be completed 'ex-parte', on the basis of material available on record. There was no compliance even after this notice. The AO noted that the appellant is a habitual defaulter. For instance, in connection with the assessment proceedings for A.Y.2010-11, Penalty u/s 271(1)(b) of the I.T. Act amounting to Rs.20,000/- for two defaults (non-compliance with the statutory notices issued u/s 143(2)/ 142 of the I.T. Act) was levied.

4.2 Order was passed u/s 144, making the following additions:

		Amount in Rs.
	Total Income as per the revised return filed on 23-3- 2012	79,15,730
Add:	Addition on account of disallowance of claim of deduction under Chapter VIA of the I.T. Act	1,58,73,094
	Unexplained cash credit	4,35,42,600
	Disallowance of interest relating to unsecured loans held as unexplained cash credit	6,29,720
	Undisclosed business receipt	1,68,00,000
	Addition on estimate basis	50,00,000
	Total Income	8,97,61,144
	Total Income rounded off]	8,97,61,140

4. Aggrieved by the aforesaid additions in the assessment order, assessee preferred an appeal before the Ld. CIT(A), but with no success the appeal of assessee stands dismissed, confirming the additions made by the Ld. AO under various heads (**supra**).

5. Being dissatisfied with the order of Ld. CIT(A), the assessee filed an appeal before this tribunal which is under consideration in the present case.

6. At the threshold of the hearing, it is informed that the appeal of the assessee is barred by limitation being filed with a delay of 151 days. Regarding this defect Shri Sunil Kumar Agrawal, CA, Ld. Authorized

Representative (in short "Ld. AR"), submitted that the present appeal was filed with a delay of 151 days for the reason that the impugned order passed by the Ld. CIT(A) was never physically served on the assessee, whereas in appeal memo in Form No. 35, manually filed by the assessee before the First Appellate Authority, the option regarding "*whether notices / communication may be sent on email ?*" was opted by the assessee as "No" and the address of the assessee was furnished for sending the communications to the assessee. The assessee, therefore, was under Bonafide belief that the communications, such as notices and order by the First Appellate Authority will be served upon the assessee in the physical mode but the same had not happened. It was the submission that as soon as the accountant of the assessee Firm has informed in the month of January, 2024, about passing of order by the First Appellate Authority on 28.07.2023, the appellant approached its counsel to take remedial action and as suggested, the appeal has been filed in the month of March, 2024. To support the aforesaid contention, Ld. AR furnished before us an application along with affidavit of the partner of the assessee firm affirming the aforesaid facts on oath. Copy of application dated 17.05.2024 along with affidavit are extracted hereunder for the sake of completeness of facts:

ITA No. 58/RPR/2024
Dolphin Promoters and Builders vs Addl. CIT, Range-1, Raipur

DOH - 20-5-24

Before the Hon'ble IT Appellate Tribunal, Raipur Bench, Raipur

Assessee: M/s.Dolphin Promoters & Builders dt.17-5-24
A-1, Sai Nagar, Near Sai Mandir
Devendra Nagar
Raipur-492001 (CG), PAN-AAEFD2588E

ITA No.58/RPR/2024

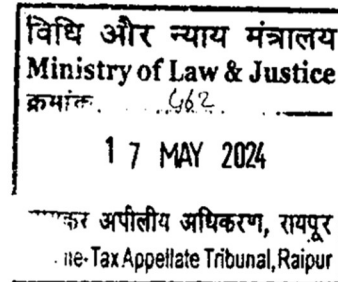
AY11-12

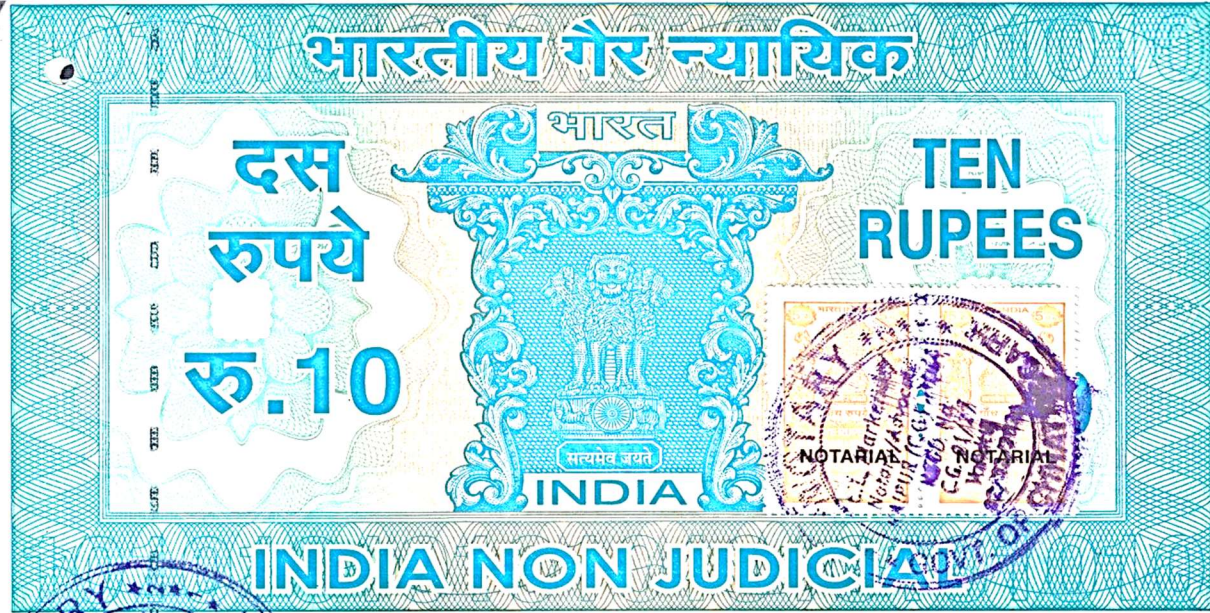
Application for submitting **affidavit** of the partner of the assessee-firm

In respect of the **delay** of **151 days** in filing appeal in Form No.36 for AY11-12 by the assessee-firm as per the defective notice issued on 27-2-24, it is respectfully submitted that, while filing Form No.36, **date of service/ communication** of the appellate order has been **mistakenly mentioned** as **28-7-23** (i.e., the **date of passing** the appellate order u/s250); however, the assessee-firm has, in fact, **not received** the appellate order dt.28-7-23 in **physical** form; however, appeal for AY11-12 was filed **manually** on 10-3-14 before CIT(A) in which there was no column was provided for details of "**mode of service of notices/ communication** to the assessee"; however, since the assessee was **not in habit of using mail-Id**, hence, the assessee has **opted** the option as '**No**' for receiving notices/ communication in **mail-id** under the head "**whether notices/ communication may be sent on email**" in Form No.35 at the time of filing appeal before CIT(A) for **AY15-16 & AY18-19**; thus, thereafter, the accountant, after seeing the IT portal of the assessee-firm, has told about the appellate order passed for **AY18-19** (dt.29-12-23) along with **AY11-12** (dt.28-7-23) & **AY15-16** (dt.11-9-23), in the month of **Jan, 2024**; and thereafter, the assessee-firm has filed appeal before the Hon'ble Bench on **24-2-24** in Form No.36 for the **3 AYs** (i.e., AY18-19; AY15-16 & AY11-12); however, it was **mistakenly mentioned** the date 28-7-23 in the Form No.36 (AY11-12), in respect of the 'date of receiving the appellate order', however, **no appellate order for AY11-12 in physical form has been received** by the assessee-firm; it may kindly be considered & obliged.

Yours faithfully,

Sunil Kumar Agrawal
(counsel for the assessee-firm)





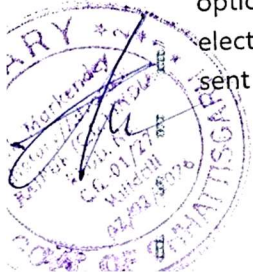
CHHATTISGARH

22AA 777969

शपथ पत्र

मैं हरमीत सिंह होरा, पिता श्री गुरुमुख सिंह होरा, उम्र 54 वर्ष, निवासी ए-1, साईं नगर देवेन्द्र, नगर रायपुर, शपथपूर्वक कथन करता हूँ कि:-

1. यह कि मैं हरमीत सिंह होरा, मेसर्स डॉल्फिन प्रमोटर्स एंड बिल्डर्स जो कि एक पार्टनरशिप फर्म है, में 45% का पार्टनर हूँ एवं अन्य पार्टनर श्री कमलजीत होरा (45%) एवं श्रीमती भवनीत कौर होरा (10%) हैं।
2. यह कि, मुझे कर निर्धारण वर्ष 2011-12 के अपील आदेश कि कॉपी फिजिकल फॉर्म में आज तक प्राप्त नहीं हुई है, चूँकि मुझे अपना ईमेल आई डी हमेशा देखने कि आदत नहीं है।
3. यह कि, कर निर्धारण वर्ष 2011-12 का अपील Form No.35 manual जमा किया गया था जिसमें "Whether notices/communication may be sent on email?" का कॉलम का option नहीं था एवं अन्य कर निर्धारण वर्ष 2015-16 एवं 2018-19 का अपील Form No.35 electronically जमा किया गया था, जिसमें "Whether notices/communication may be sent on email?" कॉलम में 'No' भरा था।



17 MAY 2024

17 MAY 2024

for, Dolphin Promoters & Builders

Partner

4. यह कि हमारी फर्म के दूसरे वर्ष, कर निर्धारण वर्ष 18-19 का भी अपीलीय आदेश दिनांक 29-12-23 को पारित हुआ, जिसकी जानकारी होने पर मैं श्री सुनील अग्रवाल, सी. ए., राजीव नगर, रायपुर के कार्यालय में जा कर संपर्क किया, तत्पश्चात उन्होंने कर निर्धारण वर्ष 11-12, 15-16 एवं 18-19, तीन वर्षों की अपील माननीय आयकर अपीलीय अधिकरण के समक्ष दिनांक 24-2-24 को एक साथ जमा करवायी।
5. यह कि, कर निर्धारण वर्ष 2011-12 के Form No.36 जो की दिनांक 24-2-24 को दाखिल किया गया है, जिसमें "Date of service or communication of the order कॉलम में गलती से दिनांक 28-7-23 लिखा गया है, जबकि मुझे मेरे अकाउंटेंट के द्वारा माह जनवरी, 2024 में अपील आदेश होने के बारे में बताया गया था।

For, Dolphin Promoters & Builders
शपथकर्ता Partner

//सत्यापन //

मैं उपरोक्त शपथकर्ता यह सत्यापित करता हूँ कि, इस शपथ पत्र की कंडिका क्रमांक 01 से 04 तक के कथन मेरी निजी ज्ञान से सत्य व सही है एवं आज दिनांक 16-5-2024 को स्थान रायपुर (छ.ग.), में अपना हस्ताक्षर कर सत्यापित किया।

For, Dolphin Promoters & Builders
शपथकर्ता Part

दिनांक: 16-5-2024
स्थान: रायपुर (छ.ग.),

10 7 MAY 2024

सत्यापन कार्य
नाम श्री. सुनील अग्रवाल
पिता पति श्री. सुनील अग्रवाल
पूर्ण पता श्री. सुनील अग्रवाल रायपुर
मो. नं. 8770042112

SOLEMNLY AFFIRMED OR
SWORN BEFORE ME BY
THE WITHIN NAMED

CL MARKANDE
NOTARY ADVOCATE
RAIPUR (C.G.) INDIA

10 7 MAY 2024

7. Backed by aforesaid submission, it was the prayer by Ld. AR that the delay involved in the present case was on account of Bonafide reasons beyond the control of assessee without any mala fide intention therefore, the same may kindly be condoned and the matter of assessee may be heard on the issues raised therein.

8. Per contra, Ld. CIT-DR objected to the aforesaid contentions raised by the Ld. AR and submitted that the delay involved in present case is inordinate, therefore, the appeal of assessee needs to be dismissed on this count itself.

9. After a thoughtful consideration to the aforesaid contention of the rival parties. On perusal of the material on record, we find that the present appeal was filed before the Ld. CIT(A) under pre faceless regime on 10.03.2014, which, thereafter, was migrated to National Faceless Appeals Centre, CBDT. It is evident from Form No. 35 filed by the assessee for appeal before the Ld. CIT(A), assessee had not mentioned any email ID, whereas against the column for information about address to which notices may be sent to the appellant, assessee filled its address as "*M/s Dolphin Promoters & Builders, A-1, Sai Nagar, Near Sai Mandir, Devendra Nagar Road, Raipur, (C.G.)*". There was no further clarification regarding the mode of communication either by the department or by the assessee, therefore, it can be presumed that the assessee was under Bonafide belief, having been served with notices / order in physical form which could never effected by the revenue. In view of such facts and circumstances, we find substance in the contention raised by the assessee that there was Bonafide reason for the reason delay in filing of

present appeal which was beyond the control of the assessee, therefore, as there was sufficient cause for not filing the appeal in time, we find it appropriate to condoned the delay involved in present case.

10. At the threshold of the hearing, Ld. AR pressed following additional grounds:

Additional Ground No. 1 dated 04.04.2024

*On the facts and circumstances of the case and in law, assessment made u/s 144 by Addl. CIT is invalid as he was not having valid jurisdiction over the assessee firm for making assessment; as he was not the 'jurisdictional AO' as per sec2(7A) who is directed u/s 120(4)(b) to exercise/perform the powers/functions conferred on, or assigned to, an 'AO' under the Act; in absence of order u/s120(4)(b) , Addl. CIT would be without authority of law for making assessment ; assessment made by Addl. CIT would be **invalid**; is liable to be quashed."*

Additional Ground No. 2 dated 18.05.2024

*"On the facts and circumstances of the case and in law, assessment made u/s 144 by Addl. CIT, Range-1, Raipur dt. 3-2-14 for AY 11-12 is invalid; in violation of sec127(1) & sec 127(3); notice u/s143(2) issued by DCIT-1(1), Raipur dt.1-8-12; there is no mention of order u/s127 by PCIT for transferring the 'case' from DCIT-1(1) to Addl. CIT; in absence of order u/s 127 & order u/s120(4)(b), assessment made u/s 144 by Addl. CIT dated 3-2-14 would be **invalid** as without having valid assumption of jurisdiction for making assessment for AY 11-12, is liable to be **quashed**."*

11. Based on aforesaid additional grounds, the assumption of jurisdiction for making the assessment by the Ld. AO has been challenged, stating that in absence of separate order passed u/s 120(4)(b) authorizing the additional CIT to perform the functions and exercised the powers of an Ld. AO u/s 2(7A) and also in absence of an order u/s 127 by the competent authority transferring the case from ACIT-1(1) to Addl. CIT, Range-1, the assessment order passed by Addl. CIT, Range-1, Raipur u/s 144 dated 03.02.2014 for the AY 2011-12 is without having a valid assumption of jurisdiction for framing the assessment, is invalid, *void ab initio*, and is liable to be quashed.

12. On the aforesaid contention by the Ld. AR, the revenue was directed to rebut, in response Ld. CIT-DR has sought time to carry out verification of records of the Pr. CIT-1, Raipur, to check that whether any order u/s 120(4)(b) of the Act to confer the jurisdiction to Addl. CIT, Range-1 to frame assessment in the present case was passed or not. In next hearing Ld. CIT(A) further sought some time to obtain a report from the concerned AO on the issue of jurisdiction. Time and again, the issue was discussed during the hearing and time was granted to the revenue on their request to furnish the necessary information in order to satisfy the mandate of law. Ld. CIT-DR furnished

before us report from concerned AO dated 03.06.2024 and 07.10.2024, the same are extracted hereunder for the sake of completeness of facts:



OFFICE OF THE
DEPUTY COMMISSIONER OF INCOME TAX-1(1), RAIPUR
CENTRAL REVENUE BUILDING, 1st FLOOR, CIVIL LINES, RAIPUR
E Mail:raipur.dcit.1.1@incometax.gov.in

F.No.ACIT-1(1)/RPR/ITAT Matter/2024-25

Dated : 07.10.2024

To,

The Commissioner of Income Tax (DR), ITAT
Raipur

Sir,

Sub: Production of order u/s 120(4)(b)/127 report in the case of M/s Dolphin Promoters and Builders, A.Y.2011-12, PAN -AAEFD2588E -Reg-

Kindly refer to your letter F. No. Jt. CIT/R-1/RPR/DPB/2024-25 dated 30.09.2024 on the above subject which was addressed to the Pr. Commissioner of Income Tax-1, Raipur and a copy endorsed to this office with direction to trace the said order and produce the same by 07.10.2024.

2. Vide the aforesaid letter it has been communicated that the Hon'ble ITAT has directed to submit the order u/s 120(4)(b)/127 of the Income Tax Act in the above case for the A.Y.2011-12 in which assessment order u/s 143(3) of the Act was passed on 04.02.2014 on 08.10.2024.

3. It is necessary to mention here that as per record, vide letter F. No. CIT-ITAT/RPR/REQ/2024-25 dated 04.06.2024 of CIT(DR), ITAT, Raipur it was communicated that *"The Hon'ble Bench has directed to furnish the report on Additional Evidences, Notice u/s 143(2), 120(4)(b) order and also on 127 order in the case of Dolphin Promoters and Builders in ITA 58/RPR/2024 A.Y.2011-12"*.

In response, the requisite report on the aforesaid grounds raised by the assessee has already been submitted by this office to the CIT(DR), ITAT, Raipur vide this office letter F. No. DCIT-1(1)/RPR/Misc./2024-25 dated 03.06.2024 (*Copy enclosed for ready reference*).

4. Further, vide letter F. No. CIT-ITAT/RPR/127/2024-25 dated 23.09.2024 of CIT(DR), ITAT, Raipur it was communicated that

"Today i.e. 23.09.2024, during the course of hearings, the Hon'ble Bench of ITAT, Raipur has directed for providing a copy of Order U/s 120(4)(b)/127 of the Act, if any, in the case of M/s Dolphin Promoters and Builders, A.Y. 2011-12, PANO. AAEFD2588E. In this case, initially the notice u/s 143(2) of the Act was issued by the DCIT, Circle-1(1), Raipur and thereafter the entire assessment proceedings have been

completed by the then Addl. CIT, Range-1, Raipur. To make further arguments and to support the stand of the Revenue, a copy of Order U/s 120(4)(b)/127 of the Act, if any, is required."

In this regard, it is worthwhile to mention here that vide this office report dated 03.06.2024, it has already been submitted that "As per the CBDT's Instruction No.6/2009 [F. No. 22/11/2006/IT/(A-II)] dated 18/12/2009, the Range Head was entrusted the work of making assessments to reduce the gap between workload and disposal of assessment. Thus, in view of the above instruction, the Range Head passed the assessment order in the current case and for this reason, no order u/s 120(4)(b) and order u/s 127 of the Act needs to be passed in this case."

5. However, I have gone through all the facts and circumstances involved in this case and observed that the assessee has incorrectly raised the grounds on requirement of order u/s 120(4)(b) / u/s 127 of the Act in this case which is discussed in details as under:-

(1) Requirement of order u/s 127 is not applicable in this case

As discussed in para 4 above, in this case, initially the notice u/s 143(2) of the Act was issued by the DCIT, Circle-1(1), Raipur and thereafter the entire assessment proceedings have been completed by the then Addl. CIT, Range-1, Raipur. Since the jurisdiction over the case was lying with DCIT, Circle-1(1), Raipur and the DCIT, Circle-1(1), Raipur comes under the jurisdiction of Addl./Jt. CIT, Range-1, Raipur therefore the jurisdiction of the case was not changed. Being the same jurisdiction, the applicability of order u/s 127 of the Act is not required in this case.

CCIT : CCIT- Raipur, C.R. Building, Aaykar Bhavan, Raipur Phone 0771-2331600		
Pr. CIT Charge: Pr. CIT-1, Raipur		
City: RAIPUR		
Range (Designation of)CIT/Addl. CIT & his Office Address & Landline Number	Ward/Circle (Designation of ITO/AC/DC & his Office Address & Landline Number)	AO Wise Jurisdiction
Addl./Joint Commissioner of Income Tax, Range-1, New C.R. Building, Civil Lines Raipur (C.G.)- 492001 0771- 2331953	Deputy/Asst. Commissioner of Income Tax- 1(1), Raipur	<p>1. All persons being companies registered under the Companies Act, 1956 and having their registered office falling within the territorial jurisdiction of the following Assessing Officers of Range-1, Raipur</p> <p>(1) ITO 1(1), Raipur (2) ITO 1(2), Raipur (3) ITO 1(3), Raipur (4) ITO 1(4), Raipur (5) ITO Bhatapara</p> <p>Whose any one of the last three returns of income as on 1st April 2014 and as on 1st April of any subsequent F.Y shows total income /Loss of above Rs.15 lakh.</p> <p>2. The directors of the companies mentioned at (1) above.</p> <p>3. All persons being other than companies deriving income from business or profession and whose principal place of business is within the territorial jurisdiction of the following Assessing Officers of Range-1, Raipur</p> <p>(1) ITO 1(1), Raipur (2) ITO 1(2), Raipur</p>

		<p>(3) ITO 1(3), Raipur (4) ITO 1(4), Raipur (5) ITO Bhatapara</p> <p>And whose any one of the last three returns of income as on 1st April 2014 and as on 1st April of any subsequent F.Y shows total income /Loss of above Rs.10 lakh.</p> <p>4. All persons being other than companies deriving income from sources other than income from business or profession and residing within the territorial jurisdiction of the following Assessing Officers of Range-1, Raipur (1) ITO 1(1), Raipur (2) ITO 1(2), Raipur (3) ITO 1(3), Raipur (4) ITO 1(4), Raipur (5) ITO Bhatapara</p> <p>And whose any one of the last three returns of income as on 1st April 2014 and as on 1st April of any subsequent F.Y shows total income /Loss of above Rs.10 lakh.</p> <p>5. All cases that may be assigned u/s 127 of the Income Tax Act, 1961.</p>
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(2) Requirement of order u/s 120(4)(b) of the Act is also not applicable in this case

Vide the CBDT's Instruction No.6/2009 [F. No. 22/11/2006/IT/(A-II)] dated 18/12/2009, management of scrutiny workload was provided as under:-

MANAGEMENT OF SCRUTINY WORKLOAD

Kindly refer to above

2. Considering the increasing gap between workload and disposal of scrutiny assessments, it has been decided to entrust the Range Heads with the responsibility of making assessments in top revenue potential cases of the Range to be selected on the basis of returned income.

3. In this regard, targets for disposal of cases by the Range Heads are prescribed as under :—

Sl. No.	Charge	Minimum number of cases to be disposed of per year
1.	Corporate	20
2.	Non-Corporate/Mixed/Salaries	30

However, the CCiTs, considering the local circumstances and other factors, may assign more cases to the Addl. CITs/Joint CITs.

It is hereby clarified that the above targets are not applicable to Central Ranges.

The provisions of Section 120(1) and the Explanation to Section 120(1) thereof inserted with retrospective effect from 1.4.1988 vide Finance Act, 2006 whereby any Income Tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the Income Tax authority lower in rank.

Thus, in view of CBDT Instruction No.6/2009 vide which targets for disposal of cases by the Range heads were prescribed and the provision of section 120(1) of the Income Tax Act, 1961, the Addl./Jt. CIT, Range-1, Raipur had passed assessment order in the case of the assessee for which there is no requirement of order u/s 120(4)(b) of the Act.

(3) As per the provisions of Section 124(3) the assessee should have challenged the jurisdiction of Assessing Officer within stipulated time. In law, a subsequent challenge at the appellate stage on the validity of jurisdiction, is not maintainable.

(4) The CBDT vide Notification No.267/2001 under F.No.187/5/2001-ITA dated 17.09.2001 directed that the Joint CIT and Joint DIT shall exercise the powers and functions

of the Assessing Officer where so authorized by the Board or CIT. Further, Notification No.732(E) dated 31.7.2001 was issued in this regard by the CBDT. Vide Gazette Notification, CBDT directed the Joint CIT to act as Assessing Officer u/s 120(4)(b) of the Act.

(5) The Hon'ble Punjab & Haryana Court in *Jasvinder Kaur Kooner* (supra) had held as under :-

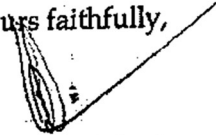
"If the assessee is aggrieved by an order of transfer, the remedy of the assessee is to challenge such as order in independent proceeding either before the higher administrative authorities as per the Act or in any independent proceedings by way of a writ petition or other wise. If no such challenge is made at the initial stage the issue cannot be raised in an appeal against the Assessment order".

In view of the aforesaid discussions, grounds raised by the assessee on the issue of order u/s 127 / 120(4)(b) of the Act needs to be rejected.

Submitted for kind perusal and needful.

Encl. as above

Yours faithfully,



(Rahul Mishra)

Dy. Commissioner of Income Tax-1(1),
Raipur (C.G.)



OFFICE OF THE
DEPUTY COMMISSIONER OF INCOME TAX-1(1), RAIPUR
CENTRAL REVENUE BUILDING, 1st FLOOR, CIVIL LINES, RAIPUR
E Mail:raipur.dcit.1.1@incometax.gov.in

F.No.DCIT-1(1)/RPR/Misc /2024-25

Dated : 03/06/2024

To

The Commissioner of Income Tax(DR)
ITAT, Raipur(CG)

Sir,

Sub: Production of case record and report on Additional Evidence, Notice u/s 143(2), 120(4)(b) order and also on 127 order in the case of Dolphin Promoters & Builders - ITA No-58/RPR/2024 – AY-2011-12 – Reg-

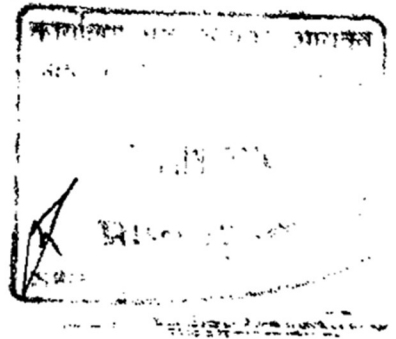
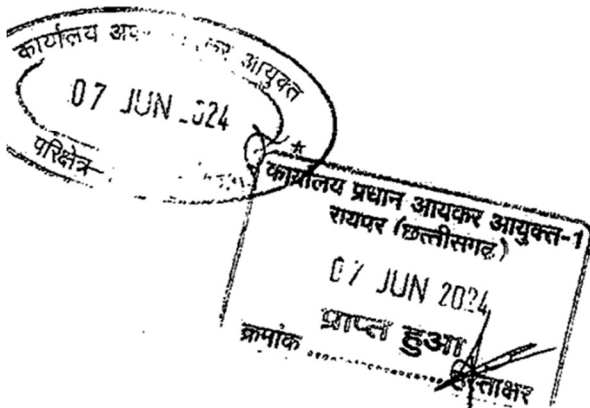
Kindly refer to your letter dated 04/06/2024 addressed to JCIT, Range-1, Raipur on the above subject.

2. In this connection, the desired information in respect of this case is as under :

GROUND NO-1: "Additional Evidences"

REBUTTAL :

The submission of the assessee is not acceptable because the statement of the assessee that they were not aware of the notices were very much wrong. This is because the NFAC/CIT(A) in its order dated 28/07/2023 at Page-5/Para-5 had clearly mentioned the facts of issuance of hearing notices and also the fact that the assessee had filed adjournment applications. This clarifies that the assessee were aware of the proceedings of appeal. Relevant portion of Order u/s 250 of the Act passed by NFAC/CIT(A) is scanned as under :



5.0 During the appellate proceedings, following hearing notices u/s 250 of the IT Act were issued:

- a) Hearing notice dated 15.01.2021 fixing hearing on 01.02.2021
- b) Hearing notice dated 07.07.2021 fixing hearing on 22.07.2021
- c) Hearing notice dated 03.12.2021 fixing hearing on 20.12.2021
- d) Hearing notice dated 10.01.2022 fixing hearing on 25.01.2022
- e) Hearing notice dated 02.03.2022 fixing hearing on 17.03.2022
- f) Hearing notice dated 11.07.2023 fixing hearing on 26.07.2023

All the notices were served on registered mail id kpf2002@gmail.com which is the primary email id as per latest return filed and on horakamaljeet@hotmail.com which is the primary email id as per e-filing profile. The appellant did not respond to any of the hearing notices and no explanation/submissions were filed. In response to the first 4 notices listed above, the appellant only filed adjournment applications. A final opportunity was given vide notice dated 11/7/2023, failing which the appeal would be decided on the basis of material on record. There has been no response to this notice till date. In the absence of any reply whatsoever, the appeal is disposed of on the basis of material available on record.

6. Decision

6.1 I have carefully considered the grounds of appeal, the statement of facts and the details mentioned in the assessment order. Grounds no. 1 and 12 are general in nature and do not require separate adjudication. Ground no. 2 states that the order u/s 144 is erroneous as it was passed without adequate opportunity of being heard. The contention of the appellant in this regard has no merit. As mentioned in the assessment order, the appellant failed to comply with the following notices: notice u/s 143(2) dated 1/8/2012 and notices u/s 142(1) dated 27/11/2013, 2/1/2014 and show cause notice dated 21/1/2014. Adequate opportunity was given but was not availed of by the appellant. Thus, ground no. 2 has no merit and it is dismissed.

6.2 Ground no. 3 is against the disallowance of deduction u/s 80IB(10) amounting to Rs. 1,58,73,094/- As seen from the assessment order, the deduction u/s 80IB(10) was disallowed for three different reasons, which are as below:

- (a) the appellant failed to furnish any details whatsoever in support of the claim of deduction under chapter VI-A, despite having the primary onus of

Further, the submission of the assessee cannot be entertained for the facts that as per the provisions contained in Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, the parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal. The provisions contained in the said rule are pari materia

with the Order 41 Rule 27 of the Code of Civil Procedure, 1908, which also does not allow the party to the appeal to adduce any additional evidence unless and until such exceptional circumstances are set out.

Materials clarificatory in nature-whether amounts to additional evidence - Courts have held that clarificatory nature of materials are not additional evidence. This issue arose before the Karnataka High Court in *Sri Shankar Khandasari Sugar Mills vs. CIT (1992) 193 ITR 669*. The issue before the court, in brief, was that the ITO framed the best judgement assessment U/S 144 relying upon the material from the Commercial Tax Department relating to the turnover of the assessee. Before the CIT(A), the assessee produced Sales Tax assessment order for the first time who refused to look into the same on the pretext of additional evidence. Holding the action of the CIT(A) to be unjustified, the court observed- "The appellate authority should have accepted the material produced by the assessee as clarificatory in nature and considered the same to test the fairness and propriety of the estimate of income made by the Income-tax Officer. Though it was belated production of very relevant material, no prejudice (in its legal sense) would have resulted to the Revenue by considering the material produced by the assessee" "In the absence of any prejudice to the Revenue, and the basis of the tax under the Act being to levy tax, as far as possible, on the real income, the approach should be liberal in applying the procedural provisions of the Act. An appeal is nothing but a continuation of the original proceeding and what the Income-tax Officer could have done, the appellate authority also could do." (emphasis supplied). Recently, in a Third Member case before the Gauhati Bench of the Tribunal in *DCIT vs. New Manas Tea Estate (P) Ltd 73 ITD 157*, the relevant facts were that the assessee had purchased tea leaves from 'A' Ltd. under an agreement pursuant to which certain amount was debited in the purchase and expenses account at a certain rate plus 0.50p in respect of the cess imposed by the Government. At the end of the year, it was found that a certain amount of cess remained payable to 'A' Ltd. The AO. disallowed the same under section 43B. Before the CIT(A) for the first time the assessee produced a letter issued by 'A' Ltd. stating therein that it had deposited cess in full. The Third Member on appreciation of these facts held that the evidence in the form of the letter could not be considered an additional evidence.

Additional evidence can be presented by the assessee on the grounds that whether it was refused by the AO/CIT(A) at the time of proceedings before them or the assessee was prevented from presenting the same. This is not the case in the current scenario. The assessee himself escaped from presenting the facts before the AO/CIT(A).

GROUND NO-1: "Notice u/s 143(2) of the Act"

REBUTTAL :

After the selection of case for scrutiny assessment through CASS, a notice u/s 143(2) of the Act was issued on 01/08/2012 by ACIT-1(1), Raipur which was duly served upon the assessee through registered post on 06/08/2012 fixing the case for 21/08/2012. This fact is also mentioned in the very first page of the assessment order passed u/s 144 of the Act dated 03/02/2014.

GROUND NO-1: "Order u/s 120(4)(b) and Order u/s 127 of the Act"

REBUTTAL :

As per the CBDT's Instruction No 6/2009 [F. No. 22/11/2006/IT/(A-II)], dated 18/12/2009, the Range Head was entrusted the work of making assessments to reduce the gap between workload and disposal of assessment. Copy enclosed.

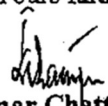
Thus, in view of the above instruction, the Range Head passed the assessment order in the current case and for this reason, no Order u/s 120(4)(b) and Order u/s 127 of the Act needs to be passed in this case.

3. Thus, looking to the facts, circumstances and matter of the case, it is requested to Set-Aside the case for complete inspection of the documents currently submitted by the assessee before, the Hon'ble ITAT.

Encl.: As above.

Case record in 1 volume.

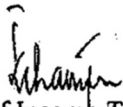
Yours faithfully,


(Tapan Kumar Chatterjee)

Deputy Commissioner of Income Tax-1(1),
Raipur

Copy to :

- 1) The Pr. Commissioner of Income Tax-1, Raipur.
- 2) The Jt. Commissioner of Income Tax, Range-1, Raipur.


Deputy Commissioner of Income Tax-1(1),
Raipur

Instruction No. 6/2009 [F.NO. 225/11/2006/ITA.II]***SECTION 144A OF THE INCOME-TAX ACT, 1961- JOINT COMMISSIONER, POWER TO ISSUE DIRECTIONS IN CERTAIN CASES – SCHEME FOR IMPROVING QUALITY OF ASSESSMENTS******Instruction No. 6/2009 [F.NO. 225/11/2006/ITA.II], dated 18-12-2009***

For past sometime the Board has been concerned about the need for improving general quality of scrutiny assessments on a sustainable basis. In this connection, reference is invited to Board's instruction No. 2/2006 dated 27.04.2006 which required monitoring of scrutiny assessments by Range Heads under the powers available to them under section 144A of Income tax Act. Instructions have also been issued from time to time for strengthening the machinery for review of assessments and inspection of assessment charges. However, it is felt that there is significant scope for improving the quality of scrutiny system. The matter came up for discussion during 25th Annual Conference of Chief Commissioner of Income tax held in August 2009. A presentation was made by CCIT Chandigarh outlining a scheme for improving quality assessments implemented in NWR Region. After taking into account various suggestions, it was decided to devise a similar scheme with appropriate flexibility for country-wide implementation.

2. Accordingly, it has now been decided that the following scheme for improving quality of assessments shall be implemented from calendar year 2010 onwards,

- (i) At the beginning of each calendar year i.e. in the month of January, the Range Head in consultation with the concerned Assessing Officer would identify at least 5 pending time-barring assessment cases in respect of each Assessing Officer of his Range for monitoring. These should normally include cases taken up for scrutiny with the permission of CCIT. The selection should be done jointly by the Range Head and the concerned Assessing Officer. Cases of PSUs and loss-making concerns should normally not be identified for this purpose. This exercise should also include those Ranges which are held as additional charge by a Range Head in January.*
- (ii) The Range Head would issue directions u/s 144A in the identified cases for the guidance of the Assessing Officer regarding the course of investigation to enable him to complete these assessments in a proper manner. This should be done at the earliest available opportunity so as to allow the Assessing Officer to have sufficient time to complete the assessment proceedings. A copy of the directions issued by the Range Head would also be endorsed to the CIT. The Range Head should also monitor the subsequent developments in the assessment proceedings in these cases.*

- (iii) *On completion of the assessment the Assessing Officer shall send a copy of the assessment order to the Range Head and the CIT,*
- (iv) *In the event of a Range Head holding more than one Range the concerned CCIT may appropriately relax the requirement for Issue of directions under section 144A in respect of the cases of the Range(s) held as additional charge.*
- (v) *For the purpose of this instruction, a quality assessment would be one in which issues arising for consideration are clearly identified, investigation of basic facts in respect of these issues is carried out, adequate opportunity to rebut adverse evidence is given to the assessee, the rival evidence are suitably analysed and evaluated in the light of correct interpretation of law, and these efforts result in substantial addition to the returned Income, The benchmark for the quantum of addition to the returned income, which may qualify for being a quality assessment, may be decided by the concerned CCIT depending upon the potential of the given Range/Charge. Normally, this should not be less than Rs.5 lakh excluding additions on account of recurring issues. It is expected that the selected cases will meet the parameters for quality assessment*
- (vi) *As regards the remaining scrutiny assessments, it is expected that 30% of assessments completed by the Range Head, 20% of the remaining scrutiny assessments completed by DC/ ACIT and 10% by ITOs will result in quality assessments. These benchmarks can be reviewed once the scheme has been in operation for some time,*
- (vii) *The parameters for determining whether an assessment is a quality assessment should be decided by the concerned Chief Commissioner in the light of the above and should be widely circulated at the beginning of the calendar year i.e. in the month of January of every year.*
- (viii) *At the end of the financial year, the data regarding assessments completed by Assessing Officers of the CCIT Region shall be got evaluated by the concerned CCIT in the month of next April according to the parameters decided earlier. The overall results will be tabulated in the enclosed proforma and circulated in the CCIT (CCA) Region for information. Separate performance ranking should be done for Range Heads in respect of cases completed by them u/s 143(3) out of the cases selected under Instruction 4 of 2007 dated 16.5.2007, and those monitored by them under this instruction.*

- (ix) *CCITs may also devise methods for commending good performance of Assessing Officers in the area of quality assessments and reflecting the same in the annual appraisals. Important cases involving large successful additions may be reported to the Board in monthly D.O. letters. These can be also be sent to DIT (RSP&PR) for inclusion in the Annual Report of good assessment cases.*

3. *These instructions may please be brought to the notice of all officers working in your Cadre Control region immediately for proper compliance.*

Proformae

Performance Ranking of Assessing Officers

<i>CCIT</i>	<i>CIT</i>	<i>RANGE</i>	<i>NAME OF THE ASSESSING OFFICER</i>	<i>NO. OF ASSESSMENTS COMPLETED</i>	<i>NO. OF QUALITY ASSESSMENTS OUT OF 2</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>

Performance Rankings for Range Heads as Guides

<i>CCIT</i>	<i>CIT</i>	<i>RANGE</i>	<i>NAME OF THE ADDL./JOINT CIT</i>	<i>NO. OF CASES IN WHICH GUIDANCE GIVEN U/S 144A</i>	<i>NO. OF QUALITY ASSESSMENTS OUT OF 2</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>

MANAGEMENT OF SCRUTINY WORKLOAD

Kindly refer to above

2. *Considering the increasing gap between workload and disposal of scrutiny assessments, it has been decided to entrust the Range Heads with the responsibility of making assessments in top revenue*

potential cases of the Range to be selected on the basis of returned Income.

3. *In this regard, targets for disposal of cases by the Range Heads are prescribed as under:-*

<i>S. No.</i>	<i>Charge</i>	<i>Minimum number of cases to be disposed of per year</i>
<i>1</i>	<i>Corporate</i>	<i>20</i>
<i>2</i>	<i>Non-Corporate / Mixed / Salaries</i>	<i>30</i>

However, the CCITs, considering the local circumstances and other factors, may assign more cases to the Addl. CITs. / Joint CITs.

4. *It is hereby clarified that the above targets are not applicable to Central Ranges.*

13. On 21.11.2024, Ld. CIT-DR referring to CBDT Circular No. 6/2009 dated 18.12.2009, requested for further time to obtain the list of cases from the office of CCIT, Raipur to ascertain the cases entrusted to the range head with the responsibility to make assessment for the subject assessment year 2011-12. However, in the next hearing dated 11.12.2024 and 19.12.2024, the requisite orders or lists by the office of CCIT could not be placed on record by the revenue.

14. On perusal of the reports by the Ld. AOs, as we observed, it is contended by the revenue that the present case was assessed by the Ld. AO i.e., Addl. CIT, Range-1, Raipur in accordance with CBDT's Instruction No. 06/2009, which is part of their report extracted (**supra**). According to which targets of disposal of cases of the Range heads were prescribed and according to the provisions of section 120(1) of the I.T. Act, 1961, the Addl. CIT, Range-1, Raipur had passed the assessment order in the instant case for which **there is no requirement of order u/s 120(4)(b) of the Act**. It is also stated that as per provisions of section 124(3), the assessee should have challenged the jurisdiction of Assessing Officer within stipulated time permitted in law. A subsequent challenge at the appellate stage on the validity of jurisdiction, is not maintainable. Ld. AO in his report dated 07.10.2024 had further submitted that as per CBDT Notification No. 267/2001 dated 17.09.2001 directed that the Joint CIT and Joint DIT shall exercise the powers and functions of Assessing Officers where so authorized by the board or CIT. Further notification No. 732(E) dated 31.07.2001 was issued in this regard by CBDT. Vide Gazette Notification, CBDT directed the Jt. CIT to act as Assessing Officer u/s 124(B) of the Act. Ld. AO placed his reliance on the case of **Jaswinder Kaur Kunnar by the Hon'ble P & H High Court**, wherein it was held that if the assessee is aggrieved by an order of transfer, the remedy is assessee is to challenge such an order in independent proceedings

with before the higher authorities as per act or in any independent proceedings by way of a writ petition or otherwise. If no such challenge is made at the initial stage, the issue cannot be raised in an appeal against the Assessment order. With such assertion, it was the prayer by Ld. CIT-DR that the Addl. Ground raised by the Ld. AR needs to be rejected.

15. In rebuttal, to the aforesaid contentions raised by the Ld. AO stating the reasons for inapplicability of any order u/s 120(4)(b) of the Act in the present case, Ld. AR representing the assessee submitted that the issue is squarely covered by various decisions as under:

<i>Jindal Power Ltd</i>	<i>(2024) (Raipur-Trib) dt.25-6-24</i>	<i>ITA No.201/RPR/2017</i>
<i>Tata Steel Ltd</i>	<i>(2024) (Mum-Trib) dt.7-6-24</i>	<i>163 taxmann.com 345</i>
<i>Tata International Ltd</i>	<i>(2023) (Mum-Trib) dt.24-3-23</i>	<i>ITA No.1605/Mum/2012</i>
<i>Vertiv Energy (P) Ltd</i>	<i>(2023) (Mum-Trib) dt.2-6-22</i>	<i>(2023) 37 NYPTTJ 412</i>
<i>Nasir Ali</i>	<i>(2020) (Del-Trib) dt.25-9-19</i>	<i>113 taxmann.com 515</i>

16. He further in his written synopsis dated 01.11.2024, submitted as under:

BS
29/11/24

104 21-11-24

M/s.Dolphin Promoters & Builders
AY11-12

Before the Hon'ble Income Tax Appellate Tribunal, Raipur Bench, Raipur

Assessee: **M/s.Dolphin Promoters & Builders** dt.1-11-24
A-1, Sai Nagar, Near Sai Mandir, Devendra Nagar
Raipur-492001 (CG), PAN-AAEFD2588E
ITA No.58/RPR/2024 AY11-12
Synopsis-1

1.1. Factual details are as under:

30-9-11	ROI filed u/s139(1) declaring income of Rs.79,15,730 (assessment order- incorrectly mentioned Rs.82,60,200; difference is due to depre of Rs.3,44,464; tax payable Rs.26,83,210; not paid up to 30-9-11)	<div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">विधि और न्याय मंत्रालय Ministry of Law & Justice क्रमांक.....1259 2-0 NOV 2024 आयकर अपीलीय अधिकरण, रायपुर Income-Tax Appellate Tribunal, Raipur</p> </div>
23-3-12	Revised ROI filed declaring same income of Rs.79,15,730 (tax paid on 24-1-12 at Rs.28,78,880; refund claimed at Rs.97,830; tax payable at Rs.26,83,210 including intt of Rs.2,37,249; further, intt at Rs.2,44,590 u/s234B & Rs.90,495 u/s234C) (mistakenly mentioned u/s153C)	
1-8-12	Notice issued u/s143(2) by ACIT-1(1), Raipur (under CASS); served on 6-8-12; fixing the case on 21-8-12; --- 30-9-12 is the last date for issuance of notice u/s143(2) for AY11-12 when ROI has been filed on 23-3-12 ;	It is a valid notice issued u/s143(2) by the ' Jurisdictional AO ' within the meaning of sec124(1), 120(1) & 120(2) & sec2(7A) ; within the time i.e., up to 30-9-12; ---there is no que of objection to be made u/s124(3)(a); ---it is only to be objected, when the assessee changed his address of establishment/ place of business or place of residence, as the case may be, to an another area or place, and therefore, he wants to make request for change of jurisdiction of the AO for making assessment by the AO of the ' changed area '; then it is obligatory to make such request within 30 days from the first valid notice issued u/s143(2)/ 142(1) from the ' jurisdiction AO '; Since the assessee had no grievance from the assessment to be made by the AO, he has not made any objection ;
27-11-13	Notice u/s142(1)(ii)/(iii) issued by Addl.CIT, Range-1, Raipur	Invalid;
2-1-14	Notice/ letter issued by Addl.CIT, Range-1, Raipur for compliance	---since the Addl.CIT is not the AO of the assessee for making

ITA No. 58/RPR/2024
Dolphin Promoters and Builders vs Addl. CIT, Range-1, Raipur

21-1-14	Notice/ letter issued by Addl.CIT, Range-1, Raipur for compliance	assessment u/s143(3)/144/ 147 for AY11-12 within the meaning of sec2(7A) i.e., sec2(7A) has been inserted from 1-4-88 in the Statute; ---in absence of order u/s120(4)(b) for becoming as an 'AO' u/s2(7A) for assuming jurisdiction over the case of assessee for AY11-12 in pursuance to sec124(1), 120(1) & 120(2); ---notice u/s143(2) issued by ACIT-1(1) on 1-8-12, who was having valid authority of law to issue such notice u/s143(2) as per sec124(1), 120(1) & 120(2) & sec2(7A); ---and thereafter, case has been transferred to Addl.CIT, who was not empowered by sec120(4)(b) for making assessment on the assessee for AY11-12; ---there must be an order u/s120(4)(b) for becoming an AO over the case of the assessee for AY11-12; in absence of this, assessment order passed by Addl.CIT for AY11-12 would be invalid; ---there is no order u/s127 for transferring the case from ACIT-1(1) to Addl.CIT, Range-1;
3-2-14	Assessment made u/s144 by Addl.CIT, Range-1, Raipur	
31-1-17	Remand report dt.31-1-17 submitted by ACIT-3(1), Raipur before CIT(A)	
28-7-23	CIT(A) passed order u/s250 against the order u/s144 dt.3-2-14 for AY11-12	
24-2-24	Form 36 filed before the Hon'ble Tribunal, which is pending for adjudication	
27-3-18	Further, once again, Notice issued u/s148 for AY11-12 for escaped income of Rs.1,04,73,000 on account of cash received from customers	
3-7-18	ROI filed u/s148 for AY11-12 declaring income of Ra.79,15,730 (in response to notice u/s148 dt.27-3-18)	
30-7-18	Notice issued u/s143(2) by ITO-3(4), Raipur	
10-10-18	Assessment order passed u/s147 rws.144 by ITO-3(4), Raipur for AY11-12 by making addition of Rs.1,04,73,000 and assessed at Rs.1,83,88,730 (it was earlier assessed at Rs.8,97,61,140 u/s144 dt.3-2-14 by Addl.CIT)	

22-11-18	Form No.35 filed against the order u/s147 rws.144 dt.10-10-18 for AY11-12	
1-2-24	Order passed u/s250 by CIT(A)/NFAC and deleted the addition of Rs.1,04,73,000	

- 1.2. since the Addl.CIT is **not the AO** of the assessee for making assessment u/s143(3)/144/ 147 for AY11-12 within the meaning of sec2(7A) i.e., sec2(7A) has been inserted from 1-4-88 in the Statute; in **absence of order u/s120(4)(b)** for becoming as an 'AO' u/s2(7A) for assuming **jurisdiction** over the case of assessee for AY11-12 in pursuance to **sec124(1), 120(1) & 120(2); notice u/s143(2)** issued by ACIT-1(1) on 1-8-12, who was having valid authority of law to issue such notice u/s143(2) as per **sec124(1), 120(1) & 120(2) & sec2(7A)**; and thereafter, case has been **transferred to Addl.CIT**, who was **not empowered** by **sec120(4)(b)** for making assessment on the assessee for AY11-12; there **must be an order u/s120(4)(b) for becoming an AO** over the case of the assessee for AY11-12; **in absence** of this, assessment order passed by Addl.CIT for AY11-12 would be **invalid**; more so, thereafter, there is **no order u/s127** for transferring the case from ACIT-1(1) to Addl.CIT, Range-1;
- 1.3. Assessment made u/s144 dt.3-2-14 for AY11-12 by the Addl.CIT, is **invalid, void ab initio, in absence of order u/s120(4)(b)** in writing by the competent authority, over the assessee for the AY11-12; the assessee is well within its right to challenge the absence of his inherent jurisdiction to frame the impugned assessment in the course of the appellate proceedings; impugned assessment order passed by the Addl.CIT is liable to be quashed for want of valid assumption of jurisdiction on his part;
- 1.4. in **absence of separate orders passed u/s120(4)(b)** authorising the Addl.CIT to perform the functions and exercise the powers of an AO u/s2(7A) and also **in absence of an order u/s127** by the competent authority **transferring** the case from **ACIT-1(1) to Addl.CIT, Range-1**; assessment order passed by Addl.CIT u/s144 dt.3-2-14 for AY11-12 is without having a valid assumption of jurisdiction for framing an assessment, is invalid, void-ab-initio; and is liable to be quashed;

Jindal Power Ltd	(2024) (Raipur-Trib) dt.25-6-24	ITA No.201/RPR/2017
Tata Steel Ltd	(2024) (Mum-Trib) dt.7-6-24	163 taxmann.com 345
Tata International Ltd	(2023) (Mum-Trib) dt.24-3-23	ITA No.1605/Mum/2012
Vertiv Energy (P) Ltd	(2023) (Mum-Trib) dt.2-6-22	(2023) 37 NYPTTJ 412
Nasir Ali	(2020) (Del-Trib) dt.25-9-19	113 taxmann.com 515

- 1.5. the time limit for raising objection to the jurisdiction of the AO prescribed u/s124(3) has a relation to the AO's territorial jurisdiction; the time limit prescribed would not apply to a case where the assessee contends that the **action of the AO is without authority of law and, therefore, wholly without jurisdiction- Bansilal B Rasoni & Sons (2019) (Bom HC) (Para 7)**;
- 1.6. the contention of the Deptt that where the assessee had not objected to the jurisdiction within the time prescribed u/s124(3), then, having waived its said right, it was barred from raising the issue of jurisdiction after having participated in the assessment proceedings, it is **held** that the **waiver can only be of one's right/ privilege but non-exercise of the same will not bestow jurisdiction on a person who inherently lacks jurisdiction**; therefore, the **principle of waiver cannot be invoked so as to confer jurisdiction on an Officer who is acting under the Act when he does not have jurisdiction- Lalitkumar Bardia (2017) (Bom HC) (Para 18 & 19)**;

- 1.7. conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court; 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; an issue can be raised at any belated stage of the proceedings including in appeal or execution; the finding of a court or Trib becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction; acquiescence of a party equally should not be permitted to defeat the legislative animation and the court cannot derive jurisdiction apart from the statute; **Kanwar Singh Saini (2012) (SC) 2012 (4) SCC 307; Jindal Power Ltd (2024) (Raipur-Trib) (Para 30 & 31);**
- 1.8. even a right order by a wrong forum is a nullity- **Pandurang (1986) (SC); Ojasvi Motor Finance (P) Ltd (2024) (Cal HC) (Para 7);**
- 1.9. the que of territorial jurisdiction as raised by the assessee has gone to the very root of the case; such a que could be raised at any stage of the proceedings, to contend that the order passed by the CIT u/s263 was without jurisdiction; in appeal the gr. of territorial jurisdiction on the undisputed facts of the case, was rightly entertained by the Trib- **Divine Light Finance Ltd (2024) (Cal HC) (Para 10);**
- 1.10. "a jurisdiction can neither be waived nor created even by consent and even by submitting to jurisdiction, an assessee cannot confer upon any jurisdictional authority, something which he lacked inherently"; "if an order is passed by a judicial or quasi-judicial authority having no jurisdiction, it is an obligation of Appellate Court to rectify the error and set aside the order passed by the authority or forum having no jurisdiction" -**State of Guj v. Rajesh Kumar Chimanlal Barot AIR 1996 SC 2664- Charu K Bagadia (2023) (Mad HC) (Para 15);**

Divine Light Finance Ltd	(2024) (Cal HC) dt.3-7-24	165 taxmann.com 254
Ojasvi Motor Finance (P) Ltd	(2024) (Cal HC) dt.3-5-24	163 taxmann.com 80
Charu K Bagadia	(2023) (Mad HC) dt.27-6-22	146 taxmann.com 345
Ashika Stock Broking Ltd	(2024) (Cal HC) dt.17-5-24	
Weedo Ventures (P) Ltd	(2023) (Cal HC) dt.3-1-23	7 NYPCTR 10
Weedo Ventures (P) Ltd	(2024) (SC) dt.23-9-24 SLP dismissed	167 taxmann.com 615
Cosmat Traders P Ltd	(2023) (Cal HC) dt.15-11-22	146 taxmann.com 207
OSL Developers P Ltd	(2022) (Cal HC) dt.16-11-22	ITAT/145/2022
Bansilal B Raisoni & Sons	(2019) (Bom HC) dt.29-11-18	101 taxmann.com 20
Lalitkumar Bardia	(2017) (Bom HC) dt.11-7-17	84 taxmann.com 213
Dalipur Construction P Ltd	(2017) (Alld HC) dt.13-1-17	
SK Industries	(2022) (SC) dt.19-7-22	141 taxmann.com 569
SK Industries	(2022) (Del HC) dt.31-5-17	141 taxmann.com 568
SK Industries	(2015) (Del HC) dt.5-5-15	
GP Infraventures	(2024) (Raipur-Trib) dt.23-11-23	166 taxmann.com 723
Shri Bangalore Narayan Das	(2023) (Bang-Trib) dt.17-3-23	157 taxmann.com 605
KA Wires Ltd	(2020) (Kol-Trib) dt.22-1-20	ITA No.1149/Kol/2019
Dr Hari Singh Chandel	(2024) (Raipur-Trib) dt.17-10-22	166 taxmann.com 353
Balaji Enterprise	(2021) (Gau-Trib) dt.13-11-20	124 taxmann.com 78
OSL Developers P Ltd	(2021) (Kol-Trib) dt.3-12-20	125 taxmann.com 98
Nasir Ali	(2020) (Del-Trib) dt.25-9-19	113 taxmann.com 515

Yours faithfully

CA Sunil Kumar Agrawal
Counsel for the assessee-firm

17. Backed by aforesaid submissions, it was the prayer by Ld. AR that in absence of an order u/s 120(4)(b), the Addl. CIT, Range-1, was not conferred with the assumption of jurisdiction to frame the assessment in the case of the assessee firm in the present case, therefore, the assessment order passed in the present case was *void ab initio* and at nullity.

18. We have considered the rival submissions, perused the material available on record *inter alia* reports by the Ld. AO and the judicial pronouncements relied upon by the Ld. AR. Admittedly, as stated by the revenue through the reports of Ld. AO, no order u/s 120(4)(b) of the Act was passed in the present case so as to confer upon the jurisdiction with the Addl. CIT, Range-1, Raipur to exercise or perform Power of Functions of Ld. AO.

19. On perusal of the CBDT Instruction 06/2009 dated 18.12.2009, the Central Board of Direct Taxes shown its concerned about the need for improving general quality of scrutiny assessment on a sustainable basis. CBDT further mentioned about their Instruction No. 2/2006 dated 27.04.2006, which required monitoring of scrutiny assessment by the range head under the powers available to them u/s 144A of the Act. In continuation, it was advised that the range head would issue directions u/s 144A in the identified

cases for the guidance of Assessing Officers regarding the course of investigation to enable him to complete these assessments in proper manner. It is further stated in the subject notification that the benchmark for quantum of addition to the returned income, which may qualify for being a quality assessment, may be decided by concerned CCIT depending upon the potential of the given range/ charge. It is also advised by the CBDT that, it is expected that apart from the category of assessee's defined in Para (v) of the impugned instruction, out of the remaining scrutiny assessments it is expected that 30% of assessment completed by the range head, 20% by DC/ACIT and 10% by ITO's. The notification no. 6/2009 relied upon by the revenue is only for the guidance of departmental officers to devise the method and mechanism in order to commending good performance of Assessing Officer in the area of quality assessment, the same cannot be considered as the replacement to order u/s 120(4)(b) conferring jurisdiction with the Addl. CIT, Range-1, Raipur. This issue has been discussed in detail in the case of **Jindal Power Ltd. Vs JCIT, Range-1, Bilaspur** in **ITA No. 201 & 202/RPR/2017**, wherein while dealing with the similar contentions raised by the assessee and defendant by the revenue are dealt with at length and a view has been formed by this tribunal after considering various judicial pronouncements, deliberating upon all possible aspects, under the following observations:

19. As stated by the DCIT, Circle-1(1), Bilaspur, no order u/s. 120(4)(b) of the Act vesting jurisdiction with the Jt. CIT, Range-1, Bilaspur to exercise or perform powers and functions of the A.O had been passed. Ostensibly, the Notification No.03/2006 dated 13.10.2006 passed by the Commissioner of Income Tax, Bilaspur dated 13.10.2006 in exercise of the powers conferred by the CBDT u/s. 120 of the Act, i.e. Notification No.223 dated 31.07.2001 in SO No.732(E) and F. No.137/5/2001-ITA(I) is in a different context. As per the Notification No.03/2006, dated 13.10.2006, the Commissioner of Income Tax, Bilaspur in exercise of powers conferred upon him by the CBDT u/s. 120 of the Act, had authorized the Additional Commissioners of Income Tax/Jt. Commissioners of Income Tax to issue orders in writing for the exercise of the powers and performance of the functions by the A.Os who were sub-ordinate to them. Accordingly, it was pursuant to the aforesaid authorization the Addl. Commissioners/Jt. Commissioners had carried out restructuring of the jurisdiction of the authorities' sub-ordinate to them, i.e. DCIT/ACIT/ITO in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases. Accordingly, the Notification No.03/2006 dated 13.10.2006 issued by the Commissioner of Income Tax, Bilaspur in exercise of powers conferred by the CBDT u/s. 120 of the Act is not an order u/s.120(4)(b) of the Act conferring jurisdiction with the Jt. CIT, Range-1, Bilaspur to exercise or perform the powers and functions as that of the A.O in the case of the present assessee company before us. For the sake of clarity, the Notification No.03/2006, dated 13.10.2006 (supra) is culled out as under:

No. CIT/BSP/Tech./Notification/2006-07

Government of India,

Ministry of Finance : Department of Revenue.

Office of the

Commissioner of Income tax,

Aayakar Bhawan, Vyapar Vihar, Bilaspur (C.G)

Tel. No. (07752) 403140, 406768, 412632(PBX)

Fax (07752) 412550

NOTIFICATION No. 03 of 2006

Dated :13/10/06

In exercise of the powers conferred by the Central Board of Direct Taxes under section 120 of the Income tax Act, 1961 (43 of 1961) vide Notification No. 223 dated 31/07/01 in S.O. No. 732(E) and F.No. 137/5/2001-ITA(I) and in supercession of all existing notifications and all other powers enabling in this behalf, I, the Commissioner of Income tax, Bilaspur authorise the Addl./Joint Commissioner of Income tax referred to in Column 2 to the Schedule annexed to issue orders in writing for the exercise of the powers and performance of the functions by the A.Os who are subordinate to them as given in Column 3 of the said schedule in respect of such specified area(s) or persons or classes of persons or income or classes of incomes or cases or classes of cases as given in column 4 in respect of which such Addl./Joint Commissioner of Income tax are authorised by the Commissioner of Income tax.

This notification shall come into effect from 16/10/06.

Explanation :-

- (i) For the purpose of this notification "residing" means: -
- a) in the case of an individual, place of residence, unless otherwise provided in this notification.
 - b) In the case of an Hindu Undivided Family, the place of residence of the Karta and;
 - c) in the case of a firm or an association of persons, or body of individuals or a local authority and all other artificial juridical persons other than companies, the place where the head office is located.
- (ii) The expression "Joint Commissioner" will have the meaning assigned to it under section 2(28c) of the Income tax Act.

Kalyan Chaudhuri

13.10.2006

(Dr. Kalyan Chaudhuri),
Commissioner of Income tax,
Bilaspur (C.G)

SCHEDULE


S. No	Designation of Addl.CIT/JCIT	Subordinate I.T authorities	Categories
	2	3	4
1.	Addl. CIT, Range-1, Bilaspur	DCIT/ACIT, Circle 1(1), Bilaspur	<p>(i) All Limited Companies having registered office located within the territorial jurisdiction of ITO-1(1), Bilaspur, ITO-1(2), Bilaspur, ITO-1, Raigarh & ITO-2, Raigarh</p> <p>(ii) All Directors and Managing Directors of such companies specified at Item (i) above.</p> <p>(iii) All persons (other than limited companies) within the territorial jurisdiction of the following officers :- (a) Income tax Officer-1(1), Bilaspur (b) Income tax Officer-1(2), Bilaspur</p> <p>whose returns of income as on 1st April 2005 and as on 1st April of any subsequent financial year shows the total income/loss of Rs. 3 lakhs and above or whose last assessed income/loss as on the first day of the financial year is of Rs. 3 lakhs and above.</p> <p>(iv) All persons (other than limited companies) within the territorial jurisdiction of the following officers :- (a) Income tax Officer-1, Raigarh (b) Income tax Officer-2, Raigarh</p> <p>whose returns of income as on 1st April 2005 and as on 1st April of any subsequent financial year shows the total income/loss of Rs. 5 lakhs and above or whose last assessed income/loss as on the first day of the financial year is of Rs. 5 lakhs and above.</p> <p>(v) All cases of Public Charitable/Religious Trusts claiming exemption u/s 10(22), 10(23C) and sections 11,12 and 13 of the Income tax Act, 1961 and falling within the territorial jurisdiction of :- a) ITO-1(1), Bilaspur and ITO-1(2), Bilaspur b) ITO-1, Raigarh and ITO-2, Raigarh.</p> <p>vi) All persons whose cases may be assigned u/s 127 of the Act.</p>

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2.	Addl. CIT, Range-1, Bilaspur	ITO-1(1), Bilaspur	<p>(i) All persons (other than companies and other than those assessable by any other Assessing officers) who fall within the Municipal Ward Nos. 1,2,3,4,5,6,7,8,10,11,17,18,19,20,21,22,23,24,25,26,27,28, 29,30,47 & 48 of the Municipal Area of Bilaspur (26 Municipal Wards) and whose total income includes :</p> <ol style="list-style-type: none"> 1) Income from House Property and/or; 2) Profit and Gains of Business or profession and/or; 3) Capital gains and/or; 4) Income from other sources. <p>iii) All cases of pensioners and salaried employees of Bilaspur District receiving salary/pension from SECL and South Eastern Central Railways (other than those assessable by the DCIT/ACIT or by any other Assessing Officers)</p> <p>iii) All persons whose cases may be assigned u/s 127 of the Act.</p>
3	Addl. CIT, Range-1, Bilaspur	ITO-1(2), Bilaspur	<p>(i) All persons (other than companies and other than those assessable by any other Assessing officers) who fall within the Municipal Ward Nos. 9,12,13,14,15,16,31,32,33,34,35,36,37,38,39,40,41,42,43, 44,45,46,49,50,51,52,53,54 and 55 of the Municipal Area of Bilaspur (29 Municipal Wards)and whose total income includes :</p> <ol style="list-style-type: none"> 1) Income from House Property and/or; 2) Profit and Gains of Business or profession and/or; 3) Capital gains and/or; 4) Income from other sources. <p>iii) All cases of pensioners and salaried employees of Bilaspur District receiving salary/pension from State/Central Govts. (other than those assessable by the DCIT/ACIT or by any other Assessing Officers)</p> <p>iii) All persons whose cases may be assigned u/s 127 of the Act.</p>
4	Addl. CIT, Range-1, Bilaspur	ITO-1, Raigarh	<p>(i) All persons (other than companies and other than those assessable by any other Assessing officers) who fall within the Raigarh District (except tehsils of Kharsia and Sarangarh) and except those assessed by ACIT-1(1), Bilaspur and ITO-2, Raigarh and whose total income includes :</p> <ol style="list-style-type: none"> 1) Income from House Property and/or; 2) Profit and Gains of Business or profession and/or; 3) Capital gains and/or; 4) Income from other sources. <p>ii) All cases of pensioners and salaried employees falling within the area mentioned above (other than those assessable by the DCIT/ACIT or by any other Assessing Officers)</p> <p>iii) All persons whose cases may be assigned u/s 127 of the Act.</p>


 Addl. CIT
 Range-1
 Bilaspur

ITO-2, Raigarh

(i) All persons (other than companies and other than those assessable by any other Assessing officers) who fall within the District of Jashpur and the tehsils of Kharsin and Sarangarh and whose total income includes :-

- 1) Income from House Property and/or;
- 2) Profit and Gains of Business or profession and/or;
- 3) Capital gains and/or;
- 4) Income from other sources.

(ii) All cases of pensioners and salaried employees falling within the area mentioned above (other than those assessable by the DCIT/ACIT or by any other Assessing Officers)

(iii) All persons whose cases may be assigned u/s 127 of the Act.

Addl. CIT
 Range-2
 Bilaspur

DCIT/ACIT,
 Circle 2(1),
 Bilaspur

(i) All Limited Companies having registered office located within the territorial jurisdiction of ITO-2(1), Bilaspur, ITO-2(2), Bilaspur.

(ii) All Directors and Managing Directors of such companies specified at item (i) above.

(iii) All persons (other than limited companies) within the territorial jurisdiction of the following officers :-

- (a) Income tax Officer-2(1), Bilaspur
- (b) Income tax Officer-2(2), Bilaspur

whose returns of income as on 1st April 2005 and as on 1st April of any subsequent financial year shows the total income/loss of Rs. 3 lakhs and above or whose last assessed income/loss as on the first day of the financial year is of Rs. 3 lakhs and above.

(iv) All cases of Public Charitable/Religious Trusts claiming exemption u/s 10(22), 10(23C) and sections 11, 12 and 13 of the Income tax Act, 1961 and falling within the territorial jurisdiction of :-

- a) ITO-2(1), Bilaspur
- b) ITO-2(2), Bilaspur

(v) All the cases of professionals and co-operative banks falling within the territorial jurisdiction of ITO-2(1), Bilaspur and ITO-2(2), Bilaspur.

(vi) All persons whose cases may be assigned u/s 127 of the Act

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7	Addl. CIT, Range-2, Bilaspur	ITO- 2(1), Bilaspur	<p>(i) All persons (other than companies and other than those assessable by any other Assessing officers) who fall beyond the Municipal limit of Bilaspur (except Masturi Tehsils of Bilaspur) and except those assessed by ACIT-2(1), BSP & ITO-2(2), Bilaspur and whose total income includes :-</p> <ol style="list-style-type: none"> 1) Income from House Property and/or; 2) Profit and Gains of Business and/or; 3) Capital gains and/or; 4) Income from other sources. <p>ii) All cases of pensioners and salaried employees of private institutions (Private salary) viz. All Banks, LIC, BSNL, Universities, CSEB, NTPC, Municipal Corp. CIIMS, FCI etc. falling within the districts of Bilaspur, Janjgir-Champa (other than those assessable by the DCIT/ACIT or by any other Assessing Officers)</p> <p>ii) All persons whose cases may be assigned u/s 127 of the Act.</p>
8	Addl. CIT, Range-2, Bilaspur	ITO- 2(2), Bilaspur	<p>(i) All persons (other than companies and other than those assessable by any other Assessing officers) who fall within the territorial jurisdiction of Janjgir-Champa District, Masturi Tehsils of Bilaspur and Manendragarh Tehsil of Korea Distt. and whose total income includes :</p> <ol style="list-style-type: none"> 1) Income from House Property and/or; 2) Profit and Gains of Business and/or; 3) Capital gains and/or; 4) Income from other sources. <p>ii) All Govt. salary cases of pensioners and salaried employees of Janjgir-Champa Districts, Govt. & Private salary cases of Manendragarh tehsil of Korea Distt. (other than those assessable by the DCIT/ACIT or by any other Assessing Officers)</p> <p>iii) All persons whose cases that may be assigned u/s 127 of the Act.</p>
9	Addl.CIT/ Jt. CIT, Range, Korba	DCIT/ACIT, Circle, Korba	<p>(i) All Limited Companies having registered office located within the territorial jurisdiction of ITO-1, Korba, ITO-2, Korba and ITO, Ambikapur.</p> <p>(ii) All Directors and Managing Directors of such companies specified at Item (i) above.</p> <p>(iii) All persons (other than limited companies) within the territorial jurisdiction of the following officers :-</p> <ol style="list-style-type: none"> (a) Income tax Officer-1, Korba (b) Income tax Officer-2, Korba <p>whose returns of income as on 1st April 2005 and as on 1st April of any subsequent financial year shows the total income/loss of Rs. 3 lakhs and above or whose last assessed income/loss as on the first day of the financial year is of Rs. 3 lakhs and above.</p>

Korba. 19.11.2024

- 6 -

			<p>(iv) All persons (other than limited companies) within the territorial jurisdiction of the Income tax Officer, Ambikapur whose returns of income as on 1st April 2005 & as on 1st April of any subsequent financial year shows the total income /loss of Rs. 5 lakhs and above or whose last assessed income/loss as on the first day of the financial year is Rs. 5 lakhs & above</p> <p>(v) All cases of Public Charitable/Religious Trusts claiming exemption u/s 10(22), 10(23C) and sections 11, 12 and 13 of the Income tax Act, 1961 and falling within the territorial jurisdiction of :- a) ITO-1, Korba b) ITO-2, Korba c) ITO, Ambikapur</p> <p>(vi) All the cases of professionals and cooperative banks falling within the territorial jurisdiction of ITO-1, Korba, ITO-2, Korba and ITO, Ambikapur.</p> <p>(vii) All persons whose cases may be assigned u/s 127 of the Act.</p>
10	Addl.CIT/Jt.CIT, Range, Korba	ITO-1, Korba	<p>(i) All persons (other than companies and other than those assessable by any other Assessing Officers) who fall within the area of Korba Tehsil (Except Korba Municipal Ward Nos. 3,4,5,6 and 8) and whose total income includes: 1) Income from House Property and/or; 2) Profit and Gains of Business and/or; 3) Capital gains and/or; 4) Income from other sources.</p> <p>(ii) All cases of pensioners and salaries employees falling within the jurisdiction at (i) above (Other than those assessable by the DCIT/ACIT or by any other Assessing Officers)</p> <p>(iii) All persons whose cases may be assigned u/s 127 of the Act.</p>
11	Addl.CIT/Jt.CIT, Range, Korba	ITO-2, Korba	<p>(i) All persons (other than companies and other than those assessable by any other Assessing Officers) who fall within the Katghora, Pali & Kartala Tehsils of Korba District and Korba Municipal Ward Nos. 3,4,5,6 and 8) whose total income includes: 1) Income from House Property and/or; 2) Profit and Gains of Business and/or; 3) Capital gains and/or; 4) Income from other sources.</p> <p>(ii) All cases of pensioners and salaried employees falling within the jurisdiction at (i) above and persons receiving pension/salary from the South Eastern Coal Fields (Other than those assessable by DCIT/ACIT or by any other Assessing Officers)</p> <p>(iii) All persons whose cases may be assigned u/s 127 of the Act.</p>

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12	Addl. CIT/ Jt. CIT, Range, Korba	ITO- Ambikapur	<p>(i) All persons (other than companies and other than those assessable by any other Assessing officers) residing within the Districts of Sarguja and Korea (excluding Manendragarh Tehsil) (other than those assessable by the DCIT/ACIT) and whose total income includes :</p> <ol style="list-style-type: none"> 1) Income from House Property and/or; 2) Profit and Gains of Business and/or; 3) Capital gains and/or; 4) Income from other sources. <p>ii) All cases of pensioners and salaried employees falling with the territorial jurisdiction as mentioned in (i) above (other than those assessable by the DCIT/ACIT or by any other Assessing Officers)</p> <p>iii) All persons whose cases may be assigned u/s 127 of the Act.</p>
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Kalyan Chaoudhuri
13.10.2006
(Dr. Kalyan Chaoudhuri),
Commissioner of Income tax,
Bilaspur (C.G)

No. CIT/BSP/Tech/Notification/2006-07

Dated : 13/10/06

Copy to :

- 1) The Chief Commissioner of Income tax, Raipur
- 2) The Commissioner of Income tax, Raipur
- 3) The Commissioner of Income tax (Appeals), Bilaspur/Raipur
- 4) The Director of Income tax (Inv.), Bhopal
- 5) The Dy. Director of Income tax-1/II, Raipur
- 6) The Addl./ Joint Commissioner of Income tax, Range-1/2, Bilaspur/Korba
- 7) All the A.Os and TROs in Bilaspur charge.

Nidhi Verma Singh
(Nidhi Verma Singh),
Asstt. Commissioner of Income tax (HQ.)
for Commissioner of Income tax, Bilaspur

Admittedly, as stated by the Ld. AR, and rightly so, no order u/s. 120(4)(b) of the Act had been passed by the Commissioner of Income Tax, Bilaspur conferring jurisdiction with the Jt. CIT, Range-1, Bilaspur to exercise or perform the powers and functions of the A.O in the case of the present assessee company before us.

20. *We shall now deal with the sustainability of the assessment order passed by the Jt. CIT, Range-1, Bilaspur u/s.143(3) dated 29.01.2014 in absence of any order u/s.120(4)(b) of the Act conferring upon him the jurisdiction to exercise or perform the powers and functions as that of an A.O over the case of the assessee company before us.*

21. *Before proceeding any further, we deem it fit to cull out sub-section (3) to Section 143 of the Act which reads as under:*

"143(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment."

(emphasis supplied by us)

Ostensibly, as per sub-section (3) to Section 143 of the Act, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment. As the assessment can only be framed by the "Assessing Officer", therefore, we shall now look into the

definition of the term "Assessing Officer" as contemplated in Section 2(7A) of the Act, which reads as under:

"2. In this act, the context otherwise requires:-

xxxxxxxxxx

(7A) "Assessing Officer" means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Incometax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act."

(emphasis supplied by us)

On a careful perusal of the aforesaid definition of the term "Assessing Officer" we find that the same, inter alia, takes within its sweep an Additional Commissioner or Additional Director or Joint Commissioner or Joint Director who is directed under Clause (b) of Sub-section (4) of Section 120 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 Income Tax Act, 1961.

22. *As observed by us hereinabove though the Jt. Commissioner of Income Tax, inter alia, can exercise or perform all or any of the powers and functions conferred on, or assigned to the A.O under this Act, but as provided in sub-section (7A) of Section 2 of the Act, the same is subjected to a fundamental precondition that he is so directed under clause (b) of sub-section (4) of Section 120 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 Income Tax Act, 1961. Accordingly, the Jt. Commissioner of Income Tax in absence of an order u/s.120(4)(b) of the Act cannot exercise or perform all or any of the powers and functions conferred on or assigned to, an A.O under this Act. A corollary flowing thereto is that the Jt. Commissioner of Income Tax in absence of an order u/s.120(4)(b) of the Act cannot frame the assessment u/s.143(3) of the Act.

23. *We find that ITAT, "H" Bench, Mumbai in the case of Shri Kishore Vithaldas Vs, JCIT-17(2), Mumbai, ITA No,7397/Mum/2016 and ITA No.5661/Mum/2017 dated 16.10.2019, had observed, that Jt. CIT/Addl. CIT cannot validly assume jurisdiction and pass an assessment order in absence of an order u/s. 120(4)(b) of the Act. Also, a similar view had been taken by the ITAT, Delhi in the case of Mega Corporation Ltd. vs. ACIT, [2015] 155 ITD 1019. Also, ITAT, Mumbai in the case of Tata Sons Ltd. Vs. ACIT, Circle-2(3), ITA Nos. 4497 & 4542/Mum/2005 had, inter alia, held that Addl. Commissioner of Income Tax can perform functions and exercise powers of an Assessing Officer only if he is specially directed u/s. 120(4)(b) of the Act. For the sake of clarity, the observations of the Tribunal are culled out as under:*

"3.26. In addition to the above, it further noted by us that only that 'Joint Commissioner' was authorized to act as an Assessing Officer who was directed under clause (b) of sub-section 4 of section 120 to exercise or perform all or any of the powers and functions of an Assessing Officer as defined u/s 2(7A) of the Act. Now, if we refer to section 120, its perusal makes further clear that only CBOT can empower the Chief Commissioners or Commissioners for issuance of orders to the effect that powers and functions of an Assessing Officer for a particular assessee or classes of assessee shall be exercised by a 'Joint Commissioner'. Despite numerous directions, the Revenue was not able to bring before us any order wherein any specific authority was given by any Chief Commissioner or Commissioner authorizing the

impugned Additional 162 Commissioner to pass impugned assessment order. We find force in the argument of Lc). Counsel that at the relevant time when the assessment proceedings were in progress, the word 'Additional Commissioner' was not available in the aforesaid section and therefore, it was not possible for the Chief Commissioner or the Commissioner to have authorized an Additional Commissioner for exercising powers and functions of an Assessing Officer for a particular assessee or classes of assessee. Even otherwise, no order could be shown to us, whereby any such authority was given to the Joint Commissioner of the Range. Under these circumstances, we find that the Revenue is not able to show any order or notification in favour of the Additional Commissioner authorizing him for performing the powers and functions of the Assessing Officer of the assessee.

3.27. *During the course of hearing, Ld. CIT-DR had drawn our attention upon Board's Notification No.267/2001 dated 1.7-9-2001, Notification No.228/2001 dated 31.7.2001 and Notification No.335/2001 dated 29-10-2001 with a view to argue that the jurisdiction was assigned to all the officers including 'Additional Commissioner' for exercise of powers as Assessing Officer, and thus the 'Additional Commissioner of Income Tax' who had passed the impugned assessment order had inherent powers under the law to act as assessing officer of the assessee and pass the impugned assessment order.*

3.28. *We have gone through all these Notifications, but do not find any substance in the contention of the Ld. CIT-DR. It is noted that Notification No.335 is issued merely for assigning jurisdiction to various Commissioners and it is thus of no use to Revenue as far as issue before us is concerned. So far as Notification No.267/2001 is concerned, it reads as follows:—*

"In exercise of the powers conferred by clause (b) of sub-section (4) of section 120 of the income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes, hereby directs that the Joint Commissioners of Income Tax or the Joint Directors of Income tax, shall exercise the powers and functions of the Assessing Officers, in respect of territorial area or persons or classes of persons or incomes or classes of income or cases, or classes of cases, in respect of which such Joint Commissioners of Income tax are authorised by the Commissioner of Income tax, vide Government of India, Central Board of Direct Taxes notification number S.O.732(E) dated 31.07.2001, S.O.880(E) dated 14.09.2001, S.O.881(E) dated 14.09.2001, S.O. 882(E) dated 14.09.2001 and S.O. 883(E) dated 14.09.2001 published in the Gazette of India, Part II, Section 3, subsection (ii), Extraordinary. (Emphasis supplied)"

24. *Also, we find that a similar view had been arrived at by the ITAT, Lucknow in the case of Prachi Leather (P). Ltd. Vs. Addl. CIT, ITA No.26/L/2010 dated 08.12.2010, wherein, after drawing support from the judgment of the*

Hon'ble High Court of Delhi in the case of Dr. Nalini Mahajan Vs. DCIT, (2002)

257 ITR 123 (Del.), it was held as under:

"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 (h) 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 duly bound, if at all they were to exercise such delegated power to act according to the provisions of law; meaning thereby that it was incumbent upon the Chief Commissioner of Income-tax or the Commissioner of Income-tax, as the case maybe, if at all they wanted to authorize the Additional CIT to act and perform the functions of an AO, to pass a proper order delegating such functions/powers upon him. This view of ours is fully supported by the decision of the Hon'ble Delhi High Court in the case of Dr, Nalini Mahajan v. DIT (2001) 252 ITR 123/[2002] 122 taxman 897 wherein the Hon'ble High Court, while discussing the powers of Additional Director Investigation, held as under:

"It is now well-settled that when a power is given to do a certain thing in a certain manner, the same must be done in that manner or not at all. A delegation of power is essentially a legislative function. Such a power of delegation must be provided by the statute. The director himself for certain matters is the delegating authority. He, unless the statute expressly states, cannot sub-delegate his power to any other authority. In any event, if an authority, which had no jurisdiction to issue such an authorization did so, the same would be liable to be quashed as ultra vires. Thus, unless and until an amendment is carried out, by reason of the redesignation itself, read with the provisions of the General Clauses

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Act, the Addl. Director does not get any statutory power to issue authorization to issue a 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. "

25. *Further, we find that a similar view had been taken by the ITAT, Jodhpur in the case of City Garden Vs. ITO (2012) 21 taxmann.com 373, and ITAT, Lucknow in the case of Mircrofin Security (P) Ltd. Vs. Addl. CIT (2005) 3 SOT 302. Also, we find that the ITAT, Delhi in the case Shri Nasir Ali Vs. Addl. CIT, ITA No.1285/Del/2018 dated 25.09.2019, had observed that where the Addl. CIT had passed the assessment order, however, no order conferring concurrent jurisdiction to the Addl. CIT over the cases of the Income Tax Officers was available, the assessment so framed being without jurisdiction was void-ab-initio. Also, a similar view had been taken by the ITAT, Delhi in the case of Harvinder Singh Jaggi Vs. ACIT (2016) 157 ITD 869. We may herein observe that the ITAT, 'K' Bench, Mumbai in the case of The Indian Hotels Company Ltd. Vs. Addl. CIT/Dy.CIT (OSD), Range-2(2), ITA No. 8570/Mum/2011, ITA No.565/Mum/2013, ITA No.2049/Mum/2014 and ITA No.1910/Mum/2014, dated 21.05.2021, had observed, that as the Addl. CIT, Range-2(2), Mumbai had failed*

to establish that he possessed the legal and valid powers of performing the functions of an A.O conferred on him u/s. 120(4)(b) of the Act, therefore, assessment so framed by him being devoid and bereft of any force of law was liable to be quashed. Once again, the aforesaid view had been reiterated by the ITAT, "J" Bench, Mumbai in the case of Addl. CIT, Range-1(3) Vs. M/s. Tata Communications Limited (Formerly known as Videsh Sanchar Nigam Limited), ITA No.4452/Mum/2011, ITA No.3460/Mum/2011 and ITA No.8768/Mum/2010 dated 24.12.2019.

26. *Further, we find that ITAT, "B" Bench, Kolkata had an occasion to deal with the aforesaid issue in the case of DCIT, Circle-7(1), Kolkata Vs. M/s. Ganesh Realty & Mall Development Pvt. Ltd., ITA No.581/Kol/2017 dated 23.01.2019. The Tribunal had approved the order of the CIT(Appeals), who had observed that as per Section 2(7A) of the Act, ACIT/DCIT, ADIT/DDIT or the ITO would be considered as A.O who had been vested with jurisdiction u/s.120(1) or u/s. 120(2), but the Addl. CIT/Jt. CIT, Addl. DIT/Jt. DIT would act as A.O only if they are empowered u/s. 120(4)(b) of the Act in writing. In fact, we find that a similar view had been taken by the ITAT, Delhi in the case of a group entity of the assessee company, viz. Jindal Steel & Power Ltd. Vs. JCIT, Hisar, ITA No.619/Del/2015 dated 17.09.2021. The Tribunal after carrying out a conjoint reading of Section 2(7A) r.w.s. 120(4)(b) of the Act, had observed that as no order was passed by the Commissioner of Income Tax u/s. 120(4)(b) of the Act, therefore, the Jt. CIT, Hisar lacked jurisdiction to frame assessment in the*

case of the assessee company before them. Accordingly, the Tribunal had concluded that as the Jt. CIT, Hisar Range, had not legally and validly assumed jurisdiction over the case of the assessee company, therefore, the impugned assessment order passed by him being illegal and without jurisdiction was liable to be quashed. For the sake of clarity, the observations of the Tribunal in the aforesaid case are culled out as under:

"36. In the instant case, (1) there is no order by the Id. CIT invoking powers conferred u/s 120(4) wherein sub-Section (b) empowers the CIT 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 the Act in respect of any specified areas or persons shall be exercised by the Joint Commissioner. In the absence of any order by the Id. CIT invoking the powers conferred by sub-Section (4) of Section 120, we hold that the order passed by the Assessing Officer lacks jurisdiction. (2) Further, we also find that the order of the Id. CIT in pursuance with the notification No.251/2001 also did not confer any jurisdiction to the CIT, Hisar. (3) In addition, no order has been issued by the Ld. CIT transferring the case from one AO to other AO u/s 127 is also wanting in the instant case.

37. Considering the totality of the facts and circumstances of the case, we are of the view that JCIT, Hisar Range, do not have jurisdiction over the case of assessee and since he did not assume the jurisdiction legally and validly, therefore, the Impugned assessment order framed by him is vitiated and illegal and without jurisdiction. In view of the above discussion, we set aside the order of the authorities below and quash the impugned order."

27. We shall now deal with the contention of the Ld. DR that as the assessee company had not called in question the jurisdiction of the Jt. CIT, Range-1, Bilaspur within the specified time period contemplated under sub section (3) of Section 124 of the Act, i.e. within a period of one month from the date on which it was served with the notice u/s. 143(2) of the Act, therefore, it was divested of its right from assailing the same for the first time before the Tribunal.

28. *Before proceeding any further, it would be relevant to cull out Section 124(3) of the Act which reads as under:*

"124 (1) xxxxxxxx

(2) xxxxxxxx

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—

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

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier;

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

29. *Having given a thoughtful consideration to the aforesaid claim of the ld. DR we are unable to persuade ourselves to subscribe to the same. On a careful perusal of Section 124 of the Act, it transpires that the same deals with the issue of "territorial jurisdiction" of an Assessing Officer. Ostensibly, sub-section (1) of Section 124 contemplates vesting with the A.O jurisdiction over a specified area by virtue of any direction or order issued under sub-section (1) and sub-section (2) of Section 120 of the Act. On the other hand sub-section (2) of Section 124 contemplates the manner in which any controversy as regards the territorial jurisdiction of an A.O is to be resolved. Apropos, sub-section (3) of Section 124 of the Act, the same places*

an embargo upon an assessee to call in question the jurisdiction of the A.O where he had initially not raised such objection within a period of one month from the date on which he was served with a notice under sub-section (1) of Section 142 or sub-section (2) of Section 143. In sum and substance, the obligation cast upon an assessee to call in question the jurisdiction of the A.O as per the mandate of sub-section (3) of Section 124 is confined to a case where the assessee objects to the assumption of territorial jurisdiction by the A.O, and not otherwise. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of Peter Vaz Vs. CIT, Tax Appeal Nos. 19 to 30 of 2017, dated 05.04.2021 and that of the Hon'ble High Court of Gujarat in the case of CIT Vs. Ramesh D Patel (2014) 362 ITR492 (Guj.). In the aforesaid cases the Hon'ble High Courts have held that as Section 124 of the Act pertains to territorial jurisdiction vested with an AO under sub-section (1) or subsection (2) of Section 120, therefore, the provisions of sub-section (3) of Section 124 which places an embargo on an assessee to raise an objection as regards the validity of the jurisdiction of an A.O would get triggered only in a case where the dispute of the assessee is with respect to the territorial jurisdiction and would have no relevance in so far his inherent jurisdiction for framing the assessment is concerned. Also, support is drawn from a recent judgment of the Hon'ble High Court of Calcutta in the case of Principal Commissioner of Income-tax Vs. Nopany & Sons (2022) 136 taxmann.com 414 (Cal). In the case before the Hon'ble High Court the case of the assessee was transferred from ITO, Ward-3 to ITO, Ward-4 and the impugned order was passed by the ITO, Ward-4 without issuing notice u/s 143(2), i.e. only in pursuance to the notice that was issued

by the ITO, Ward-3, who had no jurisdiction over the assessee at the relevant time. The Hon'ble High Court considering the fact that as the assessment was framed on the basis of the notice issued under Sec. 143(2) by the assessing officer who had no jurisdiction to issue the same at the relevant point of time quashed the assessment. Apart from that, the aforesaid view is also supported by the order of the ITAT, Kolkata 'B' Bench in the case of OSL Developers (p) Ltd. Vs. ITO, (2021) 211 TTJ (Kol) 621 and that of ITAT, Gauhati Bench in the case of Balaji Enterprise Vs. ACIT (2021) 187 ITD 111 (Gau.). Accordingly, on the basis of our aforesaid observations, we are of the view that as the assessee's objection to the validity of the jurisdiction assumed by the Jt. CIT, Range-1, Bilaspur is not an objection to his territorial jurisdiction, but in fact an objection to the assumption of inherent jurisdiction by him in absence of an order u/s.120(4)(b) of the Act, therefore, the provisions of sub-section (3) of Section 124 would not assist the case of the revenue.

30. In fact, we find that the Hon'ble High Court of Bombay in the case of Bansilal B. Rasoni & Sons Vs. ACIT, Central Circle-1, Nashik & Anr, WP No.13391 of 2018 had, inter alia observed that the time limit for raising objection to the jurisdiction of the Assessing Officer prescribed under sub section (3) of Section 124 has a relation to the Assessing Officer's territorial jurisdiction. It was further observed that the time limit prescribed would not apply to a case where the assessee contends that the action of the Assessing Officer is without authority of law and, therefore, wholly without jurisdiction. Also, we find that the Hon'ble High Court of Bombay in the case of CIT-1, Nagpur Vs. Lalitkumar Bardia, (2017) 84 taxmann.com 213 (Bom) had addressed the contention of the department that

where the assessee had not objected to the jurisdiction within the time prescribed under sub-section (3) of Section 124 of the Act, then, having waived its said right, it was barred from raising the issue of jurisdiction after having participated in the assessment proceedings. The Hon'ble High Court had observed that the waiver can only be of one's right/privilege but non-exercise of the same will not bestow jurisdiction on a person who inherently lacks jurisdiction. Therefore, the principle of waiver cannot be invoked so as to confer jurisdiction on an Officer who is acting under the Act when he does not have jurisdiction. The Hon'ble High Court while concluding as hereinabove had relied on the judgment of the Hon'ble Supreme Court in the case of Kanwar Singh Saini Vs. High Court of Delhi, 2012 (4) SCC 307. The Hon'ble Apex Court in its aforesaid judgment had held that it is 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. The Hon'ble Apex Court further observed that if the court passes order/decrees having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Also, the Hon'ble Apex Court clarified that an issue can be raised at any belated stage of the proceedings including in appeal or execution. Elaborating further, it was observed by the Hon'ble Apex Court that the finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. It was further observed by the Hon'ble Apex Court that acquiescence of a party equally should not be permitted to defeat the legislative animation and the court cannot derive jurisdiction apart from the statute. For the sake of clarity, the observations

of the Hon'ble Apex Court in the case of Kanwar Singh Saini Vs. High Court of Delhi (supra) are culled out 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/inexecutable 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, U.P. 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.)"

31. We, thus, are of the view that as the Jt. CIT, Range-1, Bilaspur in absence of any order passed by the specified authority u/s. 120(4)(b) of the Act had no jurisdiction to frame the assessment in the case of the assessee company before us, therefore, the calling into question of the same by the assessee company before us would not be hit by the prescribed time limit contemplated in Section 124(3) of the Act, which as observed by us hereinabove, is in context of the territorial jurisdiction of the A.O. Apart from that, as held by the Hon'ble Supreme Court in the case of Kanwar Singh Saini Vs. High Court of Delhi (supra), as the Jt. CIT, Range-1, Bilaspur in absence of any order in writing u/s. 120(4)(b) of the Act had wrongly assumed jurisdiction and framed the assessment vide his impugned order u/s. 143(3) of the Act dated 01.03.2013, therefore, the assessee company remained well within its right to

challenge the absence of his inherent jurisdiction to frame the impugned assessment in the course of the proceedings before us.

32. We, thus, in terms of our aforesaid observations, quash the order passed by the Jt. CIT, Range-1, Bilaspur u/s. 143(3) of the Act dated 01.03.2013 for want of valid assumption of jurisdiction on his part.

33. As we have quashed the assessment for want of valid assumption of jurisdiction, therefore, we refrain from adverting to and dealing with the contentions raised by the assessee company qua the merits of the case which, thus, are left open.

34. In the result, appeal filed by the assessee company in ITA No.201/RPR/2017 for A.Y.2010-11 is allowed in terms of our aforesaid observations.

20. The aforesaid view adopted by this tribunal is further fortified, in terms of the decision by coordinate bench of ITAT, Mumbai in the case **ITO (IT) TDS-2 vs Tata Steel Ltd. (2024) 207 ITD 345 (Mumbai- Trib.) dated 07.06.2024**, wherein the findings of Mumbai Tribunal, read as under:

26. From the careful perusal of various submissions, both orally and in writing, made by the learned DR, it is pertinent to note that the Revenue has made no submission with respect to the absence of necessary orders under section 127 of the Act transferring the jurisdiction from the DCIT to the Addl. CIT as contemplated under section 127 of the Act. Thus, apart from objecting to the admission of additional ground no.B-3 and B-4 raised by the assessee, the Revenue has neither made any submission on its merit nor brought any order passed under section 127 of the Act on

record. Therefore, we are of the considered view that on both counts, i.e. absence of requisite orders authorising the Addl. CIT under section 120(4)(b) of the Act to act as an Assessing Officer as well as absence of requisite order under section 127 of the Act transferring the jurisdiction to the Addl. CIT, prejudice is caused to the assessee as the impugned final assessment order was passed without any jurisdiction.

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

21. As the issue in present case, regarding assumption of jurisdiction by the Range head i.e., Addl. CIT, Range-1, Raipur to perform the functions, and exercise the powers of an Assessing Officer under section 2(7A) *dehors* an order u/s 120(4)(b) by the competent authority is held to be against the mandate of law, as decided in the case of **Jindal Power Ltd. Vs JCIT (Supra)**. Having similar facts and circumstances in the present case, we are of the conviction that the issue in present case is squarely covered by the view adopted by this Tribunal in the case of **Jindal Power Ltd. Vs JCIT (Supra)**, which the revenue was unable to distinguish by furnishing any contrary material, evidence or decision. Further, admittedly there was no

order for transferring the jurisdiction u/s 127 of the Act issued in the present case, therefore, on that count also the impugned assessment cannot survive. Consequently, in absence of inherent jurisdiction with the Addl. CIT, Range-1, Raipur, to exercise the duties of an Assessing Officer to frame the impugned assessment, the assessment framed u/s 144 of the Act, dated 03.02.2014 is liable to be quashed and we direct to do so.

22. As we have quashed the assessment for want of valid assumption of jurisdiction by the Ld. AO in the present case, in terms of our aforesaid observations, we, therefore, refrain from deliberating upon and dealing with the other contentions raised by the assessee either on legal count or *qua* the merits of the case, which, thus, are left open.

23. In result, the appeal of assessee in **ITA NO. 58/RPR/2024** for AY 2011-12 is **allowed** in terms of our aforesaid observations.

Order pronounced in the open court on 30/01/2025.

Sd/-

(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 30/01/2024

Vaibhav Shrivastav

Sd/-

(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- Dolphin Promoters and Builders
2. प्रत्यर्थी / The Respondent- Addl. CIT, Range-1, Raipur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur