

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 1849/Del/2022
Assessment Year: 2015-16**

Baljit Singh S/o Shri Jagar Singh, Ex Director of the Co. Redhu Farms Pvt. Ltd., H.No.2153, Urban Estate, Jind (Haryana) PIN: 126 102	Vs.	Income Tax Officer, Ward-1, Bhiwani Haryana – 127 021
PAN : ARBPS0986M		
(Applicant)		(Respondent)
Date of Hearing	:	05.12.2024

**ITA No. 1850/Del/2022
Assessment Year: 2015-16**

Redhu Farms Pvt. Ltd., Village Alewa, Distt. Jind, Haryana – 126102, through Interim Resolution Professional Adesh Kumar Singla	Vs.	Income Tax Officer, Ward-1, Bhiwani Haryana – 127 021
PAN : AACCR4956P		
(Applicant)		(Respondent)

Assessee by	Shri R R Singla, CA
Respondent by	Ms. Harpreet Kaur, Sr. DR
Date of hearing	23.01.2025
Date of pronouncement	19.02.2025

ORDER**PER ANUBHAV SHARMA: JUDICIAL MEMBER**

These are two separate appeals are filed at the instance of the appellant in appeal ITA No.1850/Del/2022, being the company as assessee and the appellant in ITA No.1849/Del/2022 is the director of the assessee company in regard to whom an order under Section 179 of the Income Tax Act, 1961 (hereinafter referred to as "Act") was passed. Both the appellants have challenged the orders under Sections 250 of the Act dated 08.07.2022 passed by National Faceless Appeal Centre (NFAC), Delhi arising out of an assessment order dated 29.09.2021 passed under Sections 143(3) r.w.s. 263 of the Act by the ITO, Ward -1, Bhiwani (hereinafter referred to as the Assessing Officer or in short "AO"), for the assessment year 2015-16.

2. Brief facts of the case are that, the assessee, Redhu Farm Pvt. Ltd. (hereinafter referred to as 'Appellant company') is a private limited company and is engaged in the business of Poultry Unit. In this case, return declaring a loss of (-)Rs.3,03,588/- was e-filed by the appellant on 30.10.2015. Assessment u/s 143(3) of the Act was completed on 15.12.2017 assessing income at Rs.96,412/- by making addition on account of low net profit of

Rs.4,00,000/- . Subsequently, proceedings u/s 263 were initiated by the PRCIT, Hissar wherein the PRCIT raised the following issues viz. (1) Large share premium received during the year (2) Large difference in opening stock of current year and closing stock of previous year and (3) Low net profit as compared to previous year, which remained unverified. As such the assessment order passed by AO u/s 143(3) was held to be erroneous and prejudicial to the interest of Revenue in respect of aforesaid issues. Order u/s 263 was passed on 10.02.2020 with a direction to examine the above issues. Subsequently, following the directions of the PRCIT, Hissar, the Assessing Officer passed order u/s 143(3)/263 of the Act on 29.09.2021 by making the following disallowances/additions:

(i) Rs.17917200/- u/s 68 for failure to produce the documentary evidence regarding the transactions, creditworthiness and genuineness of the shareholders.

(ii) Rs. 122737569/- by making addition on account of difference in opening stock of current year and closing stock of previous year.

(iii) Rs.10041320/- addition on account of low net profit

3. The appeal of the appellant assessee company was dismissed and accordingly both the appellants are before this

Tribunal raising grounds on merits as well as legal grounds. It is pertinent to observe here that during the course of hearing it transpired that by CP(IB) No. 129/Chd/Hry/2021 insolvency proceedings were initiated in the case of the assessee company at the instance of one operational creditor Aviagen India Poultry Breeding Company Pvt. Ltd. Further on query from Bench, learned DR has apprised that with regard to the present assessment order a claim of Rs. 10,64,79,933/- has been raised by the ITO, Ward-1, Bhiwani, as Assessing Officer, as an operational creditor before the resolution professional. It further comes up from record that initially the appeal of the assessee was dismissed for insolvency proceedings being pending before NCLT, Chandigarh Bench, but restored at the instance of Resolution Professional and presently the Resolution Professional is contesting on behalf of the assessee company.

3.1 It has also come up that resolution plan for the assessee company has failed and an application for liquidation of the assessee company u/s 33(1) & (2) of the Insolvency and Bankruptcy Code 2015 (IBC) has been filed by the Resolution Professional before the NCLT, Chandigarh Bench. However, the same is pending. The contents of the application u/s 133(1) & (2)

of the IBC establish that as for the purpose of liquidation the value of liquid assets of the Corporate Debtor i.e. assessee is determined at Nil, the liquidation value of the company is Rs. 12,24,69,728.

4. In the revised form 36, on behalf of the appellant company, the resolution professional has filed revised grounds and the same are reproduced below;

“1. The Id. CIT(A) has erred in law and facts while rejecting the ground of jurisdiction of the Id. AO to frame the assessment as the Id. AO has passed the assessment order:-

a. Without having the inherent jurisdiction as an assessing officer as prescribed under section 2(7) read with section 120 of the Act

b. Without issuing a valid notice u/s 143(2) of the Act

c. Having the case on transfer without any order passed u/s 127 of the Act.

2. On the facts and circumstances of the case, the order passed under section 143(2) of the Act is bad in law having been passed in pursuance of proceedings originally initiated by an officer who did not have jurisdiction of the case

3. The Id. CIT(A) has erred in law and facts while rejecting the ground of non compliance of CBDT directions dated 6-9-2021 by the AO while framing the assessment

4. That the review order u/s 263 dated 10-02-2020 as well as assessment order u/s 143(3) dated 29-09-2021 were not having DIN within the body of the orders, hence may please be declared as null and void.

5. The Id. CIT(A) has erred in law and facts while upholding the additions of Rs.1,79,17,200/- being share capital by

promoters and not considering the additional documents/evidences submitted before him.

6. The Id. CIT(A) has erred in law and facts while upholding the trading/business additions of Rs.12,27,37,359/- made even without rejecting the books of accounts or without pointing out any infirmity in the books of accounts of the previous year.

7. The Assessee may please be allowed to add, alter, amend its ground of appeal at any time before or during the course of hearing of the appeal.”

5. At the time of hearing, the learned counsel for the appellants has addressed on ground nos. 1 and 2 primarily challenging the impugned assessment orders on the basis that the effect giving assessment order u/s 143(3)/263 of the Act dated 29/09/2021 framed by the ITO, Ward-1, Bhiwani is without jurisdiction. In this context, it was submitted that as per sub-section (3) of section 124, ITO Ward-1, Bhiwani was not vested with the jurisdiction over the area of Jind by virtue of an orders dated 18.09.2020 passed under Section 120(1) and 120(2) of the Act issued by the Additional CIT.

6. Learned counsel has relied on the judicial decision in the case of S.K. Industries Vs. ACIT, Circle-50(1), New Delhi in W.P.(C) No.4014/2016 of order dated 31.05.2017 and the order dated 19.07.2022 in S.L.P. No.14128 of 2016 by which appeal of the Revenue was dismissed. He has also relied on the decision of

Co-ordinate Bench in the case of Nirmal Gupta vs. PCIT in ITA No.108/Del/2018 order dated 22.06.2021.

6.1 This has been rebutted by the Learned DR by filing a report as sought from the Assessing Officer countering the reliance of Learned AR on the decision of Co-ordinate Bench in the case of Nirmal Gupta vs. PCIT (supra). It was submitted that in the case of Nirmal Gupta (supra), the grounds primarily were with regard to validity of first notice issued under Section 143(2) of the Act by jurisdictional DCIT, Bhiwani having PAN jurisdiction over the assessee. It was submitted that PAN of assessee has been under the jurisdiction of DCIT, Circle Bhiwani since 22.03.2010 and all income tax returns filed by the assessee during this period were processed by the same jurisdictional Assessing Officer without any objection. It was submitted that the assessee further had participated in the original assessment proceeding under Section 143(2) of the Act without raising any objection to the jurisdiction of the Assessing Officer. It was submitted that as during the original assessment proceeding under Section 143(3) of the Act or before the revisional authority under Section 263 of the Act. Reliance is also placed on section 124(3)(a) of the Act submitting that jurisdiction challenges must be raised within one month

from the date of service of notice under Section 143(3) of the Act or under Section 142(1) of the Act.

7. The learned counsel for the assessee has countered the reliance on section 124(3)(a) of the Act by relying the judgment in the case of M/s Rungta Irrigation Ltd. Versus ACIT Central Circle-3(1) Calcutta ITA no 1224/Kol/2019 to submit that where there is no jurisdiction over the provisions of section 124(3)(a) of the Act cannot be considered.

8. We have taken into consideration the facts and circumstances of the case and we find that the learned CIT (Appeals) has actually not disputed the fact that while passing the impugned assessment order dated 29.9.2021 u/s 263/143(3) of the Act, ITO, Ward-1, Bhiwani did not have the jurisdiction and for that reason rescue of the provision of section 124(3) of the Act has been taken. However, we are of the view that when the order u/s 263 was passed on 10.02.2020, the directions were issued restoring the issues to the file of the AO. There was no specific reference as to it was the jurisdictional AO or the successor of the AO who had passed the order under revision. Now this aspect as ambiguous in the order u/s 263 is crucial because admittedly on 18.9.2020 exercising power u/s 120 of the Act, Additional

Commissioner, Hisar had changed jurisdictions of various tax authorities falling under his jurisdiction. In case of corporate assessee located in the revenue district of Jind the ITO, Ward-1, Jind was given the jurisdiction for income returned upto 30 lacs. Same had become applicable on the present assessee company but still the impugned effect giving order u/s 143(3) r.w 263 of the Act dated 29/09/2021 was passed by ITO Ward I, Bhiwani.

8.1 In context to the above, the report which is filed before us by the AO i.e ITO Ward I Bhiwani, is that only for the reason that the PAN of the assessee was transferred from ITO, Ward-1, Jind to DCIT Circle Bhiwani on 22.03.2010, therefore, DCIT Circle, Bhiwani had jurisdiction to pass the assessment order.

8.2 It appears that the Id. CIT (Appeals) has defended this assumption of jurisdiction by ITO, Ward-1, Bhiwani on the basis of altogether different aspect which is reproduced below:

“3.7 It is seen that pursuant to the order of the Pr.CIT, Hisar dated 10.02.2020 passed u/s. 263(1) of the Act setting aside the assessment and restoring it back to the AO for making a fresh assessment, notice u/s. 143(2) was issued to the appellant on 23.09.2020 for initiating the fresh assessment proceedings. The case was then transferred to the NeFAC on 25.01.2021. Subsequently, the case was transferred to the jurisdictional AO i.e. ITO, Ward-1, Bhiwani on 12.09.2021 from NeFAC, New Delhi. Thereafter, ITO, Ward-1, Bhiwani issued notice u/s. 142(1) dated 16.09.2021 and 20.09.2021

and finally passed assessment order u/s. 263/143(3) of the Act dated 29.09.2021.”

8.3 The reasons recorded by the ld. CIT(A) in the impugned order as reproduced above are thus unfounded and were not actually had bearing in the mind of AO to assume jurisdiction and pass the impugned effect giving order.

9. At the same time we are of the view that the entire case of the revenue hinges upon the interpretation that PAN being at Bhiwani then same become a criteria and foundation of deciding the jurisdiction of the Assessing Officers. However, in terms of Section 120, which prescribes that the criteria for the allotment of jurisdiction of Income Tax Authority shall be as per the directions of the CBDT; and four criteria have been laid down in sub section (3) namely, (a) territorial area, (b) persons of classes of persons, (c) income of classes of income, and (d) cases of classes of cases. Section 124 which governs the jurisdiction of the Assessing Officer allocates jurisdiction to the Assessing Officer as per the direction or order issued by the CBDT under Section 120(2) & (1) of the Act. Nowhere in the statute it has been provided that PAN data or address will decide the territorial jurisdiction of the Assessing Officer. Section 139A merely provides who are the

persons required to obtain PAN having regard to the nature of transaction of business and other conditions laid down that, Assessing Officer may allot a PAN and other procedure and mechanism of allotment of the PAN. The territorial jurisdiction is decided by the CBDT in terms of Section 120 only. Here, in this case, as discussed above, none of the parameters laid down for the territorial jurisdiction are applicable to the assessee. As far as filing returns at Bhiwani Circle is concerned, under the scheme of "e" filing of return, the assessee has to fill PAN on the return. It has to also fill its address and some of the details are picked-up by the assessee. If the Department's system fails to correctly transfer the return to the jurisdictional Assessing Officer and transfer the same to Assessing Officer though who has no jurisdiction as per the CBDT's notification, such mistake cannot confer the jurisdiction on such an Assessing Officer. Jurisdiction can be conferred only by notification u/ s 120(1) and 120(2) of the Act only. In any case there is no case of revenue that by virtue of any specific order u/s 119 or 120 of the Act, jurisdiction vested with AO i.e. ITO, Ward-1, Bhiwani on 23.09.2020 when fresh notice u/s. 143(2) of the Act was issued for initiating the fresh assessment proceedings.

10. In fact we find that the initial assessment order dated 15.12.2017 passed u/s 143(3) of the Act and which was subject matter of revision proceedings u/s 263 of the Act, was passed by ACIT, Circle Bhiwani. Admittedly the return of the assessee at that time was declared at NIL with business loss of Rs. 3,03,588/-. Now the Instruction No. 1/2011 [F. No. 187/12/2010-IT(A-I), dated 31.1.2011 of the Board issued u/s 119 of the Act become relevant and same specifically refers to the fact that in order to remove the hardship to the taxpayers of Mofussil Areas the corporate returns of the assessee in the Mofussil Areas have to be with ITOs in cases of return not exceeding Rs. 30 lacs. Thus, where the assessee was located at Jind, it was ITO Jind who was authorized to examine the return of the assessee filed at Nil income. Infact after the order of 18.09.2020 DCIT, Bhiwani Circle had transferred the assessment record to ITO Ward I, Jind, which shows that infact the jurisdiction always vested with ITO Ward I, Jind.

11. In any case, even if it is assumed that as the PAN of the assessee was with DCIT Circle Bhiwani then also by virtue of CBDT Instruction No. 1/2011 (supra), it was ITO Bhiwani who

would have had the pecuniary jurisdiction and not the ACIT Circle Bhiwani.

12. We are of the considered view that in the present facts and circumstances, provisions of section 124(3) of the Act cannot help the Revenue as after the order u/s 120 of the Act dated 18.9.2020 of the Additional Commissioner of Income Tax Hisar, there could not have been three Assessing Officer having pecuniary jurisdiction, one DCIT Bhiwani, then the ITO Ward-1, Bhiwani and lastly ITO Ward-1, Jind. To apply provisions of section 124(3), the Revenue should establish that there is jurisdiction rightly vested under law and exercised u/s 124(1) of the Act. No particular notification of jurisdiction with DCIT Bhiwani, or the ITO Ward-1, Bhiwani, is cited. However, when the jurisdiction is exercised beyond the pecuniary competence, specifically spelt out by the Board under Instruction No. 1/2011 (supra) or by senior tax authorities u/s 120 of the Act in that case Revenue cannot take shelter of section 124(3) of the Act and protect the invalidity in assumption of jurisdiction which has crept by issuance of notice u/s 143(2) of the Act by an assessing officer, who had no jurisdiction. Had the notice u/s.143(2) of the Act been issued by the jurisdictional AO, who was having pecuniary jurisdiction over

the assessee, there would have been no case for the assessee to raise the issue of wrong assumption of jurisdiction.

13. The judgement which is relied by the learned AO, ITO, Ward-1, Bhiwani, in the report filed before us by the ld. DR, in the case of *Abhishek Jain v. ITO* [WP(Civil) No. 11844 of 2016, order dated 1.6.2018] is distinguishable as it is not a case of concurrent jurisdiction which vest with multiple tax authorities. Thus assumption of jurisdiction in passing the initial assessment order dated 15.12.2017 u/s 143(3) of the Act and subsequent order dated 29.09.2021 u/s 263/143(3) of the Act on the basis of notice u/s 143(2) issued by ITO Ward-1, Bhiwani are both vitiated. Ld. CIT has failed to appreciate the facts in correct perspective and has merely try to validate the impugned assessment on basis of provision of section 124(3) of the Act, which is not some panacea for all jurisdictional errors. This view of our is supported by a co-ordinate bench decision in case of **Jindal Power Ltd. V JCIT, Bilaspur ITA no. 201 & 202 /RPR/2017** order dated 25/06/2024 and the relevant conclusion of the co-ordinate bench are reproduced below;

“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 sub-section (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 as 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. Jindal Power Limited Vs. Jt. CIT, Range-1, Bilaspur ITA Nos.201 & 202/RPR/2017 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 Jindal Power Limited Vs. Jt. CIT, Range-1, Bilaspur ITA Nos.201 & 202/RPR/2017 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/decreed 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 Jindal Power Limited Vs. Jt. CIT, Range-1, Bilaspur ITA Nos.201 & 202/RPR/2017 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.)"

14. Consequently we sustain the grounds no. 1 and 2. The assessee company's appeal is sustained and consequently the appeal filed by the Director also deserves to be allowed.

15. In the result both the appeals stand allowed.

Order pronounced in the open court on 19.02.2025.

**Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBRE**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Dated: 19th February, 2025

Mohan Lal

Copy forwarded to:

1. Applicant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi