

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No.3533/Del/2019  
Assessment Year: 2014-15

**With**

ITA No.3534/Del/2019  
Assessment Year: 2015-16

M/s. Venetian LDF Projects LLP, 83 Avenue, Sector-83, Vill.- Sihi, Gurgaon, Haryana	<b>Vs.</b>	ACIT, Circle-4(1), Gurgaon
<b>PAN: AAJFV6462C</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Lalit Mohan, CA Sh. Ankit Kumar, Adv.
Department by	Sh. Harpreet Kaur Hansra, Sr. DR

Date of hearing	01.05.2025
Date of pronouncement	01.05.2025

**ORDER**

**PER SATBEER SINGH GODARA, JM**

These assessee's twin appeals ITA Nos.3533 & 3534/Del/2019 for assessment year 2014-15 and 2015-16, arises against the Commissioner of Income Tax (Appeals)-1, Gurgaon's orders, both dated 15.03.2019 passed in case nos. 557/16-17 and

692/17-18, respectively, involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') in both the appeals.

2. Heard both the parties. Case files perused.

3. It emerges during the course of hearing that the assessee has sought to raise an additional ground vide its application dated 09.12.2024 to the effect that the impugned twin identical assessments, framed by the ACIT, Circle -4(1), Gurgaon, dated 26.12.2016 and 26.12.2017, are non-est in the eyes of law since not preceded by a valid section 143(2) notice issued by the competent authority. The Revenue's case on the other hand is that the learned Assessing Officer had indeed issued his section 143(2) notices dated 29.08.2015 and 29.07.2016, assessment year-wise; respectively, and, therefore, we need to uphold the same. And that the assessee's foregoing additional ground(s) to this effect deserves to be rejected.

4. We have given our thoughtful consideration to the assessee's and Revenue's foregoing respective submissions. There could be hardly any dispute that the assessee's impugned additional ground goes to the root of the matter and the facts relevant thereto already

form part of the records. A combined perusal of both these case files indicates that the assessee declared loss of Rs.3,46,94,465/- in the former assessment year 2014-15's return filed on 27.09.2014 and Rs.1,77,00,320/- in the latter's return dated 27.08.2015. And that it was the ITO, Ward-4(4), who happens to have issued the above section 143(2) notices in question. Learned counsel has further invited our attention to the very authority's letter dated 21.11.2016 not only admitting lack of jurisdiction but also transferring the case records to the DCIT, Circle -4, Gurgaon for the latter's further necessary action as under:

F.No.ITO .W-4(5) /GGN/Trsf/2016-17/

Dated: 21.11.2016

To

The Dy. Commissioner of Income Tax,  
Circle-4, Gurgaon

Sir,

**Sub: Transfer of scrutiny case of M/s Venetain LDF Projects LLP for the A. Y. 2014-15 (PAN- AAJFV6462C)-Reg -**

Please refer to above.

Please find enclosed here with the assessment record of the above noted assessee for the A. Y. 2014-15 in one volume. Since, the assessee has loss of more than Rs 35 lacs (ie Rs. 3,64,94,465/-) during the year under consideration, hence, the jurisdiction over the case lies with you. Therefore, the assessment record in one volume is transferred to you for further necessary action at your end.

**Please enter the pendency of the case in your record. It is submitted that the case is time barring on 31.12.2016.**

5. That being the clinching factual position on record, we are of the considered view that the learned ITO, Ward-4(5) never had

jurisdiction to issue section 143(2) notice(s) in scrutiny in the assessee's twin assessments in light of the CBDT's landmark instruction no. 1/2011, dated 31<sup>st</sup> January, 2011 prescribing pecuniary jurisdiction of the field authorities, for the purpose of framing assessments in corporate and non-corporate returns filed in mufassil areas and metro cities. And that this tribunal's recent coordinate bench's order dated 29.04.2024 in YKM Holdings Pvt. Ltd. Vs. ACIT, ITA No. 1020/Del/2019 for AY: 2015-16 has concluded the very issues in assessee's favour and against the department as under:

*"4. We have heard the rival submissions and perused the material available on record. At the outset, we find that the additional grounds raised by the assessee go to the root of the matter challenging the jurisdictional per se. All the facts relevant for its adjudication are placed on record. Hence, in the light of decision of Hon'ble Supreme Court in the case of NTPC Ltd. reported in 229 ITR 383, we are inclined to admit the additional grounds and take up the same for its adjudication.*

*5. We find that assessee's returned income for the A.Y. 2015-16 was Rs.37,78,510/- hence, the jurisdiction of the assessee should lie with ACIT/DCIT since the returned income had exceeded Rs.30,00,000/-, in view of the CBDT Instruction No.1/2011 dated 31.01.2011. For the sake of convenience, the said Instruction No.1/2011 [F. No.187/12/2010-IT(A-I)] dated 31.01.2011 is hereby reproduced:-*

**"SECTION 119 OF THE INCOME-TAX ACT, 1961-INCOME-TAX  
AUTHORITIES-INSTRUCTIONS TO SUBORDINATE AUTHORITIES**

**INSTRUCTION NO. 1/2011 [F. NO. 187/12/2010-IT(A-1)], DATED 31-1-  
2011**

*References have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which*

increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship.

An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:

	Income Declared (Mofussil areas)		Income Declared (Metro cities)	
	ITOS	ACS/DCS	ITOS	DCS/ACS
Corporate returns	Upto Rs. 20 lacs	Above Rs. 20 lacs	Upto Rs. 30 lacs	Above Rs. 30 lacs
Non-corporate returns	Upto Rs. 15 lacs	Above Rs. 15 lacs	Upto Rs. 20 lacs	Above Rs. 20 lacs

Metro charges for the purpose of above instructions shall be Ahmedabad, Bangalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune.

The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from 1-4-2011.”

6. In the instant case, the notice under section 143(2) of the Act stood issued to the assessee on 12.04.2016 by ITO Ward 27(4), Delhi. In July, 2016, the ITO transferred the jurisdiction of the assessee from him to DCIT since the returned income for A.Y. 2015-16 is more than 30,00,000/-. Copy of the said transfer memo is enclosed in page 5 of the paper book. After the transfer of jurisdiction from ITO to DCIT, no fresh notice under section 143(2) of the Act was issued by ACIT, Circle 4(1), Gurgaon. The assessment was ultimately framed under section 143(3) of the Act for A.Y. 2015-16 on 14.12.2017 by ACIT, Circle – 4(1), Gurgaon. It is pertinent to note that assessment for the A.Y. 2014-15 of the assessee was completed under section 143(3) of the Act on 30.11.2016 by DCIT, Circle – 27(2), New Delhi. Hence, it was argued that the notice under section 143(2) of the Act dated 12.04.2016 issued by the ITO selecting the return of assessee for A.Y. 2015-16 for scrutiny is without jurisdiction and consequently, the assessment framed under section 143(3) of the Act dated 14.12.2017 required to be quashed as void ab initio. When this was confronted to learned DR, he pointed out to the provisions of section 124(3) of the Act wherein it was mentioned that assessee should challenge within one month about the jurisdiction of the AO on receipt of the notice. In the instant case, nowhere up to learned CIT(A), the assessee has challenged the jurisdiction of the learned AO. In our considered opinion, this argument of the learned DR is wrong in as much as section 124(3) of the Act talks only about territorial jurisdiction, whereas the issue involved here is pecuniary jurisdiction. Further, the provisions of section 124(3) of the Act could be taken shelter by the Revenue only when legal valid notice under section 143(2) of the Act has been issued by the Revenue. In the instant case, notice issued under section 143(2) of the Act on 12.04.2016 by ITO

*is not legal as he did not possess jurisdiction over the assessee for A.Y. 2015-16 in as much as the returned income for A.Y. 2015-16 had exceeded Rs.30,00,000/-. We find that the issue in dispute is no longer res integra by the decision of Hon'ble Delhi High Court in the case of Ashok Devichand Jain vs. UOI reported in 452 ITR 43 (Bom). In this case, very same issue was addressed in the light of CBDT Instruction No.1/2011[F. No.187/12/2010-IT(A-I)] Dated 31.01.2011. For the sake of convenience, the entire order is reproduced hereunder:*

*“1. Petitioner is impugning a notice dated 30th March, 2019 issued under section 148 of the Income Tax Act, 1961 (the Act) for A.Y. 2012-13 and order passed on 18th November, 2019 rejecting Petitioner's objection to reopening on various grounds.*

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

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

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

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

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

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

8. *Petition disposed."*

7. *In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we have no hesitation to hold that the assessment framed under section 143(3) of the Act deserves to be quashed in the instant case as the initial scrutiny notice issued under section 143(3) of the Act dated 12.04.2016 by ITO was without jurisdiction as he did not possess jurisdiction over the assessee for the A.Y. 2015-16. Consequently, assessment framed under section 143(3) of the Act is hereby quashed as void ab initio. The additional ground no.2 is hereby allowed.*

8. *Since, the entire assessment is quashed the adjudication of original grounds of appeal and other additional grounds become academic in nature and no opinion is hereby rendered thereon and they are left upon.*

9. *In the result, appeal of assessee is allowed."*

6. The department at this stage vehemently submits that necessary instructions from the field authority are still awaited on the above issue. We are of the considered view in light of the above transfer letter (supra) that once the learned competent authority had not even issued section 143(2) notice in terms of the CBDT's circular, both these consequential assessments are not sustainable in the eyes of law. The same stand quashed in very terms.

All other pleadings on merits herein stand rendered academic.

7. These assessee's twin appeals ITA Nos. 3533 & 3534/Del/2019 are allowed in above terms. A copy of this common order be placed in the respective case files.

***Order pronounced in the open court on 1<sup>st</sup> May, 2025***

***Sd/-***  
**(NAVEEN CHANDRA)**  
**ACCOUNTANT MEMBER**

***sd/-***  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

Dated: 1<sup>st</sup> May, 2025.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi