

IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR "SMC" BENCH :: RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

I.T.A.No. 328/RPR/2025
(Assessment Year 2015-16)

Surya Land Developers, C/o Shri Ashok Khemka, Satyanarayan Dharamshala, Station Road, Raipur, Chhattisgarh PAN : AAYFS 5301 E (Appellant)	vs.	ITO, Ward-1(4), Raipur. (Respondent)
---	-----	---

For Assessee :	Shri Vikaas S. Sharma, CA
For Revenue :	Dr. Priyanka Patel, Sr.-DR

Date of Hearing :	02.07.2025
Date of Pronouncement :	03.07.2025

ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Ld. Commissioner of Income Tax (Appeals)/NFAC-8, Delhi ["CIT(A)"] dated 16/04/2025 for Assessment Year ("AY") 2015-16, as per the following grounds of appeal:-

“Regarding Legal Validity:-

1. *On the facts and in the circumstances of the case, the assessment framed u/s 143(3) of the Act by the Ld. Income Tax Officer, Ward-1(4), Raipur is invalid, bad-in-law and void ab initio, as the notice u/s 143(2) dated 29.07.2016 was not issued by the Assessing Officer having jurisdiction over the assessee (i.e., DCIT/ACIT-1(1), Raipur), as envisaged u/s 143(2) r.w.s. 2(7A) r.w.s. 120 and Notification No. 1/2014-15 dated 15.11.2014 issued by the Ld. JCIT, Range-1, Raipur, instead, the notice u/s 143(2) was issued by the Ld. Income Tax Officer, Ward-1(4), Raipur. Hence, the assessment order passed without jurisdiction deserves to be quashed.*

2. *On the facts and in the circumstances of the case, the Ld. AO has erred in making addition of Rs.3,16,520/- on account of non-deduction of TDS u/s 194C of the Income Tax Act, 1961 and the Ld. Addl./JCIT(A)-8, Delhi has erred in confirming the same inasmuch as the payment to the parties were made against purchase of material and not against works contract, moreover, as per Explanation (iv)(e) to Section 194C, work does not include manufacturing or supplying product by using material purchased from any other person, therefore, there was no obligation on the part of the appellant to deduct TDS. Hence, it is prayed that the disallowance of Rs.3,16,520/-may kindly be deleted.*

3. *On the facts and in the circumstances of the case, the Ld. AO has erred on facts and in law in making the disallowance of Rs.3,16,520/- u/s 40(a)(ia) of the Income Tax Act, 1961 on account of alleged non-deduction of tax at source (TDS) and the Ld. Addl./JCIT(A)-8, Delhi has erred in confirming the same without appreciating that the said expenditure had not been claimed as a deduction in the Profit & Loss Account but was capitalized as part of Work In Progress (WIP) in the books of accounts for ongoing construction activities. Since, no expenditure was claimed in the Profit & Loss Account, hence, the provisions of Section 40(a)(ia) are not attracted and the addition is contrary to facts, law and legislative intent, therefore, it is prayed that the addition of Rs.3, 16,520/-confirmed by the Ld. Addl./JCIT(A)-8, Delhi may kindly be deleted particularly in view of the decision of the Hon'ble Jurisdictional High Court of Chhattisgarh in the case of Assistant Commissioner Of Income Tax-I, Bhilai,; Joint Commissioner Of Income Tax, Bhilai Range, Bhilai, District Durg (C.G.) Versus M/s Ganapati Motors, Tax Case No. 30 of 2016 with Tax Case No. 8 of 2017.*

4. *Without prejudice to the aforesaid grounds, on the facts and in the circumstances of the case, the Ld. AO has erred on facts and in law*

in making disallowance of Rs.3,16,520/- by invoking Section 40(a)(ia) and the Ld. Addl./JCIT(A)-8, Delhi has erred in confirming the same without first ascertaining from the respective payees as to the discharge of liabilities by the said payees in their respective individual assessments which renders the assessee not being assessee in default in terms of proviso to Section 201 by virtue of which no disallowance u/s 40(a)(ia) is warranted, therefore, the Ld. AO's action of disallowing without first ascertaining from the respective payees as to discharge of income tax liability as held by the Hon'ble Jurisdictional Chhattisgarh High Court in the case of M/s Ravi Shree Narayan Transport vs. ACIT(TDS), Tax Case No. 178 of 2024, Tax Case No. 180 of 2024, Tax Case No. 181 of 2024 renders the disallowance liable to be deleted and unsustainable. It is prayed that the disallowance of Rs.3,16,520/- may kindly be deleted.

5. *Without prejudice to the grounds above, on the facts and in the circumstances of the case, the Ld. AO has grossly erred in disallowing 100% of the sum of Rs.3,16,520/- u/s 40(a)(ia) of the Act, and the Ld. Addl./JCIT(A)-8, Delhi has erred in confirming the same ignoring the amendment made by the Finance (No.2) Act, 2014, which was applicable to the A.Y. 2015-16 (i.e. the year under consideration) which limits the disallowance to 30% of the amount on which tax was deductible but not deducted, and therefore, even assuming without admitting that there was any liability to deduct TDS, the disallowance ought to have been restricted to Rs.94,956/- (i.e. 30% of Rs.3,16,520/-). Hence, the disallowance of the entire amount of Rs.3,16,520/- is bad in law and is liable to be deleted or at least reduced to Rs.94,956/- i.e. 30% of the payment.*

6. *Without prejudice to the above, on the facts and in the circumstances of the case, the Learned AO has erred on facts and in law in making the impugned disallowance of Rs.27,26,731/- and the Ld. Addl./JCIT(A)-8, Delhi has erred in confirming the same without appreciating the fact that the said expenses were part of the opening WIP brought forward from the preceding previous year and were thus, part of the closing working in progress (WIP) and as such were not debited to the Profit and Loss Account of the year under consideration, therefore, in view of the decision of the Hon'ble Jurisdictional Chhattisgarh High Court, in the case of Hon'ble Jurisdictional High Court of Chhattisgarh in the case of Assistant Commissioner Of Income Tax-I, Bhilai,; Joint Commissioner Of Income Tax, Bhilai Range, Bhilai, District Durg (C.G.) Versus M/s Ganapati Motors, Tax Case No. 30 of 2016 with Tax Case No. 8 of 2017 where no disallowance was warranted, consequently, the addition so made is unsustainable and*

liable to be deleted. It is prayed that the disallowance of Rs.27,26,731/- may kindly be directed to be deleted.

7. *On the facts and in the circumstances of the case, the Learned AO has erred on facts and in law in making addition of Rs.27,26,731/- and the Ld. Addl./JCIT(A)-8, Delhi has erred in confirming the same in respect of opening WIP brought forward from preceding previous year, which was outside the scope of the issues for which the case was selected under "Limited Scrutiny" through CASS, thus, disallowance SO made was without jurisdiction by virtue of CBDT Instruction No. 20/2015 dated 29.12.2015 inasmuch as no addition could be made on issues beyond the scope of limited scrutiny without prior approval and due conversion to complete scrutiny, which was not done in the present case. Therefore, the addition is illegal, bad in law and void ab initio as the same was without jurisdiction. Hence, it is prayed that the addition of Rs.27,26,731/- confirmed by the Ld. Addl./JCIT(A)-8, Delhi may kindly be deleted.*

8. *On the facts and in the circumstances of the case, the Ld. AO has erred facts and in law on in disallowing Rs.27,26,731/- on account of alleged prior period expenses being Rs.16,70,862/- on account of Interest Expense, Rs.8,85,927/- on account of electricity expense and Rs. 1,69,942/- on account of site expenses and the Ld. Addl./JCIT(A)-8, Delhi has erred in confirming the same inasmuch as these expenses were incurred in earlier years for ongoing real estate projects and its treatment as capitalization as opening WIP is consistent with the accounting policies without appreciating the fact that in the case of real estate developers engaged in long-term project execution, indirect project-related expenses, even if incurred over multiple years, are routinely capitalized as part of project cost. The disallowance of legitimate business expenses brought forward as opening WIP under the pretext of prior period expenses is self-contradictory as the book results has been duly accepted inasmuch as the books of accounts has been duly accepted, consequently, the disallowance is liable to be deleted. Hence, it is prayed that the addition of Rs.27,26,731/- confirmed by the Ld. Addl./JCIT(A)-8, Delhi may kindly be deleted.*

9. *The Appellant craves leave to add, amend, alter vary and /or withdraw any or all the above grounds of Appeal.*

(Tax effect Rs.4,95,030/-)

2. At the time of hearing, learned counsel for the assessee submitted that though they have assailed both grounds on merit as well as legal ground, however, they would be first taking up the legal ground and it is the submission of the learned counsel that if such legal ground is answered in affirmative, in such a case, the other grounds shall become academic only. That, referring to the legal issue, learned counsel contended that they are challenging the pecuniary jurisdiction in respect of notice u/sec. 143(2) of the Act issued to the assessee and subsequent assessment order framed u/sec. 143(3) of the Act. Learned counsel placed reliance on the notification No.01/2014-15, dated 15/11/2014 and submitted that notice u/sec. 143(2) of the Act dated 29/07/2016 for A.Y. 2015-16 being issued by ITO, Ward-1(4), Raipur and subsequent framing of assessment also by him lacked inherent jurisdiction. It is the contention of the learned counsel for the assessee that as per the referred notification of the Department, since the total income filed as per the returned income was Rs. 10,46,800/-, therefore, the competent authority to issue the said statutory notice and subsequent completion of assessment order u/sec. 143(3) was vested upon DCIT/ACIT of Income Tax-1(1), Raipur and not with ITO, Ward-1(4), Raipur. The same was demonstrated by

the learned counsel from the notice under section 143(2) as annexed in the paper book along with the assessment order. At the same time, he referred to the return filed for the relevant assessment year wherein the total income has been declared at Rs. 10,46,800/- which has been duly acknowledged by the AO i.e. ITO, Ward-1(4), Raipur in the assessment order also. Learned counsel vehemently contended that since the total income returned was above Rs. 10,00,000/-, therefore, the competent authority to issue notice u/sec. 143(2) and the subsequent assessment completed u/sec. 143(3) could only have been exercised and performed by DCIT/ACIT of Income Tax-1(1), Raipur and since the ITO, Ward-1(4), Raipur lacked inherent jurisdiction for issuance of such notice and framing of assessment, therefore such assessment was invalid, bad in law and *void ab-initio*. Resultantly, all other subsequent proceedings, therefore becomes *non-est* in the eyes of law. Learned counsel further placed reliance on the decision of this bench of the Tribunal in the case of *Basanti Bai Agrawal vs. ITO* [ITA No. 259/RPR/2025 for A.Y. 2016-17 dt. 23/06/2025] wherein the same issue was decided based on the same referred Notification dated 15/11/2014 Notification No. 01/2014-15 of the Department.

3. *Per contra*, ld. Sr.DR principally supported the findings of the subordinate authorities, however, she conceded regarding the applicability of the referred decision by the learned counsel since she had only represented the Department before the Tribunal in the said case (*supra*).

4. Having heard the submissions of the parties and after careful consideration of all the documents/materials on record, I consider it pertinent to refer to the judgment of this Bench adjudicating on the same issue of inherent lack of jurisdiction as per the referred to notification of the Department. The relevant part of the said judgment (*supra*) is extracted as follows:-

2. The assessee has also placed on record additional ground of appeal and relying on the judgment of the Hon'ble Supreme court in the case of National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC), has prayed before the Tribunal for admission of the same which goes to the root of the matter. The additional ground of appeal raised by the assessee reads as follows:

“Assessment framed u/s.143(3) by the Ld. ITO, Mahasamund is without jurisdiction as jurisdiction vested with the Ld. DCIT/ACIT-3(1), Raipur in view of Section 143(2) read with Section 2(7A) read with Section 120 read with Notification No.1/2014 dated 15.11.2014 issued by the Ld. JCIT, Range-3, Raipur, rendering entire assessment illegal and void-ab-initio being inconsistent with statutory prescription.”

That since the additional ground raised by the assessee is the ground challenging the validity of the jurisdiction of the A.O framing the impugned assessment, therefore, such ground goes to the root of the matter since inherent lack of jurisdiction is incurable and is covered by

the aforesaid judgment of the Hon'ble Apex Court (supra) and therefore, the same is admitted for adjudication. 3. In this regard, the Ld. Counsel for the assessee opened his argument by demonstrating that the notice u/s. 143(2) of the Income Tax Act, 1961 (for short 'the Act') for the relevant A.Y. 2016-17, dated 25.09.2017 had been issued by the ITO, Ward-Mahasamund. That similarly, the assessment order was completed dated 22.12.2018 by the ITO, Ward-Mahasamund. It is the contention of the Ld. Counsel that such issuance of notice u/s. 143(2) of the Act and subsequent framing of assessment order u/s. 143(3) of the Act by the ITO, Ward- Mahasamund suffers from lack of jurisdiction in the case of the assessee in view of Notification No.1/2014-15, dated 15.11.2014. That for the sake of completeness, the said notification issued by the Department of Revenue, Ministry of Finance, Government of India is made part of this order and extracted as follows:



Government of India
Ministry of Finance: Department of Revenue
Office of the Joint Commissioner of Income Tax, Range-3
Ground Floor, Central Revenue Building, Civil Lines, Raipur, (C.G.)

NOTIFICATION : 1/2014-15
DATED 15/11/2014

In exercise of powers conferred under sub-section 1, 2 and 5 of section 120 of the Income Tax Act, 1961(43 of 1961) read with Notification No. 1/2014-15 dated 15/11/2014 by the Commissioner of Income Tax-1 , Raipur in super cession of all the existing notifications on the subject and all other power enabling me in this behalf, I , Joint Commissioner of Income tax, Range-3, Raipur hereby directs that the Assessing Officers mention in Column (2) of the schedule below shall exercise and perform the functions under the Income Tax Act, 1961, Wealth Tax Act, 1957, in respect of such cases or classes of cases (Specified in the corresponding entries in Col. 3 of the said schedule) of all such persons or classes of persons specified in the Col. No. 3 of the said schedule in such territorial areas as specified in the corresponding Col. No. 3 in respect of all incomes or classes of incomes.

2 This order shall take effect from 15/11/2014.

SCHEDULE

1	2	3
1.	Dy./ Asstt. Commissioner of Income Tax- 3(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-3, Raipur</p> <ol style="list-style-type: none"> 1. ITO 3(1), Raipur 2. ITO 3(2), Raipur 3. ITO 3(3), Raipur 4. ITO 3(4), Raipur 5. ITO Mahasamund <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</p>

		<p>Officers of Range-3, Raipur</p> <ol style="list-style-type: none"> a. ITO 3(1), Raipur b. ITO 3(2), Raipur c. ITO 3(3), Raipur d. ITO 3(4), Raipur e. ITO Mahasamund <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> <ol style="list-style-type: none"> 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-3, Raipur <ol style="list-style-type: none"> a. ITO 3(1), Raipur b. ITO 3(2), Raipur c. ITO 3(3), Raipur d. ITO 3(4), Raipur e. ITO Mahasamund <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> <ol style="list-style-type: none"> 5. All persons that may be assigned u/s 127 of the I.T. Act 1961.
2.	ITO, 3(1), Raipur	<ol style="list-style-type: none"> 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-3, Raipur <ol style="list-style-type: none"> b. ITO 3(1), Raipur c. ITO 3(2), Raipur d. ITO 3(3),Raipur, e. ITO 3(4),Raipur <p>And whose none 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 Rs.15 lakh or less.</p> <ol style="list-style-type: none"> 2. The directors of the companies mentioned at (1) above. 6. All cases of salaried employees of the State Government and Public Sector Unit wholly or partly owned by the State Government residing in Raipur district whose fifth letter of their PAN is from A to D. 7. All persons being other than companies deriving income from business or profession and other than those assessable by

		<p>DCIT/ACIT 3(1), Raipur and whose principal place of business is within the territorial area detailed as under:</p> <p>i. Areas falling under the left side of G.E Road starting from Shastri Chowk, upto the Municipal Limit towards Arang passing through Bhagat singh chowk, Telibandha, Magneto Mall .</p> <p>ii. Right side of the road starting from Sashtri Chowk upto Katchari Chowk.</p> <p>iii. Right side of the road starting from Katchari Chowk passing through Jeevanbima Marg, Avantibai Chowk, over bridge of Mova upto the Municipal limit towards Balodabazar covering Daldalseoni, Saddu, Shankarnagar etc.</p> <p>8. All persons being other than companies deriving income from sources other than income from business or profession and other than those assessable by DCIT/ACIT 3(1),Raipur and residing within the territorial area detailed as under:</p> <p>i. Areas falling under the left side of G.E Road starting from Shastri Chowk, upto the Municipal Limit towards Arang passing through Bhagat singh chowk, Telibandha, Magneto Mall .</p> <p>ii. Right side of the road starting from Sashtri Chowk upto Katchari Chowk.</p> <p>iii. Right side of the road starting from Katchari Chowk passing through Jeevanbima Marg, Avantibai Chowk, over bridge of Mova upto the Municipal limit towards Balodabazar covering Daldalseoni, Saddu, Shankarnagar etc.</p> <p>9. All cases that may be assigned under section 127 of the IT Act 1961.</p> <p>10.All the Residual area of the Range-1, Raipur which is not assigned to any other ITO of Range-3, Raipur</p>
ITO 3(2), Raipur		<p>1. All cases of salaried employees of the Central Government Department and Public Sector Unit wholly or partly owned by the Central Government residing in Raipur district whose fifth letter of the PAN is from E to L.</p> <p>2. All persons being other than companies deriving income from business or profession and other than those assessable by DCIT/ACIT 3(1), Raipur and whose principal place of business is within the territorial area detailed as under:</p> <p>i. Areas falling under the Right side of G.E Road starting from Ambedkar Statue opposit Collectarate upto the Municipal Limit towards Aarang passing through Bhagat singh chowk,</p>

		<p>Telibandha, 36 City Mall .</p> <p>ii. Left side of the road starting from Ambedkar Statue opposite Collectorate up to Kali Mandir covering Raj Bhawan, Income tax Office.</p> <p>iii. Left side of the road from Kali Mandir upto Kalibadi Chowk passing through Madhusudan Chowk</p> <p>iv. Left side of the road starting from Kalibadi Chowk upto the Municipal Limit towards Abhanpur passing through Sidharth chowk, Pachpedi Naka, Lalpur etc.</p> <p>2. All persons being other than companies deriving income from sources other than income from business or profession and other than those assessable by DCIT/ACIT 3(1),Raipur and residing within the territorial area detailed as under:</p> <p>i. Areas falling under the Right side of G.E Road starting from Ambedkar Statue opposit Collectarate upto the Municipal Limit towards Aarang passing through Bhagat singh chowk, Telibandha, 36 City Mall .</p> <p>ii. Left side of the road starting from Ambedkar Statue opposite Collectorate up to Kali Mandir covering Raj Bhawan, Income tax Office.</p> <p>iii. Left side of the road from Kali Mandir upto Kalibadi Chowk passing through Madhusudan Chowk</p> <p>iv. Left side of the road starting from Kalibadi Chowk upto the Municipal Limit towards Abhanpur passing through Sidharth chowk, Pachpedi Naka, Lalpur etc.</p> <p>3. All cases that may be assigned under section 127 of the IT Act 1961.</p>
4	ITO 3(3), Raipur	<p>1. All cases of salaried employees of the Central Government Department and Public Sector Unit wholly or partly owned by the Central Government residing in Raipur district whose fifth letter of the PAN is from M to Q.</p> <p>2. All persons being other than companies deriving income from business or profession and other than those assessable by DCIT/ACIT 3(1), Raipur and whose principal place of business is within the territorial area between Dhamtari narrow gauge track and Vishakhapatanam broad gauge railway track starting from Raipur Rail way station upto their intersection of Jeewanbima Marg (Pandri) covering Raman mandir ward, Timber Market, Devendra Nagar, Pandri Cloth Market, FCI Godown.</p>

		<p>3. All persons being other than companies deriving income from sources other than income from business or profession and other than those assessable by DCIT/ACIT 3(1),Raipur and residing within the territorial area between Dhamtari narrow gauge track and Vishakhapatanam broad gauge railway track starting from Raipur Rail way station upto their intersection of Jeewanbima Marg (Pandri) covering Raman mandir ward, Timber Market, Devendra Nagar, Pandri Cloth Market, FCI Godown.</p> <p>4. All cases that may be assigned under section 127 of the Income Tax Act, 1961.</p>
5	ITO-3(4) Raipur	<p>1. All cases of salaried employees of the Central Government and Public Sector Unit wholly or partly owned by the Central Government residing in Raipur district whose fifth letter of the PAN is from R to Z.</p> <p>2. All persons being other than companies deriving income from business or profession and other than those assessable by DCIT/ACIT 3(1), Raipur and whose principal place of business is within the territorial area detailed as under:</p> <p>i. Areas falling under the Right side of Road starting from Jaistambh Chowk upto Dhamtari Narrow gauge railway track passing through Durga College, Moudhapara, fafadih Chowk.</p> <p>ii. Left side of the GE road starting from Jaistambh Chowk upto Shastri Chowk.</p> <p>iii. Left side of the road starting from Sashtri Chowk upto Katchari Chowk .</p> <p>iv. Left side of the road starting from Katchari Chowk passing through Jeevanbima Marg, upto Dhamtari Narrow gauge railway track at Pandri covering Pagaria Complex, Bus stand , Khalsa School,etc.</p> <p>v. Right side of the Dhamtari Narrow gauge railway track from Fafadih to Pandri.</p> <p>3. All persons being other than companies deriving income from sources other than income from business or profession and other than those assessable by DCIT/ACIT 3(1),Raipur and residing within the territorial area detailed as under:</p> <p>i. Areas falling under the Right side of Road starting from Jaistambh Chowk upto Dhamtari Narrow gauge railway track passing through Durga College, Moudhapara, fafadih Chowk.</p> <p>ii. Left side of the GE road starting from Jaistambh Chowk upto Shastri Chowk.</p> <p>iii. Left side of the road starting from Sashtri Chowk upto Katchari Chowk .</p> <p>iv. Left side of the road starting from Katchari Chowk passing through Jeevanbima Marg, upto Dhamtari Narrow gauge railway track at Pandri covering Pagaria Complex, Bus stand , Khalsa</p>

		School, etc. v. Right side of the Dhamtari Narrow gauge railway track from Fafadih to Pandri.
		4. All cases that may be assigned under section 127 of the Income Tax Act, 1961.
6	ITO Mahasamund	1. All persons being companies registered under the Companies Act, 1956 and having their registered office falling within the territorial area of Mahasamund District And whose none of the last three returns of income as on 1 st April 2014 and as on 1 st April of any subsequent F.Y shows total income /Loss of above Rs.15 lakh. 2. The directors of the companies mentioned at (1) above. 3. All persons being other than companies deriving income from business or profession and other than those assessable by DCIT/ACIT 3(1), Raipur and whose principal place of business is within the territorial area of Mahasamund District 4. All persons being other than companies deriving income from sources other than income from business or profession and other than those assessable by DCIT/ACIT 3(1), Raipur and residing within the territorial area of Mahasamund District. 5. All cases that may be assigned under section 127 of the Income Tax Act, 1961.

(D.K. JAIN)

Joint Commissioner of Income tax,,
Range-3, Raipur

Copy Forwarded to:

1. The Pr. Chief Commissioner of Income Tax (CCA), Bhopal
2. The Director General of Income Tax (Inv.), Bhopal
3. The Chief Commissioner of Income Tax, Raipur
4. The Pr. CIT/CIT-1, Pr.CIT/CIT-2, Raipur/ Pr. CIT/CIT, Bilaspur.
5. The Pr. DIT/DIT(Inv), Raipur
6. The CIT(A)-1/ The CIT(A)-2/ The CIT(A), Bilaspur.
7. The CIT(CO)/ The CIT(Audit), Bhopal
8. The Addl./Jt. Commissioner of Income Tax, Range-1,2,3,4, Raipur, 1,2,Bhilai , Range-1,2, Bilaspur, Range Korba.
9. All ACsIT, Raipur/Bhilai.
10. All ITOs/TROs in Raipur/Bhilai Charge.
11. The Chamber of Commerce Raipur/Bhilai-Durg.
12. The Income-tax Bar Association, Raipur/Bhilai/Rajnandgaon/Dhamtri/Jagdarpur.
13. Notice Board.

Joint Commissioner of Income tax,,
Range-3, Raipur

4. That referring to Column 1 & 2 in the Schedule part of the Notification, the Ld. Counsel contended that all persons being other than companies whose income in 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 lacs, in such scenario, the appropriate jurisdiction for framing assessment is with the Dy./Asstt. Commissioner of Income Tax-3(1), Raipur. That further, providing further explanation to the contention raised by the Ld. Counsel, he demonstrated from the Income Tax Return acknowledgement for A.Y.2016-17 that the total income that has been declared by the assessee was at Rs.10,27,636/- which was rounded off as per Section 288A of the Act at Rs.10,27,640/- which also gets displayed in the computation of total income. That further, the Ld. Counsel also submitted that so far as the assessment order is concerned, therein also, the ITO, Ward-Mahasamund had taken returned income of the assessee as per return of income filed a/w. computation at Rs.10,27,640/-. Therefore, it is crystal clear that so far the total income as per the return of income filed by the assessee was Rs.10 lacs and above and that as per the afore-stated Circular/Notification of the department, in such a case, the jurisdiction to exercise and perform any function under the Act with regard to such assesseees was vested with Dy./Asstt. Commissioner of Income Tax-3(1), Raipur. But since in the case of the assessee even though the return of income was filed above Rs.10 lacs, the notice issued u/s. 143(2) of the Act and subsequent assessment framed u/s.143(3) of the Act by the ITO, Ward-Mahasamund was therefore without valid jurisdiction, hence, liable to be quashed.

5. The Ld. Sr. DR could not refute these facts on record and was not able to substantiate through any documentary evidence that the contention raised by the Ld. Counsel for the assessee was incorrect.

6. Having heard the contentions of the parties herein at length and after careful consideration of the legal issue at hand, I am of the considered view that the Ld. Counsel for the assessee has fairly demonstrated that the issuance of notice u/s. 143(2) of the Act by the ITO, Ward-Mahasamund and subsequent assessment framed u/s. 143(3) of the Act by the ITO, Ward Mahasamund suffers from lack of jurisdiction, hence liable to be quashed. It is established principle of law for any proceeding by the quasi-judicial authority as per the Act, it has to be performed within the parameter of valid jurisdiction. That as per the Circular/Notification of the department dated 15.11.2014 (supra), it has been clearly laid down that so far as the assesseees are concerned who other than companies have filed return of income above Rs.10 lacs, in such case, the officer who has the rightful jurisdiction over such assessee is the Dy./ACIT-3(1), Raipur. Admittedly, as per the return of income, computation of income and even as per the assessment order,

it had been displayed that the return of income filed by the assessee was above Rs.10 lacs and to be more specific it was Rs.10,27,640/-. That in spite of such return of income filed, the assessment was framed and completed not by the Dy/ACIT-3(1), Raipur but by the ITO, Ward-Mahasamund who inherently lacked valid jurisdiction with regard to the assessee. That in exercise of quasi-judicial power as per the Act sans valid jurisdiction such an act has to be struck down as arbitrary, bad in law and void ab initio.

7. I take guidance from the judgment of the Hon'ble High Court of Calcutta in the case of Pr. CIT-5, Kolkata Vs. Raghvendera Mohta, ITAT/51/2025, IA No.GA/1/2025, GA/2/2025, dated 05.05.2025 wherein the Hon'ble High Court of Calcutta held and observed as follows:

“5. The assessee preferred appeal before the learned Tribunal challenging the order passed by the Commissioner of Income Tax (Appeals)-10, Kolkata [CIT(A)] dated 26.9.2017. One of the grounds urged before the learned Tribunal was that the Assessing Officer, who passed the assessment order did not have jurisdiction over the case of the assessee and, therefore, the notice as well as the assessment order are bad in law. The learned Tribunal took note of the facts and circumstances of the case and found that the assessee filed its return of income declaring the income to be nil. Subsequently, notice under section 143(2) was issued on 10.9.2015 and notice under section 142(1) dated 13.6.2016 was issued along with the questionnaire. The assessee contended that the notices were without jurisdiction and relied upon section 120 of the Act. In this regard, the assessee referred to the notification issued by the CBDT in Instruction No.1 of 2011. The learned Tribunal took into consideration the facts of the case and found that the assessment has been framed by the Assessing Officer, who inherently lacks jurisdiction to do so.

6. The learned Tribunal took note of the decision of a Coordinate Bench of the learned Tribunal in the case of Bhagyalaxmi Conclave (P) Ltd. vs. DCIT dated 3.2.2021. Apart from other decisions and allowed the assessee's appeal. the revenue had challenged the order passed in the case of Bhagyalaxmi Conclave (P) Ltd. before this court in ITAT/221/2022 etc. and by a judgment reported in 2022 (12) TMI 1514, the appeal filed by the department was dismissed one of the questions framed is identical to the substantial questions of law suggested by the

revenue in the instant case. Thus, we find that the learned Tribunal was right in allowing the assessee appeal and setting aside the order passed by the Assessing Officer on the ground of lack of inherent jurisdiction.

7. For the above reason, the appeal is dismissed and the substantial questions of law are answered against the revenue.”

8. Further, the Hon’ble High Court of Calcutta in the case of Pr. Commissioner of Income Tax Vs. Shree Shoppers Ltd. (2023) NYPCTR 379 (Cal.) on the same issue of validity of jurisdiction had held and observed as follows:

“4. The short issue which falls for consideration in the instant case is whether there is valid notice issued under Section 143(2) of the Act for commencing the scrutiny assessment. The Tribunal has noted the facts and rendered a finding that on the date when the case was selected for scrutiny, the authority who issued the notice namely, the Income Tax Officer, Ward No.9(4), Kolkata did not have jurisdiction and the jurisdiction was with the Deputy Commissioner of Income Tax. The following factual finding has been recorded by the Tribunal :

"Therefore, the legal ground stands to be admitted and the same relates to invalid notice issued u/s. 143(2) of the Act. It is a settled position of law that for carrying out the assessment proceedings u/s. 143(3) of the Act, the statutory requirement of serving of valid notice u/s. 143(2) of the Act is must and in absence thereof the subsequent proceedings become invalid. In the case of assessee, the facts are that the assessee has declared income of Rs.48,47,180/- in the ereturn filed on 26.09.2012. For selecting the case for scrutiny notice u/s. 143(2) of the Act was issued by ITO, Ward-9(4), Kolkata dated 23.09.2013. The Central Board of Direct Taxes (CBDT vide Instruction No.1/2011 supra) revised the monetary limit for issuing notice by ITO/DCs/ACs. Through this instruction it stated that in case of metro cities in case of corporates declare income above Rs.30 lakh the jurisdiction of such corporate assessee will lie with the DCs/ACs. It is not in dispute that as on the date of selecting the case for scrutiny, the very basis for having jurisdiction over the assessee is the returned income which was more than Rs.30 lakhs and the same was lying with the DCs/Acs but the notice u/s. 143(2) of the Act has been issued by ITO, Ward-9(4), Kolkata. It is true that subsequently the assessment has been framed by DCIT, Circle-

9(2), Kolkata but the point in dispute is that on date of issuing a notice u/s. 143(2) of the Act, whether the ITO, Ward- 9(4), Kolkata was having a valid jurisdiction to issue such notice u/s. 143(2) of the Act."

5. The above factual position recorded by the Tribunal is not in dispute. Therefore, we are of the clear view that the Tribunal rightly allowed the assessee's appeal and quashed the scrutiny proceedings as defect in issuance of notice is incurable as it goes to the root of the matter."

9. Also, the Hon'ble High Court of Bombay in the case of Ashok Devichand Jain Vs. Union of India, (2023) 151 taxmann.com 70 (Bombay) on the similar issue had held and observed as follows:

"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.

9. No order as to costs."

10. Further, the ITAT, Raipur in the case of Shri Arun Agrawal Vs. ACIT-3(1), Raipur, ITA No.214/RPR/2023, dated 16.10.2023 for A.Y.2010-11, on the similar issue had held and observed as follows:

“14. Be that as it may, I am of the view that as the assessment in the case of the assessee had been framed by the ACIT, Circle-3(1), Raipur, who in light of the CBDT Instruction No.1/2011 (supra) r.w. CBDT Instruction No.6/2011 (supra) was not vested with any jurisdiction for framing of assessment in the case of the assessee who had declared Nil income; therefore, the order so passed by him cannot be sustained and is liable to be struck down on the said count itself. Thus, the Ground of Appeal No.1 raised by the assessee is allowed in terms of my aforesaid observations.” Therefore, it is obvious and trite that any action by the revenue authority without jurisdiction is bad in law, void ab initio and hence, liable to be struck down on the said count itself.

11. The issue is no more res-integra as per the judicial precedents that any right and liabilities specifically in a case of imposing liability for that matter whether it is income tax or any other financial burden on the assessee through legal dictate, the said action can only be pronounced as legally valid if it is exercised within parameter of correct jurisdiction.

12. Reverting to the facts of the present case as examined aforesaid, it is clearly evidenced that the return of income was filed by the assessee above Rs.10 lacs, for which, the jurisdiction was vested only with the Dy./ACIT3(1), Raipur and not with ITO, Ward-Mahasamund. That since in the present case, the assessment has been framed u/s. 143(3) of the Act dated 22.12.2018 by the ITO, Ward-Mahasamund who lacked inherent valid jurisdiction, therefore, the same is held invalid, void ab initio, and the order of assessment is quashed.

13. That once the assessment order is quashed, then all other subsequent proceedings becomes non-est in the eyes of law.

14. As per the aforesaid terms even without going into the merits of the matter on this legal premise itself the appeal of the assessee is allowed. Since this legal ground is answered in favour of the assessee, therefore, all other grounds on merits including any other legal grounds if any, becomes academic only.

15. In the result, appeal of the assessee is allowed.”

5. Therefore, it is obvious and trite that any action by the revenue authority without jurisdiction is bad in law, *void ab-initio* and hence, liable to be struck down on the said count itself.

6. The issue is no more *res-integra* as per the judicial precedents that any right and liabilities specifically in a case of imposing liability for that matter whether it is income tax or any other financial burden on the assessee through legal dictate, the said action can only be pronounced as legally valid if it is exercised within parameter of correct jurisdiction.

7. Reverting to the facts of the present case as examined aforesaid, it is clearly evidenced that the return of income was filed by the assessee above Rs.10 lacs, for which, the jurisdiction vested only with the DCIT/ACIT of Income Tax-1(1), Raipur and not with ITO, Ward-1(4) and that since in the present case, the assessment has been framed u/s. 143(3) of the Act dated 28.12.2017 by the ITO, Ward-1(4), Raipur who lacked inherent jurisdiction, therefore, the same is held as invalid, void ab initio, and the order of assessment is quashed.

8. That once the assessment order is quashed, then all other subsequent proceedings becomes *non-est* in the eyes of law.

9. That, on the same parity of reasoning, following the afore-stated order, I find merit in the contention raised by the assessee and this legal ground is answered in favour of the assessee. That, therefore, all other grounds including any other legal grounds, if any, shall become academic only.

10. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 03.07.2025.

Sd/-
[PARTHA SARATHI CHAUDHURY]
JUDICIAL MEMBER

Raipur, Dated : 03rd July, 2025

vr/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Raipur concerned.
4.	D.R. ITAT, Raipur Bench, Raipur.
5.	Guard File.

By Order

//True Copy //

Sr. Private Secretary, ITAT,
Raipur Benches, Raipur.