

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
and
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.3020/DEL/2023
(Assessment Year: 2017-18)**

Arjun Rishi,
F – 79/18, Sainik Farms,
New Delhi – 110 062.

vs.

ITO, Ward 28 (1),
Delhi.

(PAN : AGVPR4625D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Arun Kishore, CA

REVENUE BY : Shri Ashish Tripathi, Sr. DR

Date of Hearing : 24.04.2025

Date of Order : 09.07.2025

ORDER

PER S.RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. This appeal is filed by the assessee against the order of ld. Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'ld. CIT (A)] dated 01.09.2023 for Assessment Year 2017-18 raising following grounds of appeal :-

“1. i) That the order of Ld. CIT (A) NFAC Delhi confirming the addition of Rs.9,81,173/- made by Ld. AO ward 28(1) Delhi is illegal, unjust, opposed to facts and suffers from the vice of arbitrariness.

ii) That all grounds of appeal are independent and without prejudice to each other.

2 i) That on the facts of the case in law the order of Ld. CIT (A) confirming the addition made by Ld. AO is an illegal order, since;

a) The assessment is made by ITO ward 28(1), without issue of any valid notice u/s 143(2).

b) The notices issued u/s 143(2) by ITO ward 31(4) dated 16.08.2018 and by ACIT, Cir.31(1) dated 12.09.2018 are notices by non-jurisdictional AO's.

c) There is no order u/s 127 for transfer of jurisdiction between various AOs ultimately, confining the jurisdiction to a non-jurisdictional AO ward 28(1).

d) As per CBDT notification ward ITO can assess incomes upto Rs. 30 lacs. AO Ward - 28(1) had no jurisdiction to assess income of Rs. 91.05 lacs declared by the Appellant.

ii) That the assessment made by a non-jurisdictional AO, even without valid notice u/s 143(2) is an illegal assessment which is to be quashed.

3 i) That the correct jurisdiction to assess the income of Rs. 91.05 lacs of a director of a company (One World Realtech Pvt Ltd.) lies with the ACIT corporate charge with Pro CIT Delhi-7.

ii) That the assessment made by a non-corporate charge, non-jurisdictional AO be annulled.

4 That on the facts of the case and in law Ld. CIT (A) has grossly erred in dismissing the additional grounds for invalid notice u/s 143(2) by referring to section 124(3), ignoring the fact that the issue goes to the root cause of the matter and the assessment is to be annulled.

5 That on the facts of the case and in law, Ld. AO and Ld. CIT (A) have both erred in making and confirming addition u/s 68, which is not applicable in case of deposits in bank account, out of opening balance of cash in hand, since there is no credit in the books of account and the Appellant is not required to maintain any books of account being a salaried employee.

6 i) That on the facts of the case and in law Ld. CIT (A) has erred in upholding the contentions of the Ld. AO that cash In hand of Rs. 10,98,327/-was not mentioned in the assessment order of AY 2016-17, without appreciating that cash in hand is never reported in the assessment order u/s 143(3).

ii) That the Rule for reporting assets and liabilities was introduced for the first time in AY 2016-17.

iii) That the Ld. CIT (A) and Ld. AD have both grossly erred in ignoring the cash book filed and accepted during AY 2016-17 - limited scrutiny for verification of cash deposits.

iv) That the inadvertent typing error in providing the information in the ITR for the first time for AY 2016-17 whereby Rs.10,98,327/-was typed as 1,08,327/- (third digit 9 was omitted) is an erroneous dismissal of appellant submission.

v) That the illegal addition on account of clerical error be deleted.

7 That Ld. AD has grossly erred on facts of the case and in law in making addition since Appellant did not file revised return in respect of the reporting of cash in hand in AY 2016-17, knowing fully well that the error did not have an impact on the income declared and revised return could not be filed after a specified period. The addition so made be deleted.”

2. Ground No.1 is general in nature, hence does not require any adjudication.
3. With regard to Ground Nos.2 & 3, assessee has raised legal grounds challenging the assessment order. The relevant facts are, assessee filed his original return of income on 31.03.2018 declaring income of Rs.91,05,020/-. The case was selected under CASS for scrutiny in the limited category. Subsequently, notice under section 143 (2) of the Income-tax Act, 1961 (for

short 'the Act') was issued and served on the assessee. The case was selected for examination on the following reasons :-

- (a) cash deposit and transaction in property;
- (b) capital gains/loss on sale of property; and
- (c) investment in immovable property.

4. Subsequently, notice u/s 142(1) was issued and served on the assessee through e-portal. In response, assessee filed relevant details. Since the assessee has raised various legal grounds, we shall deal with the same hereunder.
5. At the time of hearing, ld. AR of the assessee submitted as under :-

S. No.	Contentions of Ld. AO	Submissions of Appellant
1	In the assessment order for AY 2016-17, closing balance of cash and imprest account is not stated—so not accepted	Closing balance of cash in hand and imprest account are never reported in the assessment order, which gives the income assessed as per ITR and additions made, if any with reasons.
2	If you had noticed the error in feeding of A&L schedule for AY 2016-17, why revised return was not filed?	There was no occasion to file revised return as the appellant came to know of the error only when pointed out by the Ld. AO during AY 2017-18, by that time, return for AY 2016-17 already assessed u/s 143(3), could not be revised.

- 1.3 On account of the above inadvertent error, Ld. AO has added Rs. 9,81,173/- in following manner, as unexplained cash as per last para of assessment order on Pg. 2:

Deposit during demonetization period	Rs. 10,89,500/-
Less opening balance of cash in hand	<u>Rs. 1,08,327/-</u>
Addition made	<u>Rs. 9,81,173/-</u>

If correct balance of cash in hand of Rs. 10,98,327/- is adopted, no addition is warranted since the deposits are out of opening balance.

- 1.4 Without prejudice to the above, complete copies of following accounts were filed during the course of assessment for AY 2017-18, no mistake was found:
- a) Cash book Pg. 102 to 105 – Opening Balance Rs. 10,98,327/- and closing balance Rs. 5,30,470/-.
 - b) Imprest account – Arjun Rishi Pg. 100 to 101.
- 1.5 Complete summary of cash accounts as per copies of cash book, imprest account and bank ledger accounts filed is enclosed at Pg. 98. It will be observed from the said statement that there was enough cash balance for deposit of Rs. 10,89,500/- in the bank account during the demonetization period. Date wise detail of deposits in bank accounts is given at Pg. 97.
- 1.6 In view of above submissions, addition of Rs. 9,81,173/- is not based on facts of the case and the Ld. AO has attempted to capitalize the inadvertent mistake - feeding error of the appellant, when enough other evidence by way of cash book and balance sheet was already on record.
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- 2 Legal Grounds No. 2 to 4
- Assessment made by a non-jurisdictional Ward AO for income above Rs. 30 Lacs. Ld. AO did not have the pecuniary jurisdiction to assess the appellant's income above Rs. 90 Lacs.
 - No valid notice u/s 143(2) issued by the jurisdictional AO.
 - There is no order of Pr. CIT u/s 127 for transfer of jurisdiction between various AOs and ultimately confining it to a Ward ITO – 28(1) who had no jurisdiction to assess declared income of Rs. 91,05,020/- (please refer Pg. 89).
 - Not only the assessment was to be made by ACIT/DCIT Circle, but it was to be made under a corporate charge, since the appellant is a director of company, drawing remuneration and the assessment is to be made in the Ward / Circle of the company paying directors remuneration.
- 3.1 The law laid down by the parliament in respect of Section 143(2) and 127 has to be strictly followed by all Assessing Officers and Appellate Authorities during the course of assessment / appellate proceedings in terms of the Income Tax Act.
- 3.2 When a statute prescribes the authority with whom the power is vested, it is only that authority which can exercise that power. By consent of parties, the statutory prescription cannot be waved nor vested with another authority. As

held in Vijay Nathulal Sharma Vs. DCIT (2025) 472 ITR 535 (AP) – this is the law as already settled under various Apex Court decisions.

- 3.3 When power is given to do certain think in a certain way, it must be done in that way alone and not otherwise, as held in the case of Malay Kar Vs. Union of India (2025) 472 ITR 714 (Orissa).

Thus, the circulars, directions and guidelines issued u/s 119, 120 and others, being a delegated legislation, are to be strictly followed by the Assessing Authorities. These guidelines, circulars and directions are binding on the Assessing Officers as held under various judicial decisions including the case of Uco bank Vs. CIT (1999) 237 ITR 889 (SC). The limits fixing the pecuniary jurisdiction by CBDT are to be strictly followed, the appellant is not supposed to guide the assessing authority. Illegality, if any, committed by the Assessing Authority, cannot be legalized, by silence of the assessee or by participation of the assessee, in the proceedings, which are not in accordance with the statutory law or the delegated law.

- 3.4 In support of above legal and technical grounds, we rely upon the case laws referred in the Paper Book under Sr. No. 1 to 10, Pg. No. 1 to 88 and following case laws:

- Rajeev Goel Vs. ACIT ITA No. 1184 / Del / 2019 AY 2014-15 order dated 26.09.2019.
- CIT Vs. SK Industries (2022) 141 taxmann.com 569 (SC).
- Pr. CIT Vs. Nopany and Sons (2022) 136 taxmann.com 414 (Kol HC).
- CIT Vs. Laxman Das Khandelwal (2019) 108 taxmann.com 183 (SC)/417 ITR 325 (SC) (13.08.2019) holding that assessment made without notice u/s 143(2) is invalid – Hotel Blue Moon relied upon – in the instant case, issue of invalid notice by a non-jurisdictional Ward – ITO is as good as non-issue of valid notice.
- Dr. Hari Singh Chandel Vs. ITO (2023) 102 ITR (Trib) 541 (Raipur ITAT).

- 3.5 In view of the judicial pronouncements relied upon as referred in the Paper Book and as quoted hereinabove, the assessment made without jurisdiction by a non-jurisdictional AO, without issue of any valid notice u/s 143(2) by the jurisdictional AO and without acquiring jurisdiction to make assessment u/s 143(3), be annulled.”

6. On the other hand, ld. DR of the Revenue submitted that the assessee has to challenge the issue under consideration within two months. He submitted

that income has to be assessed and income alone cannot be considered for jurisdiction. He relied on section 124 (3) of the Act as per which assessee has to file objections within two months. In this regard, he relied on the decision of Hon'ble jurisdictional High Court in the case of Abhishek Jain vs. ITO (2018) 94 taxmann.com 355 (Delhi).

7. In the rejoinder, ld. AR of the assessee submitted that section 124 applies with the territorial jurisdiction and it is not applicable to pecuniary jurisdiction. The relevant section applicable is section 120 and he reiterated that the action of the Assessing Officer is illegal and in this regard, he relied on the CBDT Instruction No.1/2011, which is placed on record.
8. Considered the rival submissions and material placed on record. We observe that assessment was completed by the Assessing Officer, Ward 28 (1), Delhi vide order dated 30.12.2019. We observe that as per the CBDT Instruction No.1/2011 dated 31.01.2011 u/s 119 of the Act in the present case, the assessee has declared an income of Rs.91,05,020/- and as per the Instruction, income upto Rs.30,00,000/- is with the ITOs and anything above Rs.30,00,000/-, assessment has to be completed by ACs/DCs. In the given case, we observed that as per the income declared by the assessee, the jurisdiction falls under ACs/DCs. In the given case, the assessment was completed by ITO, Ward 28 (1), Delhi. The revenue has not brought on record any order passed u/s 127 for transfer of jurisdiction. Considering the

peculiar facts on record, we observe that actual jurisdiction lies with ACs/DCs and it is beyond the jurisdiction of ITOs. Therefore, notice u/s 143(2) to assess the income of the assessee is beyond the jurisdiction of the ITO. Therefore, the jurisdiction notice u/s 143(2) is bad in law and accordingly even assessment order passed with wrong jurisdiction is bad in law. In this regard, we rely on the decision of ITAT, Delhi Bench in the case of Vipul Mittal vs. DCIT in ITA No.2850/Del/2019 dated 15.01.2025 wherein it was held as under :-

14. Considered the rival submissions and material placed on record. We observed that assessee has filed its return of income declaring income of Rs.59,68,220/-. As per the CBDT Instruction No.01/2011, the jurisdiction over the assessee's case lies only with Assistant/Deputy Commissioner of Income-tax as the income declared by the assessee is above Rs.20 lakhs falls under the category of non-corporate returns. It is brought to our notice that notice u/s 143(2) was issued by the ITO, Ward 11 (3) on 28.08.2015, who do not have jurisdiction over the assessee in the case considering the fact that the return of income declared by the assessee is over and above Rs.20 lakhs. The assessment was completed by the DCIT, Circle 11 (2), New Delhi u/s 143(3) of the Act. However, we observed that the jurisdiction lies only with DCIT, however the statutory notice u/s 143(2) was issued by the ITO instead of the present Assessing Officer i.e. DCIT. In this regard, the Assessing Officer also filed the submissions which are placed on record in which it was submitted that as per the PAN based jurisdiction, the jurisdiction over the case at the time of issue of notice with the ITO, Ward 11(3). Thereafter, the jurisdiction was transferred to Circle 11 (2), Delhi on 21.07.2016 who was ultimately passed the assessment order after allowing the opportunity to the assessee. The Assessing Officer in its submissions as well as ld. DR objected to the submissions of the assessee for the reason that the present jurisdictional issue now instead of raising the same during assessment itself within one month from the date of receipt of the notice u/s 124 (3) of the Act. After considering the factual matrix in this case, we observed that similar issue under consideration is considered by the coordinate Bench in the case of YKM Holdings Pvt. Ltd. vs. ACIT (supra) wherein it was held 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:

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

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."*

15. Similar view was expressed by the ITAT, Mumbai in the case of Monarch & Quershi Builders vs. ACIT (supra) and by the coordinate Bench in the case of Sapna Rastogi vs. ITO (supra).

16. Further the Revenue has not brought on record an order u/s 127 of the Act passed in order to transfer the case to DCIT, Circle 11 (2), New Delhi except making the submissions that assessee should file the objection within one month u/s 124(3) of the Act. Since the issue of notice u/s

143(2) is the basis of initiation of the assessment u/s 143(3) and the jurisdictional officer should have issued the notice and also completed the assessment. The present Assessing Officer has completed the assessment without following the due process of law and we, respectfully following the decisions of the coordinate Bench and ITAT Mumbai, are inclined to hold that the jurisdictional notice u/s 143(2) was not issued by the DCIT before completing the assessment u/s 143(3) of the Act and that there is an unwarranted defect in this case which is not curable. Accordingly, the assessment passed in the given case is quashed and accordingly, the additional grounds raised by the assessee are allowed.”

17. Respectfully following the above decision, we are inclined to set aside the assessment order. Accordingly, Ground Nos.2 & 3 raised by the assessee are allowed.
18. Since the grounds on jurisdictional issues are allowed, the issues on merit become academic, therefore, not deliberated upon.
19. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 9th day of July, 2025.

**Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER**

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 09.07.2025

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**