

आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH KOLKATA

श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं/ITA No.1306/KOL/2025

(निर्धारण वर्ष / Assessment Year :2018-2019)

Hanuman Agro Industries, Nicco House 6 th floor, 2 Hare Street Kolkata, West Bengal-700001	Vs	DCIT, Circle-4(1), Kolkata
PAN No. :AAACH 6578 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri S.M.Surana, Advocate
राजस्व की ओर से /Revenue by	:	Shri Abhijit Adhikary, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	13/01/2026
घोषणा की तारीख/Date of Pronouncement	:	13/01/2026

आदेश / O R D E R

This is an appeal filed by the assessee against the order dated 22.05.2025, passed by the Id.CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2018-2019.

2. The Ld.AR drew my attention to the assessment order of page 1 of first line wherein the it is mentioned that the return of income for the impugned assessment year originally was filed on 31.10.2018. Subsequently, the assessee filed a revised return on 19.03.2019, declaring total income of Rs.16,64,350/-. It was the submission that the Assistant commissioner of Income Tax, Kolkata-1(2) has passed the assessment order. It was the submission that the notice u/s.148 of the Act in the impugned assessment year was issued on 25.03.2025 by the ACIT, Circle-4(1), Kolkata. The Ld.AR drew my attention to the notice which is shown at page 9 of the paper book which reads as follows :-



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT
COMMISSIONER OF INCOME TAX
CIRCLE 4(1), KOLKATA

To, HANUMAN AGRO INDUSTRIES LIMITED 6TH FLOOR NICCO HOUSE , 2 HARE STREET HARE STREET KOLKATA 700001 , West Bengal India	
---	--

PAN: AAACH6578B	A.Y: 2018-19	Dated: 25/03/2022	DIN & Notice No: ITBA/AST/S/148_1/2021- 22/1041558854(1)
--------------------	-----------------	----------------------	--

Notice under section 148 of the Income-tax Act, 1961

Sir/Madam/ M/s.

- I have the following information in your case or in the case of the person in respect of which you are assessable under the Income tax Act, 1961(here in after referred to as "the Act") for Assessment Year **2018-19**
 - information flagged by the risk management strategy formulated in this regard suggesting that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act. Order under sub-section (d) of section 148A of the Act has been passed in such case vide DIN **ITBA/AST/F/148A/2021-22/1041558383(1)** dated **25/03/2022** and annexed herewith for reference,
- 2. I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other, allowance or deduction for the Assessment Year **2018-19** and I, hereby, require you to furnish, within 30 days from service of this notice, a return in the prescribed form of the Assessment Year **2018-19**.
- 3. This notice is being issued after obtaining the prior approval of the **PCIT, Kolkata-2** accorded on date **25/03/2022** vide Reference No. **8211**.

HANUMAN AGRO INDUSTRIES LTD.

[Signature]
Director.

SOMNATH DASBISWAS
CIRCLE 4(1), KOLKATA

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

Note: If digitally signed, the date of digital signature may be taken as date of document.
AAAYAKAR BHAWAN, P-7, CHOWRINGHEE SQUARE, KOLKATA, West Bengal, 700069
Email: KOLKATA.DCIT4.1@INCOMETAX.GOV.IN, Office Phone:03322136169
Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.
* DIN-Document identification No.

This document is digitally signed
Signer: SOMNATH DASBISWAS
Date: 25 March 2022 17:42
Location: KOLKATA, India

3. It was submission that the pecuniary jurisdiction in respect of the assessee did not lie with the Assistant Commissioner of Income Tax,

Circule-1(1), Kolkata in view of the Instruction No.F.No.187/12/2010-IT(A-1) dated 31/01/2011. It was the submission that on identical circumstances the Hon'ble Jurisdictional High Court in the case of Raghvendra Mohta, in ITAT/51/2025 in IA No.GA/1/2025 and GA/2/2025 dated 05/05/2025, has upheld the decision of the coordinate bench of this tribunal in the case of Raghvendra Mohta, passed in ITA No.2416/KOL/2017 dated 08/04/2024 wherein in para 8 to 13 the coordinate bench has held as follows:-

8. *We have considered the rival contentions and gone through the records. Before proceeding further, it will be appropriate to refer to section 120 of the Act which, for the sake of ready reference, is reproduced as under:*

“Jurisdiction of income- tax authorities

120.(1) Income- tax authorities shall exercise all or any of the powers and perform all or any of the functions Conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.

[Explanation.- For the removal of doubts, it is hereby declared that any income tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1)].

(2) The directions of the Board under sub- section (1) may authorise any other income- tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income- tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub- sections (1) and (2), the Board or other income- tax authority authorised by it may have regard to any one or more of the following criteria, namely:-

- (a) territorial area;*
- (b) persons or classes of persons;*
- (c) incomes or classes of income; and*
- (d) cases or classes of cases*

.....

8.1 A perusal of the aforesaid statutory provision would reveal that the jurisdiction of Income Tax Authorities may be fixed not only in respect of territorial area but also having regard to a person or classes of persons and income or classes of income. Therefore, CBDT having regard to the income as per return has fixed the jurisdiction of the Assessing Officers for class of cases with prescribed pecuniary limits based on income declared by the assesseees.

8.2 The Id. Counsel in this respect has relied upon the CBDT Instruction No.1/2011 [F.No.187/12/2010-IT(A-I)], for the sake of convenience is reproduced as under:

“Instruction No.1/2011 [F.No.187/12/2010-IT(A-I), 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.

	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 lacs Rs.30	Above Rs.30 lacs
Non-corporate returns	Upto lacs Rs.15	Above Rs. 15 lacs	Upto lacs Rs.20	Above Rs. 20 lacs

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:

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.”

8.3. A perusal of the above provision of law along with the CBDT Instructions would show, in this case, the competent officer to proceed with the assessment by way of issue of notice u/s 143(2) of the Act was ITO, whereas, the notice u/s 143(2) has been issued by the ACIT, circle-36, Kolkata who did not have any jurisdiction to issue the aforesaid notice. As has been held by the various courts of the country including the Apex Court, the issuance of notice u/s 143(2) by the concerned Assessing Officer of a competent jurisdiction is mandatory to assume jurisdiction to proceed and frame assessment u/s 143(3) of the Act.

8.4. Identical issue came up for consideration before the Coordinate Bench of the Tribunal in the case of Bhagalaxmi Conclave (P) Ltd. v. DCIT in IT Appeal No.2517/Kol/2019, dated 03-02-2021 wherein the Tribunal by further relying upon various other decisions of the Coordinate Benches of the Tribunal has decided the issue in favour of the assessee and held that when the notice u/s 143(2) was issued by an officer who did not have jurisdiction to proceed with the assessment

and the assessment was framed by the other officer who did not issue the notice u/s 143(2) before proceeding to frame the assessment, then such an assessment order was bad in law.

9. On the above observations, the short issue which falls for consideration in the instant case is whether there is valid notice issued u/s. 143(2) of the Act in commencing the scrutiny assessment and thereafter framing the assessment order u/s. 143(3) of the Act. In this respect, it is not in dispute that on the date of selecting the case for scrutiny, the very basis for having jurisdiction over the assessee is the returned income which in the present case is less than the prescribed limit in CBDT Instruction no. 1/2011 and, therefore, the same lay with ITO. However, the notice u/s. 143(2) was issued by ACIT, Circle-36, Kolkata. It is also a fact that subsequently the assessment has been framed by ACIT, Circle-36, Kolkata only. Since a valid notice u/s. 143(2) has not been issued, the assessment proceeding carried thereafter can also not be held to be valid. We note that the assessment has been framed by the AO who is not having the prima facie jurisdiction to frame the impugned assessment, accordingly, the assessment is invalid. Case of the assessee finds support from the decision of Coordinate Bench of ITAT, Kolkata in the case of Rupasi Bangla Agro Industries Pvt. Ltd. Vs. ITO in ITA No. 909/Kol/2023 dated 14.12.2023.

10. Ld. DR has referred to the judgment of Hon'ble Supreme Court in the case of DCIT Vs. Kalinga Institute of Industrial Technology [2023] 151 taxmann.com 434 (SC) to contest that assessee did not raise objection in accordance with sec. 124(3) within 30 days of issuance of service of notice u/s. 143(2) and participated in the assessment proceedings. Therefore, he has no legal ground to challenge the assessment at this stage.

10.1 On the contentions raised by the Ld. Sr. DR on this aspect, we refer to section 124 of the Act which is extracted as under:

“Jurisdiction of Assessing Officers.—

124. (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the [Principal Director General or Director General] or the [Principal Chief Commissioner or Chief Commissioner] or the [Principal Commissioner or Commissioner]; or where the question is one relating to areas within the jurisdiction of different [Principal Director General or Director General] or [Principal Chief Commissioner or Chief

Commissioner] or [Principal Commissioner or Commissioner], by the [Principal Director General or Director General] or [Principal Chief Commissioners or Chief Commissioners] or [Principal Commissioner or Commissioner] concerned or, if they are not in agreement, by the Board or by such [Principal Director General or Director General] or [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] as the Board may, by notification in the Official Gazette, specify.

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

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

(b) where he has made no such return, after the expiry of the time allowed by the notice under 3 [sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144] to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier; 4 [(c) where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section

(1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.]

(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.

(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120.”

11. From sub-section (1) of the aforesaid section, it is important to note that AO has to be vested with jurisdiction over any area as prescribed in clause (a) and (b). In sub-section (3), an assessee is not entitled to call for the jurisdiction of AO after the expiry of one month from the date on which it was served with a notice u/s. 143(2). Further, sub-section (5) states that every Assessing Officer shall have all the powers conferred by

or under the Act on an Assessing Officer in respect of the income accruing or arising or received within the area over which he has been vested with jurisdiction by virtue of the directions or orders issued u/s. 120(1) and (2).

11.1 It is important to note that prima facie assumption of jurisdiction by the AO is to be first passed through the test prescribed in sub-section (1). In the case before us, the assessment has been framed u/s. 143(3) by an AO whose jurisdiction is under challenge who at the threshold itself did not had the jurisdiction over the assessee for issuing notice u/s. 143(2) of the Act. In the present case, both the notice issued u/s. 143(2) and the assessment completed thereafter are by an officer who does not have jurisdiction in terms of CBDT Instruction no. 1/2011, owing to nil income return filed by the assessee.

12. It is noted by the Hon'ble Apex Court in the case of Kalinga Institute of Industrial Technology (supra) that jurisdiction changed after the returns were filed. Also, it noted that the High court had granted liberty to the concerned authority to issue appropriate notice. It further clarified that the Assessing Officer is free to complete the assessment if the assessment order is not issued.

12.1 On perusing the order of Hon'ble High court, it is noted that it did not express its opinion on the order of assessment and the demand u/s. 156. It dealt only with the issue of notice u/s. 143(2) for which also it was kept open for the competent authority to issue appropriate notice to the assessee as per law.

12.2 Facts in the case of Kalinga Institute of Industrial Technology (supra) are distinguishable from the facts of the present case as noted above.

13. Accordingly, we allow the additional ground raised by the assessee and hold that the assessment order framed in the case of the assessee is without jurisdiction and is a nullity. The impugned assessment order is hereby quashed since the AO i.e. ACIT, Circle-36, Kolkata framed the said assessment did not have jurisdiction over the assessee as mandated by CBDT Instruction No. 1/2011. Since the additional ground has been allowed and the assessment order being quashed, the grounds on merits raised by the assessee in Form 36 are not adjudicated upon since they have been rendered academic in nature.

4. It was the submission that the order of the Ld.AO is liable to be quashed.

5. In reply, the Ld.Sr.DR vehemently supported the order of the AO and CIT(A).

6. I have considered the rival submissions. A perusal of the order of the Hon'ble Jurisdictional High Court in the case of Raghvendra Mohta,

referred to supra, shows that the Hon'ble Jurisdiction High Court has in page 3 of its order held as follows:-

The learned Tribunal took note of the decision of a Co-ordinate Bench of the learned Tribunal in the case of Bhagalaxmi Conclave (P) Ltd. vs. DCIT, passed in IT Appeal No.2517/Kol/2019, 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 Bhagalaxmi 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 wherein 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. The Hon'ble Jurisdictional high Court has upheld the order of the coordinate bench of this tribunal in the case of Raghvendra Mohta, referred to supra. Consequently, respectfully following the decision of the coordinate bench of this tribunal as also the principles as laid down by the Hon'ble Jurisdiction High Court in the case of Raghvendra Mohta, referred to supra, as it is noticed that the notice u/s.148 of the Act issued on the assessee by the ACIT Circle-4(1), Kolkata did not have the pecuniary jurisdiction, therefore, the same is hereby quashed. Consequently, the reassessment framed by the Assessing Officer based on the invalid notice also stands quashed.

8. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 13/01/2026.

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता Kolkata; दिनांक Dated 13/01/2026

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR,
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Kolkata