

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN “DB” BENCH: DEHRADUN**

**BEFORE SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

[THROUGH VIRTUAL MODE]

**ITA No.175/DDN/2025
[Assessment Year : 2016-17]**

M/s. B R Associates Jolly Grant, Bhaniyawala, Dehradun, Uttarakhand-248140 PAN-AAQFB6241E	vs	ACIT Circle-1(4)(1) Rishikesh, Uttarakhand-249201
APPELLANT		RESPONDENT
Assessee by		Shri Kanwal K.Juneja, CA
Revenue by		Shri A.S.Rana, Sr.DR
Date of Hearing		10.12.2025
Date of Pronouncement		18.02.2026

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by the assessee against the order dated 08.07.2025 by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“ld. CIT(A)”] in Appeal No. CIT(A), Dehradun/10296/2018-19 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 28.12.2018 passed u/s 143(3) of the Act pertaining to Assessment Year 2016-17.

2. Brief facts of the case are that the assessee is an individual and filed its return of income on 08.10.2016 declaring total income at INR 46,02,250/-. The case was selected for scrutiny under CASS and the

notice was issued by ITO, Ward-1(2), Dehradun thereafter, the case was transferred to DCIT, Circle-1(1)(1), Dehradun. Thereafter, various notices were issued and replies were filed by the assessee. After considering the submissions, total income was assessed at INR 1,93,96,755/- by making addition of INR 55.00 Lakhs towards bogus advances and INR 14,13,600/- as deemed income and further disallowance of expenses of INR 78,80,905/- was made.

3. Against the said order, the assessee preferred an appeal before ld. CIT(A) who vide impugned order dated 08.07.2025, dismissed the appeal of the assessee *ex-parte* and confirmed the additions / disallowance made, as the assessee failed to appear and file necessary submissions.

4. Aggrieved by the order of the ld. CIT(A) the assessee has raised following grounds of appeal:-

1. *“That in facts and circumstances of the case, No mandatory notice u/s 143(2) was issued by the jurisdictional ITO within a prescribed time of limitation, the same is bad in law and make the entire proceedings infructuous.*
2. *That in facts and circumstances of the case, that the notice u/s 143(2) dated 05.07.2017 issued by the ITO Ward-1(1)(2), Dehradun is against the Board Circular as well as without jurisdiction.*
3. *That in facts and circumstances of the case, on raise of objection by the assessee on 17.11.2018 then only, the file was transferred on 26.11.2018 from Dehradun which was received on 03.12.2018 to ACIT, Rishikesh who issued the notice u/s 142(1) on 04.12.2018.*

4. *That in facts and circumstances of the case, the Jurisdictional ACIT, Rishikesh did not issued or serve any notice u/s 143(2) till the completion of the assessment.*
5. *That in facts and circumstances of the case, in the absence of issue and service of statutory mandatory notice u/s 143(2) within a prescribed limitation period makes the entire subsequent proceedings void-ab-initio and redundant.*
6. *That in facts and circumstances of the case, that the provision of section 43CA is not applicable in the instance appeal, therefore, requested to please delete the addition of Rs.14,13,600/- as made by the authorities below.*
7. *That in facts and circumstances of the case, that the appellant give the discount about 2% as business promotion on the value stamp duty authorities on Rs.7,16,84,200/-and books in books Rs. 7,02,70,600/ which is quite usual as thereafter Income Tax also provide 5% for the purpose of computing profits and gain from transfer of such asset.*
8. *That in facts and circumstances of the case, the 20% disallowance of expenses on ad-hoc basis without pin pointing out any voucher and without rejecting the books of account is unwarranted and unjustified.*
9. *That in facts and circumstances of the case, that the disallowance of 20% of the business expenses of Rs.78,80,905/ made from each head of expenses is erroneous and arbitrary.*
10. *That in facts and circumstances of the case, without prejudice Ground No. 8 & 9 as stated above the disallowance may substantially be reduced.*
11. *That in facts and circumstances of the case, the addition as sustained by the CIT (A), NFAC may please be deleted.”*

5. **Ground of appeal Nos.1 to 4** raised by the assessee are with respect to the jurisdiction of the AO when the notice u/s 143(2) was issued by AO having no jurisdiction over the assessee.

6. Before us, Ld.AR for the assessee submits that return of income was filed, declaring total income of INR 46,02,250/- and in terms of

CBDT Instruction No.1/2011, the jurisdiction lies with ACIT and not with ITO. However, notice u/s 143(2) was issued by ITO, Ward-1(2), Dehradun. Ld.AR also drew our attention to the fact that assessee since beginning of the proceedings challenged the validity of jurisdiction of the AO in terms of objections filed through online portal on 17.11.2018. Ld. AR further stated that at page 1 of the assessment order, it is observed that fresh notice u/s 143(2) was issued on 02.08.2017 after transfer of jurisdiction from ITO to DCIT, Circle however, he drew our attention to the copies of the online order sheet entries of e-proceeding supplied by the AO vide letter dated 05.02.2019 placed at page 27 to 47 of the Paper Book. According to said order sheet entries, first notice u/s 143(2) was issued on 05.07.2017 by ITO, Ward-1(1)(1), Dehradun and thereafter, 2nd notice was issued on 21.08.2018 u/s 142(1) by Circle-1(1)(1), Dehradun and as such, no notice u/s 143(2) whatsoever as observed by the AO in the assessment order was ever issued. It is thus, prayed by Ld.AR that the order being passed without issue of notice u/s 143(2) by the assessing officer who has completed the assessment is bad in law and deserves to be quashed. He placed reliance of the judgment of Co-ordinate Bench of the Delhi Tribunal in the case of **Rakshit Estates Pvt. Ltd. Vs. ITO** in **ITA No.3615/Del/2024** order dated **29.10.2025**.

7. Heard the contentions of both the parties at length and perused the material available on record. At the outset, from the perusal of the certified copy of the order sheet entry issued by the AO which are available at page 27 to 47, it is observed that first notice u/s 143(2)

was issued by ITO, Ward-1(1)(2), Dehradun on 05.07.2017 and , no further notice u/s 143(2) was ever issued to the assessee though it was observed in the assessment order that fresh notice u/s 143(2) was issued after assuming jurisdiction. It appears that these observations are factually incorrect. Further, the assessee also filed e-proceedings as appearing in e-filing portal which are available at page 25 to 26 of the Paper Book, according to which also only one notice u/s 143(2) was issued on 05.07.2017 and no further / fresh notice was ever issued by ACIT, Circle Dehradun after transfer of case to his circle. The Co-ordinate Bench of Delhi Tribunal in the case of Rakhsit Estates Pvt. Ltd. under identical circumstances has held the order as invalid by making following observations:-

8. *“We have heard both the parties and perused the material available on record. In the present case, originally a notice u/s 143(2) of the Act was issued by ITO-Ward-2 (2)(2), Ghaziabad. Thereafter, as Assessee’s declared address was in Gurgaon, the Jurisdiction was transferred to ITO, Ward-3(4), Gurgaon as per PAN jurisdiction norm. However, the ITO-3(4), Gurgaon has not issued notice u/s 143(2) of the Act, but passed the assessment order u/s 143(3) of the Act on 29/12/2019 by making addition of Rs. 62,43,351/-. The above said factual aspects have not been disputed by the Department.*

9. *The Co-ordinate Bench of the Tribunal of Raipur Bench in the case of DurgaManikanta Traders Vs. ITO, ITA No. 59/RPR/2019 vide Order dated 12.12.2022 while dealing with the similar issue held as under:-*

“ 13. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

14. Admittedly, it is a matter of fact borne from record that the CBDT vide Instruction No. 1/2011, dated 31.01.2011 had, inter alia, revised the existing monetary limits for assigning cases to ITOs and DCs/ACs. For the sake of clarity, we deem it fit to cull out the CBDT

Instruction No.1/2011 dated 31.01.2011,Page 1 of APB, which reads 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.

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
Income Declared*

*(Mofussil Areas)
(Metro cities)*

	<i>ITOs</i>	<i>ACs/DCs</i>	<i>ITOs</i>	<i>DCs/ ACs</i>
<i>Corporate returns</i>	<i>UptoRs. 20 lacs</i>	<i>Above Rs. 30 lacs</i>	<i>UptoRs. 30 lacs</i>	<i>Above Rs. 30 lacs</i>
<i>Non-corporate returns</i>	<i>UptoRs. 15 lacs</i>	<i>Above Rs. 15 lacs</i>	<i>UptoRs. 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.”
(emphasis supplied by us)*

As stated by the Ld. AR, and, rightly so, the CBDT vide its aforesaid Instruction No.1/2011, dated 31.01.2011 had, inter alia, revised the earlier existing monetary limit for assigning the cases to ITOs/ACs/DCs w.e.f. 01.04.2011. On the basis of the aforesaid CBDT Instruction No.1/2011 (supra) w.e.f 01.04.2011, the case of a non-corporate assessee located in a mofussil area having declared an income above Rs.15 lacs in his return of income is to be assigned to the ACs/DCs. As the case of the present assessee for the A.Y.2012-13 was selected for scrutiny assessment vide notice issued u/s. 143(2), dated 24.09.2015, therefore, the aforesaid CBDT Instruction No.1/2011, dated 31.01.2011 that was applicable w.e.f. 01.04.2011

duly applied to his case. Also, as per the areas earmarked in the aforesaid Instruction No.1/2011, dated 31.01.2011 as the assessee is not located in any of those cities/stations which have been held to be metro cities, therefore, his case would be as that of a non-corporate assessee who is located in a mofussil area. Also, as is borne from the record the assessee had filed his return of income for the A.Y.2014-15 declaring an income of Rs. 6,57,380/- 13 M/s. DurgaManikanta Traders, Vs. ITO, Ward-1(1)

15. On the basis of the aforesaid facts, we are of the considered view, that as stated by the Ld. AR, and, rightly so, as per the CBDT Instruction No.1/2011, dated 31.01.2011 the jurisdiction over the case of the assessee who is located in a mofussil area i.e. Bhilai and had filed a non-corporate return for the year under consideration, i.e., A.Y.2014-15 declaring an income of Rs.6,57,380/- was vested with the ITO, Ward 1(1), Bhilai. Although notice u/s. 143(2), dated 24.09.2015 had been issued within the stipulated time period, i.e., within six months from the end of the relevant assessment year which would have expired as on 30.09.2015, however, the same was issued by the DCIT-1(1), Bhilai, i.e., an A.O who pursuant to the CBDT Instruction No.1 of 2011, dated 31.01.2011 was not vested with the jurisdiction over the case of the assessee for the year under consideration. On the other hand the ITO-1(1), Bhilai, who as per the aforesaid CBDT Instruction (supra) was vested with the exclusive pecuniary jurisdiction over the case of the assessee for the year under consideration had issued the notice u/s. 143(2) of the Act, dated 05.05.2016, i.e., beyond the stipulated time period, therefore, no valid jurisdiction could have been assumed on the basis of the same for framing the assessment vide order under Sec. 143(3), dated 29.12.2016.

16. On the basis of our aforesaid deliberations, we are in agreement with the Ld. AR that the ITO-1(1), Bhilai could not have validly assumed 14 M/s. DurgaManikanta Traders, Vs. ITO, Ward-1(1) jurisdiction and framed the assessment vide his order passed u/s. 143(3) of the Act, dated 29.12.2016 on the basis of the notice issued u/s. 143(2), dated 24.09.2015 by the DCIT-1(1), Bhilai i.e. a non jurisdictional A.O. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of Ashok Devichand Jain Vs. UOI in W.P. No.3489 of 2019, dated 08.03.2022. In the said case the Hon'ble High Court by referring to the CBDT Instruction No.1 of 2011, dated 31.01.2011, had observed, that as the pecuniary jurisdiction over the case of the assessee before them who had returned an income of Rs.64.34 lacs was vested with the DCs/ACs, therefore, the notice issued u/s.148 of the Act by the ITO who during the year under consideration had no pecuniary jurisdiction over the assessee's case was bad in the eyes of law. Considering the

aforesaid lapse in the assumption of jurisdiction the Hon'ble High Court had quashed the notice that was issued by the ITO u/s.148 of the Act. Also, a similar view had been taken by the Hon'ble High Court of Gujarat in the case of PankajbhaiJaysukhlal Shah Vs. ACIT, Circle-2 (2019) 110 taxmann.com 51 (Guj.). In the said case, though the A.O who had jurisdiction over the case of the assessee had recorded the 'reasons to believe' but notice u/s.148 of the Act was issued by another officer, therefore, the notice so issued u/s.148 of the Act was quashed by the Hon'ble High Court. At this stage, we may herein observe, that the 15 M/s. DurgaManikanta Traders, Vs. ITO, Ward-1(1) aforesaid order of the Hon'ble High Court had thereafter, been upheld by the Hon'ble Supreme Court in the case of ACIT, Circle-1 Vs. PankajbhaiJaysukhlal Shah[2020] 120 taxmann.com 318 (SC). Also, we find that the similar view had been taken by this Tribunal in its recent order passed in the case of Shri Sudhir Kumar Agrawal, Durg Vs. ITO, Ward-2(2), Bhilai in ITA No.158/RPR/2017 dated 17.10.2022, wherein dealing with the multifacet contentions that were raised by the department, the Tribunal had observed as under:

“13. On the basis of our aforesaid deliberations, we are in agreement with the Ld. AR that though the assessment proceedings were rightly initiated and initially embarked upon by Dy. CIT, Circle1, Bhilai i.e. the officer who was vested with the jurisdiction over the case of the assessee, but the same thereafter had wrongly been framed by an officer who as observed by us hereinabove did not have jurisdiction over the case of the assessee in so far the year under consideration was concerned. As the criteria laid down vide the CBDT Instruction No.1/2011, dated 31.01.2011 for conferring the varied jurisdictions with the ITOs/DCs/ACs on the basis of income declared by the assessee in his return of income is binding upon the department and has to be scrupulously followed, therefore, there can be no escape from the same for justifying assumption of jurisdiction by an officer other than that prescribed in the said instruction. Our aforesaid view is fortified by the Judgments of the Hon'ble Supreme Court in the case of UCO Bank Vs. CIT (1999) 237 ITR 889 (SC) and Commissioner of Customs etc. Vs. Indian Oil Corporation Ltd. &Anr. (2004) 267 ITR 272 (SC). In the aforesaid judgments it was held by the Hon'ble Apex Court that though the CBDT/CBEC circulars are not binding on court or the assessee, but the departmental authorities are bound by them and cannot act in contravention of the same. Also, support is drawn from the judgment of the Hon'ble High Court of Chhattisgarh in the case of Dy. CIT Vs. SunitaFinlease Ltd. [2011] 330 ITR 491 (Chattisgarh). In its said order it was observed by the Hon'ble Jurisdictional High Court that the administrative instructions issued by CBDT are binding on the Income-tax authorities. On the basis of our aforesaid 16 M/s. DurgaManikanta Traders, Vs. ITO, Ward-1(1) observations, we are of the considered view that as the framing of the assessment in the case

of the present assessee by the Income Tax Officer, Ward-2(2), Bhilai is clearly found to be in contravention of the CBDT Instruction No.1/2011, dated 31.01.2011, therefore, the same cannot be justified.

14. We shall now deal with the objection raised by the Ld. DR that as the assessee had not called in question the jurisdiction of the Income-Tax Officer, Ward-2(2), Bhilai within the stipulated time period of one month from the date on which he was served with the notice(s) u/ss.143(2) and 142(1), dated 03.03.2015, therefore, it was not permissible for him to challenge the same for the first time in the course of the proceeding before the tribunal. Having given a thoughtful consideration to the aforesaid claim of the ld. DR we are unable to persuade ourselves to subscribe to the same. On a careful perusal of Section 124 of the Act, it transpires that the same deals with the issue of "territorial jurisdiction" of an Assessing Officer. Ostensibly, sub-section (1) of Section 124 contemplates vesting with the A.O jurisdiction over a specified area by virtue of any direction or order issued under sub-section (1) and sub-section (2) of Section 120 of the Act. On the other hand sub-section (2) of Section 124 contemplates the manner in which any controversy as regards the territorial jurisdiction of an A.O is to be resolved. Apropos, subsection (3) of Section 124 of the Act, the same places an embargo upon an assessee to call in question the jurisdiction of the A.O where he had initially not raised such objection within a period of one month from the date on which he was served with a notice under sub-section (1) of Section 142 or sub-section (2) of Section 143. In sum and substance, the obligation cast upon an assessee to call in question the jurisdiction of the A.O as per the mandate of sub-section (3) of Section 124 is confined to a case where the assessee objects to the assumption of territorial jurisdiction by the A.O, and not otherwise. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of Peter Vaz Vs. CIT, Tax Appeal Nos. 19 to 30 of 2017, dated 05.04.2021 and that of the Hon'ble High Court of Gujarat in the case of CIT Vs. Ramesh D Patel (2014) 362 ITR492 (Guj.). In the aforesaid cases the Hon'ble High Courts have held that as Section 124 of the Act pertains to territorial jurisdiction vested with an AO under subsection (1) or sub-section (2) of Section 120, therefore, the provisions of sub-section (3) of Section 124 which places an embargo on an assessee to raise an objection as regards the validity of the jurisdiction of an A.O would get triggered only in a case where the dispute of the assessee is with respect to the territorial jurisdiction and would have no relevance in so far his inherent jurisdiction for framing the assessment is concerned. Also, support 17 M/s. DurgaManikanta Traders, Vs. ITO, Ward-1(1) is drawn from a recent judgment of the Hon'ble High Court of Calcutta in the case of Principal Commissioner of Income-tax Vs. Nopany& Sons (2022) 136 taxmann.com 414 (Cal). In the case before

the Hon'ble High Court the case of the assessee was transferred from ITO, Ward-3 to ITO, Ward-4 and the impugned order was passed by the ITO, Ward-4 without issuing notice u/s 143(2) and only in pursuance to the notice that was issued by the ITO, Ward-3, who had no jurisdiction over the assessee at the relevant time. Considering the fact that as the assessment was framed on the basis of the notice issued under Sec. 143(2) by the assessing officer who had no jurisdiction to issue the same at the relevant point of time, the Hon'ble High Court quashed the assessment. Apart from that, the aforesaid view is also supported by the order of the ITAT, Kolkata 'B' Bench in the case of OSL Developers (p) Ltd. Vs. ITO, (2021) 211 TTJ (Kol) 621 and that of ITAT, Gauhati Bench in the case of Balaji Enterprise Vs. ACIT (2021) 187 ITD 111 (Gau.). Accordingly, on the basis of our aforesaid observations, we are of the considered view that as the assessee's objection to the validity of the jurisdiction assumed by the IncomeTax Officer, Ward-2(2), Bhilai is by no means an objection to his territorial jurisdiction, but in fact an objection to the assumption of jurisdiction by him in contravention of the CBDT Instruction No.1/2011, dated 31.01.2011, therefore, the provisions of subsection (3) of Section 124 would not assist the case of the revenue.

15. We shall now deal with the contention of the Ld. DR that as both the officers in question i.e. Dy. CIT, Circle-1, Bhilai and the Income Tax Officer, Ward-2(2), Bhilai as per sub-section (5) of Section 120 were vested with concurrent jurisdiction over the assessee, therefore, initiation of the assessment proceedings by the Dy. CIT, Circle-1, Bhilai vide notice issued u/s.143(2) dated 24.09.2013, which thereafter had culminated into an assessment framed by the Income-Tax Officer, Ward-2(2), Bhilai vide his order passed u/s.143(3), dated 30.03.2015 does not suffer from any infirmity. In our considered view the aforesaid contention of the Ld. DR is absolutely misplaced and in fact devoid and bereft of any merit. As the aforesaid CBDT Instruction No.1/2011, dated 31.01.2011 exclusively vests the pecuniary jurisdiction over the case of the assessee for the year under consideration i.e. A.Y.2012-13 with the ACs/DCs, therefore, in our considered view despite vesting of concurrent jurisdiction with the Income-Tax Officer, Ward-2(2), Bhilai and the Dy. CIT, Circle-1, Bhilai the assessment in his case for the year under consideration could only have been framed by the Dy. CIT, Circle-1, Bhilai. Neither is there any reason discernible from the orders of the lower authorities nor demonstrated before us by the ld. DR which would by any means justify framing of the M/s. DurgaManikanta Traders, Vs. ITO, Ward-1(1) assessment vide impugned order u/s 143(3), dated 30.03.2015 by the Income-Tax Officer, Ward-2(2), Bhilai. Apart from that, we find that as per the mandate of sub-section (1) of section 127 of the Act, where a case is to be transferred by authorities therein specified from one or more Assessing Officers subordinate to him (whether with or

without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him, then he is under an obligation to record his reasons for doing so after giving the assessee a reasonable opportunity of being heard in the matter wherever it is possible to do so. For the sake of clarity sub-section (1) of Section 127 is culled out as under:

“(1) The [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.”

On a careful perusal of the aforesaid mandate of law, it transpires, that even in a case where jurisdiction over the case of an assessee that is vested with one A.O (having concurrent jurisdiction over the case of the assessee) is to be transferred to another A.O (having concurrent jurisdiction over the case of the assessee), even then the authority specified under sub-section (1) of Section 127 is obligated to record his reasons for doing so. Considering the aforesaid position of law, we are of the considered view that now when in the present case the assessment proceedings were initiated by the Dy. CIT, Circle-1, Bhilai vide notice u/s.143(2), dated 24.09.2013, which thereafter were taken up and culminated by the Income-Tax Officer, Ward-2(2), Bhilai vide his order passed u/s.143(3) dated 30.03.2015, then, as per the mandate of sub-section (1) of Section 127 of the Act, the specified authority i.e. Commissioner or above was obligated to have recorded his reasons for transferring the case from the aforesaid Dy. CIT, Circle-1, Bhilai to the Income-Tax Officer, Ward-2(2), Bhilai. However, nothing has been brought to our notice which would justify the transfer of jurisdiction over the assessee’s case from the Dy. CIT, Circle-1, Bhilai to Income-Tax Officer, Ward-2(2), Bhilai. 19 M/s. DurgaManikanta Traders, Vs. ITO, Ward-1(1) .

16. Be that as it may, we are of the considered view that as in the case of the assessee the assessment order u/s.143(3), dated 30.03.2015 had been passed by a non-jurisdictional officer i.e. the Income-Tax Officer, Ward-2(2), Bhilai, which is in clear contravention of the CBDT Instruction No.1/2011 dated 31.01.2011, therefore, the same cannot be sustained and is liable to be struck down on the said count itself. Before parting, we may herein observe that a similar issue as regards the validity of an assessment framed by an A.O who

had invalidly assumed jurisdiction in contravention to the CBDT Instruction No.1/2011, dated 31.01.2011 had came up in a host of cases before the various benches of the Tribunal, wherein the respective assessments framed were struck down, for the reason that the same were passed by officers who were not vested with the requisite jurisdiction as per the CBDT Instruction No.1/2011, dated 31.01.2011. Our aforesaid view is fortified by the order of the ITAT, Kolkata Bench 'SMC' in the case of Anderson Printing House (P) Ltd. Vs. ACIT (2022) 192 ITD 548 (Kolkata-Trib.). In its order the Tribunal had after drawing support from the order of the ITAT, Kolkata in the case of Bhagyalaxmi Conclave (P) Ltd. Vs. DCIT, ITA No.2517 (Kol) of 2019, dated 03.02.2021 which in turn had relied on the earlier orders passed in the case of Hillman Hosiery Mills Pvt.Ltd. Vs. DCIT, ITA No.2634/Kol/2019; Soma Roy Vs. ACIT, ITA No.463/Kol/2019 dated 08.01.2020; and Shri Sukumar Ch. Sahoo Vs. ACIT, ITA No.2073/Kol/2016 dated 27.09.2017, had struck down the assessment for want of valid assumption of jurisdiction by the A.O who had framed the assessment in contravention of the CBDT Instruction No.1/2011, dated 31.01.2011, observing as under:

"5. A perusal of the aforesaid statutory provisions would reveal that the jurisdiction of Income Tax Authorities may be fixed not only in respect of territorial area but also I.T.A. No.339/Kol/2021 Assessment Year: 2016-17 Anderson Printing House Pvt. Ltd having regard to a person or classes of persons and income or classes of income also. Therefore, the CBDT having regard to the income as per return has fixed the jurisdiction of the Assessing Officers. The ld. 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.

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</i>	<i>(MofussilAraeas)</i>
<i>Income Declared</i>	<i>(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. 30 lacs</i>	<i>UptoRs. 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>UptoRs. 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. Now, in this case, the assessment has been framed by the ACIT. At this stage, it will be appropriate to refer to the provisions of section 127 of the Act as under: Power to transfer cases (1) The [Principal Director General or] Director General or [Principal Chief Commissioner or] Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

7. A perusal of the above statutory provisions would reveal that jurisdiction to transfer case from one Assessing Officer to other Officer lies with the Officers as mentioned in section 127(1) who are of the rank of Commissioner or above. No document has been produced on the file by the Department to show that the case was transferred by the competent authority from Income Tax Officer to ACIT. The notice u/s 143(2) has been issued by ACIT which was beyond his jurisdiction and the same is therefore, void ab initio. Under the circumstances, the assessment framed by ACIT, is bad in law as he did not have any pecuniary jurisdiction to frame the assessment. The issue relating to the pecuniary jurisdiction also came into consideration before the Coordinate Bench of the Tribunal in ITA No.2517/Kol/2019 and Others vide order dated 03.02.2021, wherein the Tribunal 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 the assessment framed by Assessing Officer who was not having pecuniary jurisdiction to frame such assessment was bad in law. The relevant part of the order dated 03.02.2021 passed in ITA No.2517/Kol/2019 and Others is reproduced as under:

"5.2. The assessee relied on the recent decision of this Tribunal in the case of *Hillman Hosiery Mills Pvt. Ltd. vs. DCIT*, in ITA No. 2634/Kol/2019, order dated 12.01.2021. We find that the issues that arise in this appeal are clearly covered in favour of the assessee. This order followed the principles of law laid down in a number of other decisions of the ITAT, Kolkata Bench on this issue.

5.3. Kolkata "B" Bench of the Tribunal in the case of *Hillman Hosiery Mills Pvt. Ltd.*(supra) held as follows:

"10. In this case, the ITO Ward-3(3), Kolkata, issued notice u/s 143(2) of the Act on 04/09/2014. In reply, on 22/09/2014, the assessee wrote to the ITO, Ward-3(3), Kolkata, stating that he has no jurisdiction over the assessee. Thereafter on 31/07/2015, the DCIT, Circle-11(1), Kolkata, had issued notice u/s 142(1) of the Act to the assessee. The DCIT, Circle-11(1), Kolkata, completed assessment u/s 143(3) of the Act on 14/03/2016. The issue is whether an assessment order passed by DCIT, Circle-11(1), Kolkata, is valid as admittedly, he did not issue a notice u/s 143(2) of the Act, to the assessee. This issue is no more res-integra. This Bench of the Tribunal in the case of *Soma Roy vs. ACIT* in ITA No. 462/Kol/2019; Assessment Year 2015-16, order dt. 8th January, 2020, under identical circumstances, held as under:-

"5. After hearing rival contentions, I admit this additional ground as it is a legal ground, raising a jurisdictional issue and does not require any investigation into the facts. The ld. Counsel for the assessee submitted that as per Board Instruction No. 1/2011 [F. No. 187/12/2010-IT(A-I)], dt. 31/01/2011, the jurisdiction of the assessee is with the Assistant Commissioner of Income Tax, Circle-1, Durgapur, as the assessee is a non-corporate assessee and the income returned is above Rs.15,00,000/- and whereas, the statutory notice u/s 143(2) of the Act, was issued on 29/09/2016, by the Income Tax Officer, ward-1(1), Durgapur, who had no jurisdiction of the case. He submitted that the assessment order was passed by the ACIT, Circle-1(1), Durgapur, who had the jurisdiction over the assessee, but he had not issued the notice u/s 143(2) of the Act, within the statutory period prescribed under the Act. Thus, he submits that the assessment is bad in law.

5.1. On merits, he rebutted the findings of the lower authorities. The ld. Counsel for the assessee relied on certain case-law, which I would be referring to as and when necessary.

6. The ld. D/R, on the other hand, submitted that the concurrent jurisdiction vests with the ITO as well as the ACIT and hence the assessment cannot be annulled simply because the statutory notice u/s 143(2) of the Act, was issued by the ITO and the assessment was completed by the ACIT. He further submitted that the assessee did

not object to the issue of notice before the jurisdictional Assessing Officer and even otherwise, Section 292BB of the Act, comes into play and the assessment cannot be annulled. On merits, he relied on the orders of the lower authorities.

7. I have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, I hold as follows:-

8. I find that there is no dispute in the fact that the notice u/s 143(2) of the Act dt. 29/09/2016 has been issued by the ITO, Wd-1(1), Durgapur. Later, the case was transferred to the jurisdiction of the ACIT on 11/08/2017. Thereafter, no notice u/s 143(2) of the Act was issued by the Assessing Officer having jurisdiction of this case and who had completed the assessment on 26/12/2017 i.e., ACIT, Circle-1(1), Durgapur. Under these circumstances, the question is whether the assessment is bad in law for want of issual of notice u/s 143(2) of the Act.

9. This Bench of the Tribunal in the case of Shri Sukumar Ch. Sahoo vs. ACIT in ITA No. 2073/Kol/2016 order dt. 27.09.2017, held as follows:-

"5. From a perusal of the above Instruction of the CBDT it is evident that the pecuniary jurisdiction conferred by the CBDT on ITOs is in respect to the 'non corporate returns' filed where income declared is only upto Rs.15 lacs ; and the ITO doesn't have the jurisdiction to conduct assessment if it is above Rs 15 lakhs. Above Rs. 15 lacs income declared by a non- corporate person i.e. like assessee, the pecuniary jurisdiction lies before AC/DC. In this case, admittedly, the assessee an individual (non corporate person) who undisputedly declared income of Rs.50,28,040/- in his return of income cannot be assessed by the ITO as per the CBDT circular (supra). From a perusal of the assessment order, it reveals that the statutory notice u/s. 143(2) of the Act was issued by the then ITO, Ward-1, Haldia on 06.09.2013 and the same was served on the assessee on 19.09.2013 as noted by the AO. The AO noted that since the returned income is more than Rs. 15 lacs the case was transferred from the ITO, Ward-1, Haldia to ACIT, Circle-27 and the same was received by the office of the ACIT, Circle-27, Haldia on 24.09.2014 and immediately ACIT issued notice u/s. 142(1) of the Act on the same day. From the aforesaid facts the following facts emerged: i) The assessee had filed return of income declaring Rs.50,28,040/-. The ITO issued notice under section 143(2) of the Act on 06.09.2013. ii) The ITO, Ward-1, Haldia taking note that the income returned was above Rs. 15 lacs transferred the case to ACIT, Circle-27, Haldia on 24.09.2014. 23 M/s. DurgaManikanta Traders, Vs. ITO, Ward-1(1) iii) On 24.09.2014 statutory notices for scrutiny were issued by ACIT, Circle-27, Haldia.

6. We note that the CBDT Instruction is dated 31.01.2011 and the assessee has filed the return of income on 29.03.2013 declaring total

income of Rs.50,28,040/-. As per the CBDT Instruction the monetary limits in respect to an assessee who is an individual which falls under the category of 'non corporate returns' the ITO's increased monetary limit was upto Rs.15 lacs; and if the returned income is above Rs. 15 lacs it was the AC/DC. So, since the returned income by assessee an individual is above Rs.15 lakh, then the jurisdiction to assess the assessee lies only by AC/DC and not ITO. So, therefore, only the AC/DC had the jurisdiction to assess the assessee. It is settled law that serving of notice u/s. 143(2) of the Act is a sine qua non for an assessment to be made u/s. 143(3) of the Act. In this case, notice u/s. 143(2) of the Act was issued on 06.09.2013 by ITO, Ward-1, Haldia when he did not have the pecuniary jurisdiction to assume jurisdiction and issue notice. Admittedly, when the ITO realized that he did not had the pecuniary jurisdiction to issue notice he duly transferred the file to the ACIT, Circle-27, Haldia on 24.09. 2014 when the ACIT issued statutory notice which was beyond the time limit prescribed for issuance of notice u/s. 143(2) of the Act. We note that the ACIT by assuming the jurisdiction after the time prescribed for issuance of notice u/s. 143(2) of the Act notice became *quorum non iudice* after the limitation prescribed by the statute was crossed by him. Therefore, the issuance of notice by the ACIT, Circle-27, Haldia after the limitation period for issuance of statutory notice u/s. 143(2) of the Act has set in, goes to the root of the case and makes the notice bad in the eyes of law and consequential assessment order passed u/s. 143(3) of the Act is not valid in the eyes of law and, therefore, is null and void in the eyes of law. Therefore, the legal issue raised by the assessee is allowed. Since we have quashed the assessment and the appeal of assessee is allowed on the legal issue, the other grounds raised by the assessee need not to be adjudicated because it is only academic. Therefore, the additional ground raised by the assessee is allowed.

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

Apart from that, we find that a similar view had been taken by the ITAT, Cuttack Bench, Cuttack in the case of *Kshirod Kumar Pattanaik Vs. ITO, Angul Ward, Angul, ITA No.380/CTK/2019* dated 10.12.2020.

17. Consequent to our aforesaid deliberations, we are of the considered view that as in the present case before us the assessment had been framed by the Income Tax Officer, Ward-2(2), Bhilai u/s. 143(3), dated 30.03.2015 in clear contravention of the CBDT Instruction No.1/2011, dated 31.01.2011, which divested him of his jurisdiction over the case of the assessee for the year under consideration i.e. AY 2012-13, therefore, the same cannot be sustained and is liable to be struck down in terms of our aforesaid observations. We, thus, in terms of our aforesaid observations 24 M/s. *DurgaManikanta Traders, Vs. ITO, Ward-1(1)* quash the order

passed by the Income-Tax Officer, Ward-2(2), Bhilai for want of jurisdiction on his part.”

10. *The ITO, Ward-3(4), Gurgaon having jurisdiction to frame the assessment, had framed the assessment u/s 143(3) of the Act without issuing mandatory notice u/s 143(2) of the Act, by following the ratio laid down by the Tribunal in the case of Durga Manikanta Traders (supra), we are of the opinion that the order of assessment cannot be sustained in the eyes of law. Accordingly, the impugned order of the Ld. CIT(A) confirming the assessment order is hereby set aside by allowing the Additional Grounds No. 7 to 9 of the Assessee.*

11. *Since, we have set aside the order impugned by allowing the Additional Grounds No. 7 to 9 of the Assessee, other Grounds/additional Grounds of Appeal requires no adjudication.”*

8. The Hon’ble Jurisdictional High Court in the case of PCIT Vs. **Vimal Gupta** reported in **2017 (10) TMI 1670 (Delhi)** held the assessment order as invalid where the notice u/s 148 was issued by the authority having no jurisdiction over the assessee. The relevant observations of the hon’ble court are as under:

1. *This is an appeal filed by the Revenue against an order dated 23rd December 2015 passed by the Income Tax Appellate Tribunal (‘ITAT’) in ITA No. 1211/Del/2010 for the Assessment Year (‘AY’) 2006-07.*
2. *Although other grounds have been pressed by the Revenue regarding the validity of the impugned order of the ITAT holding the assessment order passed under Section 148 of the Income Tax Act, 1961 (‘Act’) to be invalid, a threshold ground urged is that the ITAT erred in holding in the impugned order **that the assessment made by the Additional Commissioner of Income Tax (‘ACIT’) Circle 34 (1) was without jurisdiction. It has been noticed that the matter was transferred to the said ACIT by the Income Tax Officer (‘ITO’) Ward 34 (4), New Delhi without an appropriate order having been issued under Section 127 of the Act. Further that the ACIT did not himself issue the notice under Section 148 of the Act.***

3. *The ITAT has in para 13 of the impugned order specifically adverted to the above aspect and correctly held that “The ACIT, Circle 34(1), New Delhi has admittedly not recorded that he had reasons to believe that income chargeable to tax of the Assessee has escaped assessment. He continued reassessment proceedings initiated by the ITO, Ward 34(4) of the Act without independently recording reasons for reopening or issuing a fresh notice u/s 148 of the Act.” Further the ITAT noted that “There is no order u/s 127 of the Act transferring the jurisdiction of the case from ITO, Ward 34(4) to ACIT, Ward 34(1). Thus this order of reassessment passed by the ACIT u/s 34(1) of the Act is without jurisdiction and hence is bad in law.”*
4. *In the present memorandum of appeal no attempt has been made by the Revenue to aver whether in fact there was an order under Section 127 of the Act transferring the case to the ACIT, Circle 34(1). That being the position, the impugned order of the ITAT cannot be faulted. In view of the above conclusion, there is no occasion to examine the other questions urged by the Revenue in this appeal.*
5. *No substantial question of law arises. The appeal is dismissed.*

9. The Co-ordinate Bench of Delhi Tribunal in the case of **Sapna Rastogi Vs. ITO** reported in **2024 (8) TMI 1517 (ITAT, Delhi)** has held the reassessment order as invalid as the notice u/s 148 was issued by the AO having no jurisdiction over the assessee. The relevant observations are as under:

5. *We have given thoughtful consideration to the matter on record and the submissions. The assessee had filed a return of income on 07.07.2013 declaring the total income at Rs. 18,85,550/-. The assessee is an individual and, taking into consideration Instruction No. 01/2011 available at page 245 of the paper book, for non-corporate returns in case of non-metro cities (mofussil areas), the returns above Rs. 15 lakhs have to be assessed by the officers of the rank of Assistant Commissioners/Deputy Commissioners. The report which is filed by the AO dated 26.06.2024 and reproduced above categorically mentions the fact that it is only on 15.05.2024, the PAN of the assessee has been transferred to ACIT, Circle 1(1)(1), Meerut, from ITO, Ward 1(2)(5), Meerut, as per CBDT Instruction No. 05/2011 dated 31.01.2011 vide which jurisdiction of noncorporate returns above Rs. 15 lakhs lies with ACIT/DCIT and upto Rs. 15 lakhs lies with ITO.*

- 5.1 *Now, admittedly, the notice u/s 148 dated 30.03.2021, copy of which is placed at page 7 of the paper book, is issued by ITO, Ward-1(2)(5), Meerut. Thus, certainly, this Revenue Officer did not have the pecuniary jurisdiction as vested by the Board vide CBDT Instructions No. 01/2011 dated 31.03.2011.*
- 5.2 *In this context, the coordinate Bench order in the case of J. Mitra & Brothers vs. ACIT, ITA No. 3643/Del/2023 decided on 10.04.2024 has been relied by the ld. AR wherein the coordinate Bench, relying another decision in the case of Kelvin International vs. DCIT, ITA No. 5363/Del/2017, order dated 22.12.2023, has held that the exercise of jurisdiction of Revenue Officer who did not have the jurisdiction given by the CBDT Instructions cannot be sustained and the assessment order is vitiated. The Hon'ble Allahabad High Court in the case of PCIT-II, Lucknow vs. Mohd. Rizwan, Proprietor M/s M.R. Garments, in ITA No. 1000/2015, order dated 30.03.2017 has examined this aspect on the basis of numerous judicial pronouncements and while considering the question, if the notice u/s 148 of the Act, issued by an authority not having jurisdiction, would be valid by referring to section 292BB of the Act, has held that jurisdiction can neither be waived nor created even by consent and even by submitting to jurisdiction, an assessee cannot confer upon any jurisdictional authority, some which he lack inherently. The Hon'ble Allahabad High Court has decided this issue against the Revenue holding that notice u/s 148 is not a procedural subject, but, a jurisdictional one as it is a condition precedent for initiation of proceedings. This judicial pronouncement squarely covers the issue in favour of the assessee.*
- 5.3 *The judgments which the ld. DR has relied when taken into consideration, are not applicable to the facts and circumstances as the judgements in the cases of Home Finders Housing Ltd. (supra) and Sagar Developers (supra) are in the context of the non-disposal of the objections and the judgement in the cases of Abhishek Jain (supra) and S.S. Ahluwalia (supra) are primarily concerned with territorial jurisdiction in regard to which there may be instance of concurrent jurisdiction of the two assessing officers. However, the case before us concerns the pecuniary jurisdiction vested by the Board and if that is not complied, the invoking of jurisdiction is vitiated and, consequently, the assessment order is vitiated. The ground No. 1 with sub-grounds in regard to this issue are sustained.*
6. *In the result, the appeal of the assessee is allowed and the assessment order is quashed.*

10. In view of the above facts and by respectfully following the order of Hon'ble Jurisdictional High Court in the case of Vimal Gupta (supra) and decisions of the Co-ordinate Bench of the Tribunal in the case of Rakshit Estates Pvt. Ltd. (supra) and Sapna Rastogi (supra), we hold that the assessment order passed by ACIT, Circle Dehradun without issue of notice u/s 143(2) of the Act is without jurisdiction and therefore, the same is hereby, quashed.

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

Order pronounced in the open Court on 18.02.2026.

Sd/-

(YOGESH KUMAR U.S)
JUDICIAL MEMBER

Date:- 18.02.2026

Amit Kumar, Sr.P.S

Copy forwarded to:

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

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT