

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

**SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER**

**ITA No. 5844/Mum/2025
(Assessment Year: 2016-2017)**

Jagruti Kirti Shah

E-1601, Agarwal Residency, Nr. Jain temple,
Shankar Lane, Kandivali (West), Mumbai - 400067
Maharashtra.

[PAN: ABDPS9091F]

..... **Appellant**
Vs

**Assistant Commissioner of Income Tax
Circle 23(1), Mumbai**

Earnest House, Nariman Point
Mumbai – 400021. Maharashtra

..... **Respondent**

**ITA No. 6125/Mum/2025
(Assessment Year: 2016-2017)**

**Assistant Commissioner of Income Tax
Circle 23(1), Mumbai**

Earnest House, Nariman Point
Mumbai – 400021. Maharashtra

..... **Appellant**
Vs

Jagruti Kirti Shah

E-1601, Agarwal Residency, Nr.
Jain temple,
Shankar Lane, Kandivali (West),
Mumbai - 400067
Maharashtra.

[PAN: ABDPS9091F]

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Gunjjan Kakkad
For the Respondent/Department : Shri Nakul Agrawal

Date

Conclusion of hearing : 19.02.2026
Pronouncement of order : 26.02.2026

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are Cross-Appeals filed by the Assessee and Revenue in

appeal preferred by the Assessee pertaining to Assessment Year 2016-2017 arising from Order, dated 15/07/2025 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the '**CIT(A)**'], under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as '**the Act**'], whereby the Ld. CIT(A) had partly allowed the appeal preferred by the Assessee against the Assessment Order, dated 24/12/2018, passed under Section 143(3) of the Act.

2. When the appeal was taken up for hearing the Learned Authorized Representative for the Assessee pressed into service the following Additional Ground raised vide Letter dated 27/11/2025

"Additional Ground No.1.

On the facts and circumstances of the case and in law, the notice issued under Section 143(2) of the Act by the Income Tax Officer, Ward 18(1)(5), Mumbai is invalid and bad in law in view of the CBDT Instruction No.1 of 2011 read with Instruction No. 6 of 2011"

3. The Learned Authorised Representative for the Assessee submitted that the assumption of jurisdiction for reopening assessment for the Assessment Year 2016-2017 was bad in law since the notice under Section 143(2) of the Act was issued by Income Tax Officer whereas as the jurisdiction vested in the Assistant Commissioner or Deputy Commissioner of Income Tax in terms of Instruction No.1 of 2011 issued by Central Board of Direct Taxes (CBDT). Reliance was also placed on judicial precedents forming part of the paper-book.
4. Per contra Learned Departmental Representative opposed the admission of the additional ground and submitted that the additional ground was being raised for the first time before the Tribunal. Learned Departmental Representative submitted that in the present case the Assessment Order was finally passed by the Assistant Commission of Income Tax and therefore, there was no violation of

Instruction No.1 of 2011 issued by CBDT.

5. In rejoinder, the Learned Authorised Representative reiterated the submission and submitted the legal contention raised by the Assessee did not require inquiry into new facts and therefore, the Tribunal could entertain and adjudicate the same in view of judgment of the Hon'ble Supreme Court in the case of Thermal Power Co. Ltd. Vs. CIT: 229 ITR 383.
6. We have considered the rival submissions and perusal of the relevant material on record.
7. Keeping in view the judgment of the Hon'ble Supreme Court in the case of Thermal Power Co. Ltd. Vs. CIT: 229 ITR 383, we admit the additional ground raised by the Assessee since the same is a legal grounds which can be adjudicated on the basis of material on record without inquiring into new facts.
8. On perusal of Instruction No.1 of 2011 issued by CBDT, we find that same provides revised monetary limits for assumption of jurisdiction and/or assigning cases to Income Tax Officers and Deputy Commissioners/Assistant Commissioners and read as under:

"References have been received by the Board from the large number of taxpayers especially from moffssil areas, that the existing monetary limits for assigning cases to Deputy Commissioners/Assistant Commissioners and ITOs is causing hardship to the taxpayers.

*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 (Mofussil areas)		Income Declared (Metro cities)	
	<i>ITOs</i>	<i>ACs/DCs</i>	<i>ITOs</i>	<i>ACs/DCs</i>
<i>Corporate returns</i>	<i>Upto INR.20 lacs</i>	<i>Above INR.20 lacs</i>	<i>Upto INR.30 lacs</i>	<i>Above INR.30 lacs</i>
<i>Non- corporate returns</i>	<i>Upto INR.15 lacs</i>	<i>Above INR.15 lacs</i>	<i>Upto INR.20 lacs</i>	<i>Above INR.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”.

9. The above Instruction No.1 of 2011 issued by CBDT provided that in case where income declared by corporate/non-corporate assessee exceeded a specified monetary limit, the jurisdiction to frame assessment shall vest with Deputy Commissioners/Assistant Commissioners. It provides that where income declared by a non-corporate assessee in metro cities (including Mumbai) exceeded INR 20 Lacs, the jurisdiction to frame assessment vests with Deputy Commissioners/Assistant Commissioners of Income Tax.
10. In the present case it is admitted position that Assessee had filed return of income for the Assessment Year 2016-2017 on 02/09/2016 declaring return of INR.40,33,450/- which exceed that threshold limit of INR.20 lacs fixed by Instruction No.1 of 2011 issued by the CBDT.
11. In the case of **Ashok Devichand Jain Vs. Union of India (452 ITR 43) (Bom)**, the Bombay High Court had, after examining the

income tax return filed by a corporate assessee, quashed the notice issued under Section 148 of the Act as being without jurisdiction observing that the same was issued by the Income Tax Officer and not by Deputy Commissioner/Assistant Commissioner of Income Tax. The relevant extract of the said judgment reads as under:

- " *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 1203)(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."*

12. In the present case, the notice under Section 143(2) of the Act was issued on 04/07/2017 by the Income Tax Officer, Ward 18(1)(5) Mumbai. It is the case of the Assessee that the very assumption of jurisdiction is bad in law being violative of Instruction No. 1 of 2011 issued by CBDT. During the course of hearing the Learned Authorised Representative had placed reliance upon the decision of Mumbai Bench of the Tribunal in the case of **Monarch & Qureshi Builders Vs. ACIT [2024] 161 taxmann.com 356**. In that case notice under Section 143(2) of the Act as the same was issued by Income Tax Officer though the return filed by the assessee exceeded the monetary limit prescribed by Instruction No. 1 of 2011 issued by CBDT. The Mumbai Bench of the Tribunal quashed the aforesaid notice issued under Section 143(2) of the Act holding that the assumption of jurisdiction by the Income Tax Officer was contrary to Instruction No. 1 of 2011 issued by CBDT and therefore, bad in law. After taking into consideration the above judgment of the Hon'ble Bombay High Court in the case of Ashok Devichand Jain (supra) and other decision of Co-ordinate Bench of the Tribunal, the Co-ordinate Bench of the Tribunal held as under:

"7. The Assessee further claimed that according to the monetary limits set out by such Instruction No.1/2011 (supra) in the metropolitan cities, the ITOs are empowered to make the assessments of the corporate assesses upto Rs.30 lakhs as declared and above Rs.30 lakhs income declared by the Assessee, only Deputy Commissioners/Assistant Commissioners are empowered to make the assessments. In the instant case, admittedly, the income declared by the Assessee for the year under consideration is Rs.67,99,440/- and, therefore, only DC/AC had the power to issue the notice under section 143(2) of

the Act and to make the assessment. Somehow the notice under section 143(2) of the Act dated 31/08/2015 was issued by the Income-tax Officer, Ward 33(2)(3) who was not empowered and infact had no jurisdiction to decide the assessment over and above R.30 lakhs and therefore vitiated the assessment order dated 30/09/2016 passed under section 143(3) of the Act by the Assistant Commissioner of Income-tax, Circle-33(2)(3), Mumbai and hence, the assessment order itself is liable to be quashed.

7.1 The Assessee in support of its contention also relied upon various judgments. For the sake of brevity, we are reproducing below, the dictum laid down by the jurisdictional High Court in the case of **Ashok Devichand Jain v. Union of India** [2023] 151 taxmann.com 70/452 ITR 43 (Bom.)/[Writ Petition No. 3489 of 2029 decided on 08/03/2012]:

xx xx

7.2 We observe that though the Hon'ble High Court has dealt with the notice issued under section 148 of the Act; however, it is a fact that the Hon'ble High Court has also dealt with the Instruction No.1/2011 dated 31/01/2011 issued by the CBDT which is also under consideration before us and notice under section 148 of the Act is also a statutory and jurisdictional notice and, therefore, goes to the root of the assessment. The Hon'ble High Court has clearly held that ITO who had issued the notice under section 148 of the Act had no jurisdiction over the petitioner. The notice under section 148 of the Act is a jurisdictional notice and any inherent defect therein is not a curable one.

7.3 We further observe that the co-ordinate bench of the Tribunal in the case of **Ketan Tokershi Shah v. Dy. CIT** [IT Appeal No. 1107 (Mum.) of 2023, dated 26-7-2023] also dealt with the identical issue and the Instruction No.1/2011 (supra) as well and following the judgment in the case of Ashok Devichand Jain (supra) held the assessment completed under section 143(3) of the Act by issuing notice under section 143(2) of the Act by the DCIT, Central Circle-2, Thane as without jurisdiction and consequently quashed the assessment.

7.4 We further observe that the jurisdictional co-ordinate bench in the case of **Dy. CIT v. Parmar Built Tech Parmar Estate** [IT Appeal No. 4124 (Mum.) of 2012, dated 12-9-2022] also dealt with the identical issue and by following the judgment of the jurisdictional High Court in the case of Ashok Devichand

Jain (supra), quashed the assessment order in the identical facts.

7.5 We further observe that Hon'ble co-ordinate bench of the Tribunal at Kolkata in the case of **Bhagyalaxmi Conclave (P.) Ltd. v. Dy. CIT** [IT Appeal No. 519 (Kol.) of 2019, dated 3-2-2011] also dealt with the notice issued under section 143(2) of the Act and ultimately held the notice issued by the DCIT as defective and consequently quashed the assessment by holding that the assessing authority, who passed the order under section 143(3) of the Act i.e. DCIT-13(1), Kolkata has not issued notice under section 143(2) of the Act and also for the reason that the jurisdiction of these cases lies with the ITO and not the DCIT.

7.6 ***It is trite to say that as per dictum of the Hon'ble Apex Court in the case of Asstt. CIT v. Hotel Blue Moon [2010] 188 Taxman 113/321 ITR 362, the notice under section 143(2) of the Act is mandatory for making the assessment and therefore the same is required to be issued by the Assessing Officer, who has jurisdiction and is empowered to issue the notice under section 143(2) of the Act and to make the assessment. Hence, considering the peculiar facts and circumstances in totality specific to the effect ITO who issued the jurisdictional notice u/s 143(2) had no jurisdiction and infact was not empowered to make the assessment, and therefore respectfully following the dictum laid down by Hon'ble High Court in Ashok Devichand Jain case (supra) to the effect that "inherent defect is not curable", we do not have any hesitation to quash the assessment proceedings. Consequently, the assessment order itself is quashed.***

8. xx xx

9. *In the result, appeal filed by the Assessee is allowed."*
(Emphasis Supplied)

13. The Revenue has failed to bring on record any material to distinguish above judgment/decision either on facts or in law. Therefore, respectfully following the same, we quash notice, dated 04/07/2017, issued by the Income Tax Officer under Section 143(2) of the Act. Consequently, the Assessment Order, dated 24/12/2018 passed under Section 143(3) of the Act for the Assessment Year

2016-2017 is quashed. Thus, Additional Ground No. 1 raised by the Assessee is allowed, while all other grounds raised by the Assessee are dismissed as having been rendered infructuous. The appeal preferred by the Assessee is, thus, partly allowed.

14. As regards appeal preferred by the Revenue is concerned, all the grounds raised by the Revenue pertain to the relief granted by the Learned CIT(A) on merits. Since the Assessment Order, dated 24/12/2018, passed under Section 143(3) of the Act has been quashed, the additions made and the consequent demand raised stand deleted. Therefore, all the grounds raised by the Revenue are dismissed as having been rendered infructuous.
15. In result, the appeal preferred by the Assessee [ITA No.5844/Mum/2025] is partly allowed while the appeal preferred by the Revenue [ITA No. 6125/Mum/2025] is dismissed.

Order pronounced on 26.02.2026.

Sd/-
(Bijayananda Pruseth)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 26.02.2026
Milan,LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR, ITAT,
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