

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, D, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

श्री संजय गर्ग, न्यायिक सदस्य एवं

श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Sanjay Garg, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.4497/Mum/2005
Assessment Year: 2001-02**

Tata Sons Ltd. Bombay House, 24, Homi Mody Street Mumbai-400001	बनाम/ Vs.	ACIT CIR. 2(3) Aayakar bhavan, Roon No.555 M.K. Rd. Mumbai-400020
(Appellant)		(Revenue)
P.A. No. AAAC4060A		

**ITA NO.4542/Mum/2005
Assessment Year: 2001-02**

DCIT CIR. 2(3) Aayakar bhavan, Roon No.555 M.K. Rd. Mumbai-400020	बनाम/ Vs.	Tata Sons Ltd. Bombay House, 24, Homi Mody Street Mumbai-400001
(Revenue)		(Respondent)
P.A. No. AAAC4060A		

Appellant by	Shri Dinesh Vyas, (AR)
Revenue by	Shri K. Srisha Murthy (DR)

सुनवाई की तारीख/ Date of Hearing :	20/10/2016
आदेश की तारीख / Date of Order:	31/10/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

These Cross appeals have been filed against the order of Ld. Commissioner of Income Tax, Mumbai, -XXXII (in short 'CIT(A)'), dated 31.03.2005 passed against the assessment order of the AO u/s 143(3) dated 19.03.2004 for the Assessment Year 2001-02 on the following grounds:

“On facts and circumstances of the case and in law, the learned CIT(A) erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below.

1. The CIT(A) erred in holding that the figure of gross funds of Rs.4443.16 crores be adopted as denomination as against the correct figure of Rs. 1745.69 crores (being the total amount of borrowed funds) while calculating the interest expenses to dividend income.

2. The CIT(A) erred in holding that the disallowance u/s. 14A of the administrative expenses attributable to the earning of the exempted income should be restricted to 1 crore as against 2% of such expenses disallowed by the AO.”

2. During the course of hearing, arguments were made by Shri Dinesh Vyas, Authorised Representative (Sr. Counsel) on behalf of the Assessee and by Shri K. Srisha Murthy, Departmental Representative (CIT-DR) on behalf of the Revenue.

3. During the course of hearing, the assessee filed few more additional grounds on merits. The assessee vide its petition dated 15.01.2016 filed additional grounds raising jurisdictional validity of assessment order on the ground that the assessment order was passed by the Additional Commissioner of Income Tax u/s 143(3) who was not competent under the law to discharge functions of AO and

therefore, impugned assessment order was passed by him without authority of law and thus, assessment order was bad in law.

3.1. During the course of hearing, Ld. Senior counsel vehemently argued that he should be heard first on the aforesaid legal grounds which go to root of the matter and if need arises, then this case may be heard on merits.

3.2. Per contra, Ld. CIT-DR initially requested for short adjournment on the ground that he was not prepared and documents required from the AO in respect to the aforesaid additional ground raised by the assessee were not yet made available by the AO. In response, Ld. Senior Counsel vehemently opposed the submissions of the Ld. CIT-DR on the ground that in this case numerous adjournments have been taken by the department since January, 2016 on one pretext or the other and every time different officer would appear in this case and make request for adjournment on the ground that the order authorizing Additional Commissioner of Income Tax to pass the assessment order was not available on record and some more time was required to trace the same. On earlier two dates also, detailed order was passed by the Bench on the order sheet directing the department to argue the matter on the next date and if department still seeks adjournment, then heavy cost would be imposed on the department. But, despite that, department is taking this matter lightly and in a casual manner and is disregarding detailed orders passed by the Tribunal and the AO has also disregarded directions of the

Tribunal. He has neither sent the record nor any proper explanation for not sending the records.

3.3. Under these circumstances, we went through the previous orders passed by the bench on the order sheet and accordingly it was felt necessarily that the AO should be summoned personally to explain his conduct and next date was given for hearing. Accordingly, the AO was personally present on the next date. But he again submitted that the order authorizing Additional Commissioner of Income Tax for passing the impugned assessment order was not available on file. Ld. CIT-DR also maintained that no such order was available. But, he added that even without such an order, the Additional Commissioner of Income Tax was very much competent and authorized under the law to pass the impugned assessment order.

3.4. We have gone through entire facts and circumstances of the case and previous interim orders issued on order sheet. It is noted that on 15.06.2016, the bench had directed the then CIT-DR to be present along with necessary documents and explanation on 27.06.2016. On the next date i.e. 27.06.2016, these appeals were substantially heard but these were subsequently adjourned on the persistent request of the CIT-DR on the ground that department wanted to produce the records. Accordingly, date of 29th June 2016 was given as last and final opportunity to the Revenue on the condition that no further adjournment shall be given and if still records were not produced, then, adverse view may be taken on 29.06.2016. On the said date, the AO was personally present along with Ld.

CIT-DR to again make a request for further time. Somehow, accepting his request, the case was adjourned for 11.07.2011. On said date, again adjournment request was made by the department and to accommodate the department, case was adjourned on 19.07.2016. On said date, the CIT-DR again moved an application requesting for two days time and gave an undertaking that no further adjournment shall be taken by the department. Thus, taking strict view on the conduct of the department following order was passed:

“On 15th June, 2016 the learned D.R. was directed to be present alongwith necessary documents, on 27th June, 2016 last opportunity was provided to the Department with a direction that necessary documents/ case record will be produced. Again on 27th June, 2016 nothing was produced and again at the request of the Department last opportunity was provided to the Department with a direction to produce the record. It was made clear that it will be the final opportunity to the Department. Again on 29th, June, 2016 necessary documents were not produced and it was made clear that if the necessary record is not produced adverse view will be taken. Again nothing was produced. The Department, on 11.07.2016 again requested for adjournment and 'thus the Bench was constrained to provide last opportunity to the Department.

Today, i.e. 19.07.2016 the learned CIT-DR has again moved an application and requested for two days time with an undertaking that no further adjournment shall be requested. Since these are old appeals and considering that these appeals are to be disposed of on priority basis, though we are constrained to grant another opportunity to the Department as prayed but it is made clear that no further adjournment shall be granted to the Department and adverse view will be taken. It is also made clear that if the Department still

seeks adjournment then the higher authorities of the Department of Revenue will be informed. The learned CIT-DR suggested that these appeals may be taken on 22nd July, 2016. Accordingly the appeals are fixed for hearing on 22.07.2016.”

3.5. Accordingly, case was adjourned on 22.07.2016 and on the said date, Ld. CIT-DR again came out with a new plea for seeking adjournment and following order was passed on 22.07.2016:

“The Ld. CIT(DR), Shri Ajit Srivastava has filed written submissions for which our attention was invited to page 16, paragraph (c) of the submissions dt 22-07-2016. Shri Srivastava states that they are trying to locate the relevant order / record and seeks time for 3 months by stating that the entire machinery of the department is engaged in the process of IDS. Dr. Dinesh Vyas, the Ld. Senior Advocate strongly opposed the submission of the department by stating that the approach of the department has been very casual and on earlier occasions, last opportunity was provided to the department, in spite of that, the department has not produced the relevant record.

2. We agree with the submissions of Dr. Dinesh Vyas and constrained to observe that the department has not produced the relevant record in spite of repeated opportunities for providing the record. Today, the Ld. CIT(DR) has come out with a new plea in support of his written submissions. We are aware that these are old appeals and must be disposed of at the earliest. However, considering the totality of facts, these appeals are de-heard. It is adjourned for fresh hearing by the regular bench. Adjourned to 18th October, 2016 along with appeal in ITA No. 193/Mum/2006; 4542/Mum/2005; 2745/Mum/2006; NS ITA No.3623/Mum/2008. The Ld. CIT(DR) had no objection to this date. However, it is made clear that if the department still seeks time, at that time heavy costs will be put on the department and these appeals shall be decided on the basis of material held on record.”

3.6. Under these circumstances, case was adjourned for 18th October, 2016, for producing requisite records and for making final arguments. On 18.10.2016, Ld. CIT-DR again made an adjournment application in a highly casual manner which was turned down as mentioned above and therefore, he was directed to argue the matter and was also directed to instruct the AO to remain present during the course of hearing. Under these circumstances, on 19.10.2016, AO appeared along with Ld. CIT-DR and tendered his apologies for not being able to provide the records as was directed by the Bench on earlier occasions. Under these circumstances, Ld. CIT-DR requested that the case should be taken up the next date so that final argument may be made. Under these circumstances, case was fixed for final arguments on 20.10.2016. Thus, under these circumstances, we have no other option but to proceed with the hearing of the matter on the basis of records available before us.

3.7. It is noted that first argument made on behalf of the assessee was with respect to additional ground challenging legal competence of the Additional Commissioner for passing impugned order. The Ld. CIT-DR vehemently opposed the admission of additional grounds at this stage. It is noted that the assessee has filed its petition for admission of additional grounds with following request:

“Delhi Bench of the Hon'ble Tribunal in the case of Mega Corporation Ltd. vs. Additional CIT (ITA No.102/Del/2014), decided on 22/9/2015 on the facts similar to facts in the aforesaid Appeals of the appellant has held the Assessment Order to be invalid and bad in

law. This Order of the Hon'ble Tribunal has just been reported and on the basis thereof, we propose to file the additional grounds of appeal challenging the validity of the Assessment Order passed in our case. Therefore, we hereby file the enclosed additional grounds of appeal in the Appeals referred to above and filed by us with a request that these grounds may please be adjudicated by the Hon'ble Tribunal.

The additional grounds raised herein go to the very root of the matter and deal with the very jurisdiction and authority of the Assessing Officer to pass the Order. Therefore, these grounds can be admitted in the interest of substantial justice and especially when they are raised in a bona fide manner without indulging in delaying tactics. In this connection, we wish to rely on the following decisions of the Hon'ble Apex Court and the Hon'ble Jurisdictional High Court:-

- 1. Jute Corporation of India Ltd. vs. CIT [187 ITR 688 (SC)]*
- 2. CIT vs. S. Nelliappan [66 ITR 722 (SC)]*
- 3. Ahmedabad Electricity Co. Ltd. vs. CIT [199 ITR 351 (Bom)]*
- 4. CIT vs. Pruthvi Brokers & Shareholders [349 ITR 336 (Bom)]*
- 5. Ashok Vardhan Birla vs. CIT [208 ITR 958 (Bom)]*
- 6. Inaroo vs. CIT [204 ITR 312 (Bom)]*
- 7. CIT vs. Govindram Bros. P. Ltd. [141 ITR 626 (Bom)]”*

3.8. Following additional grounds have been raised along with the aforesaid petition:

“1. On the facts and in the circumstances of the case the assessment order dated 19.03.2004 passed by the Additional Commissioner of Income Tax under section 143(3) is bad in law, illegal and without jurisdiction and/or in excess of jurisdiction. on the grounds amongst others, that he failed to establish that he possessed legal and valid jurisdiction under the Act to pass the assessment order and consequently the Hon'ble Tribunal he pleased to quash the said order.

2. The Additional Commissioner of Income Tax lacked jurisdiction to pass the Order of

Assessment u/s 143(3) dated 19.03.2004 and to exercise the powers of performing the functions of an Assessing Officer, without establishing that he possess such jurisdiction conferred on him under section 120(4)(b) of the Act. Accordingly in the absence of an order u/s 120(4)(b) conferring jurisdiction on the Additional Commissioner of Income Tax the assessment order dated 19.03.2004 passed by him needs to be quashed.

3. The proceedings having been initiated by issue of a Notice u/s 143(2) on 30.09.2002 by the Asst. Commissioner of Income Tax, in the absence of an Order transferring jurisdiction u/s 127 to the Additional Commissioner of Income Tax, the Order of Assessment dated 19.03.2004 passed by the Additional Commissioner of Income Tax. is without jurisdiction and needs to be quashed.

4. The proceedings having been initiated by the lower authority (viz. Asst. Commissioner of Income Tax) in the absence of an Order transferring jurisdiction u/s 127 to the Additional Commissioner of Income Tax, the Order of Assessment passed by the higher authority (viz. Additional Commissioner of Income Tax) is without jurisdiction and needs to be quashed.

5. As held in Mega Corporation Ltd vs. Addl. CIT ITA No. 102/Del/2014. in a case where the proceedings have been initiated by one officer and the assessment order is passed by the another officer, the assessment order is bad in law and illegal and therefore the impugned assessment order in this case should be quashed.

3.9. We have gone through the aforesaid petition and final grounds raised by the assessee.

3.10. The solitary issue raised in these additional grounds is for challenging the jurisdictional validity of the assessment order on the ground that Additional Commissioner of Income Tax, who had passed impugned assessment order, did not

have the authority of law to act as an Assessing Officer and to pass the impugned assessment order.

3.11. Admission of Additional Grounds:

The assessee has challenged legal competence of the Additional Commissioner of Income tax to act as an Assessing Officer of the assessee and to pass the impugned assessment order by way of additional grounds. The issue raised by the assessee goes to the root of the matter and seeks to shake the very sustainability of the impugned assessment order in the eyes of law. During the course of hearing, it was shown by the Ld. Senior Counsel of the assessee that law in this regard has been developed recently. Moreover, this fact was not in the knowledge of the assessee that the Additional Commissioner of Income Tax had assumed jurisdiction to frame the impugned assessment order without the authority of law and without there being any order from the Commissioner of Income Tax authorizing him to act as Assessing Officer of the assessee. Under these circumstances, it is bounden duty of the Revenue to establish legal competence and authority of the officer passing the assessment order, if so challenged by an assessee at any stage.

3.12. We have examined this issue. It is well accepted position that the Tribunal is a final fact finding body. Requisite documents required for establishing legal authority of the Assessing Officer who had passed the assessment order are expected to be available in the assessment records. Thus, the legal issue raised by the assessee falls in the category of cases which can be decided on the basis of material held on record.

3.13. Further, it is noted by us that the aforesaid grounds are purely legal grounds and do not require any investigation of fresh facts and can be decided on the basis of records held on record. It has been held by the Hon'ble Supreme Court in the case of **National Thermal Power Corporation 229 ITR 383** as well as in the other judgments as have been relied upon by the Ld. Counsel in its petition that assessee should be permitted to raise legal grounds at any stage, if they go to the root of the matter.

3.14. Revenue's argument to reject the additional grounds due to acquiescence and participation of the assessee in assessment proceedings:

It was contended by the Ld. CIT-DR that during the course of assessment proceedings, assessee had made participation in the proceedings. Therefore, assessee cannot be allowed to challenge jurisdictional defect in the assessment order at this stage. We have considered this aspect very carefully. The assessee has challenged before us authority of the officer to pass the impugned assessment order. It is bounden duty of the Revenue to establish the authority and legal competence of its officer to pass the assessment order, as and when it is called upon to do so. No order can be sustained in the eyes of law if its author does not have requisite sanction of the law. If an order does not possess requisite strength in the eyes of law and is void *ab-initio*, then it will remain so even if there is acquiescence or participation by the assessee in the proceedings carried out by the AO to frame the assessment order. It is well settled law that consent of the assessee cannot confer jurisdiction to an assessing officer who lacked

jurisdiction under the law. Similarly, vice versa is also true i.e. absence of consent of the assessee shall not take away jurisdiction from an Assessing Officer who actually possessed a valid jurisdiction in the eyes of law. Thus, legal competence of the officer who passed the assessment order as well as validity of the assessment order must be examined on the basis of factual analysis and provisions of law and not on the basis of conduct of the assessee. This issue is not *res-integra*. Immediate reference in this regard can be made on the judgment of **Hon'ble Bombay High Court in the case of Inventors Industrial Corporation Limited Vs. CIT 194 ITR 548 (Bombay)**. Similar view was taken by Hon'ble Gujarat High Court in the case of **P.V. Doshi Vs. CIT 113 ITR 22 (Guj)**. Recently Hon'ble Delhi High Court handled a similar situation in the case of **Valvoline Cummins Ltd 307 ITR 103 (Del)** wherein challenge was made to the jurisdiction of Additional Commissioner of Income Tax who had passed the assessment order. It was contended on behalf of the Revenue that challenge of jurisdiction must be made within the stipulated time during the course of assessment proceedings in view of restrictions imposed by the provisions contained in section 124 of the Act. Hon'ble Delhi High Court in the aforesaid case held as under:-

“This is well settled that mere acquiescence in the exercise of powers by a person who does not have jurisdiction to exercise that power cannot work as an estoppel against him.”

3.15. It is further noted by us that in the case before us, a challenge has been made about the legal competence of the Additional Commissioner of Income tax and his jurisdiction to

exercise the powers and perform the functions of the Assessing Officer of the assessee and to carry out the assessment proceedings and frame the assessment order in accordance with the provisions of the Income tax Act, 1961. Thus, reliance upon the provisions contained in Section 124 of the Act would be of no help to the Revenue as the assessee has not challenged either territorial jurisdiction or irregular exercise of jurisdiction by the Additional Commissioner of Income Tax but challenge was made to the authority and legal competence itself of the Additional Commissioner of Income tax to pass the impugned assessment order upon the assessee. Similar view has been taken by the Delhi Bench of ITAT in the case of **Mega Corporation Ltd Vs. Additional CIT 155 ITD 1019 (Delhi)** following the judgment of Hon'ble Delhi High Court in the case of Valvolines Cummins Ltd, supra.

3.16. In view of the facts and circumstances, of this case and the judgments of Hon'ble Supreme Court and Hon'ble Bombay High Court relied upon by the Ld. Counsel in its petition as mentioned above, we find that these additional grounds deserve to be an admitted and therefore, these are admitted for our adjudication.

3.17. Since the additional grounds go to the root of the matter and challenge jurisdictional validity of the order, therefore, we find it appropriate to first deal with the same before deciding the appeal on merits. It has been argued at length by the Ld. Senior Counsel of the assessee that in this case first notice of assessment proceedings intimating change of jurisdiction was issued by ACIT circle 2(3) Mumbai, dated 5th September 2001

wherein it was claimed that the jurisdiction of assessment was with the said officer. Subsequently, notice u/s 143(2) was issued by the DCIT dated 01.12.2003. Thereafter a questionnaire was issued by the Additional Commissioner of Income Tax Range -2(3), Mumbai dated 10th February 2004 and finally the Additional Commissioner of Income Tax framed the assessment order. He took us through the various provisions of Income Tax Act to impress upon the point that Additional Commissioner of Income Tax was not legally competent to act as Assessing Officer and to pass assessment orders. He referred to provisions of section 2(7A) which provide definition of the term 'Assessing Officer'. He also referred to the provisions of section 2(28C) which defines Joint Commissioner of Income Tax. It was argued that in the definition of Assessing Officer, earlier only Joint Commissioner was provided and Additional Commissioner was inserted subsequently. It was further submitted that only those Joint Commissioners/Additional Commissioners were competent to pass the assessment order who were authorized to act as an Assessing Officer as per clause (b) of sub-section 4 of section 120. It was vehemently argued that the Additional Commissioner who passed the impugned assessment order was not having any authority issued from the Board or the jurisdictional Commissioner of Income Tax to act as an Assessing Officer and to pass an assessment order in the case of the assessee. He also took us through provisions of section 120 to argue that Additional Commissioner or Joint Commissioner could have exercised the power of an Assessing

Officer only if they were so authorized specifically by their jurisdictional Commissioner. In support of his proposition, he relied upon following judgments:

1. Mega Corporation v. Addl. CIT (62 taxmann.com 351(Del. ITAT)
2. Bindal Apparels Ltd. ACIT 104 TTJ 950(Del)
3. City Garden vs. ITO (21 taxmann.com 373 (Jodhpur ITAT)
4. Microfin Securities (P) Ltd. vs. Addl. CIT 3 SOT 302 (Luk.)
5. Prachi Leathers Ltd. 26L/Luk/2010 in ITA No.744/Luk/2004 order dat. 29.03.2010
6. Harvinder Singh Jaggi vs. ACIT 67 Taxmann.com 109(Del. ITAT)
7. Dr. Nalini Mahajan vs. DIT (Inv.) 257 ITR 123(Del. HC)
8. Ghanshyam K. Khabrani vs. ACIT 346 ITR 443(Bom. HC)
9. CIT vs. SPL's Siddhartha Ltd. 345 ITR 223 (Del. HC)

3.18. Per contra, Ld. CIT-DR, with the assistance of Ld. AO, vehemently opposed the submissions of the Ld. Senior Counsel and argued that all the Additional Commissioners have concurrent jurisdiction upon all the assesses falling in their respective ranges and therefore, Additional Commissioner was well within his competence to pass the impugned assessment order. It was further submitted that as per section 2(28C), Joint Commissioner includes Additional Commissioners also. It was further submitted that section 2(7A) was amended retrospectively and the word 'Additional Commissioner' was also inserted along with word 'Joint Commissioner' by Finance Act, 2007, with retrospective effect from 01.06.1994. In response to our query, Ld. CIT-DR fairly

submitted that he was not able to submit any order from the board or Chief Commissioner of Income Tax or Jurisdictional Commissioner of Income Tax authorizing the present Additional Commissioner of Income Tax to act as an Assessing Officer and to pass assessment order. But, he maintained that even without and such specific order, the Additional Commissioner was legally competent to pass the impugned assessment order.

3.19. In rejoinder, Ld. Senior Counsel of the assessee again took us through all the previous order sheet entries recorded by the bench on earlier dates wherein bench had repeatedly directed and had given opportunity to the department to produce if there was any order authorizing the Additional Commissioner of Income Tax to pass impugned assessment order. It was further submitted by him that assessee is not challenging territorial jurisdiction of the assessee, but the assessee is challenging legal competence of the officer to pass the impugned Assessment order and it can be done at any stage. Under these circumstances, the restriction provided u/s 124 was not applicable. If the legal competence of the officer is challenged, then it is for the Revenue to establish that the officer was legally authorized to pass the assessment order. It was lastly argued that case of the assessee was squarely covered in view of various judgment relied upon by the counsel wherein it has been *inter-alia* held that if the law mandates a particular act to be done in a particular manner, then that act should be done by the concerned authorities in that manner alone as has been prescribed under the law, else it shall be

deemed that the said act has never been done. He requested for quashing the assessment order on the ground that same was passed without authority of law and was void *ab-initio*.

3.20. We have gone through all the facts and circumstances of the case. It is noted by us that for the impugned assessment year, after the return was filed by the assessee, a notice was issued by the ACIT Cir-2(3), Mumbai, dated 5th September 2001, intimating the assessee about change in jurisdiction and claiming that jurisdictional was with the said officer. The relevant part of the said notice is reproduced hereunder:

“Sub: Change in jurisdiction-Intimation regarding

In terms of Notification No. SO No. 732(E) dated 31.7.2001 of Central Board of Direct Taxes and consequential Notification dated 7.8.2001 of CIT. MC-II, Mumbai, jurisdiction over your case with effect from 1.8.2001 vests with the undersigned. All IT./W.T. and Interest tax Returns and necessary correspondence on that account are therefore required to be filed with the undersigned. All payments towards Income-tax (by way of Advance tax, Regular tax or S.A. tax), Interest tax, Wealth tax and payment u/s. 115-0 of the I.T. Act are also to be made w.e.f. 1.8.2001 to the credit of the ACIT Circle 2(3), Mumbai.

2. Similarly, jurisdiction over the Managing Director, Director, Manager, and Secretary of your company also vests with the undersigned vide Notifications quoted supra. Consequently, all the returns of the above persons and follow up correspondences on that account are to be made with the undersigned. All payments towards Income-tax and Wealth-tax w.e.f 01.08.2001 of the above persons are also to be made to the credit of ACIT Cir.2(3) Mumbai. This may be carefully noted.

Your's Faithfully

Sd/-

*(Jagadish Prasad Jangid)
ACIT Cir. 2(3), Mumbai.*

3.21. Thus, from the above, it is clear that initially the jurisdiction was with ACIT Cir. 2(3), Mumbai, for passing the assessment order. Subsequently, a notice u/s 143(2) was issued by DCIT Cir. 2(3) dated 01.12.2003 who was indeed successor to the first officer. Subsequently, assessee received a questionnaire dated 10th December, 2004 from the Additional CIT range 2(3) Mumbai. Apparently, Additional Commissioner of Income Tax was not successor of ACIT/DCIT who had issued earlier notice. But, the assessee has contended that there is nothing on record to show as to how the Additional Commissioner of Income Tax became AO of the assessee and passed the impugned assessment order.

3.22. Thus, the first issue raised by the assessee before us is that in this case assessment proceedings were initiated by the Assistant Commissioner of Income Tax but were taken over in the middle of the proceedings by the Additional Commissioner of Income Tax and completed by him without there being any valid transfer of jurisdiction from the Assistant Commissioner of Income Tax to the Additional Commissioner of Income tax, as required under section 127 of the Income Tax Act. In this regard, Ld. CIT-DR was of the view that the Additional Commissioner of Income tax and Assistant Commissioner of Income tax have concurrent jurisdiction over the assessee. In our view, contention of Ld. CIT-DR is not valid as it is not based upon correct appreciation of the law. It appears that Revenue has misunderstood and miss-applied the very concept of 'concurrent jurisdiction' and has ignored the distinction between the 'concurrent jurisdiction' and 'joint

jurisdiction'. When we talk about assignment of 'concurrent jurisdiction' to two officers of different hierarchy, it does not mean that both the officers can simultaneously or jointly work upon the assessment proceedings of same assessee. But it means that both the officers are legally eligible for assignment of jurisdiction of the assessment proceedings of an assessee and, therefore, any one of these officers can be assigned the jurisdiction by the higher authority. But, exercise of the jurisdiction between both the officers shall always be mutually exclusive to each other. If the jurisdiction has been assigned to one of the officers, it shall not be exercised by the other, and if the jurisdiction is taken away from the former officer and assigned to the latter, then it shall be exercised by the latter only and not by the former. Thus, the jurisdiction can be exercised by only one Assessing Officer at any given point of time who has been duly assigned the jurisdiction by the competent authority. The assignment of jurisdiction to an officer and its transfer from one officer to the other can be made only through the prescribed process of law. Section 127 of the Act contains provisions regarding process to be followed by the Revenue Officers and their powers for transfer of cases from one Assessing Officer to the other. Section 127(1) *inter-alia* provides and mandates that the Commissioner may after recording his reasons for doing so, transfer any case from one Assessing Officer subordinate to him to any other Assessing Officer (whether with or without concurrent jurisdiction) also subordinate to him. Thus, mandatory requirement of the law in this regard is that an order in writing must be passed by the

jurisdictional Commissioner of Income tax for effecting transfer of assessment proceedings from one Assessing Officer to the other. Law in this regard was explained in detail by Hon'ble Delhi High Court in the case of **Valvolines Cummins**, supra. Similar view was taken by the Delhi bench of the Tribunal in the case of **Mega Corporation Ltd. Vs. Additional CIT**, supra following the aforesaid judgment of the Delhi High Court. Relevant part of order is reproduced below for the sake of ready reference:-

*".....9. Another contention specifically raised is that there is no transfer order u/s 127 of the Act from transferring the case from the DCIT to the Addl. CIT, Range 6, and New Delhi. The learned CIT(A) has held that in the cases of transfer of cases to another AO after issue of notice u/s 143(2) of the Act by another AO, the issue involves the interpretation of concurrent jurisdiction which is beyond the scope of this appeal within the restricted directions of the Hon'ble ITAT. He has held that, "in my considered opinion, since both Addl. CIT Range-6 and DCIT Circle-6(1) works as subordinate officer to the same CIT and the CIT having entire territorial jurisdiction, the passing of assessment order by the Addl. CIT after issue of notice u/s 143(2) by the DCIT Circle 6(1) does not affect the taxability of the appellant or appellant is not adversely affected by the order." The **Hon'ble Delhi High Court** in the above context in the case of **Valvoline Cummins Ltd.** (supra) has held as under:*

"28. On the issue of 'concurrent' jurisdiction between the Additional Commissioner and the Deputy Commissioner, learned counsel for the assessee relied upon a decision of the Calcutta High Court in Berger Paints India Ltd. v. Asstt. CIT [2000] 246 ITR 133. The Calcutta High Court had explained the meaning of the expression 'concurrent' to mean two authorities having equal powers to deal with a situation -but the same work cannot be divided between them. This is what the Calcutta High Court had to say:-

". . . Concurrent jurisdiction means a subordinate authority can deal with the matter equally with any superior

authority in its entirety so that either one of such jurisdictions can be invoked. It cannot be construed as concurrent jurisdiction when one part of the assessment will be dealt with by one superior officer and the other part will be dealt with by one subordinate officer. . . ."

.....**It appears to us quite clearly that there is a distinction between concurrent exercise of power and joint exercise of power. When power has been conferred upon two authorities concurrently, either one of them can exercise that power and once a decision is taken to exercise the power by any one of those authorities, that exercise must be terminated by that authority only. It is not that one authority can start exercising a power and the other authority having concurrent jurisdiction can conclude the exercise of that power. This perhaps may be permissible in a situation where both the authorities jointly exercise power but it certainly is not permissible where both the authorities concurrently exercise power.** One example that immediately comes to the mind is that of grant of anticipatory bail. Both the Sessions Judge and the High Court have concurrent power. It is not as if a part of that power can be exercised by the High Court and the balance power can be exercised by the Sessions Judge. If the High Court is seized of an application for anticipatory bail it must deal with it and similarly if the Sessions Judge is seized of an anticipatory bail, he must deal with it. There can be no joint exercise of power both by the High Court as well as by the Sessions Judge in respect of the same application for anticipatory bail.

30. In the facts of the present case, since the Additional Commissioner had exercised the power of an Assessing Officer, he was required to continue to exercise that power till his jurisdiction in the matter was over. His jurisdiction in the matter was not over merely on the passing of the assessment order but it continued in terms of section 220(6) of the Act in dealing with the petition for stay. What has happened in the present case is that after having passed the assessment order, the Additional Commissioner seems to have washed his hands of the matter and left it to the Deputy Commissioner to decide the

stay petition filed under section 220(6) of the Act. We are of the opinion that this was not permissible in law.”

9.1 We therefore hold that applying the above judicial position that assessment has to be completed by the authority who has initiated the proceedings for making assessment and any other authority can take over the proceedings only after a proper order of transfer u/s 127(1) or 127(2) of the proceedings. The revenue has not brought any order for transfer of the proceedings from DCIT, Circle-6(1), New Delhi to the Additional CIT, Range-6, New Delhi and therefore it is quite evident that the Additional CIT, Range-6 took over the assessment proceedings without there being an order u/s 127(1). In the case of Prachi Leathers Pvt. Ltd. (supra), it has been held as under:

19. We are further of the opinion that the notice under section 143(2) of the Act having been issued by the Income-tax Officer, Range 6(2), Kanpur on 16.8.2002, it was Income-tax Officer alone who could frame the assessment subject however to the fact that that the assessment could be framed by any other officer also provided there was an order of transfer of jurisdiction over assessee's case from Income-tax Officer, Range-6(2), Kanpur to that officer under section 127(4) of the Act, but so far as present case is concerned, the Revenue has not brought to our notice any order under section 127 passed after 6.8.2002 transferring jurisdiction over the assessee's case from the Income-tax Officer, Range 6(2), Kanpur to the Addl. CIT, Range-6, Kanpur and therefore, the assessment framed by the Addl.CIT, Range-6, Kanpur irrespective of the fact as to whether he was authorized to perform the functions of an AO or not, is illegal and void ab initio for want of jurisdiction. Consequently, we are of the opinion that the assessment order in the present case dated 31.3.2003 passed by the Addl.CIT, Range (6), Kanpur was illegal and void ab initio for want of jurisdiction. Consequently, the assessment order is quashed.”

9.2 Consequently on this count also, the assessment made on 29.12.2008 by the Additional Commissioner is illegal and bad in law for want of jurisdiction.

10. for the reasons aforesaid we hold that the order of assessment dated 29.12.2008 was without jurisdiction

and therefore is quashed as such. In result, ground Nos. 1 and 2 are allowed.”

3.23. In the case before us, the facts are identical. It is noted that Ld. CIT-DR as well as the Assessing Officer (present incumbent) who was personally present during the course of hearing before us, jointly stated that no such order (as prescribed under section 127(1) required to be passed by the jurisdictional Commissioner of Income tax) is available in the records. Thus, it is clear that there was no valid transfer of jurisdiction to the Additional Commissioner of Income Tax who had passed the impugned assessment order. Thus, impugned assessment order had been passed without assuming jurisdiction as per law.

3.24. Next issue raised by the Ld. Senior Counsel was that the Additional Commissioner who had passed the impugned assessment order was not authorized to act as assessing officer of the assessee and pass the impugned assessment order. We analyzed the provisions of law in this regard and find that section 2(7A) defines the term of Assessing Officer as under:

“Assessing Officer” means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or subsection (2) of section 120 or any other provision of this Act, and the Joint Commissioner or Joint Director who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act.”

3.25. Subsequently, the word ‘Additional Commissioner’ was also added in the said definition by Finance Act, 2007, with

retrospective effect from day 01.06.1994. Thus, from the above, it is clear that when the impugned assessment order was passed, definition of the word 'Assessing Officer' did not include 'Additional Commissioner of Income Tax'. It is further noted that section 2(28C) defines Joint Commissioner. Section 2(28C) was available on statute since 01.10.1998 and provide as under:

"2(28C) Joint Commissioner means a person appointed to be a Joint Commissioner of Income Tax or an Additional Commissioner of Income Tax under sub-section (1) of section 117."

On the other hand, section 2(1C) defines 'Additional Commissioner' as under:

"Additional Commissioner means a person as appointed to be an Additional Commissioner of Income Tax under sub-section (1) of section 117."

Thus, combined reading of all the above sections makes it clear that prior to amendment made by Finance Act, 2007, the legislature treated 'Additional Commissioner' and 'Joint Commissioner' differently for the purposes of performing the role as an Assessing Officer, despite the fact that for all the other purposes 'Joint Commissioner' meant 'Additional Commissioner' as well, as per section 2(28C). It is clear from the facts that by way of subsequent amendment by Finance Act, 2007, words 'Additional Commissioner' have also been inserted along with words 'Joint Commissioner' in section 2(7A) which defines the term for 'Assessment Officer'. In case, the legislature would have intended and meant that for the

purpose of acting as Assessing Officer, 'Joint Commissioner' and 'Additional Commissioner' means one and the same, then there was no need to come out with an amendment made by Finance Act, 2007, wherein the word 'Additional Commissioner' was also inserted in the definition of 'Assessing Officer' as contained in section 2(7A). Thus, it is clear as per the plain reading of the statute that when the assessment order was passed, the 'Additional Commissioner' was not authorized to act as Assessing Officer.

3.26. In addition to the above, it further noted by us that only that 'Joint Commissioner' was authorized to act as an Assessing Officer who was directed under clause (b) of subsection 4 of section 120 to exercise or perform all or any of the powers and functions of an Assessing Officer as defined u/s 2(7A) of the Act. Now, if we refer to section 120, its perusal makes further clear that only CBDT can empower the Chief Commissioners or Commissioners for issuance of orders to the effect that powers and functions of an Assessing Officer for a particular assessee or classes of assessee shall be exercised by a 'Joint Commissioner'. Despite numerous directions, the Revenue was not able to bring before us any order wherein any specific authority was given by any Chief Commissioner or Commissioner authorizing the impugned Additional Commissioner to pass impugned assessment order. We find force in the argument of Ld. Counsel that at the relevant time when the assessment proceedings were in progress, the word 'Additional Commissioner' was not available in the aforesaid section and therefore, it was not possible for the Chief

Commissioner or the Commissioner to have authorized an Additional Commissioner for exercising powers and functions of an Assessing Officer for a particular assessee or classes of assessee. Even otherwise, no order could be shown to us, whereby any such authority was given to the Joint Commissioner of the Range. Under these circumstances, we find that the Revenue is not able to show any order or notification in favour of the Additional Commissioner authorizing him for performing the powers and functions of the Assessing Officer of the assessee.

3.27. During the course of hearing, Ld. CIT-DR had drawn our attention upon Board's Notification No.267/2001 dated 17-9-2001, Notification No.228/2001 dated 31.7.2001 and Notification No.335/2001 dated 29-10-2001 with a view to argue that the jurisdiction was assigned to all the officers including 'Additional Commissioner' for exercise of powers as Assessing Officer, and thus the 'Additional Commissioner of Income Tax' who had passed the impugned assessment order had inherent powers under the law to act as assessing officer of the assessee and pass the impugned assessment order.

3.28. We have gone through all these Notifications, but do not find any substance in the contention of the Ld. CIT-DR. It is noted that Notification No.335 is issued merely for assigning jurisdiction to various Commissioners and it is thus of no use to Revenue as far as issue before us is concerned. So far as Notification No.267/2001 is concerned, it reads as follows:-

"In exercise of the powers conferred by clause(b) of sub-section (4) of section 120 of the income-tax Act, 1961(43 of 1961), the Central Board of Direct Taxes, hereby directs

*that the Joint Commissioners of Income Tax or the Joint Directors of Income tax, shall exercise the powers and functions of the Assessing Officers, in respect of territorial area or persons or classes of persons or incomes or classes of income or cases, or classes of cases, **in respect of which such Joint Commissioners of Income tax are authorised by the Commissioner of Income tax,** vide Government of India, Central Board of Direct Taxes notification number S.O.732(E) dated 31.07.2001, S.O.880(E) dated 14.09.2001, S.O.881(E) dated 14.09.2001, S.O. 882(E) dated 14.09.2001 and S.O. 883(E) dated 14.09.2001 published in the Gazette of India, Part II, Section 3, sub-section (ii), Extraordinary. (emphasis supplied)*

3.29. Perusal of the aforesaid notification reveals that only those Joint Commissioners shall exercise the powers and functions of the Assessing Officers who have been authorized by the concerned Commissioners of Income tax in pursuance to the relevant notification conferring requisite powers to the concerned Commissioners.

3.30. Similarly notification No.228/2001, supra authorize the Commissioners of Income tax to issue orders for authorizing in turn, the Joint Commissioner of Income tax who are subordinate to them for exercising of the powers and performance of the functions of the Assessing Officers. It also, *inter-alia*, authorizes the Joint Commissioners who were so authorized by the Commissioners, to issue orders in writing to the Officers who are subordinate to them for the exercise of the powers and performance of the functions of the Assessing Officers for specified assessee or class of assessee. Relevant part of the said notification is reproduced as under for the sake of ready reference:-

“.....(c) authorise the Commissioner of Income Tax referred to in this notification to issue the orders in writing for the exercise of the powers and performance of the functions of the Joint Commissioners of Income tax, who are subordinate to them, in respect of such cases or classes of cases specified in the corresponding entries in column(6) of the Schedule-I and Schedule –II of such persons or classes of persons specified in the corresponding entries in column(5) of the said Schedules, in such territorial areas specified in the corresponding entries in column (4) of the said Schedules, and in respect all of incomes or classes of income;

(d) authorises the Joint Commissioner of Income Tax referred to in clause (c) of this notification, to issue orders in writing for the exercise of the powers and performance of the functions by the Assessing Officers, who are subordinate to them, in respect of such specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, in respect of which such Joint Commissioners of Income Tax are authorised by the Commissioner of Income Tax under clause (c) of this notification.....”

3.31. Thus, in view of the aforesaid notification it becomes imperative on the part of the Revenue to show us that in the case before us, the Additional Commissioner of Income tax, who had passed the impugned assessment order, was duly authorized by the jurisdictional Commissioner to do so. It is noted that any such order would not be available with the Revenue, because even in the notifications discussed above only ‘Joint Commissioners’ were authorized to perform the role of the Assessing Officers. However, the Revenue is not able to bring before us any order of the Commissioner authorizing even the ‘Joint Commissioner’ to perform powers and functions of Assessing Officer of the assessee. As per the discussion made by us in detail in the earlier part of our order, it is clear that no such order is available in the assessment

record or in any other record. Legal consequences of the same have been elaborately analysed in many judgments by various courts.

3.32. Identical issue came up for consideration before Delhi Bench of Income Tax Appellate Tribunal in the case of **Mega Corporation, supra**. The bench discussed entire law available on this issue and held that an 'Additional Commissioner of Income Tax' cannot *ipso facto* exercise the powers or perform the function of an Assessing Officer under the Act. He can perform the functions and exercise the powers of an Assessing Officer only if he is specifically directed under section 120(4)(b) of the Act to do so. Relevant part of the observations of the bench is reproduced hereunder for the sake of ready reference:-

"..... We have considered the arguments advanced by the parties and perused the order of the learned CIT(A), comments of the Assessing Officer and material placed on record. The controversy raised in this appeal relates to the validity of order of assessment dated 29.12.2008 passed by Additional CIT, Range 6, New Delhi. According to the appellant/assessee, it is incumbent under the scheme of statute to vest the Additional CIT u/s 120(4)(b) of the Act to exercise or perform all or any of the powers and functions of Assessing Officer under the Act.

5.1 To examine the above contention, we consider it appropriate to firstly extract section 2(7A) of the Act which reads as under:

"2(7A) Assessing Officers

(7A) "Assessing Officer" means the Assistant Commissioner or ² Deputy Commissioner ³ or Assistant Director ⁴ or Deputy Director or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of Section 120 or any other provision of this Act, and the ⁶[Additional Commissioner or]⁶ ⁷[Additional

Director or] 5 Joint Commissioner or Joint Director who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act;”

5.2 A plain reading of the aforesaid provision would show that it is in two parts. The first part provides that Assessing Officer means the “Assistant Commissioner” or “Deputy Commissioner” or “Assistant Director” or “Deputy Director” or “Income Tax Officer” who is vested with the relevant jurisdiction by virtue of directions or orders issued under section 120(1) or 120(2) or any other provision of this Act. The second part provides that Assessing Officer means the “Additional Commissioner” or “Additional Director” or “Joint Commissioner” or “Joint Director” who is directed under section 120(4)(b) of the Act to exercise or perform all or any of the powers and functions conferred on or assigned to an Assessing Officer under this Act. In other words, it is manifest that Assessing Officer inter-alia means Additional Commissioner who is directed under section 120(4)(b) of the Act to exercise or perform all or any of the powers and functions conferred on or assigned to an Assessing Officer under the Act. In other words, an Additional Commissioner can only be directed u/s 120(4)(b) of the Act to “Assistant Commissioner” or “Deputy Commissioner” or “Assistant Director” or “deputy Director” or Income Tax Officer” under the Act. This interpretation also derives strength from the provisions contained in section 120(4)(b) of the Act which reads as under:

“120. Jurisdiction of income-tax authorities (4) Without prejudice to the provisions of sub-sections (1) and (2) , the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,-

(b) empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by an

Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made there under to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or a Joint Director, by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.”

5.3 It will be seen that the said provision provides that Board may by general or special order and subject to such conditions, restrictions or limitations as may be specified therein empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on or as the case may be, assigned to, Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director and where any order is made under this clause, reference in any other provision of this Act or in any rule made there under to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or a Joint Director by whom, the powers and functions are to be exercised or performed under such order and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.

5.4 The position which emerges thus is that an Additional Commissioner of Income Tax ipso facto cannot exercise the powers or perform the functions of an Assessing Officer under the Act. He can perform the functions and, exercise the powers of an Assessing Officer only if he is specifically directed under section 120(4)(b) of the Act.”

3.33. Similar issue has been decided by the Lucknow bench of ITAT in the case of **Prachi Leather Pvt. Ltd Vs. Additional CIT** in ITA No. 26(L)/2010 dated 8.12.2010 relying upon its earlier order in ITA No.744/2004/Lucknow for assessment

year 2001-02 decided this issue on the similar lines after considering and following the decision of Hon'ble Delhi High Court in the case of **Nalini Mahajan Vs. DIT 257 ITR 123 (Delhi)**. It is also noted that this decision has also been considered by Delhi Bench in the case of Mega Corporations Ltd, supra and relevant portion of the order as discussed therein is reproduced below:-

“16.2 From the contents of the aforesaid provisions, it is quite clear that so far as Addl. Commissioner is concerned, firstly he has been included in the definition of “Assessing Officer” given under section 2(7A) of the Act with effect from 1.6.1994 as a result of retrospective amendment made by the Finance Act, 2007 but at the same time, it is also clear that the Addl. Commissioner will be Assessing Officer as envisaged in section 2(7A) so amended only if he is directed under clause (b) of sub-section (4) of section 120 to exercise or perform all or any of the powers and functions concerned on or assigned to an Assessing Officer; meaning thereby that the Addl. CIT can function or can exercise the powers and perform the functions of an Assessing Officer if he is empowered by the CBDT as required under clause (b) of sub-section (4) of section 120.

.....

18.1 So far as the issue before us in the present appeal is concerned, it is now clear from the provisions as discussed hereinbefore that the Additional CIT could act and exercise the powers of an AO only in consequence upon delegation of such authority by the Board, Chief Commissioner of Income-tax or Commissioner of Income-tax as envisaged in the provisions of section 120(4)(b) of the Act. However, the power given to the Chief Commissioner of Income-tax or Commissioner of Income-tax being in consequence upon the delegation of power duly authorized by the Legislature, the Chief Commissioner of Income-tax or Commissioner of Income-tax were duty bound, if at all they were to exercise such delegated power to act according to the provisions of law; meaning thereby that it was incumbent upon the Chief Commissioner of Income-tax or the Commissioner of Income-tax, as the case maybe, if at all they wanted to

authorize the Additional CIT to act and perform the functions of an AO, to pass a proper order delegating such functions/ powers upon him. This view of ours is fully supported by the decision of the Hon'ble Delhi High Court in the case of Dr. Nalini Mahajan vs. DIT, 257 ITR 123, wherein the Hon'ble High Court, while discussing the powers of Additional Director Investigation, held as under: "It is now well-settled that when a power is given to do a certain thing in a certain manner, the same must be done in that manner or not at all. A delegation of power is essentially a legislative function. Such a power of delegation must be provided by the statute. The director himself for certain matters is the delegating authority. He, unless the statute expressly states, cannot sub-delegate his power to any other authority. In any event, if an authority, which had no jurisdiction to issue such an authorization, did so, the same would be liable to be quashed as ultra vires. Thus, unless and until an amendment is carried out, by reason of the redesignation itself, read with the provisions of the General Clauses Act, the Addl. Director does not get any statutory power to issue authorization to issue warrant. Therefore, the Addl. Director (Investigation) cannot be said to have any power to issue any authorization or warrant to Joint Director. Consequently, notification dt. 6th Sep. 1989 is not valid in law to the said extent. "

18.2 So far as the present case is concerned, though we are concerned with the powers of Additional CIT but the proposition of law laid down by the Hon'ble High Court which was, though in relation to powers of Additional Director (Investigation), is fully applicable to the present case.

18.3 In view of the aforesaid facts, circumstances and the discussion and following the law laid down by the Hon'ble Delhi High Court in the case of Dr. Nalini Mahajan (supra), first of all we are of the opinion that the Addl.CIT, Range-6, Kanpur having not been empowered to exercise or perform the powers or functions of an Assessing Officer, the assessment framed by him was illegal and void ab initio.".....

3.34. It is further noted that similar view has been expressed by Jodhpur Bench of ITA in the case **City Garden Vs. ITO 21 taxman.com 373 (Jodhpur)** wherein it has been held that in the absence of a specific order issued in pursuance to Section 120(4)(b) specifically authorizing Joint Commissioner of Income Tax to exercise the powers and perform the function as conferred on or assigned to an Assessing Officer by or under the Act or a notification under section 120 of the Act, he is not competent to act as an Assessing Officer and pass an assessment order.

3.35. Similar view has been taken by Lucknow Bench of ITAT in the case of **Microfin Security Pvt. Ltd vs. Additional CIT 94 TTJ 767** wherein it was held that in absence of any allocation being made in favour of Additional Commissioner to make an assessment, he cannot assume for himself such an authority so as to pass an assessment order.

3.36. Similar view has been taken recently in another judgment by the Delhi bench of the ITAT in the case of **Harvinder Singh Jaggi Vs. ACIT 157 ITD 869 (Delhi)**. Relevant part of observations of the Bench is reproduced below:-

“.....As regard the contention of the assessee that no order under section 127 was passed by the Commissioner of Income-tax, the revenue has submitted that the Addl. Commissioner of Income Tax was provided concurrent jurisdiction over the cases through the order of the Commissioner of Income tax and, therefore, no separate order under section 127 was required to be passed by the Commissioner of Income tax. However, no such order of the Commissioner of income tax conferring the concurrent jurisdiction to the Addl. Commissioner of Income Tax over the cases of the Income tax officer is either available on

assessment record, or was produced by the revenue. Thus, in absence of any such order, it can't be established that said assessment order passed was within the jurisdiction of the Addl. Commissioner of Income Tax. Thus, the assessment completed by Additional Commissioner of Income Tax in the case being without jurisdiction, is void ab initio. Accordingly, the ground of appeal of the assessee is allowed."

3.37. In the case of **Bindal Apparels Ltd vs. ACIT**, Delhi Bench of ITAT took a similar view and held that in view of definition of Assessing Officer contained u/s 2(7A), an Additional Commissioner cannot be an authority to exercise and perform all or any of the powers of the functions of the Assessing Officer to make assessment of Income. The Bench analysed the provisions of Section 2(7A) as it existed prior to amendment made by Finance Act, 2007.

3.38. During the course of hearing, it was also submitted by Ld. CIT-DR to defend the impugned assessment order that in any case the assessment order has been passed by an officer of the rank of Additional Commissioner which is much superior to the rank of Assistant Commissioner and thus no prejudice can be presumed to have been done to the assessee. We find that reasoning given by the Ld. CIT-DR to defend the impugned assessment order does not have any legal force. It is well settled law that jurisdictional conditions required to be fulfilled by the assessing officer must be performed strictly in the manner as have been prescribed and if it has not been done in the manner as prescribed under the law, then it becomes nullity in the eyes of law. **Hon'ble Supreme Court in the case of CIT Vs. Anjum M. H. Ghaswala** observed that it is a normal rule of construction that when a statute vests

certain powers in an authority to be exercised in a particular manner, then that authority is bound to exercise it only in the manner provided in the statute only.

3.39. Hon'ble Bombay High Court dealt with a similar situation in the case of **Ghansham K.Khabrani Vs. ACIT 346 ITR 443** wherein the said assessee raised an issue that requisite sanction prescribed u/s 151 for reopening of an assessment was required to be obtained by the AO from Joint Commissioner of Income tax whereas the same was granted by Commissioner of Income tax and therefore the same was nullity in the eyes of law. Revenue took a stand that sanction was granted by an officer superior in rank and therefore, no prejudice was caused to the assessee. But Hon'ble High Court did not agree with the contention of the Revenue and observed that:-

“.....The expression “Joint Commissioner” is defined in section 2(28C) to mean a person appointed to be a Joint Commissioner of Income Tax or an Additional Commissioner of Income-tax under section 117(1). Section 151(2) mandates that the satisfaction has to be of the Joint Commissioner. The expression has a distinct meaning by virtue of the definition in section 2(28C). The Commissioner of Income tax is not a Joint Commissioner within the meaning of section 2(28C). There is no statutory provision under which power to be exercised by an officer can be exercised by a superior officer. When the statute mandates the satisfaction of a particular functionary for the exercise of a power, the satisfaction must be of that authority. Where a statute requires something to be done in a particular manner, it has to be done in that manner only.....”

3.40. Thus, in view of the legal discussion made above and facts of the case, it is clear that impugned assessment order has been passed without authority of law in as much as

Revenue has not been able to demonstrate that the Additional Commissioner of Income tax who had passed the assessment order had valid authority to perform and exercise the powers and functions of an Assessing Officer of the assessee and to pass the impugned assessment order. Under these circumstances, we have no other option but to hold the same as nullity and, therefore, the impugned assessment order is quashed having been passed without authority of law.

3.41. Since we have quashed the assessment order on jurisdictional ground, we do not deem it necessary to adjudicate grounds on merit raised by the assessee in its appeal. As a result, the appeal of the assessee is partly allowed.

3.42. With regard to Revenue's appeal, since assessment order has been quashed, therefore, appeal filed by the Revenue becomes infructuous at this stage. Thus the same is dismissed as "Infructuous."

4. In the result, the appeal of the Assessee is partly allowed.

Order pronounced in the open court on 31st October, 2016.

Sd/-
(Sanjay Garg)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 31 / 10 / 2016

Patel, P.S. नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai