

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. SAKTIJIT DEY, VICE PRESIDENT AND
SH. M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 1020/Del/2019
(Assessment Year : 2015-16)

YKM Holdings Pvt. Ltd. Signature Tower – A, 14 th Floor, South City Gurgaon, Haryana PAN No. AAACY 0460 B (APPELLANT)	Vs.	ACIT Circle – 4(1) New Delhi (RESPONDENT)
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Assessee by	Shri Rajkumar, C.A. Shri J. P. Sharma, C.A.
Revenue by	Shri Vivek Vardhan, Sr. D.R.

Date of hearing:	05.02.2024
Date of Pronouncement:	29.04.2024

ORDER

PER M. BALAGANESH, ACCOUNTANT MEMBER :

1. This appeal in ITA No.1020/Del/2019 for A.Y. 2015-16 arises out of the order by Commissioner of Income Tax (Appeals)-1, Gurgaon in appeal No. 314/17-18 dated 20.11.2018 (hereinafter referred to as ld CIT(A) in short) against the order of assessment passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 14.12.2017 by the Assistant Commissioner of Income Tax (hereinafter referred to as ld. AO).

2. Assessee has raised following grounds of appeal before us:

1. *“That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals)-1, Gurgaon [briefly "the CIT(A)"] has erred in upholding disallowance of Rs.9,00,000/- towards salary paid to Ms. Asha Modi & Ms. Prarthna Modi, Director of the Appellant company. It was not appreciated that the Directors played a very important role in running the day to day business of the Appellant.*
2. *That on facts and circumstances of the case and in law, the CIT(A) has erred in upholding the disallowance of Rs.36,46,215/- & Rs.3,60,591/- towards hotel, boarding & lodging and conveyance expenses, without appreciating that expenditure was incurred to run the day to day business of the Appellant.*
- 2.1 *Without prejudice, the CIT(A) has erred in not appreciating that expenditure incurred was to promote the business interest of the Appellant and was in line with the ratio laid down by Hon'ble Supreme Court in SA Builders Ltd. v. CIT (2007) 288 ITR 1.*
3. *That on the facts and circumstances of the case and in law, the CIT(A) has erred in enhancing the income of the Appellant without giving proper opportunity.*
4. *That on facts and circumstances of the case and in law, the CIT(A) has erred in disallowing depreciation of Rs.21,73,500/- on computer software & security systems.*
5. *That on facts and circumstances of the case and in law, the CIT(A) erred in making disallowance of Rs.4,70,475/-, towards the difference between the interest received and interest paid, for the reason that the same was not incurred for the purpose of business.*

That the appellant craves leave to add, alter, amend or vary any of the ground either at or before the hearing of the appeal.”

3. Assessee has also raised following additional grounds before us:

1. *That the following 3 additional grounds have been take now:-*

Additional G.No.1

That in the absence of any mandatory order U/s.127 of the I.T. Act, the transfer of proceedings from ITO Ward-27(4) Gurgaon to ACIT Circle-4(1) Gurgaon, cannot provide a valid jurisdiction to ACIT Circle-4(1), consequentially, the impugned asstt. order framed by ACIT Circle-4(1) is without jurisdiction and illegal.

Additional G.No.2

That in view of the fact of returned income more than Rs.30,00,000/-, the correct jurisdiction lies from day 01 only with DCIT/ACIT, in view of CBDT instruction No.1/2011[F.No.187/12/2010-IT(A-1)] effective w.e.f. 01.04.2011, hence in the absence of statutory notice U/s.143(2) issued by DCIT/ACIT, the impugned asstt. is without jurisdiction and illegal.

Additional G.No.3

That under the facts and circumstances, the enhancement of 10. Rs.21,73,500/- made for "depreciation on computers" Rs.21,73,500/- and for "disallowance of interest expenditure" Rs.4,70,475/-, do not arise out of the impugned asstt. proceedings, hence outside the scope of enhancement by CIT(A) U/s.251(1)(a) r.w.s. 251(2) of the I.T. Act.

2. *That the issues raised are the pure legal issues which goes to the root of the matter and all facts and material required for the these grounds are already available on record.*

3. *That such legal issues where facts exists on record and which issues goes to the root of the matter can be taken as additional grounds at any stage of proceeding and even before Hon'ble ITAT for the 1^o time The ratios of following authorities squarely applies in support of this petition-*

*NATIONAL THERMAL POWER COMPANY LTD. 229 ITR 383 (SC)
CIT VS. SINHGAD TECHNICAL EDUCATION SOCIETY 397 ITR 344
(SC) GEDORE TOOLS PVT. LTD., 238 ITR 268 (DEL)*

4. That no prejudice will cause to revenue by admitting these grounds, since, the revenue will be having a proper and reasonable opportunity of being heard on these issues.

5. That in the absence of admission of above grounds, the assessee may suffer irreparable loss.

It is therefore very humbly requested to kindly admit the above additional ground for adjudication and oblige.”

4. We have heard the rival submissions and perused the material available on record. At the outset, we find that the additional grounds raised by the assessee go to the root of the matter challenging the jurisdictional *per se*. All the facts relevant for its adjudication are placed on record. Hence, in the light of decision of Hon'ble Supreme Court in the case of NTPC Ltd. reported in 229 ITR 383, we are inclined to admit the additional grounds and take up the same for its adjudication.

5. We find that assessee's returned income for the A.Y. 2015-16 was Rs.37,78,510/- hence, the jurisdiction of the assessee should lie with ACIT/DCIT since the returned income had exceeded Rs.30,00,000/-, in view of the CBDT Instruction No.1/2011 dated 31.01.2011. For the sake of convenience, the said Instruction No.1/2011 [F. No.187/12/2010-IT(A-I)] dated 31.01.2011 is hereby reproduced:-

**“SECTION 119 OF THE INCOME-TAX ACT, 1961-INCOME-TAX
AUTHORITIES-INSTRUCTIONS TO SUBORDINATE AUTHORITIES**

**INSTRUCTION NO. 1/2011 [F. NO. 187/12/2010-IT(A-1)], DATED
31-1-2011**

References have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship.

An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:

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

Metro charges for the purpose of above instructions shall be Ahmedabad, Bangalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune.

The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from 1-4-2011.”

6. In the instant case, the notice under section 143(2) of the Act stood issued to the assessee on 12.04.2016 by ITO Ward

27(4), Delhi. In July, 2016, the ITO transferred the jurisdiction of the assessee from him to DCIT since the returned income for A.Y. 2015-16 is more than 30,00,000/-. Copy of the said transfer memo is enclosed in page 5 of the paper book. After the transfer of jurisdiction from ITO to DCIT, no fresh notice under section 143(2) of the Act was issued by ACIT, Circle 4(1), Gurgaon. The assessment was ultimately framed under section 143(3) of the Act for A.Y. 2015-16 on 14.12.2017 by ACIT, Circle – 4(1), Gurgaon. It is pertinent to note that assessment for the A.Y. 2014-15 of the assessee was completed under section 143(3) of the Act on 30.11.2016 by DCIT, Circle – 27(2), New Delhi. Hence, it was argued that the notice under section 143(2) of the Act dated 12.04.2016 issued by the ITO selecting the return of assessee for A.Y. 2015-16 for scrutiny is without jurisdiction and consequently, the assessment framed under section 143(3) of the Act dated 14.12.2017 required to be quashed as *void ab initio*. When this was confronted to learned DR, he pointed out to the provisions of section 124(3) of the Act wherein it was mentioned that assessee should challenge within one month about the jurisdiction of the AO on receipt of the notice. In the instant case, nowhere up to learned CIT(A), the assessee has challenged the jurisdiction of the learned AO. In our considered opinion, this argument of the learned DR is wrong in as much as section 124(3) of the Act talks only about territorial jurisdiction, whereas the issue involved here is pecuniary jurisdiction. Further, the provisions of section 124(3) of the Act could be taken shelter by

the Revenue only when legal valid notice under section 143(2) of the Act has been issued by the Revenue. In the instant case, notice issued under section 143(2) of the Act on 12.04.2016 by ITO is not legal as he did not possess jurisdiction over the assessee for A.Y. 2015-16 in as much as the returned income for A.Y. 2015-16 had exceeded Rs.30,00,000/-. We find that the issue in dispute is no longer *res integra* by the decision of Hon'ble Delhi High Court in the case of Ashok Devichand Jain vs. UOI reported in 452 ITR 43 (Bom). In this case, very same issue was addressed in the light of CBDT Instruction No.1/2011[F. No.187/12/2010-IT(A-I)] Dated 31.01.2011. For the sake of convenience, the entire order is reproduced hereunder:

“1. Petitioner is impugning a notice dated 30th March, 2019 issued under section 148 of the Income Tax Act, 1961 (the Act) for A.Y. 2012-13 and order passed on 18th November, 2019 rejecting Petitioner's objection to reopening on various grounds.

2. The primary ground that has been raised is that the Income Tax Officer who issued the notice under section 148 of the Act, had no jurisdiction to issue such notice. According to Petitioner as per instruction No. 1/2011 dated 31st January, 2011 issued by the Central Board of Direct Taxes, where income declared/returned by any Non-Corporate assessee is up to Rs. 20 lakhs, then the jurisdiction will be of ITO and where the income declared returned by a Non Corporate assessee is above Rs. 20 lakhs, the jurisdiction will be of DC/AC.

3. Petitioner has filed return of income of about Rs. 64,34,663/- and therefore, the jurisdiction will be that of DC/AC and not ITO. Mr. Jain submitted that since notice under section 148 of the Act has been issued by ITO, and not by DC/AC that is by a person who did not have any jurisdiction over Petitioner, such notice was bad on the count of having been issued by an officer who had no authority in law to issue such notice.

4. We have considered the affidavit in reply of one Mr. Suresh G. Kamble, ITO who had issued the notice under section 148 of the Act. Said Mr. Kamble, ITO, Ward 12(3)(1), Mumbai admits that such a defective notice has been issued but according to him, PAN of Petitioner was lying with ITO Ward (12)(3)(1), Mumbai and it was not feasible to migrate the PAN having returned of income exceeding Rs. 30 lakhs to the charge of DCIT, Circle 12(3)(1), Mumbai, as the time available with the ITO 12(3)(1) was too short to migrate the PAN after obtaining administrative approval from the higher authorities by 31st March, 2019.

5. The notice under section 148 of the Act is jurisdictional notice and any inherent defect therein is not curable. In the facts of the case, notice having been issued by an officer who had no jurisdiction over the Petitioner, such notice in our view, has not been issued validly and is issued without authority in law.

6. In the circumstances, we have no hesitation in setting aside the notice dated 30th March, 2019.

7. Consequently the order dated 18th November, 2019 rejecting Petitioner's objection is also quashed and set aside.

8. *Petition disposed."*

7. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we have no hesitation to hold that the assessment framed under section 143(3) of the Act deserves to be quashed in the instant case as the initial scrutiny notice issued under section 143(3) of the Act dated 12.04.2016 by ITO was without jurisdiction as he did not possess jurisdiction over the assessee for the A.Y. 2015-16. Consequently, assessment framed under section 143(3) of the Act

is hereby quashed as *void ab initio*. The additional ground no.2 is hereby allowed.

8. Since, the entire assessment is quashed the adjudication of original grounds of appeal and other additional grounds become academic in nature and no opinion is hereby rendered thereon and they are left upon.

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

Order pronounced in the open court on 29.04.2024

**Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT**

**Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER**

Date:- 29.04.2024
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI