<u>आयकर अपीलीय अधिकरण, कटक न्यायपीठ,कटक</u>

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

(Through : Virtual Hearing)

आयकर अपील सं./ITA No.380/CTK/2019

(**निर्धारण वर्ष /** Assessment Year :2012-2013)

Kshirod Kumar Pattnaik, Gandhimarg, Amalapada, Angul-759122	Vs.	ITO, Angul Ward, Angul
PAN No. : **AHXPP 0122 E**		

(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by	:	Shri G.Naik/Rajat Kar, ARs
राजस्व **की ओर से** /Revenue by	:	Shri Subhendu Dutta,DR

सुनवाई की तारीख **/ Date of Hearing**	:	06/11/2020
घोषणा की तारीख**/Date of Pronouncement**	:	10/12/2020

<u>आदेश / O R D E R</u>

<u>Per L.P.Sahu, AM</u>:

This is an appeal filed by the assessee against the order dated 06.09.2019, passed by the CIT(A)-2, Bhubaneswar for the assessment year 2012-2013, on the following grounds of appeal :-

6. *For that order u/s-250 of the IT Act, Dt. 06.09.2019 as passed by the Ld. CIT(A)-2, Bhubaneswar hereinafter referred to as the learned CIT(A) is far from just and legal on the facts and in the circumstances of the case.*

2. *For that the Ld. CIT(A) is not justified to reject the claim of the appellant to the effect that considering the returned income of the appellant the Ld. AO has no jurisdiction to assess the appellant as such the entire proceeding is vitiated and not sustainable in the eyes of law on the facts and in the circumstances of the case.*

3. *For that the Ld. CIT(A) has failed to appreciate that the Ld. A.O. who is an Income Tax Officer has no jurisdiction to assess the case of the appellant having declared income more than Rs.15 lacs in the impugned year now under appeal in view of CBDT*

Instruction No.1/2011 on the facts and in the circumstances of the case.

4. *For that the Ld. CIT(A) is not justified to confirm the addition of Rs.1,05,00,000/- towards un-explained investment in fixed deposits as made by the Ld. A.O ignoring the relevant documents/papers submitted before him on the facts and in the circumstances of the case.*

2. Further the assessee has filed revised grounds of appeal, which read as under :-

1. *For that the assessment order dated 30.11.2017 as passed by the Income Tax Officer, Angul Ward, Angul (hereinafter referred to as) the "learned A.O" U/s.144/147 of the I.T.Act, 1961 for the Asst. Year 2012-13 determining the total income at Rs. 1,45,72,740/- is not just and legal on the facts and in the circumstances of the case.*
2. *For that the initiation of proceeding U/s.147 and issuance of notice U/s. 148 for the Asst. Year 2012-13 on the sole basis of survey report and without any conviction of the learned A.O. is illegal, without jurisdiction and ab-inilio-void on the facts and in the circumstances of the case.*
3. *For that the assessment order dated 30.11.2017 without serving Notice U/s.143(2) of the I.T.Act, 1961 is bad in law and liable to be quashed on the facts and in the circumstances of the case.*
4. *For that addition of Rs.1,05,00,000/- U/s.69 of the I.T. Act, 1961 as made by the learned AO towards undisclosed investment in fixed deposit is arbitrary, illegal and not justified on the facts and in the circumstances of the case.*
5. *For that addition of Rs.5,63,203/- towards bank interest as made by the learned AO is arbitrary, illegal and not justified on the facts and in the circumstances of the case.*
6. *For that the assessment order is liable to be quashed on the above grounds or such other grounds to be urged at the time of hearing of the appeal on the facts and in the circumstances of the case.*

3. Brief facts of the case are that are that the assessee filed return of income u/s.139 for the assessment year 2012-2013 on 30.09.2012 electronically declaring total income of Rs.35,09,538/- after claiming deduction under Chapter VA of Rs.1 lakhs. Thereafter a survey u/s.133A of the I.T.Act was conducted in the case of the assessee and

other on 05.02.2015 by the DDIT(Inv.)-2(2), Bhubaneswar. From the survey reports and impounded documents, it was found that the assessee had made three fixed deposits of Rs.50 lakhs each on 21.07.2011, totaling to Rs.1.50 crores with bank of Baroda vide FDR No.167658, 061498082 & 061498469 during the year under consideration. On perusal of the balance sheet it was found that the assessee had shown deposit and investment of Rs.7,15,280/- only and no any interest income was offered by the assessee in his return of income. Therefore, after recording the reasons for reopening of the case u/s.147/148 of the Act duly obtained approval by the JCIT, the AO issued notice u/s.148 of the Act on 29.03.2017. The assessee did not file any return of income in compliance to the notice issued by the AO. Thereafter number of notices were issued u/s.142(1) of the Act but the assessee did not appear or furnish the documents/details as called for in the notice. The chronology of these notices and letters and sequence of follow-up actions/compliance made by the assessee, are as under :-

Date of issue of notice	Notice u/s.	Date of fixation of hearing	Fate of notice	Remarks
27/03/2017	148	30 days from the date of receipt of this notice	Duly served by e-mail.	No compliance.
12/07/2017	142(1)	20/07/2017	Duly served by e-mail.	Appeared on 21.07.17 and submitted authorization only.
01/09/2017	142(1)	12/09/2017	Duly served by hand and through e-mail.	No Compliance

04/10/2017	142(1)	16/10/2017	Duly served by hand and through e-mail.	No compliance.
24/10/2017	142(1)	02/11/2017	Duly served by hand and through e-mail.	No compliance.
03/11/2017	142(1)	13.11.2017	Duly served by hand and through e-mail.	Filed a written submission.

From the above table, it is clear that the assessee did not comply to the notice issued on different dates, therefore, the AO after recording reasons for completing the assessment u/s.144 of the Act, completed the assessment in the manner provided as per Section 144 of the Act and proceeded with the case of the assessee. Further the AO called information by issuing notice u/s.133(6) of the Act from the bank of Baroda, Angul Branch, Angul and he submitted the information that there was a total fixed deposit in the name of the assessee of Rs.1,05,00,000/-, which reads as under :-

Sl. No.	Receipt No.	Account No.	Account Open date	Amount	Interest accrued
01.	-	26350300002970	30.06.2011	Rs.5 Lakhs	Rs.32,491/-
02.	061498082	26350300002991	21.07.2011	Rs.50 Lakhs	Rs.2,65,356/-
03.	061498469	26350300002992	21.07.2011	Rs.50 Lakhs	Rs.2,65,356/-
TOTAL				Rs.l.05Crores	Rs.5,63,203/-

On 13.11.2017, an authorized representative of the assessee Shri Durga Madhab Muduli, who is the Manager of the assessee appeared and submitted few documents along with Hazira but he was unable to explain the fixed deposit found in the name of the assessee of Rs.1,05,00,000/-. The AO also concluded that the burden of proving the

source of fixed deposits made in the bank account of Baroda is on the assessee which the assessee himself has discharged by providing a credible explanation, however, the assessee failed to explain the source of investment made in the fixed deposit. Thereafter after relying on the various case laws, the AO completed the assessment and added the entire amount of Rs.1.05 crores as unexplained investment u/s.69 of the Act. Further the AO noticed that there is non-disclosure of fixed deposits in the return of income. In this regard the assessee did not file any credible explanation. The manager of the assessee also could not furnish any explanation in this regard. Then the AO added the same to the total income of the assessee of Rs.5,63,203/- under the head income from other sources and completed the assessment accordingly by Shri Aditya Kumar, ITO, Angul Ward, Angul assessing total income at Rs.1,45,72,740/-.

4. Feeling aggrieved from the order of AO, the assessee filed appeal before the CIT(A). Before the CIT(A), the assessee filed an affidavit before the CIT(A) stating that he was requested by his accountant who frequently fallen sick and he was not qualified enough to make proper submissions and produced documentary evidence such as bank statement before the AO. Before the CIT(A), the ld. AR submitted additional evidence, which was sent to the AO for remand report. The AO submitted remand report which read as under :-

"OBSERVATION OF THE A O.:

During the course of remand hearing proceedings, notice for hearing was issued to the assessee vide this office letter dtd. 16.04.2019 to produce supporting evidences and explanations, if any, in support of his claim made before the Ld. C1T(A). The relevant portion of the notice is reproduced hereunder for better appreciation of the fad:

"The CIT(A)-2, Bhubaneswar has directed the undersigned to submit a remand report in respect of your above appeal. You are hereby required to make compliance in terms of the additional evidence filed by you before the CIT(A)-2, Bhubaneswar alongwith a copy thereof and supporting documentary evidence. Your case is fixed for hearing on 29.04.2019 at 03.30 P.M.
Please note that in case of non-compliance on your part, it will be presumed that you have no comments to offer and the remand report will be sent on the basis of material available on record. "

However, once again the assessee preferred noncompliance on 08.05.2019. Therefore, the additional evidences furnished by the assessee could not be examined by the AO due to non-compliance on the part of the assessee as already stated. Accordingly, the additional evidence in question does not deserve to be admitted. "

5. In response to the remand report, the assessee submitted his reply which has been incorporated by the AO in his assessment order as under :-

It is submitted that the learned Assessing Officer in the remand report has observed that the appellant has been issued with two letters dated 16.04.2019 and dated 30.04.2019 fixing compliance on 29.04.2019 and 08.05.2019 respectively and there was no compliance on both the occasions. It is respectfully submitted that the above-mentioned letters dated 16.04.2019 and dated 29.04.2019 were never served on the appellant and therefore the appellant could not appear before the learned Assessing Officer in connection with the remand proceeding. An affidavit to this effect is enclosed herewith for Your Honour's kind consideration. However, it is submitted that the learned Assessing Officer should not have ignored the additional evidences furnished by the appellant and he should have given his comments on the additional evidences furnished. The observation of the learned Assessing Officer to the effect that the additional evidence in question does not deserved to be admitted is arbitrary and is without authority of law as the Statute empowers the Hon'ble CIT(Appeals) to admit the additional evidences and not the Assessing Officer. Therefore, the learned Assessing Officer has no authority to observe that those evidences do not deserve to be admitted.

> *That it is respectfully submitted that in view of the additional evidences furnished before Your Honour in course of appellate proceeding addition of Rs.1,05,00,000/-towards unexplained investment as made by the learned Assessing Officer may kindly be deleted. "*

6. The assessee submitted before the CIT(A) that there was no any fixed deposit made of Rs.5 lakhs and he further submitted that the fixed deposit of Rs.50 lakhs each of Rs.1,00,00,000/- has been made out of cheque payments from his own bank account and, therefore, there is no question of any undisclosed investment. The assessee relied on number of cases before the CIT(A) regarding the jurisdictional issue and submitted that the assessment order is *void ab initio*. The judgments relied on by the assessee has been incorporated by the CIT(A) in his order. The CIT(A) after discussing the details in his order with regard to the legal issue raised by the assessee before the CIT(A), dismissed the appeal of the assessee by holding as under :-

> *4.3.1 I have carefully examined the assessment order, submissions of the appellant, remand report and rejoinder. Il is undisputed that for six assessment years immediately after Asst. Year 2012-13, the total income declared by the appellant is such that the assessing officer had jurisdiction over the appellant. Therefore, the assessing officer had jurisdiction even for assessment year 2012-13 even though the total income was Rs. 35,09,540/-. Moreover, the appellant appeared through his accountant and did not raise any objection what-so-ever to either the notice or the assessment proceedings. The appellant has participated in the assessment proceedings without raising any objection on the jurisdiction of the assessing officer. For the cases relied upon by the appellant, there is neither citation nor copy of judgment is enclosed and therefore no cognizance can be taken of these cases. Further, the provisions of Section 124(3)(b) of the Income Tax Act, 1961 are attracted. According to this provision the appellant has to raise objection to the jurisdiction of the Assessing Officer within the expiry of time mentioned in the notice u/s.148 of the Income Tax Act, 1961. The appellant has not raised any such objection.*
>
> *2 The assessing officer has relied upon the judgment in the cases of Ninnal Singh ITO (Trib. Amritsar) and CIT vs British India Corporation*

(337 ITR 64 (All)), .isbinder Kaur Kunar 291 ITR 80 (P&H) and Shanti Memorial Hospital vs Pr. CIT, Sambalpur. The relevant portion of assessing officer's report is as below:

"The assessee has challenged the jurisdiction of the assessing officer and mentioned that he comes under the jurisdiction of the A CIT, Circle-], Bhubaneswar as evident from e-filed return did. 30.09.2012. The said contention on behalf of the assessee is not tenable in view of the following:

Decision did.-21'.06.2018 of Hon'ble ITAT, Amritsar Bench, Amritsar in the case of Nirmal Singh Vs ITO, Ward-IV(l), Jalandhar in IT A No.588/Asr./2016 & S.A. No.-l3/Asr./2016 for the A. Y.2009-10 reiterating the decision in the case of CIT Vs. British India Corporation Ltd. (All.) 337 ITR 64 holding as under:
"Territorial jurisdiction of ITO – Objection not raised before ITO within one month of filing of return / issue of notice. Appeal not maintainable before ITAT in view of Section 124(3).

Moreover, in the case of Jaswinder Kaur Kooner Vs. CIT (A) 291 ITR 80 (P&H) it was held as under:

Objection regarding the jurisdiction of the Assessing Officer cannot be raised before the CIT(A)/ITAT as the same is administrative matter not appealable u/s 253".

Decision of Hon'ble Orissa High Court rendered during the year 2017 in the case of Shanti Memorial Hospital Vs. Pr.CIT, Sambalpur, holding that jurisdictional matter is administrative and hence not appealable. "

The decisions cited by the Assessing Officer are very much applicable to the case of the appellant. Considering these aspects, the submissions of the appellant are rejected and ground of appeal is dismissed.

5. Ground No.2:

5.1 *In this ground, the appellant has contested that the sole basis for reopening the assessment is a survey report and the Assessing Officer has not applied his mind. It is seen from the assessment order that a survey u/s.!33A of the Income Tax Act, 1961 was carried out by Investigation Wing of the Department. During the course of survey, three fixed deposits of Rs.50 lakh each were noticed. A report regarding this was made by the Investigation Wing and sent to the Assessing Officer. The Assessing Officer found that in the balance sheet under the head 'deposits and investment' the appellant has shown an amount of Rs.7,15,280/- and therefore he came to the conclusion that the fixed deposits ,found during the course of survey are unexplained and he issued notice u/s.148 of the Income Tax Act, 1961 after seeking approval from competent authority. Thus, it is clear that the Assessing Officer has applied his mind after receiving information from the Investigation, Wing. Therefore, contention of the appellant is rejected and the ground of appeal is dismissed.*

> ***6. Ground No.** 3:*
> *In this rejoinder dated 23.07.2019 (paragraph 4) the appellant has submitted that the ground relating service of notice u/s.143(2) of the Income Tax Act, 1961 may be treated as withdrawn. Accordingly, this ground is dismissed as withdrawn.*

On merits of the case, the CIT(A) upheld the action of AO. Accordingly, the CIT(A) dismissed the appeal of the assessee.

7. Feeling aggrieved from the order of the CIT(A), the assessee has filed this present appeal before the Income Tax Appellate Tribunal.

8. Ld. AR before us, reiterated the submissions made before the lower authorities and submitted that the notice issued u/s.148 of the Act by the ITO has no valid jurisdiction, therefore, the entire procedure is *void ab initio* in the eyes of law. The assessee has filed return of income declaring total income of Rs.35,09,538/- and return was filed with ACIT, Circle-1, Bhubaneswar. As per CBDT Instruction No.211, dated 31.01.2011 fixing monetary limits for assigning the case to the AO which are placed in the paper book page No.1, according to the CBDT Instruction in case of non-corporate returns, the Income Tax Officer is upto Rs.15 lakhs, whereas the assessee has filed return of income is of Rs.35,09,538/-. On all these counts, the entire assessment proceedings are also *void ab initio* and bad in law. The Assessment Officers are binding to follow the instructions/circulars issued by the CBDT. He also submitted that there was no service of notice issued u/s.148 of the Act and the notice u/s.143(2) of the Act has not been

served to the assessee. In support of his arguments, he supported the following case laws :-

i) Kanwar Singh Saini Vs. High Court of Delhi, CRA No.1798 of 2009, dated 23.09.2011 (Supreme Court) and
ii) Attar Singh Vs. ITO, ITA No.2682/Del/2018, order dated 08.08.2019

On merits of the case, he also submitted that the fixed deposits were made by the assessee from his bank account on dated 21.07.2011, which is clear from the bank statement. Therefore, there was no any escapement of the income. The assessee is filing regular return of income every year along with the copy of the balance sheets, the books of accounts of the assessee are audited by a qualified Chartered Accountant and there is no any adverse remarks made by him.

9. In addition to the above submissions, ld. AR reiterated the submissions made before the CIT(A), which read as under :-

1. Proceedings u/s-147 of the I.T. Act.

6. *Assessee is an individual carrying on works contract business. Assessee filed the original return u/s-139(l) on 30.09.2012. Copy of the I.T. return Audited P&L A/c and Balance Sheet as on 31.03.2012 are enclosed* ***Annexure-1.***

(2) LA A.O has initiated re-assessment proceedings u/s-147 of the I.T. Act on the basis of reason recorded on 17.03.2017 and issued notice u/s-148 on 27.03.2017 as mentioned in the assessment order. It is submitted that assessee has not received any notice issued u/s 148 of the I.T. Act.

(3) As per note sheet copy received by the assessee, it has been noted by the Ld A.O that re-assessment proceedings has been initiated on the basis of survey conducted on 05.02.2015 and a survey report of DDIT (Inv). Copy of note sheet of reassessment proceedings is enclosed on ***Annexure-2.***

(4) The present re-assessment proceedings has been initiated after two years on the basis of survey conducted on 05.02.2015 that there is a undisclosed investment in fixed deposits to the tune of Rs 1,50 Crore and also assessee has not shown any interest income as noted in the note sheet entry Dt 17.03.2017.

The "reason to believe" that income chargeable to tax has escaped assessment is based on 'Survey Report' alone and there is no independent satisfaction recorded by the A.O that income chargeable to tax has escaped assessment.

(5) As per return of income filed for asst. year 2012-13, assessee's returned income is Rs.35,09,538/- and assessee comes under the jurisdiction of ACIT, Circle-I, Bhubaneswar as evident from e-filed return Dt 30.09.2012.

Therefore, present assessment proceedings by the I.T.O. Angul is without jurisdiction, based on surmise, conjuncture liable to be annulled.

2. *Non-issue* ***of Notice U/s.143(2):***

In *this case the present assessment has been completed without serving notice U/s. 143(2) of the I.T.Act, 1961. In this regard it is submitted that the learned Assessing Office at Page-2 of his order has inter-alia observed that no return of income has been filed in response to notice U/s. 148 which is not at all a fact and this is well evident from Page-9 of the assessment order wherein the learned Assessing Officer while computing the total income has taken the income as per return at Rs.35,09,538/- and thereafter made the additions, therefore it cannot be said that no return of income has been filed. It is relevant to mention here that completion of assessment without serving notice U/s.143(2) is illegal and bad in law and liable to be quashed. Law is also settled to this effect.*

3. ***Un-explained Investment –Addition of Rs 1,05,00,000/-***

6. *In the assessment order Ld A.O has made an addition of Rs 1,05,00,000 towards investment in 3 nos of fixed deposits made in Bank of Baroda, Angul Branch as noted in the assessment order at Para-4.*

(2) It is submitted that fixed deposit A/c No-26350300002991 Dt 30.06.2011 for Rs 5,00,000/- as noted in the assessment order does not belong to the assessee.

(3) The sources of investment of balance fixed deposit of Rs 1,00,00,000/- are furnished below.

F.D A/c No	*A/c Open date*	*Amount*	*Sources*
26350300002991	*21.07.2011*	*50,00,000*	*Out of drawal made by Ch. No-245292 Dt 21.07.2011 from the A/c No-26350500000038 of the assessee.*
26350300002992	*21.07.2011*	*50,00,000* ***1,00,00,000***	*Out of drawal made by Ch. No-245293 Dt 21.07.2011 from the A/c No- 26350500000038 of the assessee.*

In Support of above a facts copies statements of fixed deposits A/c and current A/c No- 26350500000038 showing transfer to fixed deposits for Rs 1,00,00,000/- on 21.07.2011 are enclosed as ***Annexure-3.***

The above current A/c No – 26350500000038 has been duly disclosed in the Balance Sheet as on 31.03.2012.
As the fixed deposits have been made from the disclosed bank A/c of the assessee addition of Rs.1,00,00,000/- as un-explained investment u/s-69 of the I.T. Act is not legally sustainable and liable for deletion.

4. Objection to Assessment u/s-144 of the I.T. Act

The assessee strongly objects to the assessment completed u/s-144 of the I.T. Act, as the assessee had made compliance on 12.07.2017 and 30.11.2017 during assessment proceedings as evident from the note sheet entry. The Ld A.O hastily completed the assessment on 30.11.2017 without providing proper opportunity to the assessee although time was available up to 31.12.2018 to pass the assessment order.

10. On the other hand, ld. Sr. DR relied on the order of lower authorities and submitted that the assessee did not raise any objection as per Section 124(3)(b) of the Act within the prescribed time and participated in the assessment proceedings before the AO and he has also filed an affidavit which is placed on the paper book filed by the assessee. The AO has reopened the case on the basis of tangible materials available with him and in the balance sheet there is no any investment shown of Rs.1 crores and no any interest income has been offered by the assessee in his return of income. The assessee did not raise any objection. The AO has sent number of notices through emails provided by the assessee in his return of income, therefore, the assessee cannot say that no notice has been received by the assessee, which is clear from the assessment record. He also referred to the remand report submitted by the AO. In the remand report, the AO has

rightly deposed that at the time of issuance of notice and at the time of completion of assessment, there was a valid territorial jurisdiction upon the Income Tax Officer. The assessee will also not get any benefit of Section 292BB of the Act because he did not raise any objection before the completion of the assessment. In support of his arguments, ld. DR reiterated the case laws as relied upon by the authorities below and also in the case of Nirmal Singh Vs. ITO, ITA No.588/Asr/2016, order dated 27.06.2018. It was also contended by the ld. DR that the AO has rightly noted in his balance sheet that there is no any investment appeared in the balance sheet and no any interest income has been offered by the assessee in his return of income. Therefore, both the authorities below are justified to dismiss the appeal of the assessee and the case laws relied on by the ld. AR of the assessee are not applicable in the present facts of the case.

11. After hearing both the sides and perusing the entire material available on record and the order of the authorities below, we noticed from the order of the authorities below and remand report submitted by the AO, which has been reproduced as above, that in the instant case the assessment has been completed by the AO u/s.144/147 of the Act as there was no compliance on the part of the assessee. Before the CIT(A), first of all, the assessee agitated the legal ground and the same has been dismissed by the CIT(A) holding that the assessee has not

objected with regard to the jurisdiction of the AO within the expiry of the time mentioned in the notice u/s.148 of the Act. With regard to merit of the case, the CIT(A) confirmed the action of AO. Accordingly, the CIT(A) dismissed the appeal of the assessee in *toto*. In the instant appeal, we have to decide first as to whether the Assessing Officer was well within the jurisdiction while framing the assessment or not. On perusal of the assessment order, we find that the assessee has filed return of income declaring total income of Rs.35,09,538/- and return was filed with ACIT, Circle-1, Bhubaneswar. As per CBDT Instruction No.211, dated 31.01.2011 fixing monetary limits for assigning the case to the AO which are placed in the paper book page No.1, according to the CBDT Instruction in case of non-corporate returns, the Income Tax Officer is upto Rs.15 lakhs, whereas the assessee has filed return of income is of Rs.35,09,538/-. Ld. AR before us submitted that there was no service of notice issued u/s.148 of the Act and the notice u/s.143(2) of the Act has not been served to the assessee. It is very much clear that the AO while computing the total income has taken the income as per return at Rs.35,09,538/- which is more than Rs.15 lakhs as prescribed by the CBDT. For more clarification, we would like to reproduce the CBDT Instruction issued in this regard, which reads as under :-

INSTRUCTION NO.1/2011 [F.NO.187/12/2010-IT(A-I)

Section 119 of the Income-tax Act, 1961 – Instructions to subordinate authorities – Instructions regarding income limits for

assigning cases to Deputy Commissioners/Assistant Commissioners/ITOs.

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)*	
	ITOs	*Acs/DCs*	*ITOs*	*DCs/Acs*
Corporate returns	Upto Rs. 20 lacs	Above Rs. 20 lacs	Upto Rs. 30 lacs	Above Rs. 30 lacs
Non-corporate returns	Upto Rs. 15 lacs	Above Rs. 15 lacs	Upto Rs. 20 lacs	Above Rs. 20 lacs

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.

12. From the above instruction issued by the CBDT, it is clear that the assessment order passed by the AO is out of the jurisdiction as the return of income involved in this appeal is at Rs.35,09,538/- . Nowhere it is mentioned either in the assessment order or in the appellate order by both the authorities below that they are deprived of from following or obeying the above Instruction of the CBDT, wherein the CBDT vide

Instruction No.1/2011 (F.No.187/12/2010-IT(A-1) has already increased the monetary limit upto Rs.15 lakhs for non-corporate return of income, which can be assessed by only the ITOs and above Rs.15 lakhs the income of the assessee can be assessed by Acs/DCs. The present assessee belongs to Angul, which is not a metro city, then it was the duty of the revenue authorities to sit upon their proper jurisdiction very much available to them. Ignorance of law cannot be denied.

13. The Kolkata Bench of the Tribunal in the case of Sukumar Ch. Sahoo Vs. ACIT, ITA No.2073/Kol/2016, order dated 27.09.2017 (2017) 60 ITR (Trib) 0225 (Kolkata) while dealing with the similar issue, has observed that as per the CBDT Instruction the monetary limits in respect to an assessee who is an individual which falls under the category of 'non corporate returns' the ITO's increased monetary limit was upto Rs.15 lacs; and if the returned income is above Rs. 15 lacs it was the AC/DC. So, since the returned income by assessee an individual is above Rs.15 lakh, then the jurisdiction to assess the assessee lies only by AC/DC and not ITO. So, therefore, only the AC/DC had the jurisdiction to assess the assessee. The relevant observations of the Tribunal in paras 5 & 6 are as under :-

> *5. From a perusal of the above Instruction of the CBDT it is evident that the pecuniary jurisdiction conferred by the CBDT on ITOs is in respect to the 'non corporate returns' filed where income declared is only upto Rs.15 lacs ; and the ITO doesn't have the jurisdiction to conduct*

assessment if it is above Rs 15 lakhs. Above Rs. 15 lacs income declared by a non- corporate person i.e. like assessee, the pecuniary jurisdiction lies before AC/DC. In this case, admittedly, the assessee an individual (non corporate person) who undisputedly declared income of Rs.50,28,040/- in his return of income cannot be assessed by the ITO as per the CBDT circular (supra). From a perusal of the assessment order, it reveals that the statutory notice u/s. 143(2) of the Act was issued by the then ITO, Ward-1, Haldia on 06.09.2013 and the same was served on the assessee on 19.09.2013 as noted by the AO. The AO noted that since the returned income is more than Rs. 15 lacs the case was transferred from the ITO, Ward-1, Haldia to ACIT, Circle-27 and the same was received by the office of the ACIT, Circle-27, Haldia on 24.09.2014 and immediately ACIT issued notice u/s. 142(1) of the Act on the same day. From the aforesaid facts the following facts emerged:

6. *The assessee had filed return of income declaring Rs.50,28,040/-. The ITO issued notice under section 143(2) of the Act on 06.09.2013.*

ii) The ITO, Ward-1, Haldia taking note that the income returned was above Rs. 15 lacs transferred the case to ACIT, Circle-27, Haldia on 24.09.2014.

iii) On 24.09.2014 statutory notices for scrutiny were issued by ACIT, Circle-27, Haldia.

6. We note that the CBDT Instruction is dated 31.01.2011 and the assessee has filed the return of income on 29.03.2013 declaring total income of Rs.50,28,040/-. As per the CBDT Instruction the monetary limits in respect to an assessee who is an individual which falls under the category of 'non corporate returns' the ITO's increased monetary limit was upto ITA No.2073/Kol/2016 Sri Sukumar Ch. Sahoo, AY 2012-13 Rs.15 lacs; and if the returned income is above Rs. 15 lacs it was the AC/DC. So, since the returned income by assessee an individual is above Rs.15 lakh, then the jurisdiction to assess the assessee lies only by AC/DC and not ITO. So, therefore, only the AC/DC had the jurisdiction to assess the assessee. It is settled law that serving of notice u/s. 143(2) of the Act is a sine qua non for an assessment to be made u/s. 143(3) of the Act. In this case, notice u/s. 143(2) of the Act was issued on 06.09.2013 by ITO, Ward-1, Haldia when he did not have the pecuniary jurisdiction to assume jurisdiction and issue notice. Admittedly, when the ITO realized that he did not had the pecuniary jurisdiction to issue notice he duly transferred the file to the ACIT, Circle-27, Haldia on 24.09. 2014 when the ACIT issued statutory notice which was beyond the time limit prescribed for issuance of notice u/s. 143(2) of the Act. We note that the ACIT by assuming the jurisdiction after the time prescribed for issuance of notice u/s. 143(2) of the Act notice became qoarum non judice after the limitation prescribed by the statute was crossed by him. Therefore, the issuance of notice by the ACIT, Circle-27, Haldia after the limitation period for issuance of statutory notice u/s. 143(2) of the Act has set in, goes to the root of the case and makes the notice bad in the eyes of law

and consequential assessment order passed u/s. 143(3) of the Act is not valid in the eyes of law and, therefore, is null and void in the eyes of law. Therefore, the legal issue raised by the assessee is allowed. Since we have quashed the assessment and the appeal of assessee is allowed on the legal issue, the other grounds raised by the assessee need not to be adjudicated because it is only academic. Therefore, the additional ground raised by the assessee is allowed.

14. The Delhi Bench of the Tribunal also in the case of Attar Singh Vs. ITO, ITA No.2682/Del/2018 along with other appeals, order dated 08.08.2019, has held as under :-

26. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the plethora of decisions relied on by both the sides. We find the assessee in the instant case is an employee of Delhi Police, receiving salary from Delhi Police and has official residence in Delhi at PS, Dwarka-Sector-9, South West District, New Delhi. A perusal of the reply received under the RTI Act vide F.No. Pr.CIT-22/RTI/2018-19/10356 Dated 3rd January, 2019 shows that the PAN is linked to ITO, Ward 64(3), Delhi with PAN No.ASDPS1581M. As per the said RTI application, the aforesaid PAN was transferred from ITO, Ward 64(3) Delhi under the charge of PCIT, Gurgaon on 26th April, 2016. We find the Assessing Officer, on the basis of the information received that the assessee with his two brothers has sold his agricultural land to M/s Bestech India Pvt. Ltd. for a sum of Rs.46,85,30,000/-, reopened the assessment after recording reasons and by issuing notice u/s 148 of the Act. A perusal of the assessment order shows that the assessee from the very beginning was challenging the assumption of jurisdiction by the Assessing Officer. Even before the CIT(A), the assessee has challenged the assumption of jurisdiction by the Assessing Officer. However, the ld.CIT(A) rejected the same on the ground that the order u/s 120/127 are not appealable u/s 246A. Further, the assessee has not raised any objection u/s 124(3)(a) to the transfer within one month from the date of service of notice u/s 143(2)/142(1). While doing so, he has relied on the decision of the Punjab & Haryana High Court in the case of Smt. Jaswinder Kaur Kooner vs. CIT (A) (2007) 291 ITR 80 and in the case of Subhash Chander v. CIT (2008) 166 Taxman 307 and the decision of the Hon'ble Allahabad High Court in the case of CIT vs. Sohal Lal Sewa Ram Jaggi (2009) 222 CTR 412 and various other decisions. He further held that where the jurisdiction has irregularly been exercised and the assessee participated in the proceedings, the assessee can be said to have waived the objection regarding jurisdiction. Further, the assessee has mentioned his address of Gurgaon in the return of income. The ld. CIT(A) accordingly held that the Assessing Officer has rightly assumed jurisdiction over the assessee and there is no irregularity or illegality.

27. It is the submission of the ld. counsel for the assessee that the Assessing Officer, Gurgaon was intimated vide letter dated 4th May, 2015 that the original return was filed on 6th March, 2013 with the Assessing Officer of Delhi and the Assessing Officer, Gurgaon could have verified as to which place the PAN is linked with. It is also the argument of the ld. counsel for the assessee that the case of the assessee was not transferred from the Assessing Officer of Delhi to Assessing Officer of Gurgaon by passing an order u/s 127 that the Assessing Officer, Gurgaon did not invoke the provisions of section 124(2) which is mandatory and which will get precedence over section 124(3). It is also the argument of the ld. counsel for the assessee that the assessee is not required to raise any objection u/s 124(3) and such objection can be raised at any time. Similarly, it is also his argument that the issue of lack of jurisdiction can be raised at any stage and even in appeal proceedings and the jurisdiction cannot be conferred by consent or waiver and notice u/s 148 can be issued only by the Assessing Officer having jurisdiction over the assessee who is regularly assessed to tax.

28. We find some force in the above argument of the ld. counsel for the assessee. We find the Hon'ble Punjab & Haryana High court in the case of Lt. Col. Paramjit Singh (supra) while deciding an identical issue has observed as under:-

"4. We have heard counsel for. The parties and in the normal course we would have accepted the preliminary objection raised by the Department and directed the petitioner to raise all the pleas before the Income-tax Officer, but keeping in view the fact that the present is a case where there is a total lack of jurisdiction in respondent No. 2, we are interfering in the matter. There is no gainsaying the fact that the petitioner was posted at Pune when he was in the service of the Army and for the assessment year in question he filed his return of income with the Income-tax Officer there and the same stands assessed. The proceedings had been completed and the tax found payable had been deposited/accounted for. Thereafter, if the assessment proceedings are to be reopened or if the income for the relevant assessment year is to be reassessed, it is the Income-tax Officer who assessed the same in the first instance alone has the jurisdiction to proceed in the matter under Section 147 read with Section 148 of the Act unless the case has been transferred by a competent authority to another Assessing Officer under Section 127 of the Act and in that event the latter will have jurisdiction to proceed. Section 127 of the Act which is relevant for our purpose is reproduced hereunder for facility of reference :

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

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director-General or Chief Commissioner or Commissioner,--

6. *where the Directors-General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director-General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order ;*

(b) where the Directors-General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring, the case may, similarly, be passed by the Board or any such Director-General or Chief Commissioner or Commissioner as the Board, may by notification in the Official Gazette, ealizing in this behalf.

(3) Nothing in Sub-section (1) or Sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under Sub-section (1) or Sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.–In Section 120 and this section, the word 'case', in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

5. Under the aforesaid provision, the Director-General or Chief Commissioner or Commissioner can transfer any case at any stage of the proceedings from one Assessing Officer subordinate to him to another. If both the Assessing Officers are not subordinate to the same Director-General or Chief Commissioner or Commissioner, then the transfer can be made on the respective Directors-General or Chief Commissioners or Commissioners agreeing and in the event of disagreement, by the Board or any such Director General or Chief Commissioner or Commissioner ealizing by it. The section expressly provides that on such a transfer it is not necessary to reissue any notice when the same has already been issued by the Assessing Officer from whom the case is transferred and the Assessing Officer to whom the case is transferred is entitled to proceed from the stage at which he receives the case from his predecessor. It is also provided that wherever it is possible to do so, the

assessee shall be given a reasonable opportunity of being heard before an order of transfer is passed and that the competent authority will record his reasons for the transfer. The Explanation to Section 127, makes it clear that once an order of transfer is made under the section, all pending proceedings for different years are transferred and the Assessing Officer to whom the case is transferred would be in a position to continue all the pending proceedings and to institute further proceedings against the assessee in respect of any year, past or future, and even to reopen the assessment for an earlier year which stood completed at the date of the transfer. It is clear that in the absence of any transfer order no Assessing Officer other than the one who initiated the proceedings or completed the assessment shall have jurisdiction to continue with the proceedings or even to reopen a concluded assessment. It is common ground between the parties that the file of the petitioner pertaining to the assessment year 1988-89 has not been transferred from the jurisdiction of the Assessing Officer, Pune, to the Income-tax Officer, Jalandhar (respondent No. 2 herein). As a matter of fact, no order of transfer has been passed by the competent authority under Section 127 of the Act for any assessment year and, therefore, the proceedings for reassessment initiated by respondent No. 2, are wholly without jurisdiction. We have, therefore, no hesitation in quashing the impugned notice dated March 13, 1995 (annexure P-4 with the writ petition), issued by respondent No. 2 under Section 148 of the Act.

6. It was also contended on behalf of the petitioner that respondent No. 2 did not have sufficient material before him for reopening the assessment proceedings and that it was a mala fide exercise of the power since it was being exercised at the behest of the father of the petitioner's son-in-law. Since we have held that the Income-tax Officer, Jalandhar, has no jurisdiction to reopen the concluded assessment of the petitioner for the assessment year 1988-89, we are not examining these contentions of learned counsel for the petitioner.

7. In the result, the writ petition is allowed and the proceedings for reassessment initiated by respondent No. 2 under Section 148 of the Act set aside with costs which are assessed at Rs. 1,000."

29. We find the Hon'ble Delhi High Court in the case of Dushyant Kumar jain vs. DCIT (2016) 66 taxmann.com 126 (Delhi), has held that it was only the Assessing Officer who had passed the original assessment, was empowered to exercise powers under section 147/148 to reopen that assessment. The relevant observation of the Hon'ble Delhi High Court from para 15 to 17 reads as under:-

"15. What is evident from the counter affidavit filed by the Respondent is a clear admission that the officer who issued the notice dated 14th March, 2014, and recorded the reasons for re-opening the assessment, i.e. the ITO Ward 39(2) was not the AO of the Assessee. That single fact in itself vitiates the reopening of the assessment. What is also evident is that, perhaps ealizing the error, a subsequent notice dated 23rd June 2014 under Section 148 was issued by the AO of the Assessee. However, it was beyond the deadline of 31st March, 2014 under Section 149(1)(b) of the Act.

16. The reasons given by the Department in its counter affidavit do not in any way explain the patent illegality in invoking the powers under Section 148 of the Act for reopening the assessment of the Assessee for AY 2007-08. The mere fact that the definition of an AO in terms of Section 2(7-A) of the Act also includes a DCIT and other superior officers or an ITO of some other ward who may be vested with the relevant jurisdiction by virtue of orders issued under Section 120 (1) or Section 120 (2) of the Act will not make a difference to the above legal position. The reason is not far to seek. It is only the AO who has issued the original assessment order dated 13th April 2009 for AY 2007-08 under Section 143 (3) of the Act who is empowered to exercise powers under Section 147/148 to re-open the assessment. This is because he alone would be in a position to form reasons to believe that some income of that particular AY has escaped assessment. This again cannot be based on a mere change of opinion. Further, in terms of Section 151 of the Act such a move will have to have the prior approval of the CIT. Under the scheme of the Act, if a superior officer forms an opinion that the original assessment order is prejudicial to the interests of the Revenue, recourse can be had to Section 263 of the Act. In any event the question of an ITO who is not the AO who passed the original assessment order under Section 143(3) of the Act for particular AY, exercising the powers under Sections 147/148 of the Act to re-open that assessment does not arise.

17. Consequently, this Court quashes the notices dated 14 th March 2014 and 23rd June 2014 as well as the order dated 28 th January, 2015 passed by the DCIT rejecting the objections of the Petitioner. The writ petition is allowed ITA Nos.2682, 2913, 2683,3112,2684,2700/Del/2018 34 and the application is disposed of in the above terms but, with no order as to costs."

30. Since, admittedly, in the instant case, the assessee was regularly filing his return of income at Delhi with his PAN No. linked with the Assessing Officer at Delhi and he was residing at PS, Dwarka-Sector-9, South West District, New Delhi, in government accommodation and was getting salary from the Delhi Police, therefore, merely because the assessee has received the notice, which was sent in his Gurgaon address and has participated in the assessment proceedings will not give jurisdiction to the Assessing Officer at Gurgaon to have jurisdiction over the assessee. So far as the argument of the ld. DR that the assessee has participated in the assessment proceedings and, therefore, has apparently given his consent to the transfer of jurisdiction to the Assessing Officer of Gurgaon is concerned, the same, in our opinion, would not confer jurisdiction upon the Assessing Officer who otherwise was not the Assessing Officer of the assessee. The Hon'ble Bombay High Court in the case of CIT vs. Lalitkumar Bardia (supra) has held that mere participation in proceedings or acquiescence would not confer jurisdiction upon the Assessing Officer who otherwise was not the Assessing Officer of the assessee. The Hon'ble Apex Court in the case of Kanwar Singh Saini (supra) has held that there can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the party nor by a superior court.

31. So far as the argument of the Revenue that the assessee has not raised any objection to the jurisdiction within the prescribed time period is concerned, we find merit in the argument of the ld. counsel that the issue to lack of jurisdiction can be raised at any stage in a case where the return has been filed in response to notice u/s 148/158BC/153A. We find the Hon'ble Bombay High Court in the case of Mavany Brothers vs. CIT (supra) while adjudicating an identical issue has observed as under:-

"13. We have considered the rival contentions. The jurisdiction under Section 147/148 of the Act is an extra ordinary jurisdiction and can only be exercised when condition precedent as provided in Sections 147/148 of the Act are satisfied. It is the appellant's case that the aforesaid conditions are not satisfied inasmuch as in the absence of the Assessing Officer having the original return of income available it would not be possible for him to have a reasonable belief that income chargeable to tax has escaped assessment. This issue of jurisdiction according to the respondent – Revenue could only have been raised before the Assessing Officer and not having been raised before him, the appellant had waived its rights to raise the same. The appellant having submitted to the jurisdiction of the Assessing Officer cannot now challenge the same. This is not entirely correct. It is well settled that mere acquiescence will not give jurisdiction to an authority who has no jurisdiction. In fact this Court in CIT V/s. ITSC reported in 365 ITR 87 has held that mere participation by a party in proceedings without jurisdiction will not vest/confer jurisdiction on the authority. Reason to believe that income chargeable to tax has escaped assessment is a jurisdictional fact and only on its satisfaction does the Assessing Officer acquire jurisdiction to issue notice. Thus this lack of satisfaction of jurisdictional fact can never confer jurisdiction and an objection to it can be raised at any time even in appeal proceedings. The mere fact that no objection is taken before the Assessing Officer would not by itself bestow jurisdiction as the Assessing Officer. Such an objection can be taken in appeal also. Moreover, the Apex Court in its recent decision in Kanwar Singh Saini V/s. High Court Of Delhi reported in 2012(4) SCC 307 has held that it is settled position that conferment of jurisdiction is a legislative function and cannot be conferred by consent of petitioner. An issue of jurisdiction can be raised at any time even in appeal or execution. Reliance in this regard could usefully be made to Indian Bank v/s Manilal Govindji Khona reported in 2015 (3) SCC 712. Paras 22 of the said judgment read as under :

"22. In Sushil Kumar Mehta case [Sushil Kumar Mehta v. Gobind Ram Bohra, (1990) 1 SCC 193] this Court has elaborately considered the relevant factual and legal aspect of the case and has laid down the law at para 10, after referring to its earlier decision of a four-Judge Bench of this Court speaking through Venkatarama Ayyar, J. in Kiran Singh v. Chaman Paswan [AIR 1954 SC 340 : (1955) 1 SCR 117] , which would be worthwhile to be extracted as under: (Sushil Kumar Mehta case [Sushil Kumar Mehta v. Gobind Ram Bohra, (1990) 1 SCC 193] , SCC p. 199)

6. "10. ... '6. ... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities.' (Kiran Singh case [AIR 1954 SC 340 : (1955) 1 SCR 117] , AIR p. 342, para 6)" Thus, it is open to the petitioner to raise the issue of jurisdiction before the appellate authorities."

32. In view of the above discussion and considering the fact that the assessee was employed with Delhi Police and was regularly filing his return of income at Delhi under ITO, Ward 64(3) [earlier ITO, Ward 40(3)] and since this fact was known to the ITO at Gurgaon, therefore, in absence of any transfer of jurisdiction u/s 127, we hold that the ITO, Gurgaon has no jurisdiction over the assessee. Therefore, respectfully following the decision of the Hon'ble Punjab & Haryana High Court, which is the jurisdictional High Court in view of the assessment order being passed by the ITO at Gurgaon, we hold that the Assessing Officer, Gurgaon had no jurisdiction over the assessee to issue notice u/s 148 and consequently pass the order u/s 147/143(3). Therefore, the notice issued u/s 148 is quashed. Since the reopening is quashed the subsequent orders passed on account of such reopening are also quashed.

33. So far as the decisions of the Hon'ble Delhi High Court relied upon by the ld. DR, are concerned these decisions in our opinion are not applicable to the facts of the present case. In the case of Abhishek Jain (supra), we find the Assessing Officer, Noida had issued notice u/s 148 on the basis of deposits made in cash in ICICI Bank, Noida. The fact that this assessee was regularly assessed in Delhi was not intimated to the Assessing Officer at Noida and the assessee had not mentioned his PAN in the ICICI Bank and the address of the assessee was also in Noida. After the completion of the time barring period which is 31st March, 2016, the assessee intimated on 19th May, 2016 that he had been regularly assessed in Delhi. Under these circumstances, the Hon'ble Delhi High Court held that it was mala fide on the part of the assessee not to intimate prior to 31.03.2016 and the assessee was waiting for time limitation to expire and, therefore, the Hon'ble High Court held that in terms of section 124(3)(b), the jurisdiction of an Assessing Officer cannot be called in question by an assessee after the expiry of one month from the date on which he was served with a notice for reopening of assessment u/s 148. However, in the instant case, the assessee had enclosed the copy of return filed with the Assessing Officer of Delhi with his PAN and acknowledgement number. It was in the knowledge of the Assessing Officer of Gurgaon that the assessee is in employment of Delhi Police and his PAN is linked ITA Nos.2682, 2913,

2683,3112,2684,2700/Del/2018 38 with ITO of Delhi. Further, there was ample time available before the Assessing Officer for verification and consequential issue of notice by the Assessing Officer of correct jurisdiction and no mala fide intention can be attributed to the present assessee.

34. Similarly, in the case of S.S. Ahluwalia (supra) is concerned, in that case also the respondent assessee was assessed at Delhi from 1980-81 to 1983-84. From the assessment year 1984-85 to 1987-88, he was filing the return at Dimapur. The case of the assessee was reopened u/s 148 by the ACIT, Investigation, Delhi, on the basis of certain CBI search. When the question of jurisdiction issue came before the Hon'ble High Court, the Hon'ble High Court held that in case the assessee shifts his residence or place of business or work, etc., the Assessing Officer of the place where the assessee has shifted or otherwise will have jurisdiction and it is not necessary that in such case an order u/s 127 is required to be passed. While going through para 51 of the order, it shows that at clause 8 of para 51, there was exchange of correspondence between the ITO of Delhi and ITO of Dimapur and ITO Dimapur considered and accepted that for assessment year 1984-85 to 1987-88, the Assessing Officer at Delhi had jurisdiction to initiate and complete the assessment proceedings. Similarly, order u/s 127 of the Act was passed and the case was transferred to ITO, Ward 20, New Delhi. Thus, the case of S.S. Ahluwalia (supra) cannot be equated with that of the assessee. In any case, since the Assessing Officer of Gurgaon has passed the ITA Nos.2682, 2913, 2683,3112,2684,2700/Del/2018 39 assessment order, who falls under the jurisdiction of Punjab & Haryana High Court, therefore, the decision of Hon'ble Punjab & Haryana High Court will prevail over the decision of the Hon'ble Delhi High Court. If the assessment proceedings already completed by Assessing Officer are to be reopened or if the income for the relevant assessment year is to be reassessed, it is the ITO who assessed the same in the first instance has the jurisdiction to proceed in the matter u/s 147 read with section 148 unless the case has been transferred by a competent authority to another Assessing Officer u/s 127 and, in that event, latter will have jurisdiction to proceed. Thus, in the absence of any transfer order, no other Assessing Officer than the one who initiated the proceedings or completed the assessment shall have jurisdiction to continue with the proceedings or even to reopen a concluded assessment. Since in the instant case the assessee was regularly filing his return with ITO at Delhi and since no transfer order u/s 127 of the IT Act, 1961 was passed transferring the case to ITO, Gurugram, therefore, only the ITO, Delhi had jurisdiction to issue notice u/s 147 and the ITO, Gurugram has no jurisdiction to issue notice u/s 148 to the assessee.

35. In view of the above discussion, we hold that the notice issued by the Assessing Officer at Gurgaon is void ab initio on account of lack of jurisdiction. Therefore, the proceedings are quashed. Since the assessee succeeds on this legal ground, the various other grounds on merit are not being adjudicated being academic in nature. Since the legal ground raised by the assessee challenging the reassessment proceedings are

decided in favour of the assessee, the grounds raised by the Revenue in its appeal become infructuous and the same is accordingly dismissed.

15. Reliance can also be placed on the decision of the Hon'ble Supreme Court in the case of Kanwar Singh Saini Vs. High Court of Delhi, Criminal Appeal No.1798 of 2009, dated 23.09.2011 as has been relied upon by the ld. AR of the assessee before us. Though this decision of the Hon'ble Apex Court is not based upon any tax matter, however, interpretation can be derived from the verdicts of the law of land, wherein the Hon'ble Supreme Court has held that conferment of jurisdiction is a legislative function. The relevant observations of the Hon'ble Supreme Court in para 13 read as under :-

"13. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. (Vide: The United Commercial Bank Ltd. v. Their Workmen AIR 1951 SC 230; Smt. Nai Bahu v. Lal Ramnarayan & Ors., AIR 1978 SC 22; Natraj Studios Pvt. Ltd. v. Navrang Studio & Anr., AIR 1981 SC 537; Sardar Hasan Siddiqui & Ors. V. State Transport Appellate Tribunal, U.P., Lucknow & Ors. AIR 1986 All. 132; A.R. Antulay v. R.S. Nayak & Anr., AIR 1988 SC 1531; Union of India & Anr. V. Deoki Nandan Aggarwal, AIR 1992 SC 96; Karnal Improvement Trust, Karnal v. Prakash Wanti (Smt.) (Dead) & Anr., (1995) 5 SCC 159; U.P. Rajkiya Nirman Nigam Ltd. v. Indure Pvt. Ltd. & Ors., AIR 1996 SC 1373; State of Gujarat v. Rajesh Kumar Chimanlal Barot & Anr., AIR 1996 SC 2664; Kesar Singh & Ors. V. Sadhu, (1996) 7 SCC 711; Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors., AIR 1999 SC 2213; and Collector of Central Excise, Kanpur v. Flock (India) (P) Ltd., Kanpur, AIR 2000 SC 2484).

When a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act.

> *When an Act creates a right or obligation and enforces the performance thereof in a specified manner, "that performance cannot be enforced in any other manner". Thus for enforcement of a right/obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act. (See: Doe d. Rochester (BP) v. Bridges, 109 ER 1001; Barraclough v. Brown, 1897 AC 615; The Premier Automobiles Ltd. v. K.S.Wadke & Ors., AIR 1975 SC 2238; and Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) thr. L.Rs., (1990) 1 SCC 193)."*

16. The Hon'ble Bombay High Court in the case of Dattatraya Gopal Shette v. CIT (1984) 150 ITR 460 (Bom) observed that it is now well-settled that even if the contents of a circular may amount to a deviation on a point of law, a circular of the Central Board of Revenue which confers some benefit on the assessee, is binding on all officers concerned with the execution of the Income Tax Act, and they must carry out their duties in the light of the circular. The Hon'ble Madras High Court in the case of CIT v. Prasad Productions (P) Ltd. (1989) 179 ITR 147 (Mad) has held that if a circular was in force on the first day of the assessment year, the benefit of the same should be made available to the assessee. Further the Hon'ble Punjab & Haryana High Court in the case of B.S. Bajaj v. CIT (1996) 222 ITR 418 (P&H) has held that benevolent circulars providing administrative relief to the assessee, even if they are issued subsequent to the decision by an authority under the Act, have to be taken notice of and given effect to if found applicable in the given facts. Circular, even if produced in the High Court for the first time during the course of hearing has to be taken note of and the assessee will be entitled to the benefit of the circular, if

found entitled, irrespective of the fact that it was not produced before the authorities below or was issued by the CBDT subsequent to the decision given by the Tribunal. Also, the Hon'ble Gujarat High Court in the case of Madhu Silica (P) Ltd. v. CIT (1997) 227 ITR 350 (Guj) has noted that circular being in the nature of laying down general guide lines for proper administration of the Act for those who are employed in the execution of the Act are bound to observe such instructions particularly those which are beneficial to the assessee.

17. The Hon'ble Supreme Court in the case of UCO Bank vs. CIT (1999) 11 SITC 415 (SC), has also observed that so long as circular issued under section 119 of the Act is in force, it would be binding on the departmental authorities to ensure a uniform and proper administration and application of the Income Tax Act. The Hon'ble Apex Court also in the case of CIT vs. Anjum M. H. Ghaswala & Ors. (2002) 166 Taxation 586, has held that circular issued by CBDT are legally binding on the Revenue. The power of the CBDT are wide enough to enable it to grant relaxation from the provisions of several sections enumerated in clause (a) to Section 119 (1) of the Act.

18. In view of the above judicial decisions as well as the factual aspects of the matter, we find that the assessee has filed his return of income for the year under consideration before the ACIT, Circle-1, Bhubaneswar, which is clear from the copies of ITR filed for the

assessment year 2012-2013 and the same are placed in the Annexure-1 at pages 87 to 90 filed in the form of paper book before us, however, the reassessment has been completed by the ITO, Angul Ward, Angul. When the return of income filed by the assessee is more than Rs.15 lakhs, the ITO has no jurisdiction to frame the reassessment as per the CBDT Instruction No.1/2011, dated 31.01.2011. The ITO/AO should have transferred the case to the Assistant Commissioner/Deputy Commissioner, who is having well jurisdiction to frame the reassessment as per the above CBDT Instruction for the relevant assessment year under consideration. This fact was also uncontroverted by the ld. DR before us. It is also not the case of the revenue that the assessee has not raised any objection with regard to jurisdictional issue before either of the authorities below. The AO in its remand report has also accepted that this is a jurisdictional issue and therefore, he brought the provisions of Section 292BB of the Act to reject the objection of the assessee. In our view, when the issue is a jurisdictional one, the provisions of Section 292BB of the Act cannot cure jurisdictional error. On perusal of the appellate order, it is also clear that the CIT(A) has discussed the jurisdictional issue raised by the assessee, however, he has rejected the contention of the assessee, which in our opinion, amounts to overruling the CBDT Instruction issued in this regard. It was the duty of the revenue authorities to give

effect to the circulars/instructions issued by the CBDT which are binding on them. If the CBDT Instruction No.1/2011, dated 31.01.2011 is not accepted by the revenue authorities, as has been occurred in the present case in hand, anyone can frame the assessment/reassessment even having no jurisdiction to enter into the same. The power conferred upon the CBDT to issue instructions and directions by section 119 of the Act is for proper working of the Act, which should be followed by the revenue authorities in true spirit. In view of the above, we are of the view that the reassessment framed by the ITO/AO in the present case is legally not sustainable as having no jurisdiction. Accordingly, we set aside both the orders of authorities below and quash the reassessment framed by the ITO/AO, Angul Ward, Angul and allow the legal issue raised by the assessee.

19. Since we have quashed the reassessment framed by the ITO/AO allowing the appeal of the assessee on legal issue, the other grounds on merit need not to be adjudicated upon.

20. In the result, appeal of the assessee is allowed on legal ground.

Order pronounced in the open court on 10/12/ 2020.

Sd/-	**Sd/-**
(C.M.GARG)	**(L.P.SAHU)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

कटक Cuttack; दिनांक Dated 10/12/2020

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
   Kshirod Kumar Pattnaik,
   Gandhimarg, Amalapada, Angul-759122
2. प्रत्यर्थी / The Respondent-
   ITO, Angul Ward, Angul
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(**Senior Private Secretary**)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack