

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

**BEFORE SHRI MAHAVIR SINGH, JM  
&  
SHRI M.BALAGANESH, AM**

**ITA No.3972/Mum/2007, ITA No.2891/Mum/2010, ITA  
No.1015/Mum/2010, ITA No.1109/Mum/2008  
(Assessment Year : 2003-04 & 2004-05)**

M/s. Tata Communications Ltd., (formerly Videsh Sanchar Nigam Ltd.,) Videsh Sanchar Bhavan Mahatma Gandhi Road Fort, Mumbai-400001	Vs.	Additional Commissioner of Income Tax Range-1(3) Aayakar Bhavan, 5 <sup>th</sup> Floor, Maharshi Karve Road, Mumbai – 400 020
<b>PAN/GIR No.AAACV2808C</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.4664/Mum/2007, ITA No.954/Mum/2010,  
1388/Mum/2008 & 2783/Mum/2010  
(Assessment Year : 2003-04 & 2004-05)**

**&**

**CO No.163/Mum/2017  
(Arising out of ITA No.3972/Mum/2007)  
(Assessment Year : 2003-04)**

**&**

**CO No.164/Mum/2017  
(Arising out of ITA No.1109/Mum/2007)  
(Assessment Year : 2004-05)**

Additional Commissioner of Income Tax Range-1(3) / Asst. Commissioner of Income Tax – 1(3) Aayakar Bhavan, 5 <sup>th</sup> Floor, Maharshi Karve Road, Mumbai – 400 020	Vs.	M/s. Tata Communications Ltd., (formerly Videsh Sanchar Nigam Ltd.,) Lokmanya Videsh Sanchar Bhavan, Kashinath Dhuru Marg Opp. Kirti College Prabhadevi, Mumbai – 400 028
<b>PAN/GIR No. AAACV2808C</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri J.D. Mistry
Revenue by	Shri Sushil Kumar Poddar
<b>Date of Hearing</b>	<b>16/07/2019</b>
<b>Date of Pronouncement</b>	<b>16/08/2019</b>

### **आदेश / O R D E R**

#### **PER BENCH:**

#### **ITA No.3972/Mum/2007 (A.Y. 2003-04) (Assessee Appeal)**

This appeal in ITA No.3972/Mum/2017 for A.Y.2003-04 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-XXI, Mumbai in appeal No.CIT(A)XXI/Addl.CIT.1(3)/IT.100/05-06 dated 04/04/2007 (Id. 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 14/02/2006 by the Id. Addl. Commissioner of Income Tax, Range-1(3), Mumbai (hereinafter referred to as Id. AO).

#### **ITA No.4664/Mum/2007 (A.Y.2003-04) (Revenue Appeal)**

This appeal in ITA No.4664/Mum/2007 for A.Y.2003-04 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-XXI, Mumbai in appeal No.CIT(A)XXI/Addl.CIT.1(3)/IT.100/05-06 dated 04/04/2007 (Id. 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 14/02/2006 by the Id. Addl. Commissioner of Income Tax, Range-1(3), Mumbai (hereinafter referred to as Id. AO).

**CO No.163/Mum/2017 (A.Y.2003-04) (Cross Objection of Revenue)**

This Cross Objection filed by revenue in CO No.163/Mum/2017 for A.Y.2003-04 arises out of ITA No.3972/Mum/2007, on the additional grounds raised by the assessee against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 14/02/2006 by the Id. Addl. Commissioner of Income Tax, Range-1(3), Mumbai (hereinafter referred to as Id. AO).

**ITA No.1015/Mum/2010 (A.Y. 2003-04) (Assessee Appeal)**

This appeal in ITA No.1015/Mum/2010 for A.Y.2003-04 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-2, Mumbai in appeal No.CIT(A)-XXI/Asst.1(3)/IT-11/09-10 (CIT(A)-2/IT/651/09-10) dated 09/11/2009 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

**ITA No.954/Mum/2010 (A.Y. 2003-04) (Revenue Appeal)**

This appeal in ITA No.954/Mum/2010 for A.Y.2003-04 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-2, Mumbai in appeal No.CIT(A)-XXI/Asst.1(3)/IT-11/09-10 (CIT(A)-2/IT/651/09-10) dated 09/11/2009 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

**ITA No.1109/Mum/2008 (A.Y.2004-05) (Assessee Appeal)**

This appeal in ITA No.1109/Mum/2008 for A.Y.2004-05 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-XXI, Mumbai in appeal No.CIT(A)XXI/Addl.CIT.1(3)/IT.184/06-07 dated 06/12/2007 (Id. 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 22/12/2006 by the Id. Addl. Commissioner of Income Tax, Range-1(3), Mumbai (hereinafter referred to as Id. AO).

**ITA No.1388/Mum/2008 (A.Y.2004-05) (Revenue Appeal)**

This appeal in ITA No.1388/Mum/2008 for A.Y.2004-05 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-XXI, Mumbai in appeal No.CIT(A)XXI/Addl.CIT.1(3)/IT.184/06-07 dated 06/12/2007 (Id. 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 22/12/2006 by the Id. Addl. Commissioner of Income Tax, Range-1(3), Mumbai (hereinafter referred to as Id. AO).

**CO No.164/Mum/2017 (A.Y.2004-05) (Cross Objection of Revenue)**

This Cross Objection filed by revenue in CO No.164/Mum/2017 for A.Y.2004-05 arises out of ITA No.1109/Mum/2008, on the additional grounds raised by the assessee against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 22/12/2006 by the Id. Addl. Commissioner of Income Tax, Range-1(3), Mumbai (hereinafter referred to as Id. AO).

**ITA No.2891/Mum/2010 (A.Y.2004-05) (Assessee Appeal)**

This appeal in ITA No.2891/Mum/2010 for A.Y.2004-05 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-2, Mumbai in appeal No.CIT(A)-XXI/Asst.1(3)/IT-12/09-10 (CIT(A)-2/IT/652/09-10) dated 21/01/2010 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

**ITA No.2783/Mum/2010 (A.Y.2004-05) (Revenue Appeal)**

This appeal in ITA No.2783/Mum/2010 for A.Y.2004-05 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-2, Mumbai in appeal No.CIT(A)-XXI/Asst.1(3)/IT-12/09-10 (CIT(A)-2/IT/652/09-10) dated 21/01/2010 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

Since identical issues are involved in these appeals, they were heard together and are being disposed off by this consolidate order, for the sake of convenience.

2. The Asst Year 2003-04 is taken up as the lead case. The facts of Asst Year 2003-04 are taken up for adjudication and the decision rendered thereon would apply with equal force for Asst Year 2004-05 also except with variance in figures.

3. At the outset, we find that the assessee had raised the following additional grounds vide its petition for admission of additional grounds dated 15.11.2016 which go to the root of the matter as the validity of framing of assessment by the Learned Additional Commissioner of Income Tax is questioned :-

*“On the facts and in the circumstances of the case, the assessment order dated 14.02.2006 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 be 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 14.02.2006 and to exercise the powers of performing the functions of an Assessing Officer without establishing that he possesses 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 14.02.2006 passed by him needs to be quashed.*

*3. The proceedings having been initiated by issue of a Notice u/s. 143(2) on 29.09.2004 by the Assistant 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 14.02.2006 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. Assistant 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 another officer, the assessment order is bad in law and illegal and therefore the impugned assessment order in the case should be quashed.*

*The Appellate craves leave to add to, alter, amend and/or withdraw the above Grounds of Appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.*

3.1. We find that the revenue had filed the following Cross Objections on the additional grounds raised by the assessee on this preliminary issue questioning the validity of framing of assessment by the learned Additional Commissioner of Income Tax as under: -

*“i. On the facts and circumstances of the case and in law, it is denied that the assessment order dated 14/02/2006 passed by the Addl. Commissioner of Income-tax, Range-I(S), Mumbai under section 143(3) is bad in law, illegal and / or in excess of jurisdiction. The Addl. Commissioner of Income-tax, indeed had jurisdiction to pass the said order under section 143(3), in view of Notification (a) S.O 732(E) - Notification No. 228/2001 [F. No. 187/5/2001.-ITA-1] dated 31/07/2001 of CBDT, read with (b) Notification dated 01 / 08 / 2001 issued by the Commissioner of Income-tax, City-1, Mumbai read with (c) Notification dated 08/08/2001 issued by the Additional Commissioner of Income-tax, Range 1(3), Mumbai.*

*ii. On the facts and circumstances of the case and in law, it is denied that the Addl. Commissioner of Income Tax lacked jurisdiction to exercise powers and functions of AO since he was duly empowered u/s 120(b)(4) to perform functions of AO by the CBDT's Notification in S.O 889(E)-Notification No.267/2001 [F.No. 187/5/2001-ITA-1] dated 17/09/2001.*

*iii. On the facts and circumstances of the case and in law, reliance placed by the assessee on the decision in the case of M/s Mega Corporation Ltd. Vs. Addl. CIT ITA*

*No. 102/Del/2014) dated 22/09/2015 in which the ITAT held that Addl. CIT had not been empowered to perform the duties of the AO as per the CBDT's Notification No.267 of 2001 dated 17/09/2001 and it was only the Jt. CIT/Jt.DIT, who had been empowered by said Notification to exercise the powers and functions of the AO is erroneous since u/s 2(28(C) of the Income-Tax Act, 1961 the term Jt. CIT includes an Addl. CIT and this definition- has been inserted by the Finance (No.2) Act, 1998 w.e.f. 01/10/1998.*

*iv. On the facts and circumstances of the case and in law, the ^proceedings initiated by notice u/s 143(2) issued by the DCIT-1(3), Mumbai and the order of assessment dated 14/02/2006 passed by the Addl. CIT are valid 'as' there are concurrent jurisdiction.*

*v. On the facts and circumstances of the case and in law, ' the additional grounds raised by the assessee should not be admitted that as they were never raised by the assessee before any of the lower authorities.*

*vi. On the facts and circumstances of the case and in law, the additional grounds raised by the assessee is against the legal principle enunciated by the Supreme Court in the case of M/s NTPC Ltd. Vs. CIT (1998) [229 ITR 383] viz. that additional grounds can be admitted and adjudicated upon only if the same is related to law for which the facts are already on record, whereas, in the instant case new facts are required to be ascertained to answer the grounds raised by the assessee.*

*vii. On the facts and circumstances of the case and in law, the additional grounds raised by the assessee are not "pure questions of law"; rather they fall in the category of "mixed questions of law and facts" and hence the same should not be admitted by the Hon'ble Tribunal.*

*viii. The appellant craves leave to add, amend or alter any of the above grounds or to raise any new ground of objection. The appellant urges the Tribunal that the additional grounds raised by the respondent be dismissed."*

3.2. We find that the Id DR filed the written submissions objecting to the admission of additional grounds raised by the assessee and also in support of cross objections preferred by the revenue. The Id DR vehemently argued opposing the admission of additional grounds submitted that prior to the tribunal, at no stage, the assessee had raised **the issue relating the Additional CIT's Jurisdiction or lack of it, as per** notifications issued u/s 120 of the Act. The Id DR submitted the issue of jurisdiction can only be raised u/s 124(3) of the Act. He submitted that the additional grounds raised by the assessee require fresh investigation into facts which are not on record. Therefore, he argued that under the circumstances, the additional grounds raised should not be admitted. Per Contra, the Id AR submitted that the additional grounds raised by the assessee are purely legal and jurisdictional issues and can be decided on the basis of facts available on record and there is no requirement to



investigate into new facts in the light of the decision of Hon'ble Supreme Court in the case of Jute Corporation of India Ltd vs CIT reported in 187 ITR 688 (SC) ; Hon'ble Supreme Court in the case of CIT vs NTPC Ltd reported in 229 ITR 383 (SC) and Hon'ble Jurisdictional High Court in the case of CIT vs Pruthvi Brokers & Shareholders reported in 349 ITR 336 (Bom), among others.

3.3. We have heard the rival submissions and perused the materials available on record. We find that the entire objections of the Id DR in his written submissions have been already elaborately considered by this **tribunal in assessee's own case for the Asst Year 2002-03** in ITA Nos. 6981 & 7071 /Mum/2005 ; CO No. 40/Mum/2017 ; ITA Nos. 1108 & 1836 /Mum/2008 dated 30.6.2017. This tribunal for the Asst Year 2002-03 in respect of this impugned issue had held as under: -

*“We have heard the rival contentions and perused the material available on record. In our opinion, the issue raised in the additional grounds and supplementary additional grounds primarily pertained to the authority and jurisdiction of Addl. CIT to Act as an “Assessing Officer”. Thus, in this context, facts / material which require examination are the statutory notices issued under section 142(1) / 143(2) by the concerned Assessing Officer and the relevant notifications conferring jurisdiction upon the DCIT / Addl. CIT to act as an Assessing Officer of the assessee. Since the statutory notices issued under section 142(1) / 143(2) are already part of the assessment record and the notifications conferring power on the concerned officer to act as an Assessing Officer of the assessee are part of the Department's record they do not require investigation into fresh facts. In any case of the matter, the issues raised by the assessee in the additional / supplementary additional ground are purely legal and jurisdictional issues going to the root of the matter as it affects the very jurisdiction of the Addl. CIT in proceedings with the assessment and completing it. That being the case, assessee can raise such issue at any stage. Merely because assessee participated in the assessment proceedings, that will not make the assessment order sacrosanct, if the assessee can otherwise prove that the officer completing the*

*assessment had no authority / jurisdiction to do so. Therefore, following the ratio laid down in the decisions relied upon by the learned Sr. Counsel for the assessee, we are inclined to admit the additional / supplementary grounds raised by the assessee and will proceed to adjudicate the same at the very outset.”*

Respectfully following the same, the objections of the revenue for admission of additional grounds raised by the assessee are rejected and additional grounds of the assessee are admitted for adjudication as it challenges the preliminary issue of validity of framing of assessment by the learned Additional Commissioner of Income Tax.

4. The brief facts are the assessee earlier known as Videsh Sanchar Nigam Ltd , is engaged in the business of providing telecommunication services. For the Asst Year 2003-04, the assessment was completed u/s 143(3) of the Act on 14.2.2006 by the Learned Additional Commissioner of Income Tax, Range -1(3), Mumbai. In the course of assessment proceedings, the Id AO after examining the books of accounts and other materials on record made number of additions / disallowances which were challenged by the assessee before the Id CITA. The Id CITA disposed off **the assessee's appeal by the impugned order granting partial relief to the** assessee. Still aggrieved by the order of the Id CITA, both the assessee as well as the revenue are in appeal before us for both quantum and penalty u/s 271(1)(c ) of the Act.

5. The precise issue raised by the assessee in the additional grounds is that the Id Addl CIT is not vested with jurisdiction in accordance with the statutory provisions to act as an Assessing Officer, therefore, the assessment order passed is without jurisdiction, hence, null and void. To justify the aforesaid claim, the Id AR submitted , as per the provisions of section 2(7A) of the Act, as it stood at the relevant period, Assessing

Officer means Assistant Commissioner of Income Tax or Deputy Commissioner of Income Tax or Assistant Director or Deputy Director of Income Tax or Income Tax Officer vested with the jurisdiction by virtue of orders issued u/s 120(1) or (2) or any other provisions of the Act. It also provided, Joint Commissioner of Income Tax or Joint Director can exercise or perform any of the powers and functions of an Assessing Officer if he is directed under Section 120(4)(b) of the Act. The Id AR submitted that the Id Addl. CIT was not an Assessing Officer within the definition provided u/s 2(7A) of the Act as it stood at the relevant time. He submitted , Addl CIT was included within the definition of 'Assessing Officer' u/s 2(7A) of the Act by the Finance Act, 2007 , with retrospective effect from 1<sup>st</sup> June 1994. However, the Addl CIT can exercise / perform power of an Assessing Officer only if he is directed under clause (b) of sub-section (4) of section 120 of the Act. The Id AR submitted by virtue of amendment brought to section 2(7A) of the Act by Finance Act 2007 , corresponding amendment was also made to section 120(4)(b) of the Act with retrospective effect from 1<sup>st</sup> June 1994 by vesting jurisdiction of Assessing Officer on the Addl. CIT , if the Board by virtue of general or special order authorizes / empowers the Director General of Income Tax (DGIT) or Chief Commissioner of Income Tax (CCIT) or Commissioner of Income Tax (CIT) to issue orders vesting the powers of Assessing Officer on the Addl CIT. The Id AR submitted that in case of assessee, there is no such notification issued by the Board u/s 120(4)(b) of the Act, by virtue of which the Addl CIT was vested with jurisdiction to act as an Assessing Officer. He submitted that in case of assessee, jurisdiction was vested with DCIT, Circle -1(3) to exercise / perform the functions of the Assessing Officer. He submitted, in exercise of power vested with him, the DCIT, Circle 1(3) had issued notice u/s 143(2) of the Act on 9.12.2004 for the year under consideration. The Id AR submitted that

without any order being passed u/s 127 of the Act transferring the jurisdiction from DCIT, Circle-1(3) , the Addl CIT assumed jurisdiction unilaterally and issued notices u/s 142(1) and 143(2) of the Act on 14.9.2005 and ultimately completed the assessment u/s 143(3) of the Act on 14.2.2006. The Id AR submitted that in the absence of any order u/s 127 of the Act transferring the jurisdiction of the assessee from the DCIT, Circle -1(3) to Addl CIT , Circle -1(3) and further, there being no notification issued by the Board u/s 120(4)(b) of the Act, empowering the authorities to appoint the Addl CIT , Range-1(3), Mumbai, to act as an Assessing Officer, the assessment order passed is without jurisdiction, hence, has to be quashed as null and void.

5.1. The Id AR further submitted , even , after completion of impugned assessment on 14.2.2006, the DCIT, Circle-1(3), Mumbai, vide letter dated 23.9.2005, has clarified that he is still in charge as Assessing Officer in the case of the assessee. A copy of the said letter dated 23.9.2005 was placed on record. The Id AR also submitted, even the CBDT had issued a circular vide Instruction No. 5 dated 20.9.2001, wherein, it has been clarified that the Addl. CIT himself will not make the assessee but will closely monitor and supervise the same. The Id AR further submitted that in the case of another group concern viz Tata Sons Ltd vs ACIT reported in (2016) 76 taxmann.com 126 (Mum Trib) , the tribunal, while deciding identical issue relating to assumption of jurisdiction of assessing officer by Addl. CIT held that in absence of orders passed u/s 120(4)(b) and section 127 of the Act, Addl. CIT had not authority to exercise power of Assessing Officer and accordingly quashed the assessment order passed by the Addl. CIT. To lend force to his argument, the Id AR extensively relied upon the observations of the tribunal in the case of Tata Sons Ltd (supra). The Id AR placed reliance on various decisions in this regard. He

also submitted that the Hon'ble Jurisdictional High Court in the case of Hatkesh Co-operative Housing Society Ltd vs ACIT in ITA No. 328/2014 dated 22.8.2016 stated that the decision of one division bench of tribunal is binding on another division bench of tribunal. Accordingly, he vehemently submitted that the assessment order passed by the Id Addl. CIT being without jurisdiction should be quashed.

5.2. The Id. DR submitted, the additional ground raised by the assessee is not maintainable as the issue of jurisdiction can only be raised under section 124 of the Act. In support of such contention, the Id. DR relied upon the following decisions:—

- i) CIT v/s British India Corp. Ltd. [2011] 33 ITR 64 (All.);*
- ii) ACIT v/s Punjab Urban Development Authorities, [2014] 42 taxmann.com 160 (Chandigarh);*
- iii) Subhash Chander v/s CIT, [2008] 218 CTR 191 (P&H).*

5.3 The Id. DR referring to the provisions contained under section 2(7A), 2(28C), 2(1c), 116(cc), 117, 118, 119, 120, 124, 127 of the Act and various other provisions of the Act emphasized that the term "**Assessing Officer**" would include Addl. CIT. He further submitted, as per section 2(28C) of the Act, the JCIT would also include Addl. CIT since Addl. CIT is an income tax authority under section 117(1) of the Act of the Act. The Id. DR submitted, the CBDT notification no.267 dated 17<sup>th</sup> September 2001, issued under section 120(4)(b) of the Act has conferred power upon the Addl. CIT to act as an "**Assessing Officer**". In this context, the Id. DR drew our attention to the Board notification dated 17<sup>th</sup> January 2009. Further, relying upon the notification dated 1<sup>st</sup> August 2001, vide letter no.MIC/HQ-1/Jurisdiction/2001-02 submitted, the CIT in exercise

of power conferred by the Board under section 120(1) and 120(2) of the Act vide notification no.732(E) dated 31<sup>st</sup> July 2001, has directed the Addl. / Jt. CIT to exercise powers and perform functions of the Assessing Officer in respect of certain classes of person of a certain territorial area. He submitted, under the said notification, the Addl. / Jt. CIT, Range-1(3), was empowered to act as an **"Assessing Officer"**. He also referred to notification dated 8<sup>th</sup> August 2001, issued by the Addl. CIT Range-1(3), assuming jurisdiction of the Assessing Officer. Thus, referring to the aforesaid notifications, the Id. DR submitted that the Addl. CIT has validly exercised power of Assessing Officer in initiating and completing the assessment proceedings in respect of the assessee. The Id. DR submitted, in any case of the matter, jurisdiction of the Assessing Officer can be challenged in the manner and time limit prescribed under section 124(3) of the Act. That being the case, the assessee cannot challenge the jurisdiction of the Addl. CIT in completing the assessment at this stage. The Id. DR submitted, the assessee has not pointed out the prejudice caused to it by the assessment order was passed by the Addl. CIT in place of the DCIT. The Id. DR submitted, board notifications referring to by the Department clearly demonstrate that Addl. CIT, Range-1(3) was holding concurrent jurisdiction with the DCIT. Therefore, there is no harm if the Addl. CIT completes the assessment as he was having concurrent jurisdiction as an Assessing Officer.

5.4. The Id. DR also attempted to distinguish the decisions relied upon by the learned Authorised Representative. He submitted, that in case of Tata Sons Ltd. (supra), the Tribunal came to its conclusion because the Revenue was not able to bring on record the notification issued by the Board and CCIT / CIT authorising the ACIT to pass the assessment order. He further submitted, while coming to their conclusion, the Tribunal has

not properly interpreted statutory provisions. In this context, drawing the attention of the Bench to the amendment made to section 2(7A) of the Act including Addl. CIT as an Assessing Officer by Finance Act, 2007 with retrospective effect from 1<sup>st</sup> July 1994, he submitted that the intention of legislature being clear no interpretation is required. The Id. DR submitted, plain reading of section 120 as a whole would demonstrate that CCIT / CIT, is not the only authority who can issue orders empowering Addl. CIT to act as an Assessing Officer. The Id. DR though fairly admitted that to his knowledge there is no order under section 127 of the Act passed by the CIT transferring jurisdiction of the assessee from the DCIT to the Addl. CIT. However, he submitted that there is no necessity for such an order under section 127 of the Act as both the officers enjoyed concurrent jurisdiction. He submitted, instead of an order under section 127 of the Act arises only when the officer to whom the case is to be assigned does not have extant jurisdiction over the case. He submitted, since in the present case, the Addl. CIT already had jurisdiction over the assessee no transfer order under section 127 of the Act is required. The Id. DR submitted, in case of Mega Corporation Ltd. (supra) relied upon by the Tribunal in the case of Tata Sons Ltd. (supra), the Tribunal came to a conclusion without taking cognizance of the retrospective amendment made to section 2(7A) of the Act. The Id. DR submitted, in case of Mega Corporation Ltd. (supra), when the jurisdiction issue was raised for the first time before the Tribunal, the matter was set aside to the Id. CIT(A) to pass a speaking order referring to all relevant material for adjudication on jurisdiction. He submitted, the same process can be followed in case of the present assessee. In similar manner, he also distinguished the other decisions relied upon by the assessee. Finally, the Id DR submitted, the assessee has raised the jurisdiction issue at this stage knowing fully well that most of the issues raised on merit have been decided by the Tribunal

against the assessee. He further submitted, the assessee having subjected itself to the jurisdiction of the Addl. CIT, it has lost its right to appeal against the exercise of jurisdiction. Thus, he submitted, the ground raised should be dismissed.

5.5. In the rejoinder, the Id. AR submitted, none of the notifications referred to by the Department specifically conferred jurisdiction of the Assessing Officer on the Addl. CIT in the terms and manner provided under section 120(4)(b) of the Act. The Id. AR for the assessee submitted, all these notifications were considered and specifically dealt with by the Tribunal in case of Tata Sons Ltd. (supra) and ultimately it was held that by virtue of these notifications it cannot be said that Addl. CIT was vested with the power to act as the Assessing Officer as provided under section 120(4)(b) of the Act. In this context, the Id. AR drew our attention to the observations of the Tribunal in Tata Sons Ltd. (supra) and Mega Corporation Ltd. (supra). The Id. AR submitted, the retrospective amendment to section 2(7A) and section 120(4)(b) of the Act will have no impact as there is no order issued by the concerned authority under section 120(4)(b) of the Act appointing Addl. CIT as **"Assessing Officer"**. He submitted, the argument of the Department that the Addl. CIT had concurrent jurisdiction is unacceptable as the Department has failed to produce any order conferring Addl. CIT with jurisdiction of an Assessing Officer, whether exclusive or concurrent. The Id. AR for the assessee submitted, the reliance of the Department to the provisions contained under section 124 of the Act to argue that the assessee can challenge the jurisdiction under the said provision is unacceptable as section 124 of the Act applies only where directions are issued under sub-section (1) or (2) to section 120 of the Act. The Id. AR for the assessee submitted that all



these arguments / contentions raised by the Department have been dealt with and decided against them in a series of decisions of the Tribunal including the decisions rendered in the Tata Sons Ltd. (supra) and Mega Corporation Ltd. (supra). Therefore, as far as the assessee is concerned, the issue stands fully covered in its favour. The Id. AR submitted, the contention of the Id. DR to set aside the issue to Id. CIT(A) should not be accepted because in case of Mega Corp. Ltd. (supra) both the parties had agreed for set aside. However, in the present case, since the relevant notifications relied upon by the Department are already on record, no further examination relating to existence of notifications is required, hence, matter need not be set aside to the Id. CIT(A).

6. We have heard the rival submissions which were done in an elaborate manner by both the parties before us. We have also applied our mind to the decisions cited by both the parties. The short point that arises for our consideration in this preliminary ground is whether the Addl. CIT, Range - 1(3), Mumbai had the competence and jurisdiction to pass the assessment order in the case of the assessee. We find that this issue had been dealt at length by the co-ordinate bench of this tribunal in **assessee's own case for the Asst Year 2002-03** in ITA Nos. 6981 & 7071 /Mum/2005 ; CO No. 40/Mum/2017 ; ITA Nos. 1108 & 1836 /Mum/2008 dated 30.6.2017 wherein it was held as under: -

*"13. We have carefully and patiently considered elaborate submissions made by both the parties orally as well as in writing. We have also applied our mind to the decisions cited at the Bar. Specific issue raised before us which merits consideration is, whether the Addl CIT, Range-1(3), had the competence and jurisdiction to pass the assessment order in case of the assessee. As far as the relevant facts are concerned, there is no dispute that the assessee was under the assessment jurisdiction of Dy. CIT-1(3). In fact, the DCIT, being the "Assessing Officer" had initiated assessment proceedings in case of the assessee for the impugned assessment year by issuing notice under section*

143(2) on 15<sup>th</sup> Oct 2003. Before that, he has also processed the return of the assessee for the impugned assessment year and issued intimation under section 143(1) on 31<sup>st</sup> March 2003. It is evident on record, subsequently the Addl. CIT, Range-1(3), assumed jurisdiction as an Assessing Officer of the assessee and issued notices under section 142(1) and 143(2) on 9<sup>th</sup> December 2004 and ultimately completed the assessment for the impugned assessment year vide order dated 21<sup>st</sup> February 2005. Therefore, we have to examine firstly, whether there is an order of transfer of jurisdiction under section 127 of the Act, from the DCIT, Range-1(3) to the Addl. CIT, Range-1(3) and secondly, whether the Addl. CIT is vested with authority/jurisdiction to act/perform or exercise the powers of an Assessing Officer in respect of the present assessee. Before proceeding to decide the issue, it is necessary to examine certain provisions of the Act. The expression 'Assessing Officer' has been defined under section 2(7A) of the Act. The aforesaid provision as it existed during the relevant period is extracted hereunder for convenience:

#### Definitions

2. In this Act, unless the context otherwise requires, -
- (1) .....
- (2) .....

(7A) "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 sub-section (2) of section 120 or any other provision of this Act, and the Additional Commissioner or Additional Director or 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.

14. A plain reading of the aforesaid provision makes it clear that it is in two parts. First limb of the provision says, the Assessing Officer would include ACIT or DCIT or Asstt. Director or Dy. Director or the Income Tax Officer who is vested with the relevant jurisdiction by virtue of direction or orders issued under sub-section (1) or (2) of Section 120 or any other provision of the Act. The second limb of the provision says, the KIT or JDIT if directed under clause (b) of sub-section (4) of section 120, can perform powers and functions of an Assessing Officer. It is relevant to observe, the provisions of section 2(7A) underwent a change by virtue of amendment brought by Finance Act, 2007. As per the said amendment in the second limb of section 2(7A) along with the JCIT and JDIT, Addl. CIT /Addl. DIT were also to be treated as an Assessing Officer if they were

*directed to act as an Assessing Officer in terms of section. 120(4)(b). This amendment brought to section 2(7A) was with retrospective effect from 1<sup>st</sup> June 1994. Corresponding to the amendment made to section 2(7A), the Finance Act, 2007, amended the provisions of section 120(4)(b), providing that the Board in writing can empower the CCIT/CIT to issue orders directing an Addl. CIT/ADIT to act as an Assessing Officer in respect of any specified area or persons or classes of persons or classes of income or cases of classes of cases which earlier would only be vested with JCIT or JDIT. This amendment to section 120(4)(b) brought by Finance Act, 2007 was also with retrospective effect from 1st June 1994. Thus, as could be seen, for assigning the work of an Assessing Officer to the Addl. CIT, the Board has to empower the concerned CCIT/CIT to issue order in writing in terms of section 120(4)(b) in respect of a particular assessee. Keeping in view the aforesaid statutory provisions, we have to decide the issue raised before us. The specific contention of the assessee is, as per the provisions of section 2(7A), as it existed at the relevant period, Addl CIT was not an Assessing Officer. It is further submitted, even otherwise also, there is no notification / order empowering the Addl. CIT to act as an Assessing Officer in terms of section 121(4)(b). To counter the aforesaid contention of the assessee, the 'earned Departmental Representative has relied upon the following notifications.*

*i) Notification no.228 of 2001 date 31.07.2001*

*ii) Notification no.MIC/HQ- 1/Jurisdiction/2001 -02 dt 01.08.2001;*

*iii) Notification no. ACIT, Range-1(3)/Jurisdiction/2001-02 dated 08.08.2001; and*

*iv) Notification no.267/2001 dated 17.09.2001*

15. At this stage, we propose to deal with each of the aforesaid notification relied upon by the Department to establish the valid exercise of jurisdiction as an Assessing Officer by the Addl. CIT. The first notification being notification no.228 of 2001 dated 31st July 2001, corresponding to notification no. S.O. 732(E) dated 31 July 2001, is a notification issued under sub-section (1) and (2) of section 120 of the Act and obviously is not a notification issued under clause (b) of sub-section (4) of section 120. As observed earlier by us, the Addl. CIT was not included as an Assessing Officer either under section 2(7A) or under section 120(4)(b) earlier. Only by virtue of Finance Act, 2007, the aforesaid provisions were amended by including Addl. CF as an Assessing Officer. However, even after such inclusion of Addl. CIT as Assessing Officer with retrospective effect from 1<sup>st</sup> April 1994, Section 2(7A) made it clear, Asstt. CIT, DCIT, ADIT, DDIT, ITO, can act as an Assessing Officer if they are vested with relevant jurisdiction by virtue of directions and orders issued under sub-section (1)

or sub-section (2) of section 120. Whereas, as far as Addl. CIT, Addl. DIT, JCIT, JDIT are concerned, they can exercise powers and functions of an Assessing Officer, only, if they are directed to do so under clause (b) of sub-section (4) of section 120. Thus, vesting of power of Assessing Officer on different income tax authorities have been specifically demarcated under section 120 of the Act. A conjoint reading of Section 2(7A) and Section 120 would make it clear, as far as ACIT, ADIT, DCIT, ADIT; DDIT and ITO are concerned, they have to be vested with the power of Assessing Officer under section 120(1) or (2), whereas, Addl. CIT, Addl. DIT, KIT, MIT can be vested with the power of Assessing Officer under Section 120(4)(b). In a notification issued under section 120(1) and 120(2), Addl. CIT cannot be vested with power to act as an Assessing Officer. Therefore, notification no.228 of 2001 dated 31<sup>st</sup> July 2001, cannot be said to be vesting power of Assessing Officer with the Addl. CIT. Similar is the situation with notification dated 1<sup>st</sup> August 2001, issued by the CIT, Mumbai, as it is a notification issued under section 120(1) and 120(2) and not under sub-section (4)(b). The third notification dated 8<sup>th</sup> August 2001, has been issued by the Addl. CIT, Range-1(3), Mumbai, vesting jurisdiction upon himself to act as an Assessing Officer. Certainly, this notification is not in conformity with the provisions contained under section 120(4)(b), inasmuch as, this notification has been issued under section 120(1) and 120(2) and not u/s.(4)(b) of section 120. The last notification relied upon by the Department is notification no.267/2001 dated 17<sup>th</sup> September 2001. A perusal of the aforesaid notification, a copy of which has been placed in the Departmental paper book shows that this notification has been issued by the Board under section 120.(b) directing JCIT/IDIT to exercise powers and functions of the Assessing Officer. It does not mention Addl. CIT / Addl. Director of Income Tax in any case of the matter at the time of issuance of this notification, Addl. CIT was not treated as an Assessing Officer either under section 2(7A) or under section 120(4)(b) as the amendment including Addl. CIT, as an Assessing Officer was brought to the statute by Finance Act, 2007, though, with retrospective effect from 1st April 1994. Therefore, under no circumstances, the Board notification dated 17<sup>th</sup> September 2001, can be said to have conferred the jurisdiction of assessing officer on Addl. CIT. In this context, it is necessary to deal with the argument of the Department that as per the definition of JCIT under section 2(28C), it includes Addl. CIT, therefore, the notification dated 17<sup>th</sup> September 2001, issued under Section 120(4)(b) also covers the Addl. CIT. We are not convinced with the aforesaid submissions of the Department. Had it been the intention of the legislature to treat the Addl. CIT as JCIT and, in turn,

as Assessing Officer under section 2(7A) r/w section 120(4)(b), there was no necessity to amend the provisions of section 2(7A) and 120(4)(b) specifically including the Addl. CIT and Addl. DIT, since JCIT and JDIT were already included as Assessing Officer under both the provisions. This clarifies the intention of legislature in not treating JCIT and Addl. CIT as one. Thus, the Department has failed to bring to our notice any notification

issued in conformity with section 120(4)(b) empowering the Addl. CIT, Range-1(3), to act as an Assessing Officer in respect of present assessee. The notifications relied upon by the learned Departmental Representative are not under section 120(4)(b). As far as notification dated 17<sup>th</sup> September 2001 of the Board is concerned, though, it is issued under section 120(4)(b) of the Act, however, it authorizes only the JCIT and JDIT to exercise the powers and function of the Assessing Officer and it is not in respect of Addl. CIT or Addl. DIT. Thus, none of these notifications can validly authorize or empower the Addl. CIT, Range-1(3) to act as an Assessing Officer in the present case. In case of *Mega Corporation Ltd. vs. ACIT*, [2015] 155 ITD 1019, the Tribunal while deciding identical issue of exercise of powers and functions of Assessing Officer by Addl. CIT dealt with the aforesaid notifications relied upon by the learned Departmental Representative and following the decision of the Hon'ble Delhi High Court in *Valvoline Cummins v/s DCIT*, [2008] 307 FUR 103 (Del) held that without a notification under section 120(4)(b) authorizing the Addl. CIT to exercise the powers and functions of the Assessing Officer, assessment order passed by the Addl. CIT is without jurisdiction, hence, invalid. Moreover, it was held that once a proceeding has been initiated by an officer having valid jurisdiction, without any order of transfer under section 127 of the Act, the Addl CIT cannot be vested with power to function as Assessing Officer. The Tribunal negated the contention of the Department regarding exercise of concurrent jurisdiction by both the officers. It was held by the Bench that there is a distinction between concurrent exercise of power and joint exercise of power. The Bench held when power has been conferred upon two authorities concurrently, either one of them can exercise such 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. In fact on a careful perusal of the orders passed by the Tribunal in case of *Mega Corporation Ltd. (supra)* and *Tata Sons Ltd. (supra)* we are of the view that the arguments/contentions raised by the Department in the present appeal relying upon certain notifications have been exhaustively dealt with by the Tribunal in these decisions and the issue has been decided in favour of. Though, the learned Departmental Representative has submitted that the decisions of *Mega Corporation Ltd. (supra)* and *Tata Sons Ltd (supra)* should not be relied upon, however, we are of the considered view that these decisions of the Tribunal have been rendered more or less on identical facts and issues and after considering the very same notifications relied upon by the learned Departmental Representative in the present case and the Tribunal has ultimately concluded that in absence of a valid notification under section 120(4)(b) the Addl. CIT cannot exercise power of an Assessing Officer. In this context, it is necessary to reproduce the observations of the Bench in the case of *Tab Sons Ltd. (supra)* hereunder:-

### 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 ' 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 (Gui)**. 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 5<sup>th</sup> 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 10<sup>th</sup> 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 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](http://taxmann.com) 351 (Del. ITAT)*
2. *Bindal Apparels Ltd. ACIT 104 TTJ 950(Del)*
3. *City Garden vs. ITO (21 [taxmann.com](http://taxmann.com) 373 (Jodhpur ITAT)*
4. *Micro fin Securities (P) Ltd. vs Addl. CIT i SOT 302 (Luk.)*
5. *Prachi Leathers Ltd. 26L/Luk/201 0 in ITA No. 744/Luk/2004 order dat. 29.03.2010*
6. *I'farvinder Singh Jaggi vs. ACIT 67 [Taxmann.com](http://Taxmann.com) 109(DeL ITAT)*
7. *Dr. Nalini Mahafan vs. OfT (Inv.) 257 ITR 123(Del. HC)*
8. *Ghansham K. Khabrani vs. ACIT 346 IT? 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, with retrospective effect from 01.06.1994..In response to **the query**, Ld. CIT-DR fairly submitted that he was not able to get any Order from the board or Chief Commissioner of 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 judgments 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 5<sup>th</sup> 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-11, 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 7(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 wef 01.08.2001 of the above persons are also to be made to the credit of ACIT Cir. 2(3) Mumbai. This maybe Carefully noted.*

*Your's Faithfully*

*Sd/-*

*(Jagadish Prasad Jangid)*

*ACIT CIR2(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 10<sup>th</sup> 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 misapplied 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 content/on 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 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(5) 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-op 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 f the powers and functions conferred on, 'or assigned to, an Assessing Officer under this Act."

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 35 appointed to be an Additional Commissioner of Ihcome Tax Under subsection (1) of section 117."

Thus, combined reading of all the above sections makes it clear that prior to amendment mode 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(25C). It is clear from the facts that by way of subsequent amendment by Finance Ad, 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.*

*36 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 sub-section 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 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) 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 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 <sup>1</sup> 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 dear 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 12Q(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.*

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

**2(7A) Assessing Officers**

2(7A) "Assessing Officer" means the Assistant Commissioner<sup>2</sup> Deputy Commissioner<sup>3</sup> or Assistant Director<sup>4</sup> 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 [Additional Commissioner or]<sup>6</sup> [Additional Director or]<sup>7</sup> <sup>5</sup> 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 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. 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."*

*53 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 spec/fled 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.*

*54 The position which emerges thus is that an Additional 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 Put. Ltd Vs. Additional CIT in ITA No. 26(L)/2010 dated 8.12.2010** relying upon its earlier 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 Is decision has also been considered by Delhi Bench in the 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/s 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 accord/hg 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 t case of Dr. Nalini Mahajan vs DIE 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 S to powers of Additional Director*

(Investigation), is fully applicable to the present

18.3 In view of the aforesaid facts, circumstances and the discussion and following the law laid down by the Hon'ble De/hi High Court in the case of Dr. Na/ii 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 ETA 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 case of **Micro fin 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.

6. 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 W 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 Sect/on 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 id. 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 that jurisdictional conditions required to be fulfilled by the assessing officer must be performed strictly in the manner as have been as prescribed and if it has not been done in the manner under the law. then it becomes nullity in the eyes **Hon'ble Supreme Court in the case of CIT Vs. M. H. Ghaswala** observed that it is a normal rule of construction that when a statue 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 statue 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 mat sanction was granted by an officer superior in rank and therefore, no prejudice was caused to the assessee But Hon'blè 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,

16. The ratio laid down in the decision of *Tata Sons Ltd (supra)* and other decisions relied upon by the Bench therein, clearly applies to the facts of the present case. Therefore, adhering to the principle of judicial discipline we follow the decisions of the Tribunal referred to the above and hold that in the facts of the present case, the Addl. CIT in the absence of a valid order under section 120(4)(b) as well as section 127(1) of the Act could not have exercised powers of an Assessing Officer to pass the impugned assessment order. Accordingly, the impugned assessment order passed being wholly without jurisdiction is void ab initio, hence, deserves to be annulled] quashed. Accordingly, we do so.

17. At this stage, we must deal with the contention of the learned

Departmental Representative to restore the matter back to the file of the learned Commissioner (Appeals) for adjudicating the jurisdictional issue. We do not find any valid reason to accept the contention of the learned Departmental Representative. As stated earlier by us, exercise of jurisdiction by the Addl. CIT has to be examined on the basis of notification / orders passed under section 120(4)(b), inasmuch as, under section 127(1) of the Act. In this context, learned Departmental representative has relied upon certain notifications to justify the validity of the assessment order passed by the Addl. CIT. As far as existence of any order under section 127(1) is concerned, the learned Departmental Representative has fairly submitted that no such order exist on record. At least, nothing was brought to our notice in spite of specific query being raised by the Bench. Therefore, when the issues are to be decided on the basis of facts already available on record and keeping in view the relevant notifications placed on record as well as the decisions cited, there is no necessity of restoring the matter back to the file of the learned Commissioner (Appeals). As far as the contention of the learned Departmental Representative regarding maintainability of the additional ground on the plea that the assessee can only challenge the jurisdictional issue under section 124(3) of the Act, we do not find any merit in such submissions. A plain reading of section 124 would show that it refers to

*an order issued under subsection (1) or (2) of section 120, whereas, we are concerned with an order purported to be passed under section 120(4)(b) empowering the Addl. CIT to act as an Assessing Officer. Therefore, in our view, the provisions of section 124 are not applicable to the present case. For that reason we do not feel it expedient to deal with the decisions relied upon by the 'earned Departmental Representative in that regard. Thus, in view of the aforesaid the additional ground and supplementary additional grounds are allowed."*

6.1. Respectfully following the aforesaid decision, we allow the additional grounds raised by the assessee challenging the validity of assessment framed by the Id Addl. CIT and accordingly quash the assessment so framed. Since we have quashed the assessment order on legal / jurisdictional issue, the grounds raised on merits have become infructuous and hence not adjudicated.

7. In the result, the quantum appeal of the assessee for the Asst Year 2003-04 in ITA No. 3972/Mum/2007 is allowed and quantum appeal of the revenue in Asst Year 2003-04 in ITA No. 4664/Mum/2007 is dismissed. We find that the issue raised by the revenue in its cross objections for the Asst Year 2003-04 have been dealt with while deciding **the quantum assessee's appeal in ITA No. 3972/Mum/2007 hereinabove.** Therefore, separate adjudication of Cross Objection of revenue is not necessary and hence dismissed.

8. Since the quantum assessment framed for the Asst Year 2003-04 is quashed as per findings given supra, the penalty u/s 271(1)(c) of the Act will have no legs to stand. Hence the appeal of the assessee in ITA No. 954/Mum/2010 for the Asst Year 2003-04 against penalty order is allowed and appeal of the revenue in ITA No. 1015/Mum/2010 against penalty order is dismissed.



9. The same decision rendered hereinabove for the Asst Year 2003-04 would apply with equal force for Asst Year 2004-05 also except with variance in figures.

### **10. To sum up**

<b>Sr. No.</b>	<b>ITA No.</b>	<b>AY</b>	<b>Appeal By</b>	<b>Appeal against Assessment u/s.</b>	<b>Result</b>
<b>1.</b>	<b>ITA No. 3972/Mum/2007</b>	<b>2003-04</b>	<b>Assessee Appeal</b>	<b>Appeal against assessment u/s 143(3)</b>	<b>Allowed</b>
<b>2.</b>	<b>ITA No. 4664/Mum/2007</b>	<b>2003-04</b>	<b>Revenue Appeal</b>	<b>Appeal against assessment u/s 143(3)</b>	<b>Dismissed</b>
<b>3.</b>	<b>CO No. 163/Mum/2017</b>	<b>2003-04</b>	<b>Revenue Cross Objections</b>	<b>Appeal against assessment u/s 143(3) for additional grounds raised by assessee</b>	<b>Dismissed</b>
<b>4.</b>	<b>ITA No. 1015/Mum/2010</b>	<b>2003-04</b>	<b>Assessee Appeal</b>	<b>Appeal against Penalty u/s 271(1)(c )</b>	<b>Allowed</b>
<b>5.</b>	<b>ITA No. 954/Mum/2010</b>	<b>2003-04</b>	<b>Revenue Appeal</b>	<b>Appeal against Penalty u/s 271(1)(c )</b>	<b>Dismissed</b>
<b>6.</b>	<b>ITA No. 1109/Mum/2008</b>	<b>2004-05</b>	<b>Assessee Appeal</b>	<b>Appeal against assessment u/s 143(3)</b>	<b>Allowed</b>
<b>7.</b>	<b>ITA No. 1388/Mum/2008</b>	<b>2004-05</b>	<b>Revenue Appeal</b>	<b>Appeal against assessment u/s 143(3)</b>	<b>Dismissed</b>

<b>8.</b>	<b>CO No. 164/Mum/2017</b>	<b>2004-05</b>	<b>Revenue Cross Objections</b>	<b>Appeal against assessment u/s 143(3) for additional grounds raised by assessee</b>	<b>Dismissed</b>
<b>9.</b>	<b>ITA No. 2891/Mum/2010</b>	<b>2004-05</b>	<b>Assessee Appeal</b>	<b>Appeal against Penalty u/s 271(1)(c )</b>	<b>Allowed</b>
<b>10.</b>	<b>ITA No. 2783/Mum/2010</b>	<b>2004-05</b>	<b>Revenue Appeal</b>	<b>Appeal against Penalty u/s 271(1)(c )</b>	<b>Dismissed</b>

Order pronounced in the open court on this 16/08/2019

**Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER**

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

Mumbai; Dated 16/08/2019  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**