

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "E" : NEW DELHI)

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
And
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

ITA No. 7392/Del/2025
Asstt. Year : 2016-17

HARPAL SINGH,
76, REWLI SONIPAT,
HARYANA -131001
(PAN: ADUPH8748R)
(Appellant)

vs. ITO, WARD -1, SONIPAT
Haryana

(Respondent)

Appellant by : Sh. P.C. Yadav, Adv., Sh. R.K. Vashisht, Adv., Sh. H.S. Arora,
Adv. & Sh. Mayank Sharma, Adv.
Respondent by : Sh. Tarun Sharda, Sr. DR

Date of Hearing	10.08.2026
Date of Pronouncement	10.08.2026

ORDER

PER MAHAVIR SINGH, VP:

This appeal by the assessee is emanating from the order of the Ld. Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred as CIT(A)] dated 8.7.2025 pertaining to assessment year 2016-17. Assessee has only argued Ground No. 2.1 to 2.3 which read as under:-

- “2.1 That on the facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding validity of notice u/s. 148 even though same was issued without recording valid reasons.
- 2.2 That the assessee recorded for reopening u/s. 147 being vague, without application of mind and in absence of any tangible material, the assumption of jurisdiction u/s. 147 is invalid and not sustainable.
- 2.3 That in the absence of valid sanction u/s. 151, the notice u/s. 148 is illegal and void ab initio.

2. Heard both the parties. Case file perused.

3. At the threshold, it is noticed that there is delay of 48 days in filing the appeal. For this, Ld. AR for the assessee filed the application for condonation of delay. After hearing both the sides and perusing the application for condonation of delay, we are of the view that sufficient cause has been attributed to the assessee for filing the belated appeal before the Tribunal, hence, we condone the delay in dispute and admit the appeal for adjudication.

4. Coming to the solitary issue of validity of learned ITO, Ward-1, Sonipat, assessment framed on 30.3.2022, learned counsel quotes the CBDT's landmark circular No. 1 of 2011 dated 31.1.2011 that going by the pecuniary jurisdiction of the departmental authorities for the purpose of framing assessment, it is clear that for non-corporate returns, in respect of mofussil areas any return involving more than Rs. 15 lakhs income disclosure had to be acted upon and assessed by the Assistant or Deputy Commissioner; as the case may be. However, Ld. AR has submitted that in the instant case the ITO, Ward-1, Sonipat has exercised the jurisdiction of AO by issuing the notice u/s. 148 of the Income Tax Act, 1961 dated 30.3.2021. The Revenue fails to rebut this factual position. We note that the tribunal's in its recent order in M/s. Orchids Diamond Tools (P) Ltd. VS ITO (ITA No.2416/Del/2025) decided on 30th December, 2025, has already adjudicated the identical issue in assessee's favour and against the department by observing as under:

“7. Considered the rival submissions and material placed on record. We observe that assessment was completed by the Assessing Officer - ITO, Ward 19(2), Delhi vide order dated 26.12.2019. We observe that as per the CBDT Instruction No.1/2011 dated 31.01.2011 u/s 119 of the Act in the present case, the assessee has declared returned loss of Rs.1,84,94,762/- and as per the Instruction, income upto Rs.30,00,000/- is with the ITOs and anything above Rs.30,00,000/-, assessment has to be completed by ACs/DCs. In the given case, we observed that as per the income declared by the assessee, the jurisdiction falls under ACs/DCs. In the given case, the assessment was completed by ITO, Ward 19 (2), Delhi. Considering the peculiar facts on record, we observe that actual jurisdiction lies with ACs/DCs and it is beyond the jurisdiction of ITOs. Therefore, notice u/s 143(2) to assess the income of the assessee is beyond the jurisdiction of the ITO. Therefore, the jurisdiction notice u/s 143(2) is bad in law and accordingly even assessment order passed with wrong jurisdiction is bad in law. In this regard, we rely on the decision of ITAT, Delhi Bench in the case of Vipul Mittal vs. DCIT in ITA No.2850/Del/2019 dated 15.01.2025 wherein it was held as under :-

“14. Considered the rival submissions and material placed on record. We observed that assessee has filed its return of income declaring income of

Rs.59,68,220/-. As per the CBDT Instruction No.01/2011, the jurisdiction over the assessee's case lies only with Assistant/Deputy Commissioner of Income-tax as the income declared by the assessee is above Rs.20 lakhs falls under the category of non-corporate returns. It is brought to our notice that notice u/s 143(2) was issued by the ITO, Ward 11 (3) on 28.08.2015, who do not have jurisdiction over the assessee in the case considering the fact that the return of income declared by the assessee is over and above Rs.20 lakhs. The assessment was completed by the DCIT, Circle 11 (2), New Delhi u/s 143(3) of the Act. However, we observed that the jurisdiction lies only with DCIT, however the statutory notice u/s 143(2) was issued by the ITO instead of the present Assessing Officer i.e. DCIT. In this regard, the Assessing Officer also filed the submissions which are placed on record in which it was submitted that as per the PAN based jurisdiction, the jurisdiction over the case at the time of issue of notice with the ITO, Ward 11(3). Thereafter, the jurisdiction was transferred to Circle 11 (2), Delhi on 21.07.2016 who was ultimately passed the assessment order after allowing the opportunity to the assessee. The Assessing Officer in its submissions as well as ld. DR objected to the submissions of the assessee for the reason that the present jurisdictional issue now instead of raising the same during assessment itself within one month from the date of receipt of the notice u/s 124 (3) of the Act. After considering the factual matrix in this case, we observed that similar issue under consideration is considered by the coordinate Bench in the case of YKM Holdings Pvt. Ltd. vs. ACIT (supra) wherein it was held as under :-

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

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

"SECTION 119 OF THE INCOME-TAX ACT, 1961-INCOME-TAX AUTHORITIES-

INSTRUCTIONS TO SUBORDINATE AUTHORITIES

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

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

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

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

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

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

6. In the instant case, the notice under section 143(2) of the Act stood issued to the assessee on 12.04.2016 by ITO Ward 27(4), Delhi. In July, 2016, the ITO transferred the jurisdiction of the assessee from him to DCIT since the returned income for A.Y. 2015-16 is more than 30,00,000/-. Copy of the said transfer memo is enclosed in page 5 of the paper book. After the transfer of jurisdiction from ITO to DCIT, no fresh notice under section 143(2) of the Act was issued by ACIT, Circle 4(1), Gurgaon. The assessment was ultimately framed under section 143(3) of the Act for A.Y. 2015-16 on 14.12.2017 by ACIT, Circle – 4(1), Gurgaon. It is pertinent to note that assessment for the A.Y. 2014-15 of the assessee was completed under section 143(3) of the Act on

30.11.2016 by DCIT, Circle – 27(2), New Delhi. Hence, it was argued that the notice under section 143(2) of the Act dated 12.04.2016 issued by the ITO selecting the return of assessee for A.Y. 2015-16 for scrutiny is without jurisdiction and consequently, the assessment framed under section 143(3) of the Act dated 14.12.2017 required to be quashed as void ab initio. When this was confronted to learned DR, he pointed out to the provisions of section 124(3) of the Act wherein it was mentioned that assessee should challenge within one month about the jurisdiction of the AO on receipt of the notice. In the instant case, nowhere up to learned CIT(A), the assessee has challenged the jurisdiction of the learned AO. In our considered opinion, this argument of the learned DR is wrong in as much as section 124(3) of the Act talks only about territorial jurisdiction, whereas the issue involved here is pecuniary jurisdiction. Further, the provisions of section 124(3) of the Act could be taken shelter by the Revenue only when legal valid notice under section 143(2) of the Act has been issued by the Revenue. In the instant case, notice issued under section 143(2) of the Act on 12.04.2016 by ITO is not legal as he did not possess jurisdiction over the assessee for A.Y. 2015-16 in as much as the returned income for A.Y. 2015-16 had exceeded Rs. 30,00,000/-. We find that the issue in dispute is no longer res integra by the decision of Hon'ble Delhi High Court in the case of Ashok Devichand Jain vs. UOI reported in 452 ITR 43 (Bom). In this case, very same issue was addressed in the light of CBDT Instruction No.1/2011[F. No.187/12/2010-IT(A-I)] Dated 31.01.2011. For the sake of convenience, the entire order is reproduced hereunder:

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

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

3. Petitioner has filed return of income of about Rs. 64,34,663/- and therefore, the jurisdiction will be that of

DC/AC and not ITO. Mr. Jain submitted that since notice under section 148 of the Act has been issued by ITO, and not by DC/AC that is by a person who did not have any jurisdiction over Petitioner, such notice was bad on the count of having been issued by an officer who had no authority in law to issue such notice.

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

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

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

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

8. Petition disposed."

7. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we have no hesitation to hold that the assessment framed under section 143(3) of the Act deserves to be quashed in the instant case as the initial scrutiny notice issued under section 143(3) of the Act dated 12.04.2016 by ITO was without jurisdiction as he did not possess jurisdiction over the assessee for the A.Y. 2015-16. Consequently, assessment framed under section 143(3) of the Act is hereby quashed as void ab initio. The additional ground no.2 is hereby allowed."

15. *Similar view was expressed by the ITAT, Mumbai in the case of Monarch & Quershi Builders vs. ACIT (supra) and by the coordinate Bench in the case of Sapna Rastogi vs. ITO (supra).*

16. *Further the Revenue has not brought on record an order u/s 127 of the Act passed in order to transfer the case to DCIT, Circle 11 (2), New Delhi except making the submissions that assessee should file the objection within one month u/s 124(3) of the Act. Since the issue of notice u/s 143(2) is the basis of initiation of the assessment u/s 143(3) and the jurisdictional officer should have issued the notice and also completed the assessment. The present Assessing Officer has completed the assessment without following the due process of law and we, respectfully following the decisions of the coordinate Bench and ITAT Mumbai, are inclined to hold that the jurisdictional notice u/s 143(2) was not issued by the DCIT before completing the assessment u/s 143(3) of the Act and that there is an unwarranted defect in this case which is not curable. Accordingly, the assessment passed in the given case is quashed and accordingly, the additional grounds raised by the assessee are allowed.”*

14. *Respectfully following the above decision, we are inclined to set aside the assessment order. Accordingly, Ground Nos.1 to 1.4 raised by the assessee are allowed.”*

5. We also note that the aforesaid issue is no *res integra* in view of the Hon’ble Bombay High Court decision in the case of Ashok Devichand Jain vs. UOI [2023] 151 taxmann.com 70 (Bombay) dated 8.3.2022 wherein, the Hon’ble Court after referring the CBDT Instruction No. 1/2011 (Supra) had held that the notice issued u/s. 148 of the Act was without jurisdiction. If, the notice u/s. 148 of the Act is without jurisdiction, any proceedings arising from invalid notice are void ab initio.

6. Keeping in view the aforesaid factual matrix and respectfully following the above precedents, we quash the impugned assessment on similar lines, as aforesaid and allow the ground raised by the assessee. Since we have already quashed the assessment, other pleadings between the parties have become academic.

7. In the result, the assessee’s appeal is allowed.

Order pronounced in the Open Court on 10.08.2026.

Sd/-
(KRINWANT SAHAY)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Dated:11.08.2026

SR BHATANGAR

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI