

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

Sl. No.	ITA Nos. /C.O. Nos. and Assessment Years	Appellant	Respondent	Date of order of CIT(A), Bengaluru
1.	ITA No.3039/Bang/2018 2014-15	DCIT, Central Circle – 2(2), Room No.317, 03 rd Floor, C. R. Building, Queen’s Road, Bengaluru – 560 001.	M/s. GMR Energy Ltd., No.25/1, SKIP House, Museum Road, Bengaluru – 560 025. PAN : AA ACT 8420 A	10.07.2018
2.	C.O. No. 10/Bang/2019 (in 3039/Bang/2018) 2014-15	M/s. GMR Energy Ltd., Bengaluru – 560 025. PAN : AA ACT 8420 A	ACIT, Central Circle – 2(2), Bengaluru.	
3.	ITA No.3011/Bang/2018 2015-16	-do-	-do-	13.07.2018
4.	ITA No.2871/Bang/2018 2015-16	M/s. GMR Energy Ltd., Bengaluru – 560 025. PAN : AA ACT 8420 A	ACIT, Central Circle – 2(2), Bengaluru.	13.07.2018
5.	ITA No.2872/Bang/2018 2014-15	M/s. GMR Energy Ltd., Bengaluru – 560 025. PAN : AA ACT 8420 A	ACIT, Central Circle – 2(2), Bengaluru.	10.07.2018
6.	ITA No.3044/Bang/2018 2009-10	ACIT, Circle – 7(1)(1), Bengaluru.	Shri. Hemanth Kumar Bothra, No.14, 7 th Cross, Jai Bharat Nagar, Bengaluru – 560 033. PAN : AA APH 9863 N	10.07.2018
7.	ITA No.3014/Bang/2018 2010-11	ACIT, Central Circle – 2(4), Bengaluru.	Shri. K. Muniraju, No.85, Ranganatha Nilaya, 8 th Main, WIDIA Layout Chandra Layout, Bengaluru – 560 040. PAN : AOOPK 9420 Q	12.07.2018
8.	ITA No.3015/Bang/2018 2011-12	ACIT, Central Circle – 2(4), Bengaluru.	Shri. K. Muniraju, Bengaluru – 560 040. PAN : AOOPK 9420 Q	12.07.2018

9.	ITA No.3016/Bang/2018 2015-16	ACIT, Central Circle – 2(4), Bengaluru.	Shri. K. Muniraju, Bengaluru – 560 040. PAN : AOOKP 9420 Q	12.07.2018
10.	ITA No.3005/Bang/2018 2010-11	ACIT, Central Circle – 2(4), Bengaluru.	M/s. ICKON Projects, No.11/2, 2 nd Floor, New Jayadeva Hostel, Commercial Complex, 5 th Main Road, Gandhinagar, Bengaluru – 560 009. PAN : AABFI 7099 A	17.07.2018
11.	ITA No.3012/Bang/2018 2012-13	DCIT, Central Circle – 2(2), Bengaluru.	M/s. GMR Kamalanga Energy Ltd., SKIP House, Museum Road, Bengaluru – 560 025. PAN : AADCG 0436 E	10.07.2018
12.	ITA No.3013/Bang/2018 2014-15	-do-	M/s. GMR Infrastructure Ltd., No.25/1, SKIP House, Museum Road, Bengaluru – 560 025. PAN : AABCG 8889 P	10.07.2018
13.	C.O.No.156/Bang/2018 (in ITA No.3013/Bang/2018) 2014-15	M/s. GMR Infrastructure Ltd., Bengaluru – 560 025. PAN : AABCG 8889 P	DCIT, Central Circle – 2(2), Bengaluru – 560 001.	
14.	ITA No.3037/Bang/2018 2009-10	-do-	-do-	10.07.2018
15.	C.O. No.06/Bang/2019 (in ITA No.3037/Bang/2018) 2009-10	M/s. GMR Infrastructure Ltd., Bengaluru – 560 025. PAN : AABCG 8889 P	DCIT, Central Circle – 2(2), Bengaluru – 560 001.	
16.	ITA No.3038/Bang/2018 2015-16	-do-	-do-	13.07.2018
17.	C.O. No.07/Bang/2019 (in ITA No.3038/Bang/2018) 2015-16	-do-	-do-	
18.	ITA No.2873/Bang/2018 2012-13	M/s. GMR Kamalanga Energy Ltd., Bengaluru – 560 025. PAN : AADCG 0436 E	DCIT, Central Circle – 2(2), Bengaluru.	10.07.2018

19.	ITA No.2869Bang/2018 2014-15	M/s. GMR Hyderabad International Airport Ltd., No.25/1, SKIP House, Museum Road, Bengaluru – 560 025. PAN : AABCH 3448 M	-do-	10.07.2018
20.	ITA No.3017/Bang/2018 2014-15	DCIT, Central Circle – 2(2), Bengaluru.	M/s. GMR Hyderabad International Airport Ltd., Bengaluru – 560 025. PAN : AABCH 3448 M	10.07.2018
21.	ITA No.3018/Bang/2018 2015-16	-do-	-do-	10.07.2018
22.	ITA No.3019/Bang/2018 2016-17	-do-	-do-	13.07.2018
23.	ITA No.3008/Bang/2018 2011-12	-do-	M/s. Delhi International Airport Pvt. Ltd., No.25/1, SKIP House, Museum Road, Bengaluru – 560 025. PAN : AACCD 3570 F	10.07.2018
24.	ITA No.3009/Bang/2018 2012-13	-do-	-do-	10.07.2018
25.	ITA No.3010/Bang/2018 2014-15	-do-	-do-	10.07.2018
26.	ITA No.3026/Bang/2018 2015-16	-do-	-do-	10.07.2018
27.	ITA No.3027/Bang/2018 2016-17	-do-	-do-	10.07.2018
28.	ITA No.3034/Bang/2018 2009-10	DCIT, Central Circle – 2(2), Bengaluru.	M/s. GMR Enterprises Pvt. Ltd., (Successor to GMR Projects P. Ltd.), No.25/1, SKIP House, Museum Road, Bengaluru – 560 025. PAN : AAACN 6998 D	10.07.2018

29.	ITA No.3020/Bang/2018 2010-11	-do-	M/s. GMR Sports Pvt. Ltd., No.25/1, SKIP House, Museum Road, Bengaluru – 560 025. PAN : AADCG 0588 P	10.07.2018
30.	ITA No.3021/Bang/2018 2011-12	-do-	-do-	10.07.2018
31.	ITA No.3022/Bang/2018 2012-13	-do-	-do-	10.07.2018
32.	ITA No.3023/Bang/2018 2013-14	-do-	-do-	10.07.2018
33.	ITA No.3024/Bang/2018 2014-15	-do-	-do-	10.07.2018
34.	ITA No.3025/Bang/2018 2015-16	-do-	-do-	13.07.2018
35.	ITA No.3035/Bang/2018 2013-14	-do-	M/s. GMR Enterprises Pvt. Ltd., (GMR Holdings Pvt. Ltd.), No.25/1, SKIP House, Museum Road, Bengaluru – 560 025. PAN : AACCR 1554 R	13.07.2018
36.	ITA No.3036/Bang/2018 2014-15	-do-	-do-	13.07.2018
37.	ITA No.2992/Bang/2018 2009-10	ACIT, Central Circle – 1(4), Bengaluru.	M/s. Zircon Properties Pvt. Ltd., No.2650, Ground Floor, 37 th B Cross, 28 th Main, 9 th Block, Jayanagar, Bengaluru – 560 069. PAN : AAACZ 3387 J	06.07.2018
38.	C.O. No.11/Bang/2019 (in 2992/Bang/2018) 2009-10	M/s. Zircon Properties Pvt. Ltd., Bengaluru – 560 069. PAN : AAACZ 3387 J	ACIT, Central Circle – 1(4), Bengaluru.	
39.	ITA No.2993/Bang/2018 2010-11	-do-	-do-	06.07.2018
40.	C.O. No.12/Bang/2019 (in 2993/Bang/2018) 2010-11	-do-	-do-	

41.	ITA No.2998/Bang/2018 2012-13	DCIT, Central Circle – 1(1), Bengaluru.	Shri. P. Chandrashekar, Himagiri Meadows, Gottigere Village, Bengaluru. PAN : ACYPC 4498 A	06.07.2018
42.	ITA No.2999/Bang/2018 2013-14	-do-	-do-	06.07.2018
43.	ITA No.3000/Bang/2018 2014-15	-do-	-do-	06.07.2018
44.	ITA No.3001/Bang/2018 2015-16	-do-	-do-	06.07.2018
45.	ITA No.3003/Bang/2018 2013-14	DCIT, Central Circle – 2(3), Bengaluru.	M/s. Gopalan Enterprises (I) Pvt. Ltd., #5, Richmond Road, Bengaluru – 560 025. PAN : AABCG 3197 L	09.07.2018
46.	ITA No.3004/Bang/2018 2014-15	-do-	-do-	09.07.2018
47.	ITA No.3007/Bang/2018 2007-08	ACIT, Central Circle – 2(4), Bengaluru.	Sri_Adichunchanagiri Shikshana Trust, 1 st B Main, Vijayanagar, Bengaluru – 560 040. PAN : AAATS 3584 P	06.07.2018
48.	C.O. No. 147/Bang/2018 (in ITA No.3007/Bang) 2007-08	Sri Adichunchunagiri Sikshana Trust, 1 st B Main, Vijayanagar, Bengaluru – 560 040. PAN : AAATS 3584 P	ACIT, Central Circle – 2(4), Bengaluru.	
49.	ITA No.3006/Bang/2018 2015-16	-do-	M/s. Gowri Infra Engineers Pvt. Ltd., No.85, Ranganatha Nilaya, 8 th Main, WIDIA Layout Chandra Layout, Bengaluru – 560 040. PAN : AADCG 9044 N	05.07.2018
50.	ITA No.2994/Bang/2018 2015-16	ACIT, Central Circle – 1(4), Bengaluru.	M/s. Confident Projects (India) Pvt. Ltd., 574, Park House, 80 Feet Road, 8 th Block, Koramangala, Bengaluru – 560 095. PAN : AACCC 7506 L	05.07.2018

51.	ITA No.2995/Bang/2018 2016-17	-do-	-do-	05.07.2018
52.	ITA No.2996/Bang/2018 2008-09	-do-	M/s. Kansur Developers India Pvt. Ltd., No.2650, Ground Floor, 37 th B Cross, 28 th Main, 9 th Block, Jayanagar, Bengaluru – 560 069. PAN : AACCK 9866 F	06.07.2018
53.	C.O. No. 15/Bang/2019 (in ITA No.2996/Bang/2018) 2008-09	M/s. Kansur Developers (P) Ltd., Bengaluru. PAN : AACCK 9866 F	-do-	
54.	ITA No.1441/Bang/2018 2009-10	-do-	-do-	28.02.2018
55.	C.O. No. 103/Bang/2018 (in ITA No.1441/Bang/2018) 2009-10	-do-	-do-	
56.	ITA No.1442/Bang/2018 2012-13	-do-	-do-	28.02.2018
57.	C.O. No. 104/Bang/2018 (in ITA No.1442/Bang/2018) 2012-13	-do-	-do-	
58.	ITA No.2997/Bang/2018 2008-09	-do-	M/s. Kansur Realtors Pvt. Ltd., No.2650, Ground Floor, 37 th B Cross, 28 th Main, 9 th Block, Jayanagar, Bengaluru – 69. PAN : AADCK 0879 K	06.07.2018
59.	C.O. No. 16/Bang/2019 (in ITA No.2997/Bang/2018) 2008-09	M/s. Kansur Realtors (P) Ltd., Bengaluru. PAN : AADCK 0879 K	-do-	
60.	ITA No.2990/Bang/2018 2008-09	ACIT, Central Circle – 1(4), Bengaluru.	M/s. Sukant Developers India Pvt. Ltd., No.2650, Ground Floor, 28 th Main, 37 th B Cross, 9 th Block, Jayanagar, Bengaluru – 560 009. PAN : AAKCS 8220 P	06.07.2018
61.	C.O. No. 13/Bang/2019	M/s. Sukant Developers	ACIT,	

	(in ITA No.2990/Bang/2018) 2008-09	India Pvt. Ltd., Bengaluru – 560 009. PAN : AAKCS 8220 P	Central Circle – 1(4), Bengaluru.	
62.	ITA No.2991/Bang/2018 2010-11	-do-	-do-	06.07.2018
63.	C.O. No. 14/Bang/2019 (in ITA No.2991/Bang/2018) 2010-11	-do-	-do-	
64.	ITA No.2966/Bang/2018 2013-14	ACIT, Circle – 6(3)(1), Bengaluru.	M/s. MCN Developers, No.2253, 1 st Floor, MCN Complex, 'D' Block, Kodigehalli Main Road, Sahakarnagar, Bengaluru. PAN : AALFM 4732 A	CIT(A)-11, Bengaluru dated 06.07.2018
65.	ITA No.2967/Bang/2018 2014-15	-do-	-do-	-do-
66.	ITA No.2988/Bang/2018 2008-09	ACIT, Central Circle – 1(2), Bengaluru.	Shri. G. Lalanath Reddy, No.995A, 5AC, HRBR Layout, First Block, Kalyan Nagar, Bengaluru. PAN : AHPPR 3768 J	CIT(A)-11, Bengaluru dated 05.07.2018
67.	ITA No.2989/Bang/2018 2009-10	-do-	-do-	-do-
68.	ITA No.2987/Bang/2018 2010-11	-do-	M/s. Shravanee Constructions and Projects, No.142, 143, G. R. Plaza D.V. G. Road, Basavangudi, Bengaluru – 560 004. PAN : AAXFS 4657 C	-do-
69.	ITA No.2982/Bang/2018 2014-15	DCIT, Central Circle – 1(1), Bengaluru.	Shri. Chandrashekar Bhat, No.70, 5 th B Cross, Narayanappa Layout, R. T. Nagar, Bengaluru – 560 032. PAN : ADOPB 9307 L	-do-

70.	ITA No.3028/Bang/2018 2008-09	ACIT, Central Circle – 2(4), Bengaluru.	Sri Adichunchunagiri Sikshana Trust, 1 st B Main, Vijayanagar, Bengaluru – 560 040. PAN : AAATS 3584 P	06.07.2018
71.	C.O. No. 148/Bang/2018 (in ITA No.3028/Bang/2018) 2008-09	-do-	-do-	
72.	ITA No.3029/Bang/2018 2009-10	-do-	-do-	06.07.2018
73.	C. O. No. 149/Bang/2018 (in ITA No.3029/Bang/2018) 2009-10	-do-	-do-	
74.	ITA No.3032/Bang/2018 2012-13	-do-	-do-	06.07.2018
75.	C. O. No. 152/Bang/2018 (in ITA No.3032/Bang/2018) 2012-13	-do-	-do-	
76.	ITA No.3030/Bang/2018 2010-11	-do-	-do-	06.07.2018
77.	C.O. No. 150/Bang/2018 (in ITA No.3030/Bang/2018) 2010-11	-do-	-do-	
78.	ITA No.3033/Bang/2018 2013-14	-do-	-do-	06.07.2018
79.	C. O. No. 153/Bang/2018 (in ITA No.3033/Bang/2018) 2013-14	-do-	-do-	
80.	ITA No.3031/Bang/2018 2011-12	-do-	-do-	06.07.2018
81.	C. O. No. 151/Bang/2018 (in ITA No.3031/Bang/2018) 2011-12	-do-	-do-	

Revenue by	:	Shri. K. V. Aravind, Standing Counsel
Assessees by	:	Shri. Sunil Jain, CA, C.Ramesh, CA, V.Srinivasan, Advocate, Mr.Nagin Khincha, CA and others.

Date of hearing	:	02.02.2021
Date of Pronouncement	:	22.02.2021

ORDER

Per N.V. Vasudevan, Vice President

In all these appeals, the Revenue has requested by way of an additional ground that the orders impugned in these appeals should be held to be orders passed without proper jurisdiction and should be set aside and remanded to the CIT(A) for decision afresh by the CIT(A) with competent jurisdiction. All these appeals were listed in different Benches of Bangalore Benches and were consolidated and posted together for hearing at the request of the Revenue on the additional grounds raised by the Revenue in all these appeals. The additional ground sought to be raised by the Revenue in all these appeals is as follows:

“1. The order passed by the Commissioner of Income Tax (Appeals) - 11 dated 10/07/2018 being the order passed after the directions vide letter dated 18/06/2018 by the DGIT, (Inv.), Bengaluru, and notification u/ s.120 dated 16.07.2018 issued by the PCCIT, Bengaluru, the CIT(A) order is without jurisdiction and liable to be set aside.

2. The order passed by the Commissioner of Income Tax (Appeal)- 11, dated 10/07/2018 being not entered in dispatch register which was required to be entered, the order is presumed to be passed after the transfer of jurisdiction.”

2. The circumstances which the additional grounds are sought to be raised are identical in all the appeals and have been explained by the Revenue in a submission made along with the additional grounds. It has been stated therein that the various Assesseees filed appeal before the Commissioner of Income Tax (Appeals) - 11, against the order of assessment. It has been stated that the CIT(A)-11, Bangalore who passed all the impugned orders committed serious lapses and he was directed by the Director General of Income Tax, Investigation, Karnataka & Goa, Bengaluru, by direction dated 18/06/2018 not to pass any further appellate orders during pendency of the explanation sought on the lapses in adjudicating the appeals. It is the plea of the revenue that all the orders impugned in these appeals were passed after 18.6.2018 and are therefore orders passed without jurisdiction and on that ground are liable to be set aside. Without prejudice to the above contention, it is the further plea of the revenue that by notification dated 16.07.2018, issued u/ s.120 of the Act, by the Principal Chief Commissioner of Income Tax, Karnataka & Goa, the appeals pending before Commissioner of Income Tax (Appeals) - 11 were transferred to Commissioner of Income Tax (Appeals) - 12, Bengaluru. It is the case of the revenue that Commissioner of Income Tax (Appeals) - 11 disregarding the directions issued by the Principal CCIT, has passed orders that are impugned in all these appeals. It is the further case of the revenue that though the impugned orders are purported to have been passed on dates which are prior to 16.7.2018 they were in fact passed after those dates but were pre dated. In support of the claim of the revenue that the impugned orders were in fact passed after 16.7.2018 but were predated, the revenue relies on the circumstance that the date of despatch of the impugned orders has not been entered in the dispatch register maintained by Commissioner of Income Tax (Appeals) - 11. According to the revenue, in view of the fact that the date of dispatch is not specifically entered

during the period when CIT(A)-11 was directed not to pass any orders, only inference can be drawn is that the impugned orders were passed after the appeals were transferred u/s 120 of the Act to CIT(A)-12. By implication the revenue wants to contend that the orders impugned were back dated so as to fall before or on the cut off date of 16.7.2018.

3. It has further been submitted that in this connection, the Principal CCIT has conducted detailed enquiry on this aspect and has found that the order impugned in these appeals were passed after the transfer of jurisdiction. It is also the plea of the revenue that the date of order is the day on which the officer passing the order loses control of the order and in this regard has placed reliance on a decision of the Hon'ble Karnataka High Court in the case of BJN Hotels 382 ITR 110(Karn.). According to the revenue, applying the above principle, it has to be inferred that the orders impugned were passed after the date of transfer of jurisdiction and without jurisdiction. It has also been stated that the revenue has not placed the outcome of the enquiry in view of the confidentiality of the same. However, the revenue has sought leave of the Tribunal to place the same in a sealed cover, if need arises and so directed by the Tribunal. It has further been submitted that in the grounds of appeal, the ground regarding invalidity of the order on the ground that the impugned orders were passed without jurisdiction by the Commissioner of Income Tax (Appeals) - 11 has not been raised and the same is raised by way of additional ground. It has also been submitted that the issue of jurisdiction is purely legal ground and therefore should be admitted for adjudication and adjudicated. Reliance in this regard was placed on the decision of the Hon'ble Supreme Court in the case of NTPC Ltd. 229 ITR 383 (SC).

4. The learned Standing Counsel for the Department submitted that though the orders passed in all these appeals are after 18.6.2018 when the Director-General of Income Tax (Investigation), Karnataka and Goa, Bengaluru, directed the then CIT(A)-11, Bengaluru, not to pass any further appellate orders during pendency of the explanation sought on the lapses in adjudicating the appeals. Therefore the orders passed after 18.6.2018 are illegal and are orders passed without jurisdiction and liable to be set aside. In any event the orders purported to have been passed before 16.07.2018 were in fact back dated. He reiterated the allegations as contained in the submissions made by the Revenue for raising additional grounds. The learned DR prayed that all the impugned orders be set aside and the issues raised in the various appeals be remanded to the CIT(A) having proper jurisdiction to adjudicate on merits afresh.

5. In support of the Revenue's contention, learned Standing Counsel has placed reliance on the decision of the ITAT, Delhi Bench, in the case of ACIT Vs. Globus Construction Pvt. Ltd., ITA No.1185/Del/2020 for Assessment Year 2015-16 order dated 08.01.2021. In the aforesaid case, one Shri. S. K. Shrivastava, CIT(A)-1, Noida, was compulsorily retired from Government of India, w.e.f. 11.06.2019. He passed orders pertaining to appeals falling within the jurisdiction of Ghaziabad and only CIT(A), Kanpur had jurisdiction to try those appeals. There was also evidence with regard to findings of Vigilance department. On the above facts, the Delhi Bench of the Tribunal came to the conclusion that it has come on record CIT(A)-I, Noida has decided Income Tax Appeals pertaining to Ghaziabad Jurisdiction over which he has no jurisdiction purportedly on 31.12.2018 whereas it is proved on record that all these appeals were disposed of in the month of June, 2019 after his compulsory retirement. It is also proved on record that all the impugned orders have been uploaded on ITBA system between 11th June to 13th June, 2019 after

his demitting the office by Sri S.K.Srivastava, CIT(A)-1 and 2 Noida. It is also proved that he has uploaded the impugned orders to the Central Server using his RSA token only after his retirement. All these facts go to prove that the impugned orders have been passed by Sri S.K.Srivastava, CIT(A)-1 and 2 Noida after his compulsory retirement with effect from 11.06.2019, because the moment he ceases to hold his office he has become *functus officio*.

6. The learned counsel for various Assesseees in these appeals have opposed the prayer of the revenue for setting aside all the aforesaid orders on the ground that the all the orders were passed prior to 16.7.2018 and it is only on the passing of the order dated 16.7.2018 that the CIT(A)-11, lost his jurisdiction. It was contended that the order dt.18.6.2018 by which Director-General of Income Tax (Investigation), Karnataka and Goa, Bengaluru, directed the then CIT(A)-11, Bengaluru, not to pass any further appellate orders during pendency of the explanation sought on the lapses in adjudicating the appeals, is an internal matter and the Assessee does not have any knowledge regarding the same. It was contended that the order dated 18.6.2018 cannot be the basis to say that the then CIT(A)-11 did not have jurisdiction to decide appeals and it is only the order dated 16.7.2018 that legally divests the power of the then CIT(A)-11 to decide appeals. It was contended that there is no evidence to show that the orders passed prior to 16.7.2018 were in fact backdated. The enquiry is still under way and that there is nothing on record to support the contention of the revenue. It was also submitted that the decision of the ITAT Delhi cited by the learned DR in the case of Globus Construction Pvt.Ltd., (supra) is not applicable to the facts of the present case as in the present case, the admitted position is that all the orders were dated after 18.06.2018 but prior to 16.07.2018. The learned counsel for the Assessee in some of the appeals Mr.Nagin Khincha, CA argued that there is no specific

application under Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 and hence the additional grounds cannot be considered for admission. We have already observed that there is a submission along with the additional grounds and the same is and can be treated as application for admission of additional ground and the objection in this regard is hereby rejected. It was submitted that the allegation with regard to the orders being anti-dated are all allegations which are not supported by any evidence.

7. We have given a very careful consideration to the rival submissions. It is undisputed that the impugned orders in all the appeals were passed after 18.6.2018 order dt.18.6.2018 by which Director-General of Income Tax (Investigation), Karnataka and Goa, Bengaluru, directed the then CIT(A)-11, Bengaluru, not to pass any further appellate orders during pendency of the explanation sought on the lapses in adjudicating the appeals. The CIT(A) had no jurisdiction to pass any orders in appeal on or after the aforesaid date. The order passed by him contrary to the directions of the superior officer cannot be said to be an order passed by a person having proper jurisdiction. The CBDT in its instruction dated 8.3.2018 (F.No.DGIT (Vug.)/HQW/SI/Appeals/2017-18/9959) has in paragraph-7 thereof instructed all Chief Commissioners of Income Tax to conduct regular inspections of the CIT(Appeals) working under them and keep a watch on the quality and quantity of orders passed by them. The instructions further lay down that failure on the part of the Chief Commissioners of Income Tax to do so would be viewed adversely by the CBDT.

8. We notice that the instruction so issued by CBDT places responsibility upon the Chief Commissioners to ensure the quality of the orders passed by CIT(A). The purpose, obviously, is to ensure that the Appellate Commissioners pass quality orders, while achieving the quota fixed for them.

The Ld Standing Council submitted that the Director General of Income tax, Investigation, Karnataka & Goa, has issued a direction dated 18/06/2018 to the then CIT(A)-11 not to pass any further appellate orders, as he received certain information about the orders passed by the then CIT(A)-11. Admittedly, the above said direction has been defied by the then CIT(A) and he has proceeded to pass orders. There should not be any dispute that the instructions issued by CBDT are binding on all the income tax officials. The Ld Standing Council submitted that non-compliance with directions given by DGIT in compliance with the instruction issued by CBDT would cause prejudice to the revenue. Accordingly he submitted that the orders passed by the then Ld CIT(A)-11 after 18/06/2018 results in serious lapse on the part of the then Ld CIT(A)-11, as the same violates the binding directions given by DGIT. Accordingly he contended that all the impugned orders are liable to be quashed.

9. According to Ld Standing Counsel for the revenue, there is prima facie material on record to show that the orders purported to have been passed after 18.6.2018 and prior to 16.7.2018 were pre dated, which he offered to submit it in sealed cover. Though we declined to look into it, yet, considering the conduct of the then Ld CIT(A)-11, the stand taken by the revenue appears to be probable. In any case, the very action of then Ld CIT(A)-11 in ignoring the binding directions given by DGIT and proceeding to pass orders results serious lapse on his part in administering justice. We also notice that all the orders impugned in these appeals have been passed between 5.7.2018 and 13.7.2018, numbering around 50 orders, involving different Assesseees and different issues, which is difficult task for any appellate authority. Hence we agree with the submission of Ld Standing Counsel that the interests of revenue is prejudiced by the said action of the then Ld CIT(A)-11. All these factors, in our view, would vitiate the appellate orders passed by him after 18-06-2018, even if the allegation of pre-dating of orders is not accepted/proved. Hence the

impugned orders, in our view, is not curable and sustainable in the eyes of law.

10. On almost identical facts, the ITAT Delhi Bench in the case of ACIT Vs. Globus Constructions Pvt.Ltd. (supra) held after finding that the impugned orders were passed by the appellate authority after it was divested with powers to pass orders observed as follows:

“10. Hon’ble Supreme Court in case of **United Commercial Bank Ltd. vs. workman 1951 SCR 380** in the identical situation held that Jurisdictional defect strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of the parties.

10A. Hon’ble Supreme Court of India in case cited as **Kanwar Singh Saini vs. High Court of Delhi** held that order/decree passed by court having no jurisdiction is a nullity by returning following findings :

“There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. [Vide *United Commercial Bank Ltd. v. Workmen, Nai Bahu v. Lala Ramnarayan, Natraj Studios(P) Ltd. v. Navrang Studios, Sardar Hasan Siddiqui v. STAT, A.R. Antulay v. R.S. Nayak Union of India v. Deoki Nandan Aggarwal, Karnal Improvement Trust v. Parkash Wantft, U.P. Rajkiya Nirman Nigam Ltd. v. Indure (P) Ltd., State of Gujarat v. Rajesh Kumar Chimanlal Barot, Kesar Singh v. Sadhu, Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and CCE v. Flock (India) (P) Ltd.*]

11. Hon’ble Supreme Court in case of **Fatma Bibi Ahmed Patel & Anrs (2008) 6 SCC 789** held that jurisdictional issue goes to the root of the matter and the entire proceedings having been initiated illegally and without jurisdiction, and thus are nullities.

12. In view of what has been discussed above and following the decisions rendered by Hon’ble Supreme Court in case of **Fatima Bibi**

(supra), **United Commercial Bank (supra) and Kanwar Singh Saini (supra)** without entering into the merits of the captioned appeals, we are of the considered view that the impugned orders suffer from jurisdictional defect which is not curable having been passed by Ld. CIT(A)-1 and 2 Noida after his compulsory retirements with effect from 11.06.2019, when he was functus officio, are not sustainable in the eyes of law, hence, nullities. So question framed is answered in affirmative.

13. Consequently, impugned orders passed in the captioned appeals by CIT(A)-1 and 2 Noida are set aside to the files of the respective jurisdictional CIT(A)-1 and 2 Noida and CIT(A) Ghaziabad to decide afresh in accordance with law by providing an opportunity of being heard to the assessee / revenue. Consequently aforesaid appeals / cross objections are allowed for statistical purposes.”

11. Respectfully, following the order of the tribunal, we set aside the orders of the CIT(A) to the respective jurisdictional CIT(A) to decide the appeals afresh in accordance with law after due opportunity of hearing to the parties. The additional grounds of appeal are accordingly allowed. In view of the aforesaid conclusion, the issues on merits raised by the appellants in their appeal do not require any consideration. All the appeals and cross objections are treated as allowed for statistical purpose.

12. In the result, the appeals and cross objections are treated as allowed for statistical purpose.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B. R. BASKARAN)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore, Dated: 22.02.2021.
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.