

**IN THE INCOME-TAX APPELLATE TRIBUNAL “G” BENCH,
MUMBAI**

**BEFORE SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.5865/MUM/2024
(A.Y. 2014-15)**

Income Tax Officer – 26(2)(1), Room No. 254A, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai-400051, Maharashtra	v/s. बनाम	Svadeshi Enterprises Fourth 12A, Yusuf Building, Veer Nariman Road Fort, Mumbai – 400 023, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAPFS0180A		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

**प्रत्याक्षेपसं./C.O. No.168/MUM/2025
(Arising out of ITA No. 5865/MUM/2024)
(A.Y. 2014-15)**

Svadeshi Enterprises Fourth 12A, Yusuf Building, Veer Nariman Road Fort, Mumbai – 400 023, Maharashtra	v/s. बनाम	Income Tax Officer – 26(2)(1), Room No. 254A, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai-400051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAPFS0180A		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	Mr. Akshay & Nishil Jain, ARs
Revenueby :	Shri Swapnil Choudhary, (Sr. DR)

Date of Hearing	22.12.2025
Date of Pronouncement	06.01.2026

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The above captioned appeals preferred by the Revenue and Cross
Objections of the assessee emanate from the orders passed by the



Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] pertaining to assessment order u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment Year [A.Y.] 2014-15. Since the issues are common and interlinked and also the fact that the appeals were heard together, they are being taken up together for adjudication vide this composite order for the sake of brevity.

2. ITA No.5865/MUM/2024

The grounds of appeal of the Revenue are as under:

1. *“Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction on account of liability for payment for vacating occupants/tenants ignoring the fact that a mere provision cannot be allowed as an expense ?”*
2. *“Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction on account of liability for payment for vacating occupants/tenants without appreciating the fact that the assessee has himself stated that they have provided the additional amount of Rs. 3 Crore in FY 2013-14 and the matter is under litigation and therefore such a provision of Rs. 3 Crore during the year does not partake the character of an ascertained/accrued liability ?”*
3. *“Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in in relying upon the decision of Hon’ble Apex Court in the case of Bharat Earth Movers without appreciating that it is not squarely applicable in this case, as facts of the case in this case of the assessee are different from the referred case law?”*



Grounds of Cross Objection - C.O. No.168/MUM/2025

1. *That on the facts and circumstances of the case and in law, the assessment order passed by Ld. ITO Ward 17(3)(2), Mumbai is wholly without jurisdiction. It is humbly submitted that as per CBDT Instruction No.1/2011 dated 31-01-2011, if the declared income of a corporate assessee is more than Rs. 30 lakhs, the jurisdiction of the assessee case lies with ACIT/DCIT and not with ITO. In the present case, for AY 2014-15, the assessee has declared total income of 2,56,43,720/-. Therefore, in view of the aforesaid instruction, the jurisdiction of the assessee case lies with ACIT/DCIT and not with ITO. Hence, the assessment order passed by Ld. ITO is wholly without jurisdiction and liable to be quashed.*
3. The C.O. is delayed by 174 days. In this regard, the assessee has contended that the delay was caused by inadvertent mistake on part of the Accountant of the assessee whose affidavit was also filed before the Bench. It was stated by him inter alia that he is employed as an Accountant with the assessee Firm. For the relevant year, the Revenue had filed an appeal on 12.11.2024, and the notice of appeal was received on 20.12.2024. The cross-objection arising out of Appeal No. 5865/Mum/2024 was required to be filed on or before 18.01.2025. The consultant of the Firm had instructed him to file the cross-objection before the Hon'ble ITAT within the prescribed time. Due to an inadvertent oversight on his part, he failed to file the cross-objection within the stipulated period. This lapse occurred solely due to his mistake and not due to any negligence or intention on the part of the assessee. When the



assessee sought an update regarding the status of the cross-objection, it was at that stage discovered that the cross-objection had not been filed. Immediately upon becoming aware of the lapse, the assessee firm filed the Cross Objection in Form 36A on 10.07.2025, resulting in a delay The which occurred solely due to his bona fide and unintentional error and not for any extraneous reason.

4. On careful consideration of the submissions of the assessee, we are of the considered opinion that the delay in filing of the appeal was not intentional. The assessee cannot be penalised for an inadvertent mistake on part of its employee looking after such matter. In this connection, reliance could be placed on the landmark decision of hon'ble Supreme Court which inter alia held in **Collector, Land Acquisition v Mst. Katiji And Others- 167 ITR 471 (SC)** that “ordinarily, a litigant does not stand to benefit by lodging an appeal late.....Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated....Any appeal or any application, other than an application under any of the provisions of **Order XXI of the Code of Civil Procedure, 1908**, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.... A litigant does not stand to benefit by resorting to delay. In fact, he runs serious risk.” We therefore, condone the delay and **we**



take up assessee's Cross Objection in C.O. No. 168/Mum/2024 first, as it has a bearing on the very validity of the assessment order.

5. The brief facts of the case are that the assessee filed its return of income declaring income of Rs.2,56,43,720/-. Subsequently the case was selected for scrutiny. The AO during the course of assessment proceedings observed that the assessee had debited an expense pertaining to payment to occupants/tenants amounting to Rs.3cr. He AO disallowed the same while holding the same to be unjustified being a contingent liability. In the subsequent appeal, the Id.CIT(A), however, deleted the addition observing that the liability to incur the expense was established in the relevant previous year. It was held that the assessee had rightly claimed the deduction on account of payment for vacating occupants/tenants. The AO was directed to allow the claim.

6. In the C.O. the assessee has contended that the Id.CIT(A) did not adjudicate the **ground no.4** specifically raised before him regarding the validity of the assessee on account of lack of proper jurisdiction by the AO. In the said ground it was claimed that,

“The learned Assessing Officer, i.e., I.T.O. 17 (3) (2), Mumbai, erred in not recording any evidence in his assessment order regarding acquiring his jurisdiction and empowering himself to assess the income of the assessee and pass assessment order, which is in compliance with CBDT instructions which lays down monetary limit of income declared cases to be assessed by DCs,



ACs, ITOs, respectively, notwithstanding to other grounds-thereby making the assessment proceedings invalid, illegal and void-ab-initio.”

6.1 It is also submitted that detailed written submission made before him and narrated in paras 32-34 on page 12 of the order were ignored. The ld.AR has argued that in this case, the Income Tax Officer issued notice u/s 143(2) of the Act and also went on to complete the assessment. It is submitted that assessee filed its return of income declaring income of Rs.2,56,43,720/-.Therefore,considering the monetary limit by the CBDT for dealing with assessments by the ITO and ACIT, in the present case, the ITO wrongly assumed jurisdiction as considering the quantum of returned income, only ACIT could have assessed its case. It was also submitted that the ld.CIT(A) did not adjudicate this specific ground raised before him. Also the assessee made a detailed submission in this regard before him as apparent from the appellate order itself, he did not decide the ground at all. It is stated that the AO having wrongly assumed the jurisdiction,the assessment order is *ab initio* void and liable to be quashed.

6.2 The ld.DR contended the claim of the assessee stating that the notice u/s 143(2) of the Act was issued by the ITO as at the relevant pint of time, he was having PAN of the assessee with him. However, he



could not controvert the fact that even the assessment order was also passed by the ITO and not by ACIT.

7. We have carefully considered all the relevant facts of the case and also perused the records and find sufficient force in the contentions of the Id.AR. We find that exactly identical issue has been considered and decided by various coordinate benches of ITAT in favour of the respective assessee. Reference could be made to the decision in the case of **Om Prakash Bansal (HUF)** dated 24.10.2025 in **ITA No.2984/Del/2024(ITAT-Delhi)** wherein the assessment order was quashed on the same issue. The relevant parts of the order are extracted as below for the sake of brevity:

“5. At the time of hearing, Ld. AR contested only the legal issues raised in the additional grounds. He submitted that the proceedings u/s 143(2) dated 21.09.2018 was initiated by ITO, Ward 47(1), New Delhi i.e. JAO who did not have jurisdiction over the assessee. He further submitted that as per last ITR available for AY 2018-19 filed on 25.08.2018, the returned income of assessee is Rs.20,34,480/- and even considering the ITR for the year under consideration dated 08.09.2017 also, the returned income was Rs.30,71,730/-. Therefore, the jurisdiction over the assessee was with Circle and not with above Ward Officer. Since returned income of assessee exceeds the income of Rs.20 lakhs, the jurisdiction on the assessee lies with Circle, the above limit of income for non-corporate charge with Circle is fixed as per CBDT Instruction no. 01/2011 and the jurisdiction over the case lied with Assistant/Deputy Commissioner of Income Tax since the income declared was above Rs.20 Lakhs. He referred to the said **CBDT Instruction no. 01/2011** which is reproduced as under: -

"Order-Instruction - Income Tax References have been received by the Board from the large number of taxpayers especially from the mofussil areas, that the existing monetary limits for assigning cases to Deputy Commissioners / Assistant Commissioners and ITOs is causing hardship to the taxpayers.



[F. NO. 187/12/2010-IT(A-I)] DATED 31-1-2011 References have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship. An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:

Income Declared (Mofussil areas)		Income Declared (Metro cities)	
ITOs	ACs/DCs	ITOs	DCs/ACs
Corporate returns	Upto Rs. 20 lacs	Above Rs. 20 lacs	Upto Rs. 30 lacs
			Above Rs. 30 lacs

Non-corporate returns Upto Rs. 15 lacs Above Rs. 15 lacs Upto Rs. 20 lacs Above Rs. 20 lacs Metro charges for the purpose of above instructions shall be Ahmedabad, Bangalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune. The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from 1-4-2011."

6. He submitted that however, in the present case, notice u/s 143(2) was issued by ITO, Ward 47(1) on 21.09.2018, who did not have jurisdiction over the assessee and thus, notice u/s 143(2) issued is without jurisdiction. He submitted that the fact that ITO did not have jurisdiction is evident from the fact that assessment has been completed by ACIT, Circle - 46(1), Delhi, thus in the absence of valid notice u/s 143(2) by the jurisdictional AO, the assessment order is liable to be quashed and the issue is no more res integra. In this regard, he relied on the case of **Ashok Devichand Jain v. Union of India (452 ITR 43) (Bom)** -----

7. Further, he submitted that the reassessment proceedings in the present case are to be treated as being initiated by non-jurisdictional assessing officer and, therefore, the reassessment proceedings and consequent assessment order both needs be quashed. In this regard, further he relied on the cases of **YKM Holdings Pvt. Ltd. v. ACIT Circle-4(1) ITA No. 1020/DEL/2019** dated 29.04.2024, **M/s. Kelvin International vs. DCIT in ACIT in ITA No.3643/Del/2023 dated 10.04.2024**, where similar view was considered and decided that no jurisdiction over the assessee and issue of notice u/s 143(2) of the Act issued by the non-jurisdictional officer is bad in law.

8. Ld. AR submitted that in view of the above decisions, it is evident that notice u/s 143(2) issued in this case is without jurisdiction and, therefore the



said notice along with the assessment order passed on the foundation of such notice is liable to be quashed.

9. Coming to the second objection regarding issue of completion of assessment by non-jurisdictional authority, it is submitted that the jurisdiction of the assessee on the basis of CBDT jurisdictional list w.e.f. 15.11.2014 falls in Circle 47(1), Delhi based on the territorial jurisdictional of Naya Bazar, Delhi and submitted copy of instructions on record. He further submitted that the assessment has been completed by Circle 46(1), Delhi who did not have jurisdiction over the assessee. He submitted that it is therefore a case of exercise of jurisdiction for making assessment by the authority who had no jurisdiction over the assessee as per [section 2\(7A\)](#) r.w.s. 120(3) of the Act. He submitted that since that be the case, such assessment is invalid in law in view of the decisions cited herein above. Further he relied on various judgments in his written submissions. Thus, in view of the above, he prayed that the assessment order passed is without jurisdiction and accordingly, the appeal filed by the assessee be allowed.

10. On the other hand, ld. DR of the Revenue submitted that the issue raised by the assessee in additional ground should have challenged the same within one month before the Assessing Officer after receiving the notice. This issue was never raised before the first appellate authority also. He submitted that income has to be assessed and income alone cannot be considered for jurisdiction. He relied on [section 124 \(3\)](#) of the Act as per which assessee has to file objections within two months. In this regard, he relied on the decision of Hon'ble jurisdictional High Court in the case of [Abhishek Jain vs. ITO](#) (2018) 94 taxmann.com 355 (Delhi). He objected to the submissions of the ld. AR and heavily relied on the findings of the authorities below.

11. In the rejoinder, ld. AR of the assessee submitted that **[section 124](#) applies with the territorial jurisdiction and it is not applicable to pecuniary jurisdiction.** The relevant section applicable is [section 120](#) and he reiterated that the action of the Assessing Officer is illegal and in this regard, he relied on the CBDT Instruction No.1/2011, which is placed on record.

12. Considered the rival submissions and material placed on record. We observed that assessee has filed its return of income declaring income of Rs.30,71,730/-. 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 47 (1) on 21.09.2018, 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 ACIT, Circle - 46(1), Delhi [u/s 143\(3\)](#) of the Act. However, we observe 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. Ld. DR objected to the submissions of the assessee for the reason that the present jurisdictional issue raised 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 observe 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 jurisdiction 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:

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

13. Similar view was expressed by the ITAT, Mumbai in the case of **Monarch & Qureshi Builders v. ACIT Circle - 33(2) ITA No. 2026/MUM/2023** and by the coordinate Bench in the case of **Sapna Rastogi vs. ITO - ITA No. 617/DEL/2024**.

14. 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, 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.**

15. The assessee has raised several grounds on merits as well. Since we have already decided the additional grounds of appeal on jurisdictional issue, we are inclined to keep the other grounds of appeal open at this stage.”

7.1 In the instant case, the ITO, being the Assessing Officer issued notice u/s 143(2) of the Act and also completed the assessment order u/s 143(3) of the Act. Evidently he assumed wrong jurisdiction over the case as he was empowered to make the assessment as per the extant instruction of CBDT. Respectfully following the decisions of the coordinate Bench and ITAT Mumbai (supra), we are inclined to hold that the jurisdictional notice [u/s 143\(2\)](#) was not issued by appropriate authority i.e. AC/DCIT before completing the assessment [u/s 143\(3\)](#) of the Act. This defect in the assessment proceedings is fatal and incurable. Accordingly, the assessment order passed in the present case is quashed and the ground in Cross objection raised by the assessee is allowed.



8. As we have already quashed the assessment order, Revenue's appeal becomes infructuous requiring no adjudication. Accordingly, it is dismissed for statistical purposes.

9. In the result, **the appeal of the Revenue is dismissed** while the **CO of the assessee is allowed.**

Order pronounced in the open court on 06/01/2026.

Sd/-

RAHUL CHAUDHARY

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई / Mumbai
दिनांक / Date 06.01.2026
Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति // True Copy //
आदेशानुसार / BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण / ITAT, Bench,
Mumbai.

