

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' B '**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

I.T. A. Nos.1352 to 1355/Bang/2016
(Assessment Years : 2010-11 to 2013-14)

M/s. Regional Oilseeds Growers Co-operative Societies
Union Limited,
Plot No.74/A, KIADB Industrial Area,
Kelagote, Chitradurga-577 501

.... Appellant.

Vs.

Jt. Commissioner of Income Tax,
Davangere Range, Davangere.

..... Respondent.

Appellant By : Shri S. Ramasubramanian, C.A.
Respondent By : Smt. Padma Meenakshi, JCIT (D.R)

Date of Hearing : 19.6.2018.
Date of Pronouncement : 05.09.2018.

O R D E R

Per Bench :

These four appeals by the assessee are directed against the orders of Commissioner of Income Tax (Appeals), Davangere dt.29.02.2016 for the Assessment Years 2010-11 to 2013-14. Since common / connected issues are involved, these appeals were heard together and we deem it appropriate to dispose them off together by way of this order.

2. Briefly stated, the facts of the case are as under :-

2.1 The assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is engaged in activities related to procurement of oil seeds which are used as seeds for growing various oil bearing items.

2.1.1 For A.Y. 2010-11, the assessee filed its return of income showing income of Rs.3,56,96,025; but declared NIL income after setting off the entire income of Rs.3,56,96,025 against unabsorbed depreciation. The case was taken up for scrutiny and the assessment completed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dt.28.3.2011, accepting the returned income. A survey under Section 133A of the Act was conducted at the assessee's business premises on 7.11.2013, during which apparently there was a finding that the assessee had claimed excess depreciation over the years, which impacted the amount of carry forward of unabsorbed depreciation. Reassessment proceedings were initiated for Assessment Year 2010-11 and subsequently by issue of notice under Section 148 of the Act on 27.11.2013, the assessee was required to file return of income on or before 7.12.2013. In response thereto, the assessee filed a return of income on 6.12.2013 declaring income at NIL; while recomputing the brought forward losses at Rs.3,41,48,848, thereby arriving at gross total income of Rs.15,47,173 and claiming deduction thereon under Section 80P of the Act of Rs.3,35,46,397. The claim for deduction under Section 80P of the Act was made in this return.

2.1.2 The case was taken up for scrutiny. As stated in the order, the Jt. Commissioner of Income Tax, Davangere Range ('JCIT') took up the assessee's case for scrutiny on the ground that he has concurrent jurisdiction over all the cases in Davangere, and in the Central Action Plan, 2013-14, completion of scrutiny assessment is also one of the functions assigned to the Range Head. Vide letter dt.4.12.2013, the JCIT informed / intimated the assessee that he had assumed jurisdiction over the case. The JCIT completed the assessment under Section 143(3) r.w.s. 147 of the Act vide order dt.8.1.2014 determining the assessee's income at Rs.22,70,100 after setting off the entire re-worked unabsorbed depreciation of Rs.3,40,49,124, leaving NIL unabsorbed depreciation for carry forward to the subsequent years, and the deduction claimed under Section 80P of the Act was disallowed.

2.2.1 **For A.Y. 2011-12**, the assessee filed its return of income declared income of Rs.3,68,47,221, but declared taxable NIL income, after claiming the entire amount as set off towards unabsorbed depreciation of earlier years. Pursuant to the survey action under Section 133A of the Act on 7.11.2013, the Assessing Officer initiated re-assessment proceedings under Section 147 of the Act and issued notice under Section 148 of the Act on 8.11.2013. In response thereto, the assessee filed return of income on 6.12.2013 showing the gross total income of Rs.3,68,47,221 and after claiming deduction under Section 80P of the Act, declared taxable income at Rs.4,91,820.

2.2.2 The case was taken up for scrutiny. In the order of assessment, the JCIT states that the assessee's case is taken up for scrutiny on the ground that he has concurrent jurisdiction over all the cases in Davangre and in the Central Action Plan, 2013-14, completion of scrutiny assessment is also one of the functions assigned to the Range Head. The assessment was accordingly completed by the JCIT under Section 143(3) r.w.s. 147 of the Act vide order dt.8.1.2014 wherein the assessee's income was determined at Rs.3,68,02,220; after restricting the assessee's claim for deduction under Section 80P of the Act to Rs.50,000 and there being no unabsorbed depreciation of earlier years available for export turnover off in this assessment year.

2.2.3 **For Assessment Year 2012-13**, the assessee filed its return of income declaring income of Rs.3,66,89,548; but declared taxable income at NIL, after setting off the entire income against unabsorbed depreciation of earlier years. The assessee also filed a revised return of income wherein it claimed deduction u/s. 80P. Pursuant to the survey action under Section 133A of the Act on 7.11.2013, the case was taken up for scrutiny in this year also and the assessment was completed under Section 143(3) of the Act vide order dt.8.1.2014, wherein the assessee's income was determined at Rs.3,66,57,056; after restricting the assessee's claim for deduction under Section 80P of the Act to Rs.50,000 and also since there was no unabsorbed depreciation of earlier years for set off in this assessment year.

2.2.4 **For Assessment Year 2013-14**, the assessee filed its return of income on 30.9.2013 admitting NIL taxable income after claiming the entire income of Rs.4,37,00,195 by claiming deduction under Section 80P of the Act and setting off the balance income by brought forward losses. Pursuant to survey action under Section 133A of the Act on 7.11.2013, the case was taken up for scrutiny for this assessment year also. The assessment was completed under Section 143(3) of the Act vide order dt.8.1.2014, wherein the assessee's income was determined at Rs.4,36,50,200 after restricting the assessee's claim for deduction under Section 80P of the Act to Rs.50,000 and also since there was no unabsorbed losses / depreciation of earlier years for set off in this assessment year.

2.2.5 In the aforesaid orders of assessment for Assessment Years 2010-11 to 2013-14, the JCIT has disallowed the claim for deduction under Section 80P of the Act by holding that -

- i) the assessee is a trading concern involved only in trading activities;
- ii) the assessee could not prove that the purchases and sales were intended only for agriculture;
- iii) the ultimate benefit does not accrue to the members of the society;
- iv) the seeds are sold to members who are not agriculturists;
- v) the assessee is a federation of societies and not a primary society, per se.

3.1 Aggrieved by the orders of assessment for Assessment Years 2010-11 to 2013-14, the assessee filed appeals before the CIT (Appeals), Davangere challenging the disallowance of its claim for deduction under Section 80P of the Act. Before the learned CIT (Appeals), the assessee also filed additional grounds raising objections in respect of the orders of assessment for these assessment years being passed by the JCIT, Davangere while the notice under Section 148/143(2) of the Act was issued by the ITO, Ward – 1, Chitradurga. The assessee also raised the issue that reasons recorded for initiation of proceedings under Section 147 and issue of notice under Section 148 of the Act were not furnished to the assessee. It was submitted that the orders of assessment for these assessment years be quashed on these grounds.

3.2 The CIT (Appeals), Davangere dismissed the assessee's appeals for Assessment Years 2010-11 to 2013-14 vide separate orders all dt.29.2.2016, rejecting the contentions and submissions put forth by the assessee on both the main grounds (i) of its eligibility for being allowed its claim for deduction under Section 80P of the Act and (ii) also on the grounds challenging jurisdiction.

3.2.1 On the issue of jurisdiction of the JCIT, Davangere in passing the orders, the CIT (Appeals) has rejected the assessee's contention by observing as under :-

(i) As per the notification under Section 120 of the Act, of the CBDT, JCIT has concurrent jurisdiction over the cases of that particular Range; i.e. in the instant case, over the cases of Davangere Range. Concurrent jurisdiction means that apart from exercising administrative powers, the JCIT can issue instructions, guidance in completion of assessments, etc. and he may also assume and exercise the powers of an Assessing Officer as per the provisions of Sec. 120(4) & (5) of the Act.

(ii) The JCIT intimated the assessee of his assuming jurisdiction over the case by issue of letter dt.4.12.2013;

(iii) During the assessment proceedings, the assessee never objected and co-operated in the assessment proceedings.

(iv) Non-issues of notice under Section 143(2) of the Act by the JCIT may be only a technical error and does not vitiate the assessment proceedings as being bad in law.

(v) Transfer of a case may be effected at any stage of the proceedings and it is not necessary for the Assessing Officer to whose Ward / Circle / Range the case was transferred to re-issue the notice. The latter officer can continue and complete the proceedings as held in the case of Mathura Prasad Motilal & Co. reported in (1956) 30 ITR 695 (Nagpur).

3.2.2 On the issue of providing the reasons for initiation of proceedings for reopening of the assessment, the CIT (Appeals) has given a clear finding that the assessee has written to the Assessing Officer

requesting for copy of the reasons recorded in this regard and that it is also true that the Assessing Officer has not provided the same to the assessee. The learned CIT (Appeals), however, rejected the assessee's contentions by observing as under :-

- (i) The Assessing Officer has addressed letters to the assessee wherein he has indicated that he intended to pass the order of assessment in line with the proposal and the assessee replied to these letters; but in none of the assessee's letters was there any mention seeking the reasons for reopening.
- (ii) Not providing the reasons recorded will not vitiate the proceedings as the assessee was very much aware of the reasons recorded.
- (iii) The Authorised Representative of the assessee attended the hearing before the Assessing Officer on few occasions.
- (iv) The assessee has deliberately omitted to remind the Assessing Officer for obtaining the reasons recorded.

For the above cited reasons, the learned CIT (Appeals) held that the Assessing Officer was well within his powers to pass the impugned orders without providing the reasons recorded for initiation of proceedings for reopening of the assessments.

4.1 Aggrieved by the separate orders of the CIT (Appeals), Davangere dt.29.2.2016 for Assessment Years 2010-11 to 2013-14, the assessee has filed these four appeals before the Tribunal. The main facts and issues are similar in all the four assessment years. The main issue in appeal for these four assessment years is the denial / restriction of the assessee's

claim for deduction under Section 80P of the Act. Secondly, for all four assessment years, the assessee has raised the issue of concurrent jurisdiction exercised by the JCIT. Thirdly, for the first two assessment years, 2010-11 and 2011-12, the assessee has raised the issue of non-furnishing of reasons recorded by the Assessing Officer for reopening the assessments for these two years.

4.2.1 In the course of proceedings before us, the assessee has filed Paper Book containing the various submissions put forth before the authorities below for all four assessments and also citation of case laws 1 & 2 relied upon. At the outset, the learned Authorised Representative of the assessee contended that the orders of assessment need to be quashed as invalid, ab initio, due to the jurisdictional issues raised. The learned Authorised Representative further contended that, for Assessment Years 2010-11 and 2011-12, the failure of the Assessing Officer to furnish the reasons recorded for reopening the assessment as requested for by the assessee is a fatal flaw which renders the orders of assessment for both these years invalid.

4.2.2 In regard to the issue raised in respect of passing of the orders of assessment for all four assessment years 2010-11 to 2013-14 by the JCIT, the learned Authorised Representative contended that the JCIT was wrong in assuming jurisdiction over the case on hand without a specific order assigning the case to him. In support of this contention of the assessee, the learned Authorised Representative placed reliance on the judicial pronouncements in the following cases :-

- i) Valvoline Cummins Pvt. Ltd. Vs. DCIT (307 ITR 103) (Del)
- ii) Mega Corporation Ltd. Vs. Addl. CIT (155 ITD 1019) (Del) and
- iii) Tata Sons Ltd. Vs. ACIT (76 taxmann.com 126) (Mum)

4.3 It was also contended by the learned Authorised Representative that the assessee can raise such legal issues before the higher appellate authorities and not raising the issue before the JCIT (A.O) cannot be a reason for dismissing the issue. In this regard, the learned Authorised Representative placed reliance on the decision in the case of Ziaullah Shariff Vs. ACIT (316 ITR 92) (AT) Bangalore.

4.4.1 As regards the issue of non-furnishing of the reasons recorded for reopening the assessments for Assessment Years 2010-11 and 2011-12 by the Assessing Officer to the assessee, the learned Authorised Representative contended that it is settled principle that failure to furnish the reasons recorded for reopening the assessments would render the orders of assessment for these two years bad in law. It was further contended that Revenue cannot take the plea that the assessee asked for the reasons recorded only once and did not remind the Assessing Officer for obtaining the same. In support of this argument, the learned Authorised Representative placed reliance on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Trend Electronics (2015) 61 taxmann.com 308 (Bom).

4.5 Per contra, the learned Departmental Representative for Revenue supported the decision rendered by the learned CIT (Appeals) in

the impugned orders and placed reliance on certain judicial pronouncements in support of the same.

4.6 We have heard the rival contentions, perused and carefully considered the material on record; including the judicial pronouncements cited by both parties. As the jurisdictional issues raised are very fundamental and relate to the validity of the orders of assessment for the four assessment years before us, these are taken up for consideration first.

4.7 **Re-opening of assessments - Non-furnishing of reasons recorded**

(A.Ys 2010-11 & 2011-12)

4.7.1 The fact that the assessment proceedings for these two assessment years were initiated by issue of notices under Section 148 of the Act is not in dispute. At para 5(f) – of the impugned orders, the learned CIT (Appeals) has rendered a clear finding of fact that the assessee requested the Assessing Officer to provide a copy of reasons recorded for reopening and that the Assessing Officer has not provided the same to the assessee. The learned CIT (Appeals) has also recorded in the impugned orders that the assessee relied, ‘inter alia’, on the decisions of the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO (250 ITR 19) and of the Hon'ble Bombay High Court in the case of Allana Cold Storage Ltd. Vs. ITO (287 ITR 1) (Bom). The learned CIT (Appeals), we observe, has also noted that the Hon'ble Courts have held that providing reasons recorded for initiation of proceedings for

reopening of assessments is a condition precedent for passing an order of assessment. After having making the above observations, the learned CIT (Appeals) proceeded to hold that the Assessing Officer was within his power to pass the impugned orders of assessment without providing copies of the reasons recorded for initiation of proceedings for reopening the assessments for these two years, for the following reasons :-

- (i) Not providing the assessee a copy of the reasons recorded will not vitiate the proceedings as the assessee was aware of the reasons.
- (ii) The Authorised Representative of the assessee attended hearings before the officer.
- (iii) The assessee deliberately omitted to remind the Assessing Officer for being supplied with copy of the reasons recorded.
- (iv) The Assessing Officer addressed two letters to the assessee wherein he had conveyed his intention to pass the orders of assessment for these two assessment years in line with his proposals.

4.7.2 It is the assessee's contention that providing the reasons recorded for reopening of the assessments for the two assessment years, 2010-11 and 2011-12, is a condition precedent for passing an order of assessment. According to the assessee, the admitted and undisputed facts, borne out from the orders of the learned CIT (Appeals), were that the assessee had requested the Assessing Officer in writing for being supplied with copy of the reasons recorded for initiation of proceedings for reopening of the assessments for both these assessment years.

Therefore, since admittedly the Assessing Officer failed to furnish the copy of reasons recorded for reopening of the assessments after the same was sought for by the assessee, the orders of assessment passed in those assessment years is bad in law. This is the settled position of law as held by the Hon'ble Apex Court in the case of GKN Drive Shafts (India) Ltd. Vs. ITO (supra) and followed subsequently in several other cases. In support of the assessee's contentions, the learned Authorised Representative placed reliance on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Trend Electronics (supra).

4.7.3 It is not in dispute that the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO (supra) has laid down that providing reasons for reopening of assessments is a condition precedent for passing an order of assessment. In that case, the assessee had challenged the issue of notice under Section 148 of the Act in a Writ Petition before the Hon'ble Delhi High Court; which Court dismissed the Writ Petition observing that the assessee could have taken all the objections in its reply to the notices and that, at that stage, the Writ Petition was premature. On appeal, the Hon'ble Apex Court upheld the decision of the Hon'ble High Court, but while doing so, stipulated the condition of providing the reasons recorded for reopening of assessment. The relevant extract of para 5 thereof is extracted hereunder :-

“ 5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under s. 148 of the IT Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek

reasons for issuing notices. The AO is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the AO is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the AO has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."

4.7.4 This decision of the Hon'ble Apex Court (*supra*) was followed by the Hon'ble Bombay High Court in the case of CIT Vs. Trend Electronics (*supra*), and the relevant para 8 thereof is extracted hereunder :-

" 8. We find that the impugned order merely applies the decision of the Apex Court in *GNK Driveshafts (India) Ltd. (supra)*. Further it also follows the decision of this Court in *Videsh Sanchanr Nigam Ltd. (supra)* in holding that an order passed in reassessment proceedings are bad in law in the absence of reasons recorded for issuing a reopening notice under Section 148 of the Act being furnished to the assessee when sought for. It is axiomatic that power to reopen a completed assessment under the Act is an exceptional power and whenever revenue seeks to exercise such power, they must strictly comply with the prerequisite conditions viz. Reopening of reasons to indicate that the Assessing Officer had reason to believe that income chargeable to tax has escaped assessment which would warrant the reopening of an assessment. These recorded reasons as laid down by the Apex Court must be furnished to the assessee when sought for so as to enable the assessee to object to the same before the Assessing Officer. Thus in the absence of reasons being furnished, when sought for would make an order passed on reassessment bad in law. The recording of reasons (which has been done in this case) and furnishing of the same has to be strictly complied with as it is a jurisdictional issue. This requirement is very salutary as it not only ensures reopening notices are not lightly issued. Besides in case the same have been issued on some misunderstanding/misconception, the assessee is given an opportunity to point out that the reasons to believe as recorded in the reasons do not warrant reopening before the reassessment proceedings are commenced. The Assessing Officer disposes of these objections and if satisfied with the objections, then the impugned reopening notice under Section 148 of the Act is dropped/withdrawn otherwise it is proceeded with further. In issues such as this, i.e. where jurisdictional issue is involved the same must be strictly complied with by the authority concerned and no question of knowledge being attributed on the basis of implication can arise. We also do not appreciate the stand of the revenue, that the respondent-assessee had asked for reasons recorded only once and therefore seeking to justify non-furnishing of reasons. We expect the state to act more responsibly."

4.7.5 However, in a recent decision in the case of M/s. Home Finders Housing Ltd. Vs. ITO (2018) 93 taxmann.com 371 (Madras) / (2018) 404 ITR 611 (Madras) dt.25.4.2018, the Hon'ble Madras High Court has

explained the law relating to the issue and has held that if an order is passed without following the prescribed procedure, the entire proceedings will not be vitiated. The relevant paragraphs 16 to 18 and 24 to 26 thereof are extracted hereunder :-

“ **16.** It is not in dispute that there is no statutory requirement to pass an order taking into account the statement of objections filed by the assessee after receiving the reasons for invoking Section 147 of the I.T. Act. The Hon'ble Supreme Court in *GKN Driveshafts (India) Ltd.'s* case (*supra*), has given a procedural safeguard to the assessee to avoid unnecessary harassment by directing the Assessing Officer to pass a speaking order taking into account the objections for reopening the assessment under Section 147 of the I.T. Act.

17. The forming of opinion to proceed further by disposal of the objections need not be a detailed consideration of all the facts and law applicable. It must show application of mind to the objections raised by the noticee. In case the objections are such that it would require a detailed examination of facts and application of legal provisions, taking into account the assessment order sought to be reopened, the string of violations, suppression of material particulars and transactions which would require considerable time and would be in the nature of a detailed adjudicatory process, the Assessing Officer can dispose of the objections, by giving his tentative reasons for overruling the objections.

18. The disposal of objections is in the value of a procedural requirement to appraise the assessee of the actual grounds which made the Assessing Officer to arrive at a *prima facie* satisfaction that there was escape of assessment warranting reopening the assessment proceedings. The disposal of such objection must be before the date of hearing and passing a fresh order of assessment. In case, on a consideration of the objections submitted by the assessee, the Assessing Officer is of the view that there is no ground made out to proceed, he can pass an order to wind up the proceedings. It is only when a decision was taken to overrule the objections, and to proceed further with the reassessment process, the Assessing Officer is obliged to give disposal to the statement of objections submitted by the assessee.ô

“ **24.** In case an order is passed without following a prescribed procedure, the entire proceedings would not be vitiated. It would still be possible for the authority to proceed further after complying with the particular procedure.

25. The enactments like the Land Acquisition Act, 1894, contain mandatory provisions like Section 5A, the non compliance of which would vitiate the declaration under Section 6 of the Act. Even after quashing the declaration for non compliance of Section 5A, the Court would permit the conduct of enquiry and pass a fresh declaration within the period of limitation.

26. We therefore make the position clear that non compliance of the procedure indicated in the *GKN Driveshafts (India) Ltd.'s* case (*supra*) would not make the order void or non est. Such a violation in the matter of procedure is only an irregularity which could be cured by remitting the matter to the authority.ô

4.7.6 The SLP filed by the assessee in the above mentioned case before the Hon'ble Apex Court has been dismissed without any discussion vide order reported in (2018) 94 taxmann.com 84 (SC).

4.7.7 Therefore, we have before us two decisions of two non-jurisdictional High Courts, on the same issue. While the Hon'ble High Court of Bombay has merely relied on the decision of Hon'ble Apex Court in the case of *GKN Driveshafts (India) Ltd.* (*supra*); the decision of the Hon'ble High Court of Madras in the case of *Home Finders Housing Ltd.* (*supra*) has discussed, in depth, the law laid down by the Hon'ble Apex Court in the case of *GKN Driveshafts (India) Ltd.* (*supra*) and has rendered a finding that the procedure indicated in *GKN Driveshafts (India) Ltd.* (*supra*) is a procedure, the non-compliance of which itself would not make the order void. It is only an irregularity which can be caused by remitting the matter to the authority. As the Hon'ble High Court of Madras in its order (*supra*) has analysed the decision of the Hon'ble Apex Court in the case of *GKN Driveshafts (India) Ltd.* (*supra*) and has rendered a finding on the actual position of that decision, we respectfully deem it appropriate to follow the decision of the Hon'ble High Court of Madras in the case of *Home Finders Housing Ltd.* (*supra*).

4.7.8 In our considered view, the above principles apply squarely to the facts of the case on hand for both the assessment year 2010-11 and 2011-12. In the case on hand, the undisputed fact is that the assessee had asked the Assessing Officer to provide it the reasons recorded for reopening assessments, which was not furnished. However, in spite of the reasons recorded not being provided by the Assessing Officer, the assessee has participated and co-operated with the Assessing Officer in completion of the assessment proceedings. Respectfully following the decision of the Hon'ble High Court of Madras in the case of Home Finders Housing Ltd. (supra), we remit the matter back to the file of the Assessing Officer with a direction that this irregularity of non-provision of reasons recorded and other required procedures be correctly followed in accordance with the law and the order passed accordingly in line with the decision rendered by the Hon'ble High Court of Madras in the case of Home Finders Housing Ltd. (supra).

5. **Order of assessment passed by JCIT, while notice u/s.143(2)**

Issued by ITO.

5.1.1 The assessee has raised this issue in all four assessment years 2010-11 to 2013-14; contending that the Assessing Officer who initiated the assessment proceedings by issuing notices under Section 148 / 143(2) of the Act alone should pass the order of assessment under Section 143(3) of the Act, because, as per the assessee, once an officer assumes jurisdiction, another officer cannot assume jurisdiction in the absence of an order under Section 120 / 127 of the Act to this effect.

According to the assessee's contention, even if the JCIT had concurrent jurisdiction, he should have initiated the assessment proceedings by issue of notices under Section 143(2) of the Act. In support of this contention of the assessee, the learned Authorised Representative placed reliance on the decision of the Hon'ble High Court of Delhi in the case of Valvoline Cummins Pvt. Ltd. Vs. DCIT (2008) 307 ITR 103 (Del).

5.1.2 The learned CIT (Appeals), however, did not agree with the above contentions of the assessee and observed that the JCIT has been conferred concurrent jurisdiction by the CBDT. According to the learned CIT (Appeals), concurrent jurisdiction means that apart from exercising administrative powers, the JCIT can issue instructions, give guidance in completion of the orders of assessment, etc and may also assume the powers of the Assessing Officer under Section 120(4) & 120(5) of the Act. The learned CIT (Appeals) observes that the JCIT had duly informed the assessee of the fact of his assuming jurisdiction of the case on hand and the assessee had fully co-operated and participated in the assessment proceedings without raising any objection at that time.

5.1.3 According to the reasoning put forth by the learned CIT (Appeals), non-issuance of notice under Section 143(2) by the JCIT may be only a technical error and does not vitiate the assessment proceedings to be held as bad in law. As the transfer of a case can be effected at any stage of the proceedings, it is not necessary for the Assessing Officer to whose file it has been transferred to reissue the notice. The latter officer can continue the proceedings and complete the same and in support of this

proposition, the learned CIT (Appeals) has placed reliance on the decision in the case of Mathura Prasad Motilal & Co. V. CIT (1956) 30 ITR 695 (Nagpur).

5.2 Per contra, the learned Departmental Representative for Revenue emphatically supported the order of the learned CIT (Appeals).

5.3.1 We have heard the rival contentions, perused and carefully considered the material on record; including the submissions made and judicial pronouncements cited. The issue of “concurrent jurisdiction” in the context of the CBDT Notification issued under Section 120 of the Act by the CBDT has been discussed in the decision of the ITAT, Delhi Bench in the case of Mega Corporation Ltd Vs. Addl. CIT(2015) 155 ITD 1019 [ITAT (Del)]. After discussing the issue of concurrent jurisdiction and the judicial pronouncements on the subject, the Tribunal held that the order passed by the Addl. CIT was without jurisdiction. In this decision, the Tribunal had relied upon the decision of the Hon'ble Delhi High Court in the case of Valvoline Cummins Pvt. Ltd. Vs. DCIT (supra) wherein the Hon'ble High Court has explained the concept of “concurrent jurisdiction”. The relevant paragraphs at paras 29 & 30 thereof are extracted hereunder :-

“ 29. 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(6) of the Act. We are of the opinion that this was not permissible in law.

5.3.2 Further in the case of Mega Corporation Ltd. (supra), it has been held by the Tribunal that in the absence of an order under Section 120(4)(b) of the Act, the Addl. CIT lacks jurisdiction to exercise the functions of the Assessing Officer and therefore the order of assessment is framed without jurisdiction. The relevant portion at para 7.1 thereof is extracted hereunder :-

“ 7.1 On careful consideration we find merit in the said submission. This order apparently is neither an order under section 120(4)(b) of the Act and nor it otherwise directs the Additional Commissioner to exercise or perform all or any of the powers and functions conferred on or assigned to an Assessing Officer under the Act. As regards the notification no. 267/2001 dated 17.9.2001 we notice that such notification by CBDT u/s 120(4)(b) of the Act directs that Joint Commissioner of Income Tax or Joint Director shall exercise the power and function of an Assessing Officer in respect of specified cases in respect of which such Joint Commissioner or authorized by Commissioner of Income Tax vide CBDT notification dated 14.9.2001 and 31.7.2001. It is thus apparent that the said notification is applicable in respect of Joint Commissioner authorized by Commissioner of Income Tax under notification as specified therein and no more. In the instant case it is admitted position that none of the notifications as specified therein confer powers of an Assessing Officer to the Additional Commissioner of Income Tax, Range 6, New Delhi.”

5.3.3 On similar facts, the ITAT, Mumbai Bench, in the case of Tata Sons Ltd. Vs. ACIT (2016) 76 taxmann.com 126 (Mumbai – Trib.), has held that the assessment has to be completed by the assessing authority who has initiated proceedings for making assessment and another authority can take over the proceedings only after a proper transfer order is issued under Section 127 of the Act. The Additional CIT can exercise powers of the Assessing Officer only if he is specifically directed under Section 120(4)(b) of the Act. The relevant paragraphs of this order of the Tribunal (supra) at paras 3.33 to 3.40 thereof which is extracted hereunder :-

“ 3.33. Similar issue has been decided by the Lucknow bench of ITAT in the case of *Prachi Leather (P.) Ltd. v. Addl. CIT* [IT Appeal No. 26(L) of 2010, dated 8.12.2010] relying upon its earlier order in 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 *Dr. Nalini Mahajan (supra)*. It is also noted that this decision has also been considered by Delhi Bench in the case of *Mega Corporations Ltd, supra* and relevant portion of the order as discussed therein is reproduced below:ò

"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 is 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. ë ë

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 according 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 the case of *Dr. Nalini Mahajan v. DIT* [2001] 252 ITR 123/[2002]122 taxman 897 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 to powers of Additional Director (Investigation), is fully applicable to the present case.

18.3 In view of the aforesaid facts, circumstances and the discussion and following the law laid down by the Hon'ble Delhi High Court in the case of *Dr. Nalini 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 ITA in the case *City Garden v. ITO* [2012] 21 taxmann.com 373/51 SOT 195 (URO) 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 the case of *Microfin Security (P.) Ltd. v. Addl. CIT* [2005] 3 SOT 302 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.

3.36. Similar view has been taken recently in another judgment by the Delhi bench of the ITAT in the case of *Harvinder Singh Jaggi v. Asstt. CIT* [2016] 157 ITD 869/67 taxmann.com 109. Relevant part of observations of the Bench is reproduced below:ò

"ë ë .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 to 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. (supra)*, 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 Section 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 Ld. 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 law that jurisdictional conditions required to be fulfilled by the assessing officer must be performed strictly in the manner as have been prescribed and if it has not been done in the manner as prescribed under the law, then it becomes nullity in the eyes of law. Hon'ble Supreme Court in the case of *CIT v. Anjum M. H. Ghaswala* [2001] 252 ITR 1/119 Taxman 352 observed that it is a normal rule of construction that when a statute 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 statute only.

3.39. Hon'ble Bombay High Court dealt with a similar situation in the case of *Ghanshyam K. Khabrani (supra)* 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 that sanction was granted by an officer superior in rank and therefore, no prejudice was caused to the assessee. But Hon'ble High Court did not agree with the contention of the Revenue and observed that:ò

"ë ë ..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 onlyë ë ë "

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.ô

5.3.4 In our considered view, the above legal principles, as laid out in the judicial pronouncements cited above (supra), apply squarely to the facts of the case on hand. The JCIT, in the case on hand, has assumed jurisdiction over the case by mentioning that the JCIT has been given concurrent jurisdiction and has also referred to the Central Action Plan for 2013-14. The learned CIT (Appeals) has held that the JCIT has concurrent jurisdiction over this case in terms of Notification issued under Section 140 of the Act by the CBDT. However, as per the decision cited above it is an imperative mandatory requirement of law that an order in writing, to this effect, must be passed under Section 127 of the

Act by the jurisdictional Commissioner of Income Tax for effecting the transfer of assessment proceedings from one Assessing Officer to another Assessing Officer. From the records before us, it is not clear as to whether such an order has been passed.

5.3.5 In the light of the discussion above, and considering that there is no clarity on the process adopted, before the JCIT came to pass the impugned orders of assessment for Assessment Years 2010-11 to 2013-14; particularly whether an order under Section 127 of the Act was passed in this regard. In this factual matrix of the case, we deem it appropriate to remand the matter back to the file of the Assessing Officer to examine whether the necessary orders, as explained above, have been passed in the case on hand for the JCIT to assume valid jurisdiction to pass the impugned orders of assessment. Even if such an order is not passed, it would be a procedural issue and in terms of the decision of the Hon'ble High Court of Madras in the case of M/s. Home Finders Housing Ltd. Vs. ITO (supra), such a defect is not fatal and can be cured / rectified by passing a fresh order. In this factual and legal matrix of the case, we remand this issue to the file of the Assessing Officer for necessary action in accordance with law and the principles laid down in this regard by the judicial pronouncements cited / discussed from para 5.3.1 to 5.3.5 of this order. Needless to add, the Assessing Officer shall afford the assessee adequate opportunity of being heard in these matters and to put forth details / submissions required which shall be

duly considered by the Assessing Officer before deciding these issues. We hold and direct accordingly.

6. Deduction u/s.80P of the Act.

6.1 On the substantive issue of the disallowance of the assessee's claim for deduction under Section 80P of the Act, since the jurisdictional issues, namely non-furnishing of reasons recorded, validity of issued notices issued under Section 148 of the Act and validity of assumption of jurisdiction by the JCIT in passing the impugned orders of assessment have been remanded back to the file of the Assessing Officer for fresh consideration, in our considered view, adjudication on the substantive issue in the appeals at this stage would be premature. If the issue of notice and passing of orders fail to pass the test, in the light of our directions issued above, the impugned orders of assessment, having no legs to stand on, will fail and consequently so too with the disallowances made. We, therefore, refrain from adjudicating on the substantive issue of allowability of the assessee's claim for deduction under Section 80P of the Act.

6.2 It may however be mentioned that the Assessing Officer has disallowed the assessee's claim for deduction under Section 80P of the Act, inter alia, on the issue that the assessee is a federation of societies and other members and hence the concept of who constitute "Members" is very relevant. We also observe that the Assessing Officer has rendered a finding that the sales are made to agencies other than

members, by invoking the principle of mutuality. We find that the Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd. (397 ITR 1) (SC), in the context of credit co-operative societies has ruled on these two principles while deciding the issue of deduction under Section 80P of the Act. The Assessing Officer is directed to consider the principles enunciated in the aforesaid decision of the Hon'ble Apex Court (supra) while passing orders, after considering the jurisdictional issues remanded back.

7. In the result, the assessee's appeals for Assessment Years 2010-11 to 2013-14 are partly allowed for statistical purposes as indicated above.

Order pronounced in the open court on the 5th day of Sept.,2018.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore,
Dt.05.09.2018.

*Reddy gp

Copy to :

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2	Respondent	5	DR. ITAT, Bangalore
3	CIT	6	Guard File

Senior Private Secretary
Income Tax Appellate Tribunal
Bangalore.