IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITA No.6996/Del/2025
(ASSESSMENT YEAR: 2017-18)

Deepak Jain Prop. Vardhman Jewellers, S-130, 1st Floor, Greater Kailash, Part-I, New Delhi-110048. ***PAN-AANPJ2780P***	Vs.	Income Tax Officer, Ward-35(2), Delhi.
(Appellant)		**(Respondent)**

Assessee by	Shri D.C. Garg, CA
Department by	Shri Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing	12/08/2026
Date of Pronouncement	19/08/2026

O R D E R

PER M. BALAGANESH AM:

The instant appeal filed by the Assessee is directed against the order dated 05/09/2025 passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No. CIT(A)-Delhi-12/11052/2019-20 against the assessment order passed by Ward- 35(2), Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') on 31/12/2019 for the Assessment Year 2017-18.

2. At the outset, we find that the assessee has raised the additional grounds before us challenging the validity of assessment proceedings on the ground that

notice u/s 143(2) of the Act has been issued by ITO, Ward-35(2), Delhi instead of ACIT which is in violation of the pecuniary jurisdiction limits prescribed by the Central Board of Direct Taxes (CBDT) vide Instruction No.1/2011 dated 31/01/2011. This goes to the root of the matter and being a legal issue, the said additional ground is hereby admitted and taken up first for adjudication.

3. We have heard the rival submissions and perused the materials available on record. The assessee in the instant case had filed the return of income for the Asst. Year 2017-18 on 31.10.2017 u/s 139(1) of the Act declaring taxable income of Rs.37,71,070/-. Notice u/s 143(2) of the Act dated 09/08/2018 was issued by ITO, Ward-35(2), Delhi which is enclosed in page 15 of the PB. Another notice u/s 143(2) of the Act dated 21/08/2018 was issued by ITO, Ward-35(2), Delhi which is enclosed in page 19 of PB. Yet another notice u/s 143(2) of the Act dated 30/09/2018 was issued by ITO, Ward-35(3), Delhi which is enclosed in page 23 of PB. Assessment Order was finally framed by ITO, Ward-35(2), Delhi on 31.12.2019.

4. Since, the return of income is more than Rs.20,00,000/-, the notice u/s 143(2) of the Act ought to have been issued by an Officer who is in the rank of Assistant Commissioner of Income Tax or Deputy Commissioner of Income Tax as per CBDT Instruction No.1/2011 dated 31.01.2011. Since the notice u/s 143(2) of the Act being a jurisdictional notice, the notice issued by ITO instead of ACIT is bad in law as the very assumption of jurisdiction becomes flawed which in turn would make the consequential framing of assessment void ab-initio. When this was confronted to Ld. 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 u/s 143(2) of the Act. In our considered opinion, this argument of the Ld. DR is to be rejected, as the provisions

of section 124(3) of the Act speak about the territorial jurisdiction whereas the issue in the instant case involves pecuniary jurisdiction. It is trite law that instructions issued by the CBDT are binding on the Income Tax Department and not following of the same would render the assessment void ab-initio. Further the issue is also covered by the decision of Hon'ble Bombay High Court in the case of Ashok Devichand Jain vs. Union of India through The Secretary dated 08.03.2022 reported in 452 ITR 43 (Bom) , wherein the CBDT Instruction No.1/2011 dated 31.01.2011 have been duly considered by the Hon'ble Bombay High Court. For the sake of convenience, the entire order is reproduced herein under:

> *"Petitioner is impugning a notice dated 30th March, 2019 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.*
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> *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.*
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> *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.*
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> *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."*

5. Since the issue is covered by the decision of Hon'ble Bombay High Court, the reliance placed by the Ld. DR on the decision of the Co-ordinate Bench of Guwahati Tribunal in the case of the Jayanta Khaund vs. ACIT [2024] 169 taxmann.com 474 need not be followed. Respectfully following the decision of Hon'ble Bombay High Court, we hold that notice u/s 143(2) of the Act issued by the ITO is a jurisdictional defect not curable u/s 292BB of the Act as it is an illegality and not an irregularity. Consequentially the assessment framed by the Ld. ITO is bad in law and declared as void ab-initio. Accordingly, the additional ground raised by the assessee is allowed.

6. Since the entire assessment is quashed, the adjudication of the original grounds raised by the assessee become academic in nature and are left open.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 19th August,2026.

Sd/-	Sd/-
(SUDHIR KUMAR)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 19.08.2026
PK, Sr. P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI