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**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

BEFORE SHRI H.L. KARWA AND SHRI B.R. JAIN

I.T.A. NO.507/DEL/2003

Assessment year : 1999-2000

M/s Bindal Apparels Ltd.,
47-Bunglow Road,
Kamla Nagar, Delhi.

A.C.I.T.
Range-20,
New Delhi.

v.

(Appellant)

(Respondent)

Appellant by : Shri Ved Jain. F.C.A.

Respondent by: Shri Shantanu Dhamija, DR.

ORDER

This appeal by assessee against the order dated 30.12.2002 of Id CIT (A) – XXII, New Delhi raises the following grounds:

1. On the facts and circumstances of the case, the order passed by the Id CIT (A) is bad both in the eye of law and on facts.
2. On the facts and circumstances of the case, the Id CIT (A) has erred both on facts and in law, in rejecting the contention of the assessee that in the absence of an order in writing passed by the CIT as required under section 120 (4)(m) of the Act, the addl. CIT (A) can not be Assessing Officer under sec. 2 (7A) and hence the asstt. Order passed by her is null and void.
3. On the facts and circumstances of the case, the Id CIT (A) has erred in rejecting the contention of the assessee that the assessment is liable to be quashed as the same has been passed by the Addl. CIT despite the fact that by such authority is given to the Addl. CIT for making an assessment under the Act.
4. On the facts and circumstances of the case, the Id CIT (A) has erred in rejecting the contention of the assessee that the order passed by the Id Addl. CIT is illegal and unsustainable in the eye of law as it does not specify the section categorically under which the assessment has been framed i.e. whether under section 143 (3) or section 144 of the Act.
5. On the facts and circumstances of the case, the Id CIT (A) has erred in both on facts and in law, in confirming the addition of Rs.46,95,347/- as trading addition.

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6. On the facts and circumstances of the case, the Id CIT (A) has erred, both on facts and in law, in upholding the action of the Addl. CIT of rejection of books of accounts even after accepting the contention of the assessee that the Assessing Officer's reasons for rejecting the book results are inadequate.

7. On the facts and circumstances of the case, the Id CIT (A) has erred, both on facts and in law, in not accepting the contention of the assessee that the enhancement of sales by Addl. CIT to Rs.6 crores as against Rs.5,48,90,910/- as per books of accounts maintained in the normal course of business by the assessee is arbitrary, without even any basis and without any adverse material or evidence.

8. On the facts and circumstances of the case, the Id CIT (A) has erred, both on facts and in law, in not accepting the contention of the assessee that the estimation of gross profit rate by the Assessing Officer at 21% is arbitrary, without even basis and without any material and evidence.

9 (i) On the facts and circumstances of the case, the Id CIT (A) has erred, both on facts and in law, in rejecting the evidence and explanation submitted by the assessee in support of the gross profit rate declared by it as per books of accounts.

9. (ii) On the facts and circumstances of the case, the Id CIT (A) was not justified in making a presumption that the assessee has earned income out side the books of account after the date of the survey despite the fact that there was no material and basis for making such presumption.

10. On the facts and circumstances of the case, the Id CIT (A) has erred in sustaining the addition of Rs.46,95,347/- as trading addition by setting up a new case i.e. by working out the income of the full year on the basis of the additional income offered during the survey.

11. (i) On the facts and circumstances of the case, the Id CIT (A) has erred in not deleting the addition of Rs.9,80,000/- on account of the cash found at the time of survey despite the fact that the assessee has submitted complete explanation and evidence in support of the same.,

11.(ii) That the explanation and evidences submitted by the assessee for the cash of Rs.9,80,000/- available at the time of survey has been rejected in an arbitrary manner without pointing out any discrepancy or inconsistency in the explanation and the evidences.

12. On the facts and circumstances of the case, the Id CIT (A) has erred in not deleting the addition of Rs.48,000/- being the difference in stock computed by the department at the time of survey despite the fact that the assessee has submitted complete explanation and evidences in support of such differences.

13. (i) On the facts and circumstances of the case, the Id CIT (A) has erred both on facts and in law in confirming the disallowance of a sum of Rs.60,000/- on account of salary paid to the working partner, Mrs. Kusam Gupta.

13 (ii) That the salary paid to Mrs. Kusam Gupta has been disallowed in an arbitrary manner ignoring the evidences and explanation submitted by the assessee.

14. On the facts and circumstances of the case, the Id CIT (A) has erred both on facts and in law, in confirming the disallowance of a sum of Rs.29,152/- under section 43B of the Income Tax Act, 1961, on account of late payment of ESI and EPF ignoring the explanation of the assessee and the decided case law cited by the assessee.

15. The assessee craves leave to add, amend or alter any of the ground of appeal.

2. Briefly the facts are that the appellant is a partnership firm engaged in the retail trading of ready made garments. The return declaring income of Rs.27,04,313/- was filed on 25.11.1997. After processing the return under section 143 (1) (a) the Assessing Officer DCIT, Circle-6 (1) Delhi issued a notice under section 143 (2) of the Act on 10th October, 2000 and the assessee made appearance from time to time. Thereafter, the Addl. CIT, Range-20, New Delhi issued a fresh notice under section 143 (2) on 4th March, 2002 for making appearance on 13th March, 2002 and furnish evidence in support of the income returned. The assessment has been completed by Addl. CIT Range-20, on 28th March, 2002 at an income of Rs.49,98,710/- by rejecting the accounts. The sales have been estimated at Rs.6.00 crores as against the declared sales of Rs.5,48,90,910/- by applying a gross profit rate of 2%. The profit thus have been estimated at Rs.46,95,347/-. This included the amount of excess stock found during survey on 21.1.1997 and surrendered by the assessee. Telescoping for Rs.25,00,000/- offered for taxation on account of investment in building and included in the returned income also stood allowed.

3. Before the Id CIT (A) the assessee challenged the validity of assessment made by Addl. CIT Range-20, as he could not be the Assessing Officer within the meaning of section 2 (7A) of the Act nor there was any order directing transfer of jurisdiction of his case nor any directions were issued by the Id CIT Delhi within the powers vested in him under section 120 (4) (b) of the Act to perform functions of the Assessing Officer in his case. The Id CIT (A), however, rejected the contention of

the appellant and held that the Assessing Officer had correctly been assigned the jurisdiction to assess this case. The appeal of assessee on other grounds on merit also stood dismissed.

4. Shri Ved Jain Ld AR contends that as per the provisions of section 143 (3) of the Act, the power to pass assessment order is with the Assessing Officer. The word Assessing Officer has been defined in section 2 (7A) of the Act which reads as under:

Assessing Officer means the Asstt. Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income Tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub section 1 or sub section 2 of section 120 or any other provision of the Act, and Joint Commissioner or Joint Director who is directed under clause (b), sub section 4 of that section to exercise or perform all or any of the powers and functions conferred on or assigned to an Assessing Officer under this Act.

5. The above definition of the Assessing Officer nowhere provides the Additional Commissioner as Assessing Officer. The reason for not providing the Addl. Commissioner as Assessing Officer is obvious. The statute provides for filing of appeals against the assessment order passed by the CIT (A). For the reason, the Assessing Officer making the assessment has to be a person who is lower in the rank to the appellate authority. If the assessment is framed by a senior officer then the appeal has to go to a person who is much senior to that person making the assessment. It is because of this reason only that the Act specifically provides that where an order is passed by the CIT under section 263 the appeal will be directed to the Income Tax Appellate Tribunal. Moreover as per section 2 (7A) also, only those Joint Commissioners who are directed under clause (b) of sub section 4 of section 120 and not the all Joint Commissioners can exercise of the powers of assessing officer. For the purpose of section 120 (4) (b) there has to be an order in writing passed by the Board authorizing the Chief Commissioner or Commissioner who can, in turn issue further orders conferring the power of Assessing Officer on Joint Commissioner. In this case, the first notice under section 143 (2) was issued by the DCIT on 10th October, 2000. At what stage the case got transferred to the Addl. CIT is not known. For assuming jurisdiction over the assessee a proper procedure had to be followed. Since no proper

procedure has been followed in the case, the assumption of jurisdiction by the Addl. CIT itself is illegal, more so when the Addl. CIT is not the Assessing Officer within the meaning sub section (7A) of section 2 of the Act.

6. In this case, firstly the Addl. CIT cannot be an Assessing Officer within the meaning of section 2 (7A) of the Act and, secondly even if the Joint Commissioner is to be assigned the work of the Assessing Officer, a specific order has to be passed in writing by the Commissioner transferring the jurisdiction from the existing Assessing Officer to the Joint CIT. This issue was taken up in the course of hearing before the CIT (A). The additional CIT in his remand report has enclosed letter dated 14th February, 2002 (page 26 of the paper book) whereby, as per the Addl. CIT the jurisdiction in this case was transferred to him. However, the said letter nowhere transfers the jurisdiction of the appellant's case to the Addl. CIT. The said letter reads as under:

"I am forwarding herewith the copy of Board's letter F. No.187/2002 – ITA dated 7.2.2002. The Board has clarified that the Board's notification dated 17.9.2001 will supercede all the earlier guidelines issued by Board. The Addl. CIT/JCIT is entitled to exercise all the powers and functions of an Assessing Officer working under him. He can also finalise the assessment under his signatures. It is, therefore, clarified that the Addl. CIT/JCIT may pick up any such case wherein he feels that the assessment order has to be passed under their signature. The report of cases taken by JCIT for making assessments directly under his signature may be intimated to the undersigned".

7. On going through the said letter it is noticed that the Ld. CIT has only interpreted the letter dated 7th February, 2002 issued by the Board which according to him gives authorization to the Addl. CIT/JCIT to exercise all the powers and functions of the Assessing Officer working under him. On the basis of this clarification the CIT has specifically stated that no separate authorization is required from any authority including CIT for the Addl. CIT /JCIT for finalizing an assessment under his signature. As such, this letter is not an authorization issued by the CIT transferring the jurisdiction of the appellant to the Addl. CIT. It is only an interpretation of the Board Circular whereby the CIT has clearly stated that no separate

authorization is required. Accordingly, this letter cannot be considered an order passed under section 120 (4) (b) of the Act.

8. As regards the contention that objection to the jurisdiction can be filed within a period of one month, it was submitted by the Ld AR that the question is not that of the jurisdiction but the issue is whether Addl. CIT can pass the assessment order under section 143 (3) or not. As per section 143 (3) of the Act the power to pass the order is with that of the Assessing Officer. The Assessing Officer has been defined in section 2 (7A) of the Act. It includes various authorities but does not include Addl. CIT and as such the order passed by the Addl. CIT is not a valid order under section 143 (3) of the Act. The objection under section 143 (3) can be raised only when Assessing Officer having jurisdiction of certain assesses passes assessment order in respect of certain other persons not falling within his jurisdiction. The purpose of section 124 (3) is to avoid dispute in respect of allocation of jurisdiction between different Assessing Officers. The provision of section 124 (3) cannot be invoked with reference to a person to vest with him the authority of Assessing Officer who does not fall within the definition of the Assessing Officer. The bar placed under section 124 (3) reads:

"No person shall be entitled to call in question the jurisdiction of an Assessing Officer"

As such the bar is on the jurisdiction of the Assessing Officer and not for a person who is not an Assessing Officer.

9. The Ld AR in support of his argument has also relied upon the judgment of the Lucknow Bench in the case of Microfin Securities (P) Ltd. v. Addl. CIT 94 TTJ 767 where almost on similar facts the Hon'ble ITAT has quashed the assessment. Reliance has also been placed on the judgment of the Delhi Bench in the case of Mitsubishi Corporation v. DCIT 85 ITD 414 (Del.) where the Delhi Tribunal has held that JCIT can exercise the powers and functions of Assessing Officer if he has been specifically directed under section 120 (4) (b) of the Act. In the absence of any specific order, the JCIT shall not be entitled to perform the powers and functions of the Assessing Officer. This was the contention of the revenue in the above said case which was upheld by the Delhi Bench.

10. The Id DR in his reply submitted that as per the scheme of the Act, the Addl. CIT can be an Assessing Officer. The Department has restructured its whole set up in the year 2001 and after restructuring the Addl. CIT can be an Assessing Officer and there is no need for issuing any further orders. As per the Ld. DR this is a question of jurisdiction and as such provision of section 124 (3) shall be applicable. As regards the issue that the Addl. CIT cannot be an Assessing Officer within the meaning of section 2 (7A) of the Act, the Ld DR made reference to section 2 (28C) of the Act which defines Joint Commissioner to be a Joint Commissioner of Income Tax or an Addl. Commissioner of Income Tax under section 117 (1) of the Act. There is thus no difference between Joint Commissioner and Addl. Commissioner and the assessment can be framed by the Addl. CIT also. He further submitted that after the issue of the Board letter dated 7th February, 2002 there is no requirement for the Commissioner to issue any separate order in writing conferring the powers and functions of the Assessing Officer in respect of certain class of persons to the Joint CIT or Addl. CIT. In this regard the reference was made to the Board Circular dated 7th February, 2002 where the Board has clarified that the Board notification S.O. No.889 (E) dated 17th September, 2001 will supercede the scrutiny guidelines issued by the Board instructions dated 20th September, 2001 on the issue of power of assessment to be exercised by the JCIT/JDIT. He further submitted that irrespective of the provision of section 2 (7A), the Addl. CIT shall be eligible to complete the assessment and accordingly the assessment cannot be challenged on this ground. On the issue of limitation under section 124 (3), it was submitted that the limitation applies to all assessment orders as once the order has been passed by any authority it is an order passed by the Assessing Officer."

11. We have heard the parties with reference to precedents cited and taken ourselves through the entire material on record. The assessment order in this case has been made by he Addl. CIT Range-20, New Delhi on 28th March, 2002 on the strength of notice issued under section 143 (2) of the Act on 4th March, 2002. Assessing Officer has been defined under section 2 (7A) of the Income Tax Act, 1961. As per sub section (7A) of the Act there are two categories of officers, who can be Assessing Officer under the Income Tax Act, 1961. First category includes the officers who are vested with the relevant jurisdiction by virtue of directions

or orders issued under sub section (1) or sub section(2) of section 120 or any other provision of the Act. Such officers are:

- i) Assistant Commissioner, or
- ii) Deputy Commissioner, or
- iii) Assistant Director, or
- iv) Deputy Director, or
- v) Income Tax Officer.

The second category of the officers are those who are directed under clause (b) of sub section 4 of section 120 of the Act to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act. Such officers are Joint Commissioner or Joint Director. Furthermore, sub section (28-C) of Section 2 of the Act defines Joint Commissioner "to mean a person appointed to be a Joint Commissioner of Income tax or an Addl. Commissioner of Income Tax under sub section (4) of section 117 of the Act.

12. In the first place, an Addl. Commissioner of Income tax is not included expressly in the definition of Assessing Officer. It is only by the definition of "Joint Commissioner" and that too when directed under clause (b) of sub section 4 of section 120, he can be defined as an Assessing Officer. In the absence of any such directions, it is thus un-thinkable for him to be an Assessing Officer. He is lawfully seized with the jurisdiction of an Assessing Officer only when such jurisdiction is conferred upon him by virtue of directions given by the Director General or Chief Commissioner or commissioner in the manner contained under clause (b) of sub section 4 of section 120 of the Act and it is by no other manner or means he is authorized to exercise the powers and function of the Assessing Officer. We, therefore, reproduce the relevant provisions of sub section 4 of section 120 of the Act.

"Sub section (4)

"Without prejudice to the provisions of sub sections (1) & (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein:

a) authorize any Director General or Director to perform such functions of any other income tax authority as may be assigned to him by the Board.

b) empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be assigned to the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or income of classes of income or cases or classes of cases shall be exercised or performed by a Joint Commissioner or a Joint Director any where any order is made under the clause, references in any other provisions of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order and any provision of this /act requiring approval or sanction of the Joint Commissioner shall not apply."

13. From the above provisions of law, it is clear that there has to be an order by the Director General, Chief Commissioner or Commissioner to assign or confer the powers of Assessing Officer to be exercised or performed by a Joint Commissioner and also that such an order has to be in writing, then the Joint Commissioner will not be seized of the jurisdiction to exercise or perform the powers and functions conferred on, or assigned to, an Assessing Officer under this Act. In the present case in appeal no such order is found to have been passed. The revenue before us has argued that in view of the instructions issued by the Board on 7th February, 2002 authorizing Joint Commissioner to act as Assessing Officer, it was not necessary for the commissioner to pass any separate order conferring jurisdiction to Joint Commissioner to exercise or perform the powers and functions conferred on, or assigned to, an Assessing Officer under this Act. We, however, do not agree to the position canvassed by the Ld. department representative. A perusal of letter dated 7th February, 2002 copy placed at assessee 's paper book pages 262 & 263 reveals that the Board had earlier issued a notification S.O. NO. 889 (E) dated 17th September, 2001, whereby it had directed that Joint Commissioners of

Income tax shall exercise the powers and functions of the Assessing Officer in respect of class of persons or incomes in respect of which such Joint Commissioner of Income tax authorized by the Commissioner of Income tax. Thereafter, instruction No.S/2001 dated 20th September, 2001 stated that Addl. CIT/JCIT will himself not make the assessment but will closely monitor and supervise the same. It is through this letter dated 7th February, 2002, the Board clarified that its instruction dated 17th September, 2001 will supersede the scrutiny guidelines issued on 20th September, 2001 so that the Joint Commissioner of Income tax shall exercise the powers and functions of the Assessing Officer and will have the power to finalise the assessment under their signature. Embargo placed by the Addl. CIT by Board instruction dated 30th September, 2001 however, is not found to have been lifted. Let that as it may be, the fact remains that a Joint Commissioner shall exercise the powers and functions of the Assessing Officer only if he is authorized by the Commissioner of Income tax. The Board, therefore, did not give any blanket power to the "Joint Commissioner of Income tax" to pick and choose any case of a person or income for making assessment thereof or to exercise the powers and functions of Assessing Officer in respect of such person/persons. There is thus no divergence between the aforesaid Board notification and the mandatory provisions contained under clause (b) of sub section 4 of section 120 of the Act also. We also find that Ld CIT (Delhi-V), New Delhi had written a letter dated 14.2.2002 to all the Addl. CIT / JCIT under his charge, copy placed at assessee 's paper book 261. He has forwarded the Board letter dated 7th February, 2002 to all these officers and has clarified that the Addl. CIT /JCIT may pick up any such case wherein he feels that the assessment order has to be passed under their signature. The report of cases taken by JCIT for making assessments directly under his signature may be intimated.....". This clarification given by Id CIT cannot be termed as an order in writing as envisaged by clause (b) of sub section (4) of section 120 of the Act. He just left upon the Joint Commissioner to pick and choose any case for making assessment under his signature and the same being contrary to section 120 (4) (b), the assessment made by a Joint Commissioner on the strength of such clarification is without valid jurisdiction with him, more so, when this section does not confer any arbitrary authority upon the revenue officers. In the present case in appeal, the Id Addl. CIT, Range-20, is thus found to have issued notice on 4th March, 2002 and made

assessment on 13th March, 2002 without acquiring valid jurisdiction. The notice so issued as well as the assessment order passed on the strength of such notice are directed to be quashed.

14. Shri Ved Jain Ld. counsel for the appellant also made a valiant attempt to say that the Additional Commissioner cannot be an Assessing Officer. The definition of Assessing Officer given under section 2 (7A) does not include Addl. CIT. He then says that the word Addl. CIT can also not be imported from the definition of Jt. Commissioner of Income given under section 2 (28-C) of the Act. Section 2 (9A) defines Assistant Commissioner to mean a person appointed to be an ACIT or DCIT u/s 117 (1) of the Act. Despite this definition, section 2 (7A), specifically includes in the definition of Assessing Officer, the income tax authorities like ACIT as well as DCIT. Likewise section 2 (21) defines Director General or Director to mean a Director General, Director and includes an Addl. Director, Joint Director, Asst.t. Director or Deputy Director also. If section 2 (7A) included Jont Director, Deputy Director or Asstt. Director in the definition of Assessing Officer, then by import of definition u/s 2 (21), the reciprocal authorities like Director General or Director can also be termed as Assessing Officer, thereby taking into its encompass all the Income tax authorities. If that were the position, there would have been no necessity to include the specific authorities in the definition clause of assessing authority and all authorities would have assumed the powers and functions of Assessing Officer themselves. The reason for specifying the authorities in the definition of section 2 (7A) is obvious i.e. to exclude what is not included. Furthermore the definition of Assessing Officer is not inclusive but is specific. He has also placed a strong reliance on the judgment of Delhi High Court in the case of Dr. Nalini Mahajan v. Director if Income tax 257 ITR 123 (Del) where the Hon'ble Court turned down the plea of revenue that in view of definition of Director General or Director given under section 2 (21), the Addl. Director, Jt. Director and Asstt. Director as well will have the powers to issue search warrants. The Court thus stated :

"When a power is given to do certain thing in a certain manner, the same must be done in that manner alone or not at all. All other proceedings are necessarily forbidden."

15. The Ld. counsel has sought to place reliance on the decision by Lucknow Bench of the Tribunal in the case of Microfin Securities (P) Ltd. v. Addl. CIT 94 TTJ 767 (Luck.) where it has been held that Addl. CIT as has been referred to in Instruction No.1/2002 dated 21st January, 2002, is not an authority who can act as an Assessing Officer within the meaning of section 2 (7A) of the Act. It has further been held that even after such amendment restrictions on Addl. CIT to make assessment, as per instruction dated 20th September, 2001, continues.

16. We have heard the parties at length with reference to the statutory provisions contained under the Act and the precedents cited at Bar. The question which arises for our consideration is as to whether the Additional Commissioner of Income-tax has the requisite jurisdiction to act as an Assessing Officer to make assessment of income. The term "Assessing Officer" has been defined under sub-section (7A) of section 2 of the Income-tax Act, 1961 to read as under:-

"2. In this Act, unless the context otherwise requires, -

(7A) "Assessing Officer" means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the Joint commissioner or Joint Director who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act;"

17. It is apparent from the above definition that the word "means" has been used to specify the definition of "Assessing Officer" and such person shall also be the Joint Commissioner or Joint Director who is directed under clause (b) of sub-section (4) of section 120 to exercise or perform all or any of the powers and functions conferred on, or assigned to an Assessing Officer under this Act. Since the definition clause has used the word "means", the definition of Assessing Officer given under sub-section (7A) of section 2 shall be conclusive.

18. In the said definition clause article "the" has been used before the authority "Joint Commissioner or Joint Director" and this goes to show that the authority so specified alone having a direction flowing from the delegate of Central Board of Direct Taxes can exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act. In the same manner while giving the

definition of "Assessing Officer" the Parliament has used article "the" before Income-tax authority, Assistant Commissioner, yet has included in its definition "Deputy Commissioner" also to be an Assessing Officer under this Act. In case the definition of "Assistant Commissioner" as contained under sub-section (9A) of section 2 of the Act was to be imported in the definition of "Assessing Officer" so as to include a "Deputy Commissioner of Income-tax" as well, then there was no necessity to include a Deputy Commissioner in the definition clause of Assessing Officer again, after the authority, the Assistant Commissioner. Following this analogy alone, the definition of Joint Commissioner given under sub-section (28C) of section 2 of the Act defining him to be a Joint Commissioner of Income-tax or an Additional Commissioner of Income-tax cannot be imported in sub-section (7A) of section 2 so as to include the Joint Commissioner to be an Additional Commissioner as well. Since the Parliament has used article "the" before the authorities specified in the definition clause given in sub-section (7A) of section 2 of the Act, it becomes imperative that such powers and functions are to be exercised or performed by that authority alone and not by any other person by extending the meaning of such authority.

19. The Income-tax authorities can be found defined under section 116 of the Act and such authorities have been assigned different powers and functions under the Act which have to be exercised or performed by those authorities in the manner provided by the Statute and by no other manner. It is so because 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. All other proceedings are necessarily forbidden. A useful reference for this may be had from the judgments in the case of *Nazir Ahmad v. The King - Emperor* AIR 1936 PC 253; (1936) 63 IA 372; *Viteralli v. Saton* 3 Law Ed. 1012 & *Ramana Dayaram Shetty v. International Airport Authority of India* (1979) SCC 489; AIR 1979 (SC) 1628.

20. Furthermore, Section 2 of the Act which defines expression "Assessing Officer" opens with the expression "In this Act, unless the context otherwise requires". While interpreting a definition, it therefore, has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would add the achievement of the purpose which is sought to be served by the Act. The Income-tax Act has been enacted with the object to charge income-tax on the total income of a person of the previous year in accordance with and

subject to the provisions contained therein. Procedure for assessment of such total income is contained under Chapter XIV. The appointment and control of Income-tax authorities is contained under Chapter XIII while the jurisdiction of such Income-tax authorities is regulated by Chapter XIII B. The machinery provision regulating procedure for assessment in various sections like, 142, 143, 144 or 148 has used the expression "Assessing Officer to carry out these functions". For the purpose of this Act, an Assessing Officer is not a class of Income-tax authorities. This is only a designation given to certain Income-tax authorities to exercise or perform all or any of the powers and functions conferred on or assigned to them. In that view of the matter if the Parliament in its wisdom has taken the Joint Commissioner as an Income-tax authority on whom powers have been delegated by clause (b) of sub-section (4) of section 120 of the Act to perform the functions of an Assessing Officer, the intent and purpose of the Act shall be fully achieved if those functions are exercised or performed by the Joint Commissioner without extending the scope of vesting the jurisdiction into its extended definition by including an Additional Commissioner of Income-tax as well. If this position is maintained the purpose of Statute conferring powers in Assessing Officer to make assessment of total income of a person shall be fully ^{achieved} and the definition so given under sub-section (7A) of section 2 shall not become inapplicable in any manner.

21. The learned DR however, made a feeble attempt to say that sub-section (4) (b) of section 120 of the Act has used article "a" before the authority "Joint Commissioner" or a "Joint Director" who could be authorized to exercise or perform the functions of an Assessing Officer. Since the powers were delegated by the Central Board of Direct Taxes empowering the Director General or Chief Commissioner or Commissioner of Income-tax to issue order in writing for assigning the powers of the Assessing Officer to a Joint Commissioner, essentially the resort is to be had to sub-section (28C) of section 2 of the Act where the authority Joint Commissioner has been defined to include the Additional Commissioner as well. If the delegate has to perform the powers and functions of an Assessing Officer then the definition clause has not to be taken as conclusive so that the authority of making assessment is not frustrated. We however, do not subscribe to this view expressed by the learned DR particularly when the Joint Commissioner or the Joint Director was included as an Income-tax authority with effect from 1.10.1998, under

section 116 of the Act when the "Additional Commissioner of Income-tax" was already there in the definition of Income-tax authorities with effect from 1.6.1994. It follows there from that had there been the intention to include Additional Commissioner of Income-tax to be an Assessing Officer or that the powers of Assessing Officer were to be delegated to the Additional Commissioner of Income-tax, then, his name would have been included in section 120(4)(b) itself or at least in the definition of Assessing Officer contained under sub-section (7A) of the section 2 of the Act. If the Parliament in its wisdom did not include Additional Commissioner of Income-tax in the definition of Assessing Officer such authority would be barred to Act as an Assessing Officer even if the powers are delegated upon him, when the purpose can be achieved by delegation of authority to Joint Commissioner or Joint Director, and it shall not be mandatory that one should mechanically attribute the meaning assigned to Joint Commissioner under sub-section (28C) of section 2 of the Act and import the same in the definition clause of "Assessing Officer" given under sub-section (7A) of section 2 of the Act.

22. In the case of Dr. Nalini Mahajan vs. Director of Income-tax (Investigation) 257 ITR 123, the Hon'ble Delhi High court was seized with a similar question as to whether the Additional Director (Investigation) has the requisite jurisdiction to authorize any officer to effect search and seizure in purported exercise of power conferred upon him under section 132 of the Act. Sub-section (21) of section 2 of the Act which defines "Director General or Director" included an Additional Director of Income-tax or a Joint Director of Income-tax or Assistant Director or Deputy Director as well. However, section 132 of the Act used the article "the" before the name of authority Director General or Director specified for exercising statutory power under section 132 of the Act. The Hon'ble Court expressed its view that in case a broad meaning, to the definition of "Director" as contained in section 2 (21) of the Act is assigned, the authorizing officer and the Assessing Officer, although they may be different persons, would come within the purview thereof. This could never be the intention of the Legislature. Furthermore, had the Additional Director been covered within the purview of definition of Director General or Director, there was no necessity of defining Joint Director again as has been done in section 2(28D) of the Act in terms whereof also a Joint Director would be an Additional Director. The Hon'ble Court thus was of the opinion that the Additional Director (Investigation) cannot be said to

have any power to issue any authorization or warrant to the Joint Director as such power could be exercised by the authority mentioned in section 132 of the Act alone.

23. In overall conspectus, we are satisfied that in view of the definition contained under sub section (7A) of section 2 of the Act, an Additional Commissioner of Income tax cannot be an authority to exercise or perform all or any of the powers and functions of an Assessing Officer to make assessment of income and as such the assessment made on appellant by such Additional Commissioner of Income tax, Range-20, New Delhi is liable to be quashed.

24. In the result, the appeal stands allowed as announced in the open court on 31.3.2006

(H.L. KARWA)
JUDICIAL MEMBER

(B.R. JAIN)
ACCOUNTANT MEMBER

Dt. 31.3.2006.

HMS

Copy forwarded to:

1. M/s Bindai Apparels, 47-Bunglow Road, Kamla Nagar, Delhi.
2. The Addl. CIT, Range-20, New Delhi.
3. The CIT
4. The CIT (A)-XXII, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, New Delhi.

True copy.

By order

(Deputy Registrar), ITAT

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