

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'J' BENCH MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.1975/Mum/2014  
(Assessment Year :2009-10)**

**&**

**ITA No.1771/Mum/2015  
(Assessment Year :2010-11)**

M/s. Vertiv Energy Pvt. Ltd., (Formerly known as Emerson Network Power (India) Pvt. Ltd., Plot No.C-20, Road No.19 Wagle Industrial Estate Thane (W) Mumbai-400 604	Vs.	Additional Commissioner of Income Tax Range-1, Thane
<b>PAN/GIR No.AAACT4033H</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Dhanesh Bafna / Ms. Chandni Shah
Revenue by	Ms. Vatsalaa Jha
<b>Date of Hearing</b>	<b>04/04/2022</b>
<b>Date of Pronouncement</b>	<b>22/06/2022</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

These appeals in ITA Nos.1975/Mum/2014 & 1771/Mum/2015 for A.Y.2009-10 & 2010-11 preferred by the order against the final assessment order passed by the Assessing Officer dated 17/01/2014 & 13/01/2015 u/s.143(3) r.w.s. 144C(13) of the Income Tax Act, hereinafter referred to as Act, pursuant to the directions of the Id. Dispute Resolution Panel (DRP in short) u/s.144C(5) of the Act dated 30/12/2013 & 29/12/2014 respectively for the A.Y.2009-10 & 2010-11 respectively.

2. We find that assessee has raised additional grounds 11-14 in ITA No.1975/Mum/2014 for A.Y.2009-10 and additional grounds 9-12 in ITA No.1771/Mum/2015 for A.Y.2010-11 wherein it had raised a jurisdiction issue stating that the Id. Additional CIT who had passed the assessment order was not conferred jurisdiction and cannot perform the functions of the Assessing Officer in the absence of an order issued to him u/s.120(4)(b) of the Act.

2.1. Since this issue goes to the root of the matter, we deem it fit to address these additional grounds. We find that the facts that are required for adjudication, all these additional grounds are already on record and this being a legal issue, these additional grounds are admitted and taken up for adjudication by this Tribunal.

**ITA No.1975/Mum/2014 (A.Y.2009-10)**

3. For the sake of better understanding of facts the following chronology of dates and events would be relevant for A.Y.2009-10.

Sr. No.	Date	Particulars
1.	26/08/2010	Notice dated 26.08.2010 u/s 143(2) of the Act issued by the Assistant Commissioner of Income-tax, Circle - 1, Thane ('ACIT')
2.	23/06/2011	Notice dated 23.06.2011 u/s 143(2) and 142(1) of the Act issued by the ACIT
3.	07/12/2011	Notice dated 07.12.2011 u/s 142(1) of the Act issued by the ACIT
4.	21/12/2011	Notice dated 21.12.2011 u/s 142(1) of the Act issued by the ACIT
5.	18/01/2012	Notice dated 18.01.2012 u/s 142(1) of the Act issued by the Joint Commissioner of Income-tax, Range - 1, Thane ('JCIT')

6.	23/01/2012	Notice dated 23.01.2012 u/s 142(1) of the Act issued by the JCIT
7.	16/03/2012	Notice dated 16.03.2012 issued by the JCIT
8.	08/03/2013	Notice dated 08.03.2013 u/s 142(1) of the Act issued by the Additional Commissioner of Income-tax, Range - I, Thane (Addl. CIT)
9.	30/03/2013	Draft Order u/s 143(3) r.w.s. 144C(1) of the Act passed by the Addl. CIT
10.	17/01/2014	Final Assessment Order u/s 143(3) r.w.s. 144C(13) of the Act passed by the JCIT
11.	26/06/2019	Letter dated 26.06.2019 addressed to Assistant Commissioner of Income Tax, Circle-3, Thane, requesting copies of order under section 120(4)(b) and section 127 of the Act
12.	16/12/2019	Letter dated 16.12.2019 addressed to Assistant Commissioner of Income Tax, Circle-3, Thane, requesting copies of order u/s 120(4)(b) and section 127 of the Act
13.	16/02/2021	Letter dated 16.02.2021 addressed to Assistant Commissioner of Income Tax, Circle-3, Thane, requesting copies of order u/s 120(4)(b) and section 127 of the Act
14.	18/04/2021	E-mail sent to Deputy Commissioner of Income Tax, Circle 3, Thane, on 18.04.2021, requesting copies of order u/s 120(4)(b) and section 127 of the Act

**ITA No.1771/Mum/2015 (A.Y.2010-11)**

3.1. Similarly for the sake of better understanding of facts, the following chronology of dates and events would be relevant for the A.Y.2010-11.

Sr. No.	Date	Particulars
1.	29/08/2011	Notice dated 29.08.2011 u/s 143(2) of the Act issued by the ACIT

2.	22/08/2013	Notice dated 22.08.2013 u/s 143(2) of the Act issued by the JCIT
3-	24/03/2014	Draft Order u/s 143(3) r.w.s 144C(1) of the Act passed by JCIT
4.	13/01/2015	Final Assessment Order u/s 143(3) r.w.s 144C (13) of the Act passed by the Addl. CIT
5.	26/06/2019	Letter dated 26.06.2019 addressed to Assistant Commissioner of Income Tax, Circle-3, Thane, requesting copies of order u/s 120(4)(b) and section 127 of the Act
6.	17/02/2021	Letter dated 17.02.2021 addressed to Assistant Commissioner of Income Tax, Circle-3, Thane, requesting copies of order u/s 120(4)(b) and section 127 of the Act
7.	18/04/2021	E-mail sent to Deputy Commissioner of Income Tax, Circle 3, Thane, on 18.04.2021, requesting copies of order u/s 120(4)(b) and section 127 of the Act

3.2. The short point that arises for our consideration in both these appeals are that the assessee has raised additional grounds of appeal challenging the jurisdiction of the Addl. CIT/JCIT for conducting the assessment proceedings and passing the draft / final assessment order in the absence of an order issued in writing u/s.120(4)(b) of the Act pursuing the Addl. CIT/JCIT with the powers to perform the functions of "the Assessing Officer" under the Act. We further find that the assessee has also challenged the jurisdiction of the Addl. CIT/JCIT in the absence of order transferring the jurisdiction from the Asst. Commissioner to Addl. CIT / JCIT in accordance with Section 127 of the Act. For this purpose, it would be relevant to reproduce the definition of the expression "Assessing Officer" as defined in Section 2(7A) of the Act which reads as under:-

*"(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 (i) or sub-section (2) of section 120 or any other provision of this Act, and **the Additional Commissioner or Addition no.1 Director of Joint Commissioner 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;**"*

3.3. From the aforesaid dentition of the Assessing Officer, we find that the same clearly provides that for an Additional CIT or JCIT to exercise or perform all or in all the powers and functions conferred on are assigned to the Assessing Officer, an authorization u/s.120(4)(b) of the Act is required mandatorily. For this purpose, it would be relevant to reproduce the provisions of Section 120 which speaks about 'jurisdiction of income tax authorities' as under:-

*“Section 120 (1) - Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.*

*Explanation.—For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1).*

*(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.*

*(3) .....*

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

*(a) authorise any Principal Director General or Director General or Principal Director or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;*

*(b) empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal 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 incomes or classes of income or cases or classes of cases, shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or 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.”*

3.4. A bare reading of the aforesaid provisions clearly shows that the CBDT i.e. the Board has the power to empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to authorise the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director to perform the functions of the Assessing Officer by issuing orders in writing separately u/s.120(4)(b) of the Act. This independent order u/s.120(4)(b) is mandated in statute itself which alone would confer jurisdiction of Addl. CIT or JCIT to perform the functions of the Assessing Officer under the Act. In the absence of any independent order passed u/s.120(4)(b) of the Act, the Addl. CIT or JCIT could not be considered as Assessing Officer as defined u/s.2(7A) of the Act at all. In addition to this, there should also be a separate transfer order transferring jurisdiction from ACIT to Addl. CIT / JCIT in terms of Section 127 of the Act. This can be either by way of a general order or by way of a special order in writing.

3.5. We find that the Id. DR made an elaborate written submission dated 08/04/2022 and the Id. AR also filed rebuttal to the said written submissions vide letter dated 13/04/2022. The gist of various contentions of the Id. DR together with rebuttal of the assessee is given in following tabular form:-

Sr No	Ld. DR's contentions	Assessee's rebuttal
<b>The additional ground is not fit to be admitted by the Hon'ble Tribunal:</b>		
a)	<p>Such a jurisdictional issue being raised with respect to existence of an order u/s 120, u/s 124 or u/s 127 is not appealable under section 253 of the I.T. Act (Para 4, 4.1,4.3)</p> <p>These new arguments were not taken by the Id. DR in the course of physical hearing before the Hon'ble Bench and are placed before the Hon'ble Tribunal only by way of this written submission</p>	<p>The instant appeals are filed against the assessment order u/s. 143(3) of the Act and this appeal is not against any order u/s. 120/124/127 as contended by the Ld. DR. In fact, the Appellant has challenged the passing of assessment orders in absence of any order u/s 120 (4) (b) and 127 of the Act and it is not a case where appeal has been filed before the Tribunal against such orders</p>

<p>b)</p>	<p>Such a jurisdictional issue is not a pure question of law since it requires further verification of facts (verify whether the assignment order is akin to the orders u/s 120(4)(b) or u/s 127 or there is any lacuna in it). (Para 5)</p>	<p>The question involved in the additional grounds goes to the root of the matter and challenges the sustainability of the assessment order passed by an authority which is not competent to perform the functions of an Assessing Officer as per the Act. Therefore the jurisdictional issue is a pure question of law and deserves to be admitted. A similar argument urged by the Department, has been dealt by the ITAT in the following cases while admitting similar additional grounds as that in the present case</p> <ul style="list-style-type: none"> <li>&gt; Tata Sons Ltd. (ITA No. 4497/Mum/2005) (Para 3.12 &amp; 3.13, Pg. 9)</li> <li>&gt; Tata Communication Ltd. (ITA No. 7071/Mum/2005) (Para 6, Pg. 7, Para 18, Pg. 46)</li> <li>&gt; Tata Communication Ltd. (ITA No. ITA No. 2891/Mum/2010 &amp; ITA No. 1015/Mum/2010) (Para 3.3 Pg.9), etc.</li> </ul> <p>In rebuttal to the Ld. DR's contention, the Appellant wishes to submit that the requisite documents required for establishing legal authority of the Assessing Officer are expected to be available in the assessment records and thus, it is not a case where verification of fresh facts is required. In any case, in order to check whether there is any lacuna in the assignment order purported to have been passed, the order should be available with Revenue Department in the first place. Since such an order has not been produced before the Hon'ble Bench, the question of verification or setting it aside does not arise.</p> <p>Further, in the present case, the Appellant has repeatedly requested for the production of orders u/s 120(4)(b) as well as order u/s 127 of the Act and even the Hon'ble Bench has afforded opportunities and time to the Ld. DR for the same. Thus, the Appellant submits that this is not a case which</p>
-----------	--	--

Sr No	Ld. DR's contentions	Appellant's rebuttal
		requires any verification of fresh facts which are not available on record. On the contrary, these must exist as part of the assessment record, and in absence of the same, the Addnl. CIT/JCIT could not have performed the role of an Assessing Officer.
c)	<p>There is inordinate delay in filing the additional grounds. The assessee had participated in the proceedings and was satisfied that CIT Range-i Thane was having valid jurisdiction (Para 6)</p>	<p>The Act does not provide any limitation period for filing additional grounds of appeal. It is a settled law that an additional ground of appeal can be raised at any time and even for the first time before the Tribunal. Further, the Appellant submits that merely because the Appellant had participated in assessment proceedings will not make the assessment order sacrosanct if the said order is otherwise without authority as per law. It is a settled law that jurisdiction cannot be conferred by consent. A similar argument, urged by the Department, has been dealt by the ITAT while admitting similar additional grounds as that in the present case, in the following cases:</p> <ul style="list-style-type: none"> <li>&gt; Tata Sons Ltd. (ITA No. 193/Mum/2006) (Para 13- Pg 22)</li> <li>&gt; Tata Communication Ltd. (ITA No. 6981/Mum/2005) (Para 6, Pg.7) etc.</li> </ul> <p>Further, it may be noted that such additional grounds of appeal have been admitted by the Hon'ble Tribunal in all the 13 case laws relied upon by the Appellant in its Compilation of judgements filed on 5 July 2021 as also in the recent judgement of Tata Communications Ltd. vs. Addnl. CIT (ITA No. 7514/Mum/2011 &amp; Ors) dated 23 February 2022 which are on identical issues as that in the present case. In view of the above, the Appellant humbly submits that the additional grounds deserve to be admitted by the Hon'ble Tribunal in the interest of justice and oblige.</p>
2	<p><b>There exists notifications of the Board and order of the CIT-1, Thane, giving power of the Assessing Officer to the jurisdictional Addl. CIT/JCIT</b></p>	

a)	<p>There exists order of CIT-i, Thane assigning the impugned case of AY 2009-10 and AY 2010-11 to the Addl. CIT - Range-1, Thane dated 22 July 2013 (Para 4.1)</p> <p>These new arguments were not taken by the Id. DR in the course of physical hearing before the Hon'ble Bench and are placed before the Hon'ble Tribunal only by way of this written submission <b><i>Assignment order pertains to AY 2009-10 as well.)</i></b></p>	<p>The Ld. DR has relied on the assessment order for AY 2010-ii wherein there is a mention of the assignment order by the CIT to the JCIT. <b>However, the Ld. DR has failed to produce any such order before the Hon'ble Tribunal despite repeated requests by the Appellant and opportunities granted by the Hon'ble Bench.</b></p> <p>Further, the Ld. DR has mentioned that the aforesaid assignment order dated 22 July 2013 is for both the assessment years i.e. AY 2009-10 and AY 2010-11. However, the draft and the final assessment order u/s 143(3) for AY 2009-10 nowhere refers to this assignment order. Further, the draft order for AY 2009-10 was passed by the Addnl. CIT on 30 March 2013 i.e. much before such assignment order was purportedly issued. Thus, there is no proof that the assignment order which is said to exist also relates to AY 2009-10. In the absence of the aforesaid order, it is not possible to ascertain whether it pertains to both the assessment years.</p>
b)	<p>The assessment order of AY 2010-11 mentions the details of assignment of case to Addnl. CIT, however, due to shifting of records and office buildings, the physical copy of assignment order is not readily available in the records of the Department (Para 4.1)</p>	<p>It has been stated that the said order could not be produced due to shifting of records/office buildings. However, the office building address of the jurisdictional Assessing Officer for the Appellant has remained the same since 2013 till date. In any case, the order u/s 120(4)(b) and order u/s 127 of the Act ought to form part of the assessment records for AY 2009-10 and 2010-ii and it is not the case of the Department that the entire case records for both these years are not available with them.</p>

C)	<p>Assignment order to Addnl. CIT will partake character of order u/s 120(4)(b) or u/s 127 since under no other section, such an order can be made. Assessee has not challenged the assignment order of the CIT-1, Thane and only challenged order u/s 120(4)(b) or u/s 127. Since the assignment order was issued for the same purpose as S. 120(4)(b) and S. 127, only 'Form' has been challenged, not the "substance". (Para 4.1.1, 4.2)</p>	<p>The Act specifically requires that an order must be issued in writing by the PCIT/CIT, etc. u/s 120(4)(b) to authorise the Addnl. CIT/JCIT to perform the functions of an Assessing Officer. Further, section 127 of the Act requires an order transferring jurisdiction from one AO to another to be passed. Both the orders have not been produced by the Ld. DR but it has been argued that the assignment order by CIT-i, Thane referred in the assessment order of AY 2010-11 should be presumed to have been passed u/s 120(4) (b) or u/s 127. Without the existence of any order, how can any presumption be made in any case. Further, the Ld. DR is treating the assignment order referred in AY 2010-11 order to be sufficient for the purposes of Section 120(4)(b) as well as S. 127 of the Act, whereas the Act requires 2 different orders to be passed under those 2 sections. Be that as it may, the fact remains that <b>not a single order - whether order u/s 120(4)(b) or an order u/s 127 or the assignment order passed by CIT-i, Thane has been produced by the Ld. DR in the instant case and in absence of the same, there can be no question of presuming anything about the assignment order. Further, the Ld. DR has completely erred in stating that the Appellant has not challenged the assignment order (which should be presumed to be passed u/s 120(4)(b) and u/s 127 as per the Ld. DR) and that by challenging the absence of orders u/s 120(4)(b) and u/s 127, the Appellant is only challenging the form and not substance.</b> When the Ld. DR has not been able to produce any order whatsoever from the assessment records, the arguments relating to form and substance are of no relevance.</p>
----	---	--

<b>Sr No</b>	<b>Ld. DR's contentions</b>	<b>Appellant's rebuttal</b>
d)	Amendment to S. 2(7A) was clarificatory in nature, JCIT definition u/s 2(28C) always included 'Addnl. CIT as well and reliance placed on Notifications dated 31.07.2001 and 17.09.2001 alongwith assignment order by the CIT-1, Thane (Para 7,8,9)	<p>The Appellant humbly submits that the arguments and the Board notifications referred by .the id. DR in Para 7,8, and 9 of the written submissions have been considered by all the decisions provided in the COJ. The Appellant has listed down few of the instances wherein the Hon'ble Mumbai ITAT has held that the assessment orders passed by Addnl. CIT/JCIT are without jurisdiction and liable to be quashed in absence of relevant notifications/orders u/s 120(4)(b):</p> <ul style="list-style-type: none"> <li>&gt; Tata Sons Ltd. (ITA No. 4497/Mum/2005) (Para 3.26- Pg 14, Para 3.31- Pg 16)</li> <li>&gt; Tata Communications Limited (ITA No. 7071/Mum/2005) (Para 15- Pg 24, Para 18- Pg 46)</li> <li>&gt; Tata Sons Ltd. (ITA No. 193/Mum/2006) (Para 18- Pg. 49)</li> <li>&gt; Kishore Vithaldas (ITA No. 5661/Mum/2017 &amp; Ors) (Para 13- Pg. 15, Para 15- Pg 47)</li> <li>&gt; Tata Communications Ltd (ITA No. 7514/Murn/2011) (Para ii- Pg 12), etc.</li> </ul> <p>Further, as already submitted above, the Ld. <b>DR</b> has failed to produce any order / the said assignment order before the Hon'ble Bench despite repeated requests by the Appellant and opportunities granted by the Hon'ble Bench. Hence in absence of the separate order required Is 120(4)(b) of the Act, the assessment orders passed by the JCIT/Addnl. CIT are without jurisdiction and liable to be quashed.</p>
3.	<b>Identical issue decided in favour of Revenue by the Hon'ble Bombay High Court and Hon'ble Delhi High Court</b>	

a)	<p>Reliance placed on the case of N. Rajgopal (ITA No.1454/2016)(Bom HC) (Para 14, Para 14.5)</p>	<p>5. Re: DR's contention no. 3 above - Reliance on N. Rajgopal (supra)</p> <p>5.1. At the outset, the Appellant submits that the facts of N. Rajgopal (<i>supra</i>) are completely different from the facts of present case. On perusal of the said order of the Hon'ble Bombay High Court, one will observe that the only relevant issue under consideration in that case was whether the inclusion of Addnl. CIT in the definition of the term 'Assessing Officer' u/s 2(7A) of the Act vide Finance Act, 2007 was to be read retrospectively or prospectively. It is in this context that the Hon'ble Jurisdictional Bombay High Court has held that the Addnl. CIT was included in the definition of the term 'Assessing Officer' retrospectively. However, the question whether the said Addnl. CIT was an authorized officer u/s 2(7A) r.w.s. 120(4)(b) of the Act was not raised before the Hon'ble Bombay High Court. The relevant extract of the aforesaid decision are reproduced hereunder:</p> <p style="text-align: center;"><i>"4. We would first deal with the question of jurisdiction of the Assessing Officer. We notice that Section 2(7A) of the Act defines the term "Assessing Officer" as to mean every Revenue Officers mentioned therein. Reference to "Additional Commissioner" in the list of such officers was included by an amendment made under Finance Act, 2007 but with retrospective effect from 1.6 .1994. Thus, by virtue of this amendment, an Additional Commissioner of Income Tax was included in the definition of "Assessing Officer". It is true, as pointed out by the learned counsel for the assessee that when the Additional Commissioner passed the order of assessment, Section 2(7A) did not contain a specific reference of an Additional Commissioner. However, when the statute has been amended with retrospective effect, the effect of such amendment must be applied to the pending proceedings as in the present case. Non-applying such amendment in the present proceedings would destroy the retrospectively granted to it by the legislature. This contention of the assessee is, therefore, rejected."</i></p> <p>5.2. In the present case, the Appellant is not objecting to the retrospective application of the definition of the term 'Assessing Officer'. Such a controversy does not arise at all in the Appellant's case since all the relevant orders in question are passed much after Finance Act 2007 i.e. in FY 2014-15. To this extent, the Appellant has not challenged the definition of the Assessing Officer u/s 2(7A) of the Act at all and in fact, it is fairly accepted by the Appellant that Addnl. CIT/JCIT are covered under the list of Revenue officers mentioned in the said section as held by the Hon'ble Bombay High Court. There is absolutely no quarrel on the above proposition as has been held by the Hon'ble High Court.</p> <p>5.3. The controversy in the instant case is different from the case before Hon'ble Bombay High Court in N. Rajgopal (supra). The controversy in the instant case is whether the Addnl CIT/JCIT as covered u/s 2(7A) of the Act can exercise the powers and functions of an Assessing Officer in the absence of orders issued in writing as per section 120(4)(b) of the Act. Such an issue did not exist before the Hon'ble Bombay High Court in the case of N. Rajgopal (supra).</p>
----	---	---

5.4. The assessee in the case of N. Rajgopal (supra) has not challenged the existence of an order u/s 120(4)(b) of the Act before the Hon'ble Bombay High Court at all. It is under these circumstances that the Hon'ble Bombay High Court, after holding that the amendment by FA 2007 to include Addnl CIT in the definition of the Assessing Officer is retrospective in nature, has not further dealt with the issue whether the concerned Addnl CIT therein, who passed the assessment order in N. Rajgopal's case had the requisite orders issued in writing as per section 120(4)(b) of the Act to act as an Assessing Officer or no. Accordingly, the ratio of the Hon'ble Bombay High Court is not applicable to the Appellant's case and does not render any support to the DR's case.

5.5. At this stage, the Appellant would like to submit that it is a settled law by the Hon'ble Apex Court that a judgment must be read as a whole **and the observations from the judgment have to be considered in the light of the questions which were before the Court. A decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a latter case, the Courts must carefully try to ascertain the true principle laid down by the decision of the Court** and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by the Court, to support their proceedings.

5.6. In light of the above ratio, the Appellant submits that since the question involved in N. Rajgopal (supra) was not similar to the present case, the principle laid down by the Hon'ble High Court therein is limited to the question involved therein (i.e. that the Addnl CIT can be considered as an Assessing Officer retrospectively from 1 June 1994) and not beyond the issues which were not raised/challenged before the Court. The Appellant submits that since the arguments and contentions raised by the Appellant in the instant case were not before the Hon'ble Bombay High Court, the ratio of N. Rajgopal (supra) has no application to the case of the Appellant.

5.7. The Appellant reiterates that the Addnl. CIT/JCIT can be considered as an Assessing Officer u/s 2(7A) of the Act only when he is directed to do so vide specific order issued in writing u/s 120(4)(b) of the Act which have not been produced in the instant case. Hence, the reliance on this case which does not deal with the relevant question in the instant case, is completely misplaced by the Ld. DR.

5.8. Further, in any case, besides the absence of an order u/s 120(4)(b) of the Act, the transfer order u/s 127 of the Act has also not been produced in the present case to establish that the jurisdiction was validly transferred from the ACIT to the Addnl. CIT/JCIT. Hence, without prejudice to the above contention that the ratio of N. Rajgopal (supra) is not applicable to the present facts of the case, even if it is assumed that the decision of N. Rajgopal (supra) does not support the Appellant's case, the assessment orders passed by the Addnl. CIT/JCIT should still be held to be without jurisdiction and liable to be quashed in absence of a valid order u/s 127 of the Act.

b)	Reliance placed on the case of Pr. CIT vs. Mega Corporation (ITA No.128/2016)(Del HC) (Para 10 to para 13.	<p><b>6. Re: DR's contention no. 3 above - Reliance on Mega Corporation (supra)</b></p> <p>6.1. At the very outset, the Appellant wishes to submit that in the facts of Mega Corporation, an order of assignment of duties by the Commissioner of Income Tax-2, Delhi to the Addnl./Joint CIT dated 1.08.2007 was produced before the Hon'ble Delhi Tribunal as is evident from para 6 of the Delhi ITAT decision (62 <a href="http://taxrann.com">taxrann.com</a> 351). It was under these circumstances that the Hon'ble High Court rendered its finding in para 6 of the order. In the instant case, notably, there is no order on record by which the Addnl. CIT/JCIT was directed to perform the functions of the Assessing Officer for the case of the Appellant.</p> <p>6.2. Further, the Hon'ble Delhi High Court, in para 7, held that the assessee's case was covered u/s 124(3) of the Act. In this regard, with due respect to the Hon'ble Delhi High Court's decision, the Appellant wishes to submit that as under -</p> <p>6.3. The Appellant wishes to draw Your Honours' attention to the provisions of section 124 of the Act, which are reproduced hereunder:</p> <p><b><i>"Jurisdiction of Assessing Officers:</i></b>  <b><i>124. (i) Where by virtue of any direction or order issued under sub-section (i) or subsection (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—</i></b>  <b><i>(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and</i></b>  <b><i>(b) in respect of any other person residing within the area.</i></b>  <b><i>(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Principal Director General or Director General or the Principal Chief Commissioner or Chief commissioner or the Principal Commissioner or commissioner; or where the question is one relating to areas within the jurisdiction of different Principal Directors General or Directors General or Principal Chief commissioners or Chief Commissioners or Principal Commissioners or Commissioners, by the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal</i></b></p>
----	--	---

*notification in the Official Gazette, specify.*

**(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—**

*(a) where he has made a return under sub-section (i) of section 115WD or under sub-section (i) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (i) of section 142 or sub-section (2) of section 115WE or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;*

*(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115W1) or sub-section (i) of section 142 or under sub-section (i) of section 11514II or under section 148 for the making of the return or by the notice under the first proviso to section 115B. For under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier;*

*(c) where an action has been taken under Section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (i) of section 15344 or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.*

*(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.*

*(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received **within the area**, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under **sub-section (i) or sub-section (2) of section 120.**"*

...(Emphasis supplied)

		<p>6.4. Section 124 provides for jurisdiction of an 'Assessing Officer'. In case of the Appellant, the root of the issue under consideration is whether Addnl. CIT/KIT is an Assessing Officer as defined under the Act or no. When the Addnl CIT/JCIT is not an 'Assessing Officer' as per S. 2(7A) of the Act in the first place, then the provisions of section 124 become inapplicable at this point itself. For S. 124 to apply, jurisdiction i.e. authority under law to perform the functions of an Assessing Officer must be conferred correctly on an officer in the first instance. Without the sanction as per law, the Addnl. CIT/JCIT cannot be called as an Assessing Officer and accordingly, such challenge to inherent jurisdiction can be made at any time by the Appellant and the time stipulated u/s 124(3) cannot apply to such cases where there is lack of jurisdiction. In cases where there is complete lack of jurisdiction, procedural limitations such as S. 124(3) should not hinder the objections to jurisdiction, which goes to the very root of the matter.</p> <p>6.5. Without prejudice to the above, a bare perusal of the above provisions of section 124 show that the said provisions cover the aspect of jurisdiction of an Assessing Officer only with respect to his 'territorial jurisdiction'. The sub-sections (i), (2) and (s), all make a reference to the jurisdiction of an Assessing Officer with respect to as is evident from the words used in various places in these sub-sections.</p> <p>for example - <b>jurisdiction over any area', 'within the limits of such area', 'within the area', areas within the jurisdiction'</b>.</p> <p>6.6. The provisions of section 124 of the Act apply in cases where an Assessing Officer has been vested with jurisdiction by any direction or order issued u/s 120(1) and 120(2) of the Act since the text of subsection (i) to section 124 begins with the words "by virtue of anti direction or order issued under sub-section i) or sub-section '2) of section 120, the Assessing Officer has been vested with jurisdiction". However, in the instant case, the Appellant is challenging the jurisdiction of the Addnl. CIT/JCIT in the absence of an order u/s 120(4)(b) of the Act and not those covered u/s 120(1) and 120(2) of the Act. Thus, the Appellant submits that its case is not covered under section 124 of the Act at all.</p> <p>6.7. In view of the above, the Appellant submits that sub-section () of the section 124 cannot be read in isolation to hold that tile jurisdiction of an Assessing Officer should be challenged only within the time stipulated therein but should be read in context of various other provisions of section 124 which as highlighted above, is only concerned with the territorial jurisdiction of the Assessing Officer and not the 'inherent' jurisdiction. Thus, the Appellant submits that section 124 of the Act applies only to the territorial jurisdiction of an Assessing Officer and not where the inherent jurisdiction is challenged, as in the instant case.</p>
--	--	---

	<p>6.8. The Appellant wishes to place reliance on the following decisions which have been rendered by the Hon'ble Mumbai Tribunal on similar facts as that of the Appellant and wherein it was held that S. 124 has no application in cases where inherent jurisdiction of Assessing Officer was in question -</p> <p>&gt; <b>Tata Sons Ltd. ITA No. 4497/Mum/2005:</b></p> <p><i>"3.15. It is further noted by us that in the case before us, a challenge has been made about the legal competence of the Additional Commissioner of Income tax and his jurisdiction to exercise the powers and perform the functions of the Assessing Officer of the assessee and to carry out the assessment proceedings and frame the assessment order in accordance with the provisions of the Income tax Act, 1961. Thus, reliance upon the provisions contained in Section 124 of the Act would be of no help to the Revenue as the assessee has not challenged either territorial jurisdiction or irregular exercise of jurisdiction by the Additional Commissioner of Income Tax but challenge was made to the authority and legal competence itself of the Additional Commissioner of Income tax to pass the impugned assessment order upon the assessee."</i></p> <p>&gt; <b>Tata Communication Ltd. ITA No. 7071/Mum/2005:</b></p> <p><i>"18... A plain reading of section 124 would show that it refers to an order issued under sub-section (i) or (2) of section 120, whereas we are concerned with an order purported to be passed under section 120(4)(b) empowering the Addnl. CIT to act as an Assessing Officer. Therefore, in our view the provisions of section 124 are not applicable to the present case."</i></p> <p>&gt; <b>Tata Sons Ltd. ITA No. 193/Mum/2006:</b></p> <p><i>"16. We also noted that the Gujarat 1-ugh Court in the case of Ramesh D Patel (supra), while dealing with a similar issue, we noted that at page 496 under last but one paragraph held as under:</i></p> <p style="padding-left: 40px;"><i>"9. Thus, section 124 of the Act pertains to the territorial jurisdiction of an Assessing Officer vested under sub-section (i) or sub-section (2) of section 120. An objection to such jurisdiction can be raised in terms of section 124(2). In terms of sub-section (3) of section 124, right to raise such objection shall be foregone beyond the stages mentioned therein. The said provisions are clearly concerning with the dispute of the assessee with respect to the territorial jurisdiction of the Assessing Officer and has no relevance in so far as the inherent jurisdiction for passing an order of assessment under section 153A of the Act is concerned, when no search authorization under section 132 was issued or requisition under section 132A of the Act was made."</i></p>
--	---

Similarly, Hon'ble Allahabad High Court in the case of Prasad Chandra vs. CIT (supra) in para no.22 has categorically held as under:

"22. As regards the question of determining the jurisdiction, we may point out that in Moti and Jawahar (supra), which has been relied upon by the petitioner, the court observed that a point which goes to the root of the matter and which affects the very existence of the jurisdiction of an authority can be raised at any time, be it in appeal or revision."

Further, we also noted that while dealing with similar issue, the Hon'ble Calcutta High Court in the case of Elite Pharmaceuticals vs. ITO (supra), under para 15 held as under:

"15. The assessee had questioned the territorial jurisdiction of the assessing officer and the assessing officer held that the assessee had lost the right to raise the objection by efflux of time.

We, as such, find no substance in the case of the appellant."

> **Kishore Vithaldas ITA No. 5661/Mum/2017 & ITA No. 7397/Mum/2016:**

17... The Ld. DR submitted that as per section 124(3), no person shall be entitled to call in question the jurisdiction of an Assessing Officer after expiry of 30 days from the date of issue of notice u/s 142(1), 143(2) and after completion of assessment. We find that the Hon'ble Bombay High Court, in case of Bansilal B. Raisoni vs. ACIT (2019) 260 Taxman 281 (Bombay) had considered the issue in light of section 124(3) of the Act, and held that the time limit provided u/s 124(3) of the Act, has a relation to the AO territorial jurisdiction, but said time limit would not apply to the case where the assessee contests the action of the AO is without authority of law and therefore wholly without jurisdiction."

6.9. The Appellant wishes to submit that the Hon'ble Jurisdictional Tribunal in the case of Tata Sons Limited vs. ACIT (**ITA No. 193/Mum/2006 & Ors**) (Refer Pg. 75 to 125 of the COJ) has considered the decision of the Mega Corporation (supra) and held that Section 124 has no application in similar facts as that of the instant case. The relevant paragraph where the said issue has been adjudicated is reproduced below for ready reference -

"15... No doubt there the assessee has relied on the decision of Delhi Bench in the case of Principal CIT vs. Mega Corporation but relying on a particular decision does not mean that his additional ground be decided by us. We have gone through the decision of Delhi High Court in the case of Mega Corporation Ltd. (supra) and noted that various High Courts have taken a contrary view on this issue, as under:

- *CIT vs. Ramesh D Patel* [362 ITR 4931 (Guj)
- *Prashant Chandra vs. CIT81* [taxmann.com](http://taxmann.com) 106 (Allahabad)
- *Elite Pharmaceuticals vs. ITO* [242 Taxman 3451 (Cal)

16. We also noted that the Gujarat High Court in the case of *Ramesh D Patel* (supra), while dealing with a similar issue, we noted that at page 496 under last but one paragraph held as under:

"9. Thus, section 124 of the Act pertains to the territorial jurisdiction of an Assessing Officer vested under sub-section (i) or sub-section (2) of section 120. An objection to such jurisdiction can be raised in terms of section 124(2). In terms of sub-section (i) of section 124, right to raise such objection shall be foregone beyond the stages mentioned therein. The said provisions are clearly concerning with the dispute of the assessee with respect to the territorial jurisdiction of the Assessing Officer and has no relevance insofar as the inherent jurisdiction for passing an order of assessment under section 153A of the Act is concerned, when no search authorization under section 132 was issued or requisition under section 132A of the Act was made."

Similarly, Hon'ble Allahabad High Court in the case of *Prasad Chandra vs. IT* (supra) in para no.22 has categorically held as under:

"22. As regards the question of determining the jurisdiction, we may point out that in *Moti and Jawahar* (supra), which has been relied upon by the petitioner, the court observed that a point which goes to the root of the matter and which affects the very existence of the jurisdiction of an authority can be raised at any time, be it in appeal or revision."

Further, we also noted that while dealing with similar issue, the Hon'ble Calcutta High Court in the case of *Elite Pharmaceuticals vs. ITO* (supra), under para 15 held as under:

"15. The assessee had questioned the territorial jurisdiction of the assessing officer and the assessing officer held that the assessee had lost the right to raise the objection by efflux of time. We, as such, find no substance in the case of the appellant."

17. No doubt, the Delhi High Court, as has been heavily relied upon by the learned Standing Counsel for the department, in the case of *Mega Corporation Ltd.* (supra), has taken a contrary view but that decision does not have a binding precedent on us. This is the settled law, in view of the decision of Hon'ble Supreme Court in the case of *CIT vs. Vegetable Product Ltd.*, (88 ITR 192), if a court

		<p>6.10. Further, the Hon'ble Mumbai Tribunal in various other judicial precedents has consistently followed this view established in Tata Sons (<i>supra</i>) and has distinguished the decision of Hon'ble Delhi High Court in the case of Mega Corporation (<i>supra</i>) as listed below –</p> <ul style="list-style-type: none"> <li>&gt; Tata Communication Ltd. (MA order)- MA No. 785/Mum/2017- Para 3, 4 and 5 (Pg No. 3 to 5)</li> <li>&gt; Tata Sons Ltd. ITA No. 193/Mum/2006- Para 17 (Pg No. 28-29)</li> <li>&gt; Kishore Vithaldas ITA No. 5661/Mum/2017 &amp; ITA No. 7397/Mum/2016- Para 16 (Pg No. 48)</li> <li>&gt; Tata Communications Ltd ITA No. 7514/Mum/2011 &amp; Ors- Para 4 (Pg No.5), etc.</li> </ul> <p>6.11. Attention is also invited to the decision of Hon'ble Mumbai Tribunal in the case of a Miscellaneous Application filed by the Department against the decision of Hon'ble Tribunal in case of <b>Tata Communication Ltd vs. Addnl. CIT (ITA No. 7071/Mum/2005)</b> wherein the decision of Hon'ble Delhi Tribunal of Mega Corporation Ltd. vs. Addnl. CIT (ITA No. 102/Del/2014) was considered which was subsequently reversed by the Hon'ble Delhi High Court in case of Mega Corporation (<i>'supra</i>). In MA No. 785/Mum/2017, the Hon'ble Mumbai Tribunal has categorically held that the Hon'ble Mumbai Tribunal has considered the submissions made by the parties and has applied its mind to the relevant statutory provisions, notifications issued by the CBDT and all the other relevant facts in ITA No. 7071/Murn/2005 before concluding that Addnl. CIT has no jurisdiction for conducting the assessment proceedings. It's not a case where the Tribunal had only relied on the decision of Hon'ble Delhi Tribunal in case of Mega Corporation before rendering a positive view. Thus, merely because the Hon'ble Delhi High Court has reversed the decision of the ITAT in Mega Corporation will not make the decisions of the Mumbai ITAT <i>per incurium</i>. (Refer Pg. Nos. 70 to 74of the COJ).</p> <p>6.12. Further, as regards para 8 of the decision in case of Mega Corporation (<i>supra</i>), the Appellant wishes to submit that whether the assessment order passed by the Addnl. CIT/ JCIT in absence of transfer order u/s 127 of the Act is valid or not was not a question of law raised before the Hon'ble Delhi High Court as is evident from the question framed before the Hon'ble High Court. Thus, the Hon'ble Delhi High Court, with due respect, had no occasion to appreciate that section 127 operates independently of sections 120 and 124 and the order is not a speaking order with respect to absence of order u/s 127 of the Act. Thus, the Appellant humbly submits that the said decision cannot be treated as a <i>ratio decendi</i> on this aspect.</p>
--	--	--

Sr No	Ld. DR's contentions	Appellant's rebuttal
c)	<p>There is a decision of Hon'ble Mumbai Tribunal in case of ACIT vs. Stock Traders Pvt. Ltd., (ITA No.4493/Mum/2003) wherein the additional ground on similar jurisdiction issue was dismissed. (Para 14.6, Para 14.7)</p>	<p>admissibility of additional grounds of appeal depends on the facts of each case. Hence, the aforesaid decision of Stock Traders cannot be treated as a precedent for admission of an additional ground in the Appellant's case.</p>
	<p>These new arguments were not taken by the Id. DR in the course of physical hearing before the Hon'ble Bench and are placed before the Hon'ble Tribunal only by way of this written submission</p>	
4	<p><b>Existing Hon'ble ITAT decisions, on the issue, cannot be followed as these are per incurium or sub-silentio.</b> (Para 15 to Para 15.9)</p> <p>These new arguments were not taken by the Id. DR in the course of physical hearing before the Hon'ble Bench and are placed before the Hon'ble Tribunal only by way of this written submission</p>	<p>The Appellant humbly submits that during the hearing before the Hon'ble Bench, the Ld. DR forward this contention.</p> <p>The main contention of the Ld. DR here is that Delhi High Court's decision in the case of Mega (supra) has not been considered/followed by ITAT decisions. In this regard, please refer to submissions in para 5 and 6 below regarding the aforesaid High Court decisions to the facts case.</p> <p>Further, the Ld. DR has mentioned that the Sons Ltd (ITA No. 4497/Mum/2005) has been before the Hon'ble Bombay High Court and the Court has admitted Question of law vide order 2022. In this regard, the Appellant submits that High Court has not stayed the operation of the Hon'ble Mumbai Tribunal in Tata Sons (supra) accordingly, at this stage, the said decision is precedent.</p>
5	<p><b>Bar on the assessee in raising jurisdictional issue beyond one month as per the provisions of Sec.124(3) of the Act</b> (Para 16 to Para 16.1.4)</p> <p>These new arguments were not taken by the Id. DR in the course of physical hearing before the Hon'ble Bench and are placed before the Hon'ble Tribunal only by way of this written submission</p>	<p>The Ld. DR had only relied upon the decision of the Hon'ble Delhi High Court in the case of Mega Corporation (supra) in the course of physical hearing. For appellant's submission regarding non application of S. 124(3) to the instant case, please refer rebuttal submissions to Mega Corporation (supra) made in Para 6 in this submission.</p>

6	<p><b>The decision of conferring jurisdiction is an administrative matter (Para 17 to Para 17.1.5)</b></p> <p>These new arguments were not taken by the Id. DR in the course of physical hearing before the Hon'ble Bench and are placed before the Hon'ble Tribunal only by way of this written submission</p>	<p>The Ld. DR has also relied on various case laws to support this contention which were not filed during the course of the hearing and hence the same should not be considered as part of the record of the present case before the Hon'ble Tribunal. Without prejudice to the above the Appellant wishes to submit that when the statute itself requires that specific orders ought to be passed u/s 120(4)(h) of the Act, then it cannot be said that this is an administrative matter. The Act u/s 2(7A) clearly defines the Assessing Officer to include Addnl. CIT/JCIT who have been directed u/s 120(4)(b) of the Act. In absence of such an order issued in writing, the Addnl.CIT/JCIT cannot function and exercise powers of an Assessing Officer under the Act. If an Addnl. CIT/JCIT does so without an order authorizing him to do so, he has acted without jurisdiction i.e. without the authority of law.</p> <p>The decision of the CIT in conferring jurisdiction to a particular Addnl. CIT/JCIT could be an administrative matter at best, but when there is no order issued in writing directing the concerned Addnl. CIT/JCIT who have passed the assessment orders in the present case, then there is clear lack of jurisdiction which cannot be termed as an administrative matter.</p>
---	---	---

3.6. We find that in the instant case while the assessment proceedings u/s.143(3) of the Act was initiated by issue of notice u/s.143(2) of the Act by the ACIT, the draft and final assessment orders for both A.Yrs. 2009-10 and 2010-11 were passed by the Addl. CIT / JCIT without any independent order u/s.120(4)(b) u/s.127 of the Act. From the chronology of events, reproduced supra, we find that assessee had repeatedly asked the Id. AO to produce such orders passed u/s.120(4)(b) and u/s.127 of the Act passed, if any. Despite giving sufficient time to the Id. DR to produce those orders, no such orders were produced by the Id. DR

before us for both the assessment years. We find under similar facts and circumstances, this Tribunal had indeed admitted the additional grounds raised by the assessee after a long gap of 10 years or 15 years, as the case may be, and adjudicated those additional grounds and allowed the assessee's appeal by quashing the assessments framed for want of orders u/s.120(4)(b) and u/s.127 of the Act in the following cases:-

- a. Decision of Mumbai Tribunal in the case of Tata Sons Ltd., in ITA No.4497/Mum/2005 dated 31/10/2006 reported in 162 ITD 450.
- b. Decision of Mumbai Tribunal in Tata Communications Ltd., in ITA No.7071/Mum/2005 dated 30/06/2017.
- c. Decision of Mumbai Tribunal in the case of Tata Communications Ltd., in ITA No.2891/Mum/2010 and ITA No.1015/Mum/2010 dated 16/08/2019.
- d. Decision of Mumbai Tribunal in the case of Tata Sons Ltd., in ITA No.193/Mum/2006 dated 27/11/2017.
- e. Decision of Mumbai Tribunal in the case of Kishor Vithaldas in ITA No.5661/Mum/2017 dated 16/10/2019.

3.7. We find that all the oral and written arguments of the Id. DR have been met in detail by the Id. AR before us as detailed supra. The issue in dispute is already addressed by the various decisions of the Tribunal which are reproduced in the Id. AR's rebuttal referred to supra. The same are not reiterated herein for the sake of brevity. As stated earlier, the issue is already settled by various decisions of the Tribunal in favour of the assessee.

3.8. In view of the aforesaid facts and placing reliance on various decisions relied upon we hold that in the absence of separate order passed u/s.120(4)(b) and order u/s.127 of the Act, the Additional CIT / JCIT had no power to perform the functions of an Assessing Officer u/s.2(7A) of the Act for both the years under consideration. Accordingly, the assessment orders framed by them are hereby quashed. Since the assessment orders framed for both the assessment orders by the Addl.

CIT/JCIT are quashed by allowing the additional grounds raised by the assessee, the adjudication of other regular grounds becomes academic in nature and hence, they are left open.

**4. In the result, both the appeals of the assessee are allowed.**

Order pronounced on 22/06/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 22/06/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai