IT: In terms of section 124(3)(b) jurisdiction of an Assessing Officer cannot be called in question by an assessee after expiry of one month from date on which he was served with a notice for reopening assessment under section 148

[2018] 94 taxmann.com 355 (Delhi)

HIGH COURT OF DELHI

Abhishek Jain

v.

Income-tax officer, Ward-55(1), New Delhi*

SANJIV KHANNA AND Chander Shekhar, JJ.
Writ Petition (Civil) No. 11844 of 2016
JUNE 1, 2018

Section 124, read with sections 68 and 120, of the Income-tax Act, 1961 - Assessing Officer - Jurisdiction of (Objections) - Assessment year 2009-10 - Based on 'Annual Information Return' filed by a bank, located in Noida, information was forwarded to Income-tax Officer, Noida regarding cash deposits of certain amount in account of assessee in said bank - On basis of said information, Income-tax Officer, Noida issued notice under section 148 against assessee - After three months, assessee raised an objection stating that assessee was regularly filing returns with Income-tax Officer, Delhi and, accordingly, notice under section 148 issued by Income-tax Officer, Noida was illegal and without territorial jurisdicition - Whether in terms of section 124(3)(b) assessee could not call in question jurisdiction of an Assessing Officer after expiry of one month from date of a service of reassessment notice upon him - Held, yes - Whether, thus, Income Tax Officer, Noida would not per se lack jurisdiction and reopening notice issued by him against assessee was justified - Held, yes [Paras 19, 20 and 23] [In favour of revenue]

FACTS

■		Based on 'Annual Information Return', an information was forwarded to the Income-tax Officer, Noida regarding deposits in cash of certain amount in the savings bank account of the assessee in a bank located in Noida. As per bank records, communication address of the assessee was in Noida and his permanent address was in New Delhi. The assessee had not mentioned his Permanent Account Number (PAN Number). As per KYC certification, the assessee's address was in Noida. Income-tax Officer, Noida after recording reasons to believe in writing had issued notice under section 148 read with section 147, which was sent by registered post at the Noida address of the assessee. The assessee did not file return of the income, in terms of the notice. The Income-tax Officer, Noida issued notice under section 142 (1), requiring the assessee to comply with the directions therein including filing of return and furnishing of information and documents regarding cash deposits.

■		The assessee belatedly responded *vide* letter dated 19-5-2016 stating that he was regularly assessed and had filed return of income for relevant assessment year with the Income-tax Officer, Delhi. Accordingly, notice under section 142(1) and 'alleged' notice dated under section 148 issued by Income-tax officer, Noida were illegal and without jurisdiction. The assessee accepted that the savings account in Bank, in Noida, belonged to him. He had not specifically challenged and disputed cash deposits in the savings bank account. This Information regarding cash deposits was mentioned in the 'Annual Information Return', filed by the ICICI Bank.
■		On writ to the High Court :

HELD

■		The petitioner had deliberately not responded to the notice under section 148 and this muteness and belated response was intentional and malevolent as the assessee wanted to object to jurisdiction of the Income Tax Officer, Noida post 31-3-2016 and thereafter, in view of time mandate in section 149, Income Tax Officer, Delhi, could not have issued fresh notice under section 148. [Para 14]
■		Contention of the predicated on lack of jurisdiction of the petitioner Income Tax Officer, Noida on first glance appears to have strength, but on thoughtful consideration the contention must be rejected and should fail in view of the statutory provisions and peculiar facts of this case. [Para 15]
■		Section 120 which relates to jurisdiction of the Income-tax Authorities stipulates that Income-tax Authorities shall exercise any of the powers and perform all or any of the functions conferred or assigned to such authority by or under this Act as per the directions of the Board i.e., Central Board of Direct Taxes. As per *Explanation* to sub-section (1), the power can also be exercised, if directed by the Board, by authorities higher in rank. Under sub-section (2), the Board can issue orders in writing for exercise of power and performance of functions by the Income-tax Authorities and while doing so in terms of sub-section (3), the Board can take into consideration and have regard to the four-fold criteria namely, territorial area; persons or classes of persons; incomes or classes of income; and cases or classes of cases. Thus, the act does not authoritatively confer exclusive jurisdiction to specific Income Tax Authority. It is left to the Board to issue directions for exercise of power and functions taking into consideration territorial area, class/types of persons, income and case, and Board have been given wide power and latitude. The said section by necessary implication postulates and acknowledges that multiple or more than one Assessing officer could exercise jurisdiction over particular assessee. Concurrent jurisdictions are therefore not an anathema but an accepted position under the Act. The term 'jurisdiction' in section 120 has been used loosely and not in strict sense to confer jurisdiction exclusively to a specified and single Assessing Officer, to the exclusion of others with concurrent jurisdiction. It would refer to 'place of assessment', a term used in the Income-tax Act, 1922. Sub-section (5) to section 120 again affirms and accepts that there can be concurrent jurisdiction of two or more assessing officers who would exercise jurisdiction over a particular assessee in terms of the four-fold criteria stated in sub-section (3) to section 120. Second part of sub-section (5) states that where powers and functions are exercised concurrently by

		Assessing Officers of different classes, then the higher authority can direct the lower authority in rank amongst them to exercise the powers and functions. [Para 16]
■		One would reiterate that sub-section (1) to section 124 states that the Assessing Officer would have jurisdiction over the area in terms of any direction or order issued under sub-section (1) or sub-section (2) to section 120. Jurisdiction would depend upon the place where the person carries on business or profession or the area in which he is residing. Sub-section (3) clearly states that no person can call in question jurisdiction of an Assessing Officer in case of non-compliance and/or after the period stipulated in clauses (*a*) and (*b*), which would negate and reject arguments predicated on lack of subject matter jurisdiction. Where an assessee questions jurisdiction of the Assessing Officer within the time limit and in terms of sub-section (3), and the Assessing Officer is not satisfied with the correctness of the claim, he is required to refer the matter for determination under sub-section (2) before the assessment is made. Reference of matter under sub-section (2) would not be required when Assessing Officer accepts the claim of the assessee and transfers the case to another Assessing Officer in view the objection by the assessee. In terms of sub-section (3) to section 124, the assessee had lost his right to question jurisdiction of the ITO, Ward No. 1(1), Noida. [Para 19]
■		Sub-section (5) to section 124, though limited in scope, would also be applicable in the facts and circumstances of the present case as the Income Tax Officer, Noida had the power to assess income accruing or arising within the area as it is not the case of the assessee that the said officer had jurisdiction in view of location of the bank account and/or petitioner's place of work. Section 124(5) saves assessment made by an Assessing Officer provided that the assessment does not bring to tax anything other than income accruing, arising or received in that area over which the Assessing Officer exercises jurisdiction. However, notwithstanding section 124(5), the Act does not postulate multiple assessments by different Assessing Officers, or assessment of part or portion of an income. Thus, it is necessary that the Assessing Officers having concurrent jurisdiction ensure that only one of them proceeds and adjudicate. This is the purport and objective behind sub-section (2) to section 124. [Para 20]
■		Contention of the petitioner that the transfer by Income Tax Officer Noida to Delhi required an order under section 127 is fallacious and without merit. Section 127 relates to transfer of case from one Assessing Officer having jurisdiction to another Assessing Officer, who is otherwise not having jurisdiction as per directions of the Board under section 120 and section 124. Under sub-section (1), transfer order under section 127 can be passed by the Director General, Chief Commissioner or Commissioners from one Assessing Officer to another Assessing Officer subordinated to them. Sub-section (2) applies where the Assessing Officer to whom the case is to be transferred is not subordinated to the same Director General, Chief Commissioner or Commissioners of the Assessing Officer from whom the case is to be transferred. This is not a case of a transfer under section 127. This is a case in which the assessee had raised an objection stating that the Income Tax Officer, Noida should not continue with the assessment as the assessee was regularly filing returns with the Income Tax Officer, Delhi. Objection as raised were treated as made in terms of sub-section (3) to section 124, notwithstanding the fact that there was delay and non-compliance. The Income Tax Officer, Noida accepted the request/prayer of

		the petitioner and had transferred pending proceeding to the Assessing Officer, Delhi. Therefore, there was no need to invoke and follow the procedure mentioned in sub-section (2) to section 127. Section 127 would come into play when the case is to be transferred from the Assessing Officer having jurisdiction to a third officer not having jurisdiction over an assessee (a case) in terms of the directions of the Board under section 120. Section 127 could also apply when the department wants transfer of a case, and sections 120 and 124 are not attracted. [Para 21]
■		In view of the above discussion, objections as to the jurisdiction of Assessing Officer in the present case cannot be equated with lack of subject matter jurisdiction. They relate to place of assessment. The Income Tax Officer, Noida would not *per se* lack jurisdiction, *albeit* he had concurrent jurisdiction with the Income Tax Officer, Delhi. In the facts of the present case the contention raised about the lack of jurisdiction would not justify quashing the notice under section 147 /148. [Para 23]
■		Accordingly, there is no any merit in the present petition and the same is dismissed. [Para 24]

CASE REVIEW

CIT v. *S.S. Ahluwalia* [2014] 46 taxmann.com 169/225 Taxman 131 (Mag.) (Delhi) (para 17) *followed.*

Hasham Abbas Sayyad v. *Usman Abbas Sayyad* [2007] 2 SCC 355 (para 22) and *Harshad Chiman Lal Modi* v. *DLF Universal Ltd*. [2005] 7 SCC 791 (para 22) *distinguished*.

CASES REFERRED TO

CIT v. *S.S. Ahluwalia* [2014] 46 taxmann.com 169/225 Taxman 131 (Mag.) (Delhi) (para 15), *Kanji Mal & Sons* v. *CIT* [1983] 12 Taxman 34/[1982] 138 ITR 391 (Delhi) (para 20), *Hasham Abbas Sayyad* v. *Usman Abbas Sayyad* [2007] 2 SCC 355 (para 22) and *Harshad Chiman Lal Modi* v. *DLF Universal Ltd*. [2005] 7 SCC 791 (para 22).

Arvind Kumar and **Harsh Vardhan Sharma**, Advs. *for the Petitioner.* **Ashok K. Manchandani**, Sr. Standing Counsel *for the Respondent.*

JUDGMENT

Sanjiv Khanna, J. - Abhishek Jain, as an individual, has filed the present writ petition for quashing notice dated 18th February, 2016 issued under Section 148 read with Section 147 of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') for the assessment year 2009-10 by the Income-tax Officer, Ward No.1 (1), Noida, as without jurisdiction and consequently the proceedings pending on transfer before the Income-Tax Officer ward No.58(2), Delhi are bad and void.

2. Petitioner states that he has been filing returns in Delhi with the Income-Tax Officer, Ward No.36(1), Delhi and pursuant to re-adjustment of Wards with effect from assessment year 2014-15 with the Income-Tax Officer, Ward No. 58(2), Delhi.

3. The second contention raised by the petitioner is that transfer of case/proceedings by Income-tax Officer, Ward No.1(1), Noida to Income-tax Officer Ward 58(2), Delhi, pursuant to notice under Section

148 of the Act for the assessment year 2009-10 issued by the former, is void and bad in law as (i) Income-tax Officer, Ward No.1(1), Noida did not have jurisdiction and (ii) the procedure prescribed for transfer of case as per section 127(2)(a) of the Act was not followed since the Chief Commissioner having jurisdiction over the Income-tax Officer Ward No.1(1), Noida had not passed any order for transfer of the case.

4. To decide the legal controversy, we would first refer to the facts and while doing so we would also examine certain disputed facts. Petitioner, as stated above is an individual who has been filing returns with the Income-tax Officer Ward No.36(1) Delhi and thereafter from the assessment year 2013-14 with the Income-tax Officer, Ward No.58(2) Delhi. For the assessment year 2009-10, the petitioner had filed return with Income-Tax officer, Ward No. 36(1) Delhi on 29th March, 2010.

5. Respondents in the counter-affidavit and additional affidavit have stated that based on 'Annual Information Return' information was forwarded to the Income-Tax Officer Ward No.1(1), Noida regarding deposits in cash amounting to Rs. 12,89,609/- in the savings bank account No.628401512177 of the petitioner in ICICI Bank Limited, Branch Noida Sector-27, Uttar Pradesh, during the period relevant to the assessment year 2009-10. As per bank records, communication address of the petitioner was A-32, Sector-5, Noida-201301 and his permanent address was FF-50, 3rd floor, Laxmi Nagar New Delhi-110092. The petitioner had not mentioned his Permanent Account Number (PAN Number). As per Know Your Customer Certification, the petitioner's address was A-32, Sector-5, Noida. Account Opening Form along with the particulars and details mentioned therein are not disputed. The petitioner also does not dispute that the account belongs to him.

6. As per the respondents, the aforesaid details were examined and thereupon notices under Section 133(6) dated 16th August, 2015 and 11th January, 2016 were issued by registered/speed post by the Income-tax Officer, Ward No.1(1) to the petitioner at A-32, Sector-5 Noida and third notice dated 14th December, 2015 was issued to the petitioner at the second address at FF-50, 3rd floor, Laxmi Nagar New Delhi-110092. Income-Tax Inspector had visited the Laxmi Nagar address with the notice dated 14th December, 2015 but the petitioner could not be located and the notice was thereupon affixed.

7. Income-Tax Officer Ward No.1 (1), Noida did not receive any response and reply to the above notices.

8. Left with no option, Income-Tax Officer Ward No.1(1), Noida after recording reasons to believe in writing had issued notice dated 18th February, 2016 under Section 148 read with Section 147 of the Act, which was sent by registered post at the Noida address. The petitioner did not file return of the income, in terms of the notice nor did he come forward and state that he had filed return of income for assessment year 2009-10 with the Income-Tax Officer, Ward No.36(1), Delhi and was being assessed in the said Ward.

9. On 27th April, 2016 Income-Tax officer, Ward No.1(1), Noida issued notice under Section 142 (1) of the Act, requiring the petitioner to comply with the directions therein including filing of return for the assessment year 2009-10 and furnishing of information and documents regarding cash deposits.

10. The petitioner belatedly responded vide letter dated 19th May, 2016 stating that he was regularly assessed and had filed return of income for assessment year 2009-10, with the Income-tax Officer Ward No.36(1) Delhi. Accordingly, notice dated 27th April, 2016 under Section 142(1) and "alleged" notice dated 18th February, 2016 under Section 148 of the Act were illegal and without jurisdiction. Without prejudice, the petitioner had enclosed a copy of his return filed on 29th March, 2010 with the Income-tax Officer, Ward No.36(1) Delhi with the request to treat this return as filed in response to the

notice. Request was made to furnish a copy of the reasons to believe to enable the petitioner to file detailed objections. This letter did not specifically state that the petitioner had not been served with the notice dated 1st February, 2016 under Section 148 of the Act for the assessment year 2009-10 at the Noida address.

11. Petitioner in his objections filed on 15th November, 2016 did not again specifically dispute service of notice under Section 148 dated 18th February, 2016, albeit had stated that this notice was not served on him till 31st March, 2016.

12. Petitioner states that property bearing no. FF-50, 3rd Floor, Laxmi Nagar, Delhi-92 was owned by his mother and was sold by her *vide* registered sale deed dated 22nd October, 2008. It is submitted that service by affixation or pasting at Laxmi Nagar address was improper and not in accordance with law. The petitioner asserts and insists that he was not served with letters dated 16th August, 2015 and 11th January, 2016 sent at the Noida address. It is submitted that copy of the postal receipts have not been placed on record and that notice dated 11th January, 2016 was wrongly addressed to Abhishek Jaina, 32, Sector-5 Noida, instead of Abhishek Jain, A-32, Sector-5 Noida.

13. We would recapitulate the facts in brief.

(*i*)		Petitioner accepts that the savings account in ICICI Bank, Sector 27, Noida, U.P. with communication address as A-32, Sector-5, Noida-201301 i.e. factory, where the petitioner works belongs to him. Petitioner had furnished a copy employee identity card and a letter from the employer confirming the Noida address. KYC form records the address of the petitioner as A-32, Sector-5, Noida.
(*ii*)		Petitioner has not given his Permanent Account Number or updated his permanent address in the bank account.
(*iii*)		Petitioner has not specifically challenged and disputed cash deposits of Rs. 12,18,609/- in the savings bank account in the period relevant to the assessment year 2009-10. This Information regarding cash deposits was mentioned in the 'Annual Information Return', filed by the ICICI Bank.
(*iv*)		As the address of the petitioner mentioned in the bank account was located in Noida, Income-Tax Officer Ward No.1(1), Noida was informed. Income-Tax Officer Ward No.1(1) had issued three letters under Section 133(6) dated 16th August, 2015, 14th December, 2015 and 11th January, 2016, to the petitioner seeking information and clarification. The first and the third letters were sent by the registered post to the petitioner at A-32, Sector-5, Noida, and the second letter was sent to the petitioner at FF-50, 3rd floor, Laxmi Nagar New Delhi-110092. The two letters sent to the Noida address were not received back unserved and the letter dated 14th December, 2015 was served by affixture at the Laxmi Nagar, Delhi address.
(*v*)		In the aforesaid circumstances the Income-Tax Officer, Ward 1(1), Noida recorded reasons to believe and had issued notice dated 18th February, 2018 under Section 148 of the Act.
(*vi*)		This notice dated 18th February, 2018 under Section 148 of the Act was sent by speed post on 19th February, 2018.
(*vii*)		Petitioner did not respond or file his return of income in response to this

		notice.
(*viii*)		The Income-tax Officer Ward No.1 (1), Noida, had then issued notice under Section 142(1) of the Act dated 27th April, 2016 requiring the petitioner to comply with the directions contained therein including filing of return.
(*ix*)		The petitioner thereafter responded and wrote to the Income-Tax Officer Ward No.1 (1), Noida for the first time on 19th May, 2016.
(*x*)		The petitioner in his response dated 19th May, 2016 did not specifically dispute receipt of the notice under Section 148 of the Act, though the word "alleged" was used.
(*xi*)		Petitioner in his objections dated 15th November, 2016, had stated that the alleged notice under Section 148 had not been served on him till 31st March, 2016 and hence, notice (sic. proceeding) was illegal and barred by time. Impliedly, the petitioner had accepted that notice dated 18th February, 2016 under Section 148 of the Act was served.

14. Petitioner, we have no hesitation in observing, had deliberately not responded at least to the notice dated 18th February, 2016 under Section 148 of the Act. This muteness and belated response was intentional and malevolent as the petitioner wanted to object to jurisdiction of the Income-Tax Officer Ward No.1(1), Noida post 31st March, 2016. Thereafter, in view of time mandate in Section 149 of the Act, Income Tax Officer, Ward No. 36(1), Delhi, could not have issued fresh notice under Section 148 of the Act.

15. Contention of the petitioner predicated on lack of jurisdiction of the Income-Tax Officer Ward No.1(1), Noida on first glance appears to have strength, but on thoughtful consideration the contention must be rejected and should fail in view of the statutory provisions and peculiar facts of this case. On the legal position, we would like to refer to the decision dated 14th March, 2014 of the Delhi High Court authored by one of us (myself) in *CIT* v. *S.S. Ahluwalia* [2014] 46 taxmann.com 169/225 Taxman 131 (Mag.) However, we begin by reproducing Section 120 and Section 124 of the Act which read:

> "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) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely :—

(*a*)		territorial area;
(*b*)		persons or classes of persons;

(*c*)		incomes or classes of income; and
(*d*)		cases or classes of cases.

(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 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 incomes or classes of income or cases or classes of cases, shall be exercised or performed by a [25][Joint] Commissioner [26][or a [25][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 [25][Joint] Commissioner [26][or [25][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 [25][Joint] Commissioner shall not apply.

(5) The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, 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 higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.

(6) Notwithstanding anything contained in any direction or order issued under this section, or in section 124, the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification.]

	**	**	**

124. Jurisdiction of Assessing Officers.- (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (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—

(*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

(*b*)		in respect of any other person residing within the area.

(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 Director General or the Chief Commissioner or the Commissioner; or where the question is one relating to areas within the jurisdiction of different Directors General or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director General or Chief Commissioner or Commissioner as the Board may, by 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 (1) of section 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) 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 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or 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.

(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 (1) or sub-section (2) of section 120."

16. Section 120 of the Act which relates to jurisdiction of the Income-tax Authorities stipulates that Income-tax Authorities shall exercise any of the powers and perform all or any of the functions conferred or assigned to such authority by or under this Act as per the directions of the Board i.e., Central Board of Direct Taxes. As per Explanation to sub-section(1), the power can also be exercised, if directed by the Board, by authorities higher in rank. Under sub-section (2), the Board can issue orders in writing for exercise of power and performance of functions by the Income-tax Authorities and while doing so in terms of sub-section (3), the Board can take into consideration and have regard to the four-fold criteria namely, territorial area; persons or classes of persons; incomes or classes of income; and cases or classes of cases. Thus, the Act does not authoritatively confer exclusive jurisdiction to specific Income Tax Authority. It is left to the Board to issue directions for exercise of power and functions taking into consideration territorial area, class/types of persons, income and case, and Board have been given wide power and latitude. The said Section by necessary implication postulates and acknowledges that multiple or more than one Assessing officer could exercise jurisdiction over particular assessee. Concurrent jurisdictions are therefore not an anathema but an accepted position under the Act. The term "jurisdiction" in Section 120 of the Act has been used loosely and not in strict

sense to confer jurisdiction exclusively to a specified and single assessing officer, to the exclusion of others with concurrent jurisdiction. It would refer to "place of assessment", a term used in the Income Tax Act, 1922. Sub-section (5) to Section 120 of the Act again affirms and accepts that there can be concurrent jurisdiction of two or more assessing officers who would exercise jurisdiction over a particular assessee in terms of the four-fold criteria stated in sub-section (3) to Section 120. Second part of sub-section (5) states that where powers and functions are exercised concurrently by Assessing Officers of different classes, then the higher authority can direct the lower authority in rank amongst them to exercise the powers and functions.

17. Concurrent jurisdiction is reflected and recognized in Section 124 of the Act, which was interpreted in *S.S. Ahluwalia* (*supra*), in the following words:—

> 34. On analyzing the new Section 124, it is viewed that as per subsection (1), Assessing Officer has jurisdiction in respect of persons carrying on business or profession where such business or profession was being carried out or situated within the area or where the business or profession was carried on in different areas, if the principal place of business or profession was situated within the area. Assessing Officer under sub-clause (b) also had jurisdiction in respect of any other person(s) residing within the area. Residence and place of business being the basis. Sub-section (2) stipulates that question/ dispute of jurisdiction among two or more Assessing Officers, if raised, shall be determined by the Director- General, Chief Commissioner or the Commissioner, or if the question relates to areas falling within the jurisdiction of different Directors-General, Chief Commissioners or Commissioners, then by the Directors- General, Chief Commissioners or Commissioners concerned, and if they are not in agreement, by the Board or by such Director-General, Chief Commissioner or Commissioner that the Board may by an Official Gazette specify. Subsection (3) further stipulates that the objection to the jurisdiction could be questioned by an assessee or a person within one month from the date on which return of income under Section 139(1) was made or within one month from the date of issuance of notice under Section 142(1) or 143(2) or after completion of assessment, whichever was earlier. If no return of income was made, objection to the jurisdiction could be entertained, if made within the time allowed by way of notice under Section 115WD(2)/142(1)/115WH(1)/148 of the Act to make the return or by notice under first proviso to Sections 115WF or 144 to show cause why the assessment should not be completed by the best judgment of the Assessing Officer, whichever was earlier. Sub-section (4) lays down that when an assessee raises a dispute regarding jurisdiction of the Assessing Officer and the Assessing Officer if not satisfied with the correctness of the claim, he shall refer the matter for determination as per sub-section (2) of Section 124, however, this should be done before the assessment was made. The aforesaid Section, therefore, postulates waiver of objection to assumption of jurisdiction by the Assessing Officer. Time limit for raising the objection stands stipulated. Principle of deemed waiver applies. This could only happen when the authority does not lack or suffer from inherent lack of subject matter jurisdiction. When there is inherent lack of subject matter jurisdiction, principle of waiver does not apply. The principle being simple that by consent one cannot confer jurisdiction on authority which lacks inherent subject matter jurisdiction. The provisions ensure that conflict between Assessing Officers having concurrent jurisdictions is avoid and curtailed and the assessment proceeding do not get misdirected on side issues. Such deviation should be avoided. It is also clear that question of jurisdiction cannot be made subject matter of appeal, as the issue has to be decided on the administrative side by the Commissioner/Commissioners/ Board. Appeal can, however, be filed questioning the action of the Assessing Officer in not following the procedure mentioned/stipulated in Section 124. In *Wallace Brothers & Co. Ltd*. v. *CIT* [1945] 13 ITR 39, Federal Court had held that the objection to place of assessment could not be raised in an appeal

against the assessment under the Income Tax Act, 1922. This view was affirmed by the Supreme Court in *RaiBahadur Seth Teomal* v. *The Commissioner of Income Tax*,[1959] 36 ITR 9(SC) holding that the objection as to the place of objection under the 1922 Act could not be made a subject or issue before the appellate forums including the Tribunal and reference to the High Court. Thus, the question of place or authority of the particular Assessing Officer was the matter of administrative convenience and not strictly a matter of subject matter jurisdiction and where there was an error or erroneous exercise by the Assessing Officer/Commissioner notwithstanding the challenge within stipulated time, it could be corrected by way of writ jurisdiction. The position is no different under the Act i.e. Income Tax Act 1961, as was elucidated by a Division Bench of this Court in *Kanji Mal & Sons* v. *C.I.T.* (1982) 138 ITR 391 (Del), wherein reference to said two decisions was made and it was observed that if the assessee fails to raise objection before the Income Tax Officer within the time, he will be shut out from raising the question altogether. Further, if the issue was raised and decided by the Commissioner, the decision would be final and cannot be questioned in the appellate forums but where the Income Tax Officer does not refer the question to the Commissioner, the following proposition emerges:

"But where he raises the issue but the ITO does not refer the question to the CIT as in the present case (or the CIT or the Board does not decide the question before the assessment is completed) what will be the result of such failure ? Clearly, one answer to the question would be that this failure should not be held to vitiate the assessment altogether and that it should be open to the appellate authority to set aside the assessment for being redone in accordance with law after having the matter referred to the CIT and obtaining his decision. There is nothing wrong in adopting this course and it will not prejudice anyone. By adopting this course, the appellate authority will not be deciding the question of jurisdiction itself but will only be getting it done by the appropriate authority. The appellate order will not also help the department in any way if eventually the CIT (or the Board) comes to the conclusion that the ITO, who completed the assessment, had no jurisdiction in the matter and it will not confer any right on any other ITO having jurisdiction to proceed against the assessee, if he is otherwise not competent to do so. It will only help the department in the event of the CIT (or the Board) coming to the conclusion that the ITO who completed the assessment had the jurisdiction so to do.

The above approach to the issue derives support from the recent decision of the Supreme Court in the case of *KapurchandShrimal* v. *CIT* [1981]131 ITR 451. In that case (under the 1922 Act) the ITO completed the assessments of an HUF without disposing of the claim for partition that had been made by the members of the family. Before the Tribunal, the assessee contended that the assessments should be cancelled but the department contended that even if there had been a violation of s. 25A of the Act the proper order to be passed was either to direct the ITO to give effect to Section 25A or to set aside the assessments with a direction to the ITO to pass fresh orders of assessment. The Tribunal came to the conclusion that the assessments were in clear violation of the procedure prescribed for that purpose in s. 25A and cancelled the same. The Tribunal added : "We do not consider it necessary to direct first assessments. It would be open to the ITO to do so if the law otherwise so permits."

The Supreme Court held that this was not the right procedure to be adopted. It observed as follows (p.460) :

"The Tribunal was, Therefore, right in holding that the assessments in question were liable to be set aside as there was no compliance with s. 25A(1) of the Act. It is, however, difficult to agree with the submission made on behalf of the assessee that the duty of the Tribunal ends with making a

declaration that the assessments are illegal and it has no duty to issue any further direction. It is well known that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute. The statute does not say that such a direction cannot be issued by the appellate authority in a case of this nature. In interpreting s. 25A(1), we cannot also be oblivious to cases where there is a possibility of claims of partition being made almost at the end of the period within which assessments can be completed making it impossible for the ITO to hold an inquiry as required by s. 25A(1) of the Act by following the procedure prescribed therefor. We, however, do not propose to express any opinion on the consequence that may ensue in a case where the claim of partition is made at a very late stage where it may not be reasonably possible at all to complete the inquiry before the last date before which the assessment must be completed. In the instant case, however, since it is not established that the claim was a belated one, the proper order to be passed is to set aside the assessments and to direct the ITO to make assessments in accordance with the procedure prescribed by law. The Tribunal, Therefore, erred in merely cancelling the assessment orders and in not issuing further directions as stated above."

It was further observed:—

'It is, however, possible to look at the matter from another point of view. It can be said that the issue involved is one of jurisdiction and when an assessed puts it in challenge immediately he receives a notice or files a return, it must be resolved one way or the other in the manner provided for in the statute before the ITO can assume jurisdiction to proceed further and complete an assessment. The statute requires this to be done before the assessment is made. A failure to do so will render the assessment null and void and without jurisdiction as held in *Dina NathHemraj* v. *CIT* [1927] 2 ITC 304 (All) which has been referred to and in no way disapproved in Teomal's case [1959]36ITR9(SC). Once the ITO fails to follow the statutory course prescribed before assessment, it can be said, he misses the bus and cannot be given a second chance to rectify matters. It appears that the Tribunal was inclined to accept this line of argument and to hold "that the AAC could not have rendered an assessment which was illegal into a legal assessment by putting the clock back, so to speak, and enabling the Commissioner to decide the question of jurisdiction." In the view of the Tribunal, "for the exercise of the Commissioner's jurisdiction, the sands had clearly run not". It is for this reason that the Tribunal also said that the department could not rely upon Jajodia's case [1971]79ITR505(SC) to uphold the validity of a direction of the redoing of the assessment.'

However, in the facts of the said case, the Division Bench refrained from expressing their final conclusion on the question raised, though they were inclined to accept the former view that the assessment would not be a nullity, as the order of the Tribunal in the said case had attained finality and there was no reference at the instance of the Commissioner. It would be also important to reproduce the conclusion drawn by the Division Bench of the High Court on the said aspect which reads:—

"(2) The failure of the ITO to follow the above procedure may not render the assessment invalid. A view is possible that, in appeal, it is open to the AAC or the Tribunal to set aside the assessment and direct a fresh assessment after following the procedure mentioned in s.124(4) & (6) provided such a direction does not prejudice or affect the right of the assessee to challenge the reassessment as not being in accordance with any other provision of the Act. It is, however, not necessary to decide this question as the view of the Tribunal seems to be that such an assessment would be invalid and this matter is not in issue before us."

35. The said issue directly arises before us in the present appeals and it is time we give affirmative approval to the aforesaid principle as the question has been raised by the Commissioner. Reasons for the same are mentioned by the Division Bench of this Court in *Kanji Mal's* case (*supra*) and is also apparent and clear to us. Sub-section (4) and (6) of Section 124 and for that matter sub-section (2) and (4) of Section 124 after amendment w.e.f. 1st April, 1988 are procedural sections. They relate to administration and exercise of powers/authority by the Assessing Officers/Income Tax Officers and are not part of the substantive law. That the Act i.e. Income Tax Act 1961 being a complete code deals with substantive and procedural aspects. Section 120/124/127 govern the process of procedure for assessment and not the subject matter or its purpose. They relate to conduct of the Assessing Officer/Income Tax Officers and the assessees in respect of the assessment proceedings. It is a matter of merely a process. A irregularity in procedure need not result in annulment unless the statute specifically stipulates to the contrary. The appellate authorities have right to put a clock back and direct the Income Tax Officer/Assessing Officer to follow the procedure notwithstanding the difference between mandatory and directory procedural norms. In *Grindlays Bank* v. *Income Tax Officer* AIR 1980 656 (SC), the Supreme Court quashed the assessment order but then issued directions to make fresh assessment in the circumstances of the case. The said principle has been followed in cases of violation of principles of natural justice wherein an order of remit/remand when justified are passed. The courts have taken recourse of pragmatism and exigencies of the situation rather than legalistic approach of void and voidable (see Principle of Administrative Law, M.P. Jain and S.N. Jain, Fifth Edition, 2007 at pages 592-95).

36. In *Budhia Swain and Ors*. v. *GopinathDev and Ors*.(1999) 4 SCC 396, it was highlighted that distinction exists and was well recognized between lack of jurisdiction and mere error in exercise of jurisdiction. Lack of jurisdiction strikes at the very root of the action/act and want of jurisdiction might vitiate proceedings rendering the orders passed and exercise thereof, a nullity. But a mere error in exercise of jurisdiction would not vitiate the legality and validity of the proceedings and the said order was valid unless set aside in the manner known to law by laying a challenge, subject to law of limitation. The following portion of *HiraLalPatni* v. *Kali Nath*, AIR 1962 SC 199 was quoted:

"... The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it."

37. The view we have taken, finds support from the decision of the Patna High Court in *MahalliramRamniranjan Das* v. *CIT* (1985) 156 ITR 885, wherein the decision of Delhi High Court in *Kanji Mal & Son's* case (*supra*) was referred to. Reference was also made to the decision of the Supreme Court in *Guduthur Bros*. v. *ITO* (1960) 40 ITR 298 (SC), and the matter was remanded to the authority to continue with the proceedings from the stage irregularity had occurred. It was observed that the tribunal was not right in annulling the assessment. It would be also appropriate here to refer to the decision in *Hindustan Transport Co*. v. *Inspecting Asstt. Commissioner of Income Tax* and Anr. (1991) 189 ITR 326 of the Allahabad High Court-Lucknow Bench, wherein it has been observed as under:—

"A survey of the above provisions of the Act highlights the following situations. After creating the various Income Tax authorities, the Act does not prescribe their respective jurisdiction or functions.

Any case can be dealt with by any Income Tax authority with the possible exception of the Board. Accordingly, the various Income Tax authorities are of co-ordinate jurisdiction. What function or functions, which authority or officer, shall perform is left to be decided either by the Board or by the Commissioner. On what principles the Board and the Commissioner will allocate the functions is not indicated in the Act. The principle is, however, apparent from the nature of the enactment. The Act has been enacted with a view to collect revenue. Income Tax is the main source of revenue for the State. It is through revenue that the machinery of the State is run. It is desirable that the tax should be collected as early as possible. Collection of tax is preceded by assessment thereof. It is consequently desirable that the assessment proceedings should be completed expeditiously but expeditious disposal of an assessment does not mean that the assessee may be put to unwarranted harassment or prejudice. Therefore, the Board and the Commissioner shall take into account the convenience of the assessee also. It is with this purpose in view that it has been provided in Sub-section (1) of Section 127 that, whenever possible, an opportunity of hearing may be given to the assessee while transferring a case from one place to another. Since the assessee does not suffer any inconvenience or prejudice if a case is transferred locally, no such opportunity has been prescribed. From these provisions it is obvious that the Board and the Commissioner will exercise the power of allocation of functions to various authorities or officers in the exigency of tax collection with due regard to the convenience of the assessee. In other words, the allocation is a measure of administrative convenience. In such a situation, the concept of jurisdiction cannot be imported and, certainly, not in the sense of invalidating the resultant action on account of the defect in the exercise of functions.

Being an enactment aimed at collecting revenue, the Legislature did not intend collection of revenue to be bogged down on account of technical plea of jurisdiction. It has, therefore, prescribed the limit up to which the plea of jurisdiction may be raised. As provided in Section 124(5)(a), the right is lost as soon as the assessment has been completed. Even where the right is exercised before the assessment is completed, the question is to be decided by the Commissioner or by the Board. Courts do not come into the picture.

From the above provisions of the Act, it is apparent that the Act does not treat the allocation of functions to various authorities or officers as one of substance. It treats the matter as one of procedure and a defect of procedure does not invalidate the end action. The answer to the first question, therefore, is that the power is administrative and procedural and is to be exercised in the interest of exigencies of tax collection and the answer to the second question is that, under the Act, a defect arising from allocation of functions is a mere irregularity which does not affect the resultant action."

38. In *Commissioner of Income Tax* v. *ShivkumarAgrawal* (1990) 186 ITR 734 (Orissa), it was held that imposition of penalty by the Assistant Commissioner in view of the amendment was without jurisdiction in light of an earlier judgment but there was no dispute about validity of initiation of the said proceedings. Once proceedings were validly initiated but disposed of by an officer having no jurisdiction, the proceedings do not come to an end but should be finalized by an officer having jurisdiction. Therefore, while accepting the decision of the tribunal on the question of cancellation of penalty, the High Court held that the proceedings had not been finalized and could be finalized by the Income Tax Officer. In the present case, proceedings were initiated both by the AO, Delhi and ITO, Dimapur. Even if it is assumed that the proceedings initiated by AO, Delhi were not in accordance with law, there is no finding and indeed the respondent did not contest the proceedings initiated by ITO, Dimapur. ITO, Dimapur had accepted that the assessment order should be passed by AO, Delhi. Even if the said opinion/belief was wrong, it would not affect the initial initiation of

proceedings by ITO, Dimapur, who had passed the assessment orders in the second round.

39. A Division Bench of Bombay High Court in *Commissioner of Income Tax* v. *BharatkumarModi* (2000) 246 ITR 693, referred to the well settled principle of law; setting out the difference between lack of jurisdiction and irregular exercise of authority/ jurisdiction. Proceedings are a nullity when the authority taking it, has a no power to have seisin over the case. But an order is not a nullity or in exercise of *void abintio* jurisdiction, when the Assessing Officer does not confront the assessee with the material in his possession. The said error is an irregularity which could be corrected by remitting the matter. Powers of annulment and power to set aside and remit the case, have to be exercised keeping in mind the distinction between lack of jurisdiction and irregularity in exercise of authority/jurisdiction. The latter can be rectified and should be rectified as early as possible. Annulment of assessment would mean that the entire assessment proceedings would become *ab initio void* and the consequences were different from merely setting aside."

18. *S.S. Ahluwalia* (*supra*), examines several decisions which were relied upon by the assessee in the said case and were held to be not germane and applicable. This decision also explains provisions of Section 127 of the Act and scope and ambit of the said power, to observe that the section does not speak of the transfer of jurisdiction but transfer of case as defined in Section 127. Expression "concurrent jurisdiction" is mentioned in sub-section (3) to Section 127 of the Act. Elucidating the legal effect of Sections 120, 124 and 127 of the Act, it was observed in *S.S. Ahluwalia* (*supra*) :—

"(13) The provisions indicate that Sections120, 124 and 127 of the Act recognizes flexibility and choice, both with the assessee and the authorities i.e. the Assessing Office before whom return of income could be filed and assessment could be made. The Assessing Officer within whose area an assessee was carrying on business, resided or otherwise income had accrued or arisen (in the last case, subject to the limitation noticed above) has jurisdiction. Similarly, the Assessing Officer also has authority due to class of income or nature and type of business. The Act, therefore, recognized multiple or concurrent jurisdictions. Provisions of Section124 ensure and prevent two assessments by different assessing officers, having or enforcing concurrent jurisdiction. There cannot be and the Act does not envisage two assessments for the same year by different officers. (Reassessment order can be by a different officer)."

19. We would reiterate that sub-section (1) to Section 124 states that the Assessing Officer would have jurisdiction over the area in terms of any direction or order issued under sub-section (1) or sub-section (2) to Section 120 of the Act. Jurisdiction would depend upon the place where the person carries on business or profession or the area in which he is residing. Sub-section (3) clearly states that no person can call in question jurisdiction of an Assessing Officer in case of non-compliance and/or after the period stipulated in clauses (a) and (b), which as observed in *S.S. Ahluwalia* (*supra*) would negate and reject arguments predicated on lack of subject matter jurisdiction. Where an assessee questions jurisdiction of the Assessing Officer within the time limit and in terms of sub-section (3), and the Assessing Officer is not satisfied with the correctness of the claim, he is required to refer the matter for determination under sub-section (2) before the assessment is made. Reference of matter under sub-section (2) would not be required when Assessing Officer accepts the claim of the assessee and transfers the case to another Assessing Officer in view the objection by the assessee. (In terms of sub-section (3) to Section 124 of the Act, the petitioner had lost his right to question jurisdiction of the Income Tax Officer, Ward No. 1(1), Noida.

20. Sub-section (5) to Section 124, though limited in scope, would also be applicable in the facts and circumstances of the present case as the Income-Tax Officer, Ward-1 (1), Noida had the power to assess income accruing or arising within the area as it is not the case of the petitioner-assessee that the said

officer did not have jurisdiction in view of location of the bank account and/or petitioner's place of work. Section 124(5) of the Act saves assessment made by an assessing officer provided that the assessment does not bring to tax anything other than income accruing, arising or received in that area over which the assessing officer exercises jurisdiction. However, notwithstanding Section 124(5), the Act does not postulate multiple assessments by different assessing officers, or assessment of part or portion of an income [see *Kanji mal & Sons* v. *CIT* [1983] 12 Taxman 34/[1982] 138 ITR 391 (Delhi)]. Thus, it is necessary that the Assessing Officers having concurrent jurisdiction ensure that only one of them proceeds and adjudicate. This is the purport and objective behind sub-section (2) to Section 124 of the Act.

21. Contention of the petitioner that the transfer by Income-Tax Officer, Ward-1(1), Noida to Income-Tax Officer, Ward-58 (2), Delhi required an order under Section 127 of the Act is fallacious and without merit. Section 127 relates to transfer of case from one Assessing Officer having jurisdiction to another Assessing Officer, who is otherwise not having jurisdiction as per directions of the Board under Section 120 and Section 124 of the Act. Under sub-section (1), transfer order under Section 127 can be passed by the Director General, Chief Commissioner or Commissioners from one Assessing Officer to another Assessing Officer subordinated to them. Sub-section (2) applies where the Assessing Officer to whom the case is to be transferred is not subordinated to the same Director General, Chief Commissioner or Commissioners of the Assessing Officer from whom the case is to be transferred. This is not a case of a transfer under Section 127 of the Act. This is a case in which the assessee had raised an objection stating that the Income-Tax Officer, Ward-1 (1), Noida should not continue with the assessment as the petitioner-assessee was regularly filing returns with the Income-Tax Officer, Ward-58 (2), Delhi. Objection as raised were treated as made in terms of sub-section (3) to Section 124, notwithstanding the fact that there was delay and non-compliance. The Income-Tax Officer, Ward-1 (1), Noida accepted the request/prayer of the petitioner and had transferred pending proceeding to the Assessing Officer, Ward-58 (2), Delhi. Therefore, there was no need to invoke and follow the procedure mentioned in sub-section (2) to Section 127 of the Act. Section 127 of the Act would come into play when the case is to be transferred from the Assessing Officer having jurisdiction to a third officer not having jurisdiction over an assessee (a case) in terms of the directions of the Board under section 120 of the Act. Section 127 of the Act could also apply when the department wants transfer of a case, and Sections 120 and 124 of the Act are not attracted.

22. Counsel for the petitioner had relied upon judgment of the Supreme Court in *Hasham Abbas Sayyad* v. *Usman Abbas Sayyad* [2007] 2 SCC 355 which draws distinction between a person or authority lacking inherent jurisdiction which makes the order passed by them a nullity, and therefore, principle of estoppel, waiver and acquiescence or even *res judicata* which are procedural in nature, would not have any application. Such orders passed without jurisdiction would suffer lack of *coram non judice* and cannot be given effect to. This decision refers to *Harshad Chiman Lal Modi* v. *DLF Universal Ltd*. [2005] 7 SCC 791, which classifies and draws jurisprudential difference amongst - territorial or local jurisdiction; pecuniary jurisdiction; and jurisdiction over the subject matter. As far as territorial or pecuniary jurisdictions are concerned, objection should be taken at the earliest possible opportunity and /or before the settlement of issues and not at the subsequent stage. Jurisdiction as to the subject matter is distinct and stands on a different footing.

23. In view of the above discussion, objections as to the jurisdiction of assessing officer in the present case cannot be equated with lack of subject matter jurisdiction. They relate to place of assessment. Income-Tax Officer Ward 1(1), Noida would not *per s*e lack jurisdiction, albeit he had concurrent jurisdiction with the Income-Tax Officer Ward 36(1)/58, Delhi. In the facts of the present case the contention raised about the lack of jurisdiction would not justify quashing the notice under Section 147

/148 of the Act.

24. Accordingly, we do not find any merit in the present petition and the same is dismissed. Stay order is vacated. However, in the facts of the present case there would be no order as to costs.

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*In favour of revenue.