

2. The facts are that a survey u/s 133A of the Act was conducted on the registered office, i.e., E-118, Preet Vihar, New Delhi, of the assessee Company, during the course of search & seizure operation conducted on the same date on the Shanker Gutkha Group belonging to the Keshwani Group. During the course of survey, statement of Shri Arun Kumar Gupta was recorded, who informed that Shri Anil Kumar Gupta and his wife Shelly Gupta were Directors in the assessee Company, but they did not live in that house and the residence of Shri Anil Gupta was in Agra, in New Raja Ki Mandi. No document of the Company was found from this address and this address was found to be the registered office of the assessee Company only on paper, as also confirmed by Shri Anil Gupta in the statement recorded from him on 08.04.2008 during the course of post search inquiry. Shri Arun Gupta who is brother of Shri Anil Gupta, in his statement recorded on 30.01.2008 during the course of survey of the Company also informed that Shri Anil Gupta shifted to Gwalior in 1988 where he was doing manufacturing of foam mattresses in a Company, M/s Welcome Coir Industries Ltd. having its factory in Gwalior, but ten years earlier, there had occurred a fire in the factory and the factory incurred heavy losses and it was closed and then, he came to Agra and at the time of survey, it was informed that he was doing share business as sub-broker.

3. As discussed by the AO in the assessment order, this Company is connected with the Shanker Gutkha Group. The case of the assessee Company was centralized u/s 127 of the Income Tax Act, 1961 by the Id. Commissioner of Income Tax, Gwalior with the Dy. CIT/ACIT, Central Circle, Agra, vide order dated 24.03.2009, circulated vide letter F. NO. CIT/Gwl/Tech/127/2008-09. After centralization of this case with Central Circle, Agra, during the course of assessment proceedings for A.Y.2008-09, the AO found that substantial amounts were deposited in the Bank Account No.51700101003301 of this Company maintained with Union Bank of India at Gwalior and in Bank Account No. 121230000123 maintained with HDFC at Agra during the F.Ys. 2002-03, 2003-04 and 2004-05, relevant to assessment years 2003-04, 2004-05 and 2005-06, respectively. During the enquiry made by the AO with regard to these deposits, the assessee Company could not explain the nature and source of these deposits. Therefore, after recording reasons to believe about escapement of such unexplained deposits found in the two bank accounts of the assessee from being subjected to tax, the AO issued notice u/s 148 of the Act dated 24.12.2009 after obtaining approval from the Id. CIT (Central), Kanpur for all three assessment years, i.e., A.Ys. 2003-04, 2004-05 and 2005-06. As discussed by the AO in the assessment order, these notices were sent by post and were not returned and hence, they were considered by him as served on the assessee.

4. As further discussed by the AO in the assessment orders for all three assessment years, no return of income was filed by the assessee in response to notice u/s 148 of the Act and therefore, the AO issued notice u/s 144 of the Act to the then Managing Director of the Company, Shri Anil Kumar Gupta, twice, first on 14.07.2010 and second on 02.08.2010 and as stated by the AO, this notice was served on Shri Anil Kumar Gupta, the then Managing Director, on 03.08.2010, for compliance on 10.08.2010, but no compliance was made. As neither any return of income was filed in response to the notice u/s 148 of the Act, nor any compliance was made to the notice u/s 144 of the Act, the AO completed the assessment for all the three assessment years, i.e., A.Ys. 2004-05, 2005-06 and 2006-07 to the best of his judgment u/s 144 of the Act, in which, he took the returned income of the assessee for all the three assessment years as "NIL", because no return was filed in response to notice u/s 148 of the Act and in the "NIL" income, further addition for unexplained deposits in the two bank accounts had been made for all the three assessment years, as shown below, for all the three years:-

A.Y. 2003-04:-

Returned Income as estimated Rs.NIL

Add:- 1. Unexplained deposit in account Rs.77,21,920/-
with Union Bank of India, Gwalior

2. Unexplained deposit in account Rs.13.29,080/- Rs.90,51,000/-

with HDFC Bank

Total Assessed Income Rs.90,51,000/-

A.Y. 2004-05:-

Returned Income as estimated Rs.NIL

Add:- 1. Unexplained deposit in account Rs. 2,06,53,000/-

with Union Bank of India, Gwalior

2. Unexplained deposit in account Rs. 24,35,000/- Rs.2,30,88,000/-

with HDFC Bank

Total Assessed Income Rs.2,30,88,000/-

A.Y. 2005-06:-

Returned Income as estimated Rs.NIL

Add:- 1. Unexplained deposit in account Rs. 23,15,000/-

with Union Bank of India, Gwalior

2. Unexplained deposit in account Rs.1,72,35,000/- Rs.1,95,00,000/-

with HDFC Bank

Total Assessed Income Rs.1,95,00,000/-

5. The Id. CIT(A), by virtue of the impugned consolidated order, allowed all the appeals filed by the assessee for AYs. 2003-04 to 2005-06.

6. The Id. DR has contended that the Id. CIT(A) has erred in law and on facts in annulling the assessment order and allowing the appeal of the assessee by holding that the same is passed without having any valid jurisdiction, ignoring the provisions of section 292B of the Act, and without appreciating the fact that assessee had never raised any objection regarding the issue of jurisdiction during the course of the assessment proceedings and subsequent compliance had been made by it; that the Id. CIT(A) has erred in law and on facts by holding that the proceedings initiated u/s 147 of the Act and the consequent order passed is not sustainable in law, without appreciating the fact that the AO had undertaken valid and lawful proceedings u/s 147 of the Act, after obtaining due approval from the Commissioner of Income Tax and satisfaction note from the Addl./Joint Commissioner of Income Tax about the fitness of the case for taking recourse u/s 147 of the Act; and that the Id. CIT(A) has erred in law and on facts in annulling the assessment order by holding that the AO is not having jurisdiction in violation of clause (b) of sub-section 3 of section 124 of the Act.

7. The Id. Counsel for the assessee has placed strong reliance on the impugned order.

8. We have heard the parties and have perused the material on record. The Department has raised the objection that the Id. CIT(A) has wrongly annulled the

assessment order as without jurisdiction of the AO, ignoring the provisions of section 292B of the I.T. Act and without appreciating that the assessee, during the assessment proceedings, never raised any objection regarding such jurisdiction. Now, it is seen that both these questions have been amply met by the Id. CIT(A) in Para Nos. 11 to 16.2.11 of his elaborate reasoned order.

9. The Id. CIT (A) has relied on “CIT vs. Norton Motors”, 275 ITR 595 (P & H), wherein, it has been held that section 292B of the Act can be relied on for registering a challenge to the notice, etc., only if there is a jurisdictional defect or omission therein; and that however, there is nothing in the plain language of the section to infer that the section can be relied on for curing a jurisdictional defect in the assessment notes, summons, or other proceedings.

10. Before the Id. CIT(A), as pointed out by the Id. CIT(A) at pages 27-58 of the impugned order, no contra decision was cited by the AO, in the hearing conducted by the Id. CIT(A) in the presence of the AO. Before us also, the Department has not referred to any decision opposed to “Norton Motors” (supra). Therefore, “Norton Motors” (supra), is squarely applicable and has rightly been applied by the Id. CIT(A), correctly observing that such order cannot be said to have conferred jurisdiction over an assessee to the AO, if the particulars of the assessee including its name, status, address, PAN and the assessing officer before whom it was

originally being assessed, were not correctly mentioned, especially in the light of the fact that the reason for transferring the entity was not mentioned in the said order and no evidence or any record had been produced before him [the CIT(A)] showing that any opportunity was given to either the entity mentioned in the order (i.e., Welcome Coir Industries, the Firm) or the assessee (M/s Welcome Coir Industries, the Company) under appeal before him or that the said order was served on either the entity mentioned in the order, or the assessee before it was served during the course of appeal after the counsel demanded for service of this order and such mistakes cannot be said to be technical in nature, which could be considered curable in nature as per the provisions of section 292B of the Act, but since such defects are in the nature of jurisdictional defects, they are not curable u/s 292B of the Act, as held in “CIT vs. Norton Motor” (supra).

11. Further, the issue that if there is an inherent defect in the jurisdiction of the AO over the assessee and in any particular year, during the assessment proceedings no objection was taken whether it would amount to acceptance of jurisdiction for other years, has been dealt with by the ITAT, Lucknow Bench, in the case of “M.I. Builders Pvt. Ltd. vs. ITO Lucknow”, (2008) 115 ITD 419 (Luck) and it has been held that the validation of proceedings by virtue of section 124(3) of the Act is specific from proceeding to proceeding and section 124(3) cannot correct or create a jurisdiction in respect of other proceedings, if the Assessing Officer otherwise

does not have jurisdiction. Such defects also cannot get cured because of appearance of the present Director of the Company and the Counsel during the assessment proceedings for AY 2008-09, because as held in the case of “M I Builders Pvt. Ltd. vs. ITO Lucknow” (supra), the principles of estoppel are not applicable to income-tax proceedings and what may be acceptable or held in one year or in one proceeding cannot be in general held to be applicable to other proceedings. The reliance of the AO for validation of jurisdiction in the three assessment years on the basis of compliance made by the assessee in AY 2008-09, is, as correctly held by the CIT(A), also not legally tenable because erroneous assumption of jurisdiction cannot, in general, be validated. Such validation is specific in section 124(3) and failure of the assessee to object within the time allowed under section 124(3) is available to specific proceedings and not to every proceeding as also held in “M.I. Builders” (supra).

12. The CIT(A) has correctly observed that the provisions of section 124(3) are not applicable in the present case, because both clauses (a) & (b) of the said section are not applicable for the three reassessment orders. Clause (a) applies where after filing of return u/s 139(1), proceeding is initiated and not objected to within a month by the assessee calling in question the jurisdiction of the Assessing Officer after issuance of notice under section 142(1)/143(2). In that scenario, the order passed thereafter is protected on the question of jurisdiction. In the present case,

however, no proceeding has been initiated by issuing notice u/s 143(2)/142(1) on the basis of return filed u/s 139(1) with the DCIT (CC), who is the AO for the three impugned assessment orders initiated u/s 147 of the Act. Since clause (a) does not apply to proceedings u/s 147 of the Act, it cannot protect the three reassessment orders. Clause (b) applies where the assessee has not filed return originally u/s 139(1) of the Act. In such a case, the Assessing Officer can issue notice under section 148(1) of the Act, asking the assessee to file the return and in that situation, if the assessee does not call in question the jurisdiction of the Assessing Officer issuing the notice under section 148(1) before the expiry of the time allowed by the notice, such proceedings and reassessment made thereafter is protected on the question of jurisdiction, but in the present case, undisputedly, return of income was originally filed by the assessee u/s 139(1) with its erstwhile Assessing Officer and as per the AO, while filling the form for obtaining the approval of the CIT, the assessment was also completed before reopening and therefore, the assessment orders are even not protected by clause (b).

13. The CIT(A) has further rightly observed that the provisions of section 124(5) can also not protect the three reassessment orders, since the ACIT (CC), Agra does not have jurisdiction over the assessee Company by virtue of holding any territorial jurisdiction, because the ACIT (CC) does not hold any territorial jurisdiction and

he/she gets jurisdiction over an assessee only on account of passing of an order u/s 127 of the Act.

14. Further, the CIT(A) is correct in observing that on going through the provisions of section 124, it can be seen that the said assessment orders cannot be protected by any provision of section 124, because the provisions of section 124 apply to the cases in which the Assessing Officer gets jurisdiction by virtue of any order issued under sub-section (1) or sub-section (2) of section 120. However, in the present case, the Assessing Officer has claimed jurisdiction over the assessee by virtue of an order u/s 127 of the Act, which has been found to be neither passed as per law, nor passed specifically in the case of the present assessee. Therefore, the assessment orders are neither protected by the provisions of section 124, nor sustainable under law, having been passed without jurisdiction in view of a defective order passed u/s 127 of the Act.

15. The CIT(A) cannot be said to have gone wrong in observing that the jurisdiction of the assessee Company was never transferred u/s 127 of the Act to the DCIT/ACIT(Central Circle), Agra and thus, the DCIT /ACIT(Central Circle), Agra did not have jurisdiction over the assessee Company and, therefore, the reassessment proceedings initiated u/s 147 of the Act by the issuance of the notice u/s 148 dated 02.12.2009 by the DCIT(Central Circle), Agra, who had no jurisdiction over the assessee's case, was illegal and ab-initio void. As such, the

reassessment proceedings u/s 147 and consequent assessment orders passed on 16.08.2010 were rightly quashed on the ground of lack of jurisdiction with the AO.

16. The case of the assessee Company was centralized u/s 127 of the IT Act, 1961 by the Id. CIT, Gwalior with the Dy. CIT/ACIT, Central Circle, Agra, vide order dated 24.03.2009. The assessee submitted before the CIT(A) that the order u/s 127, dated 24.03.2009, on the basis of which the AO had assumed jurisdiction, was in respect of the firm called “M/s Welcome Coir Industries” and not in respect of the assessee, that is of the name of “M/s Welcome Coir Industries Ltd.”, i.e., the Company and that hence, the AO did not have jurisdiction over the assessee Company at the time of passing of the impugned orders. He emphasized this factual position by arguing that even the address of the entity and the PAN for which the centralization order stood passed did not belong to the assessee; and that the entity mentioned in the order u/s 127 of the Act is M/s Welcome Coir Industries, the firm having PAN - AAAFW6113C, whereas the assessee is Welcome Coir Industries Ltd., the Company, having PAN - AAACW0311P and hence, the case of the assessee was not centralized with the Central Circle, Agra by the above mentioned order u/s 127 of the Act.

17. The CIT(A) observed that from the centralization order it was clear that the entity centralized with the ACIT (Central Circle) is M/s Welcome Coir Industries with PAN AAAFW6113C, which pertains to a firm and it was earlier getting

assessed with ITO-2(2), Gwalior, while the assessee, M/s Welcome Coir Industries Ltd. is a Company having a different PAN, i.e., AAAEW0311P. In the said order passed u/s 127 of the Act, nothing was discussed as to whether before passing thereof, any reasonable opportunity of being heard was given to the concerned entity, or not. When enquiry was made by the AO from the office of the CIT, Gwalior on the CIT(A)'s direction to find out the details of the procedure adopted for passing of this order, a reply was received from the office of the CIT, Gwalior, vide letter, F. No. CIT/Gwl/Hqrs/127/2011-12/5133, dated 14.03.2012, which was available in the file maintained by the AO for remand report. In this letter, it stood informed that the order was passed on the basis of the approval of and direction from the Id. Chief Commissioner of Income-Tax, Bhopal, vide letter no. CCIT/MP/Tech/Centralisation/127/2009-10/4170/2, dated 13/03/2009 and it was further mentioned that the name, address and PAN no. of the assessee/assessee Company was mentioned in the order u/s 127 as proposed by the ADIT (Inv) Agra in proposal dated 15.04.2008. After going through the letter dated 13.03.2009 issued from the office of the CCIT, Bhopal granting approval for centralization, the CIT(A) found that such approval was given only on the basis of the proposal of the ADIT(Inv), Agra. In the proposal of the ADIT(Inv), he had mentioned, at sl. no. 42 in the list of assesseees to be centralised, the name of M/s Welcome Coir Industries, having the address as M-19, Madhav Nagar, Gwalior, with PAN

AAAFVV61113C, which is a firm, but while discussing the matter in the proposal, he mentioned that during survey at the address E-118, Preet Vihar, New Delhi, no such concern was found, but a paper relating to M/s Welcome Coir Industries Ltd. was found and, therefore, he proposed to centralise M/s Welcome Coir Industries Ltd. The Id. CIT(A) observed that it appeared that he did not make necessary correction in the list of the assessee, at sl. no. 42, to change the name from that of M/s Welcome Coir Industries (Firm) to that of M/s Welcome Coir Industries Ltd. (Company) and its other particulars, including PAN, pertaining to the entity proposed to be centralized, i.e., M/s Welcome Coir Industries Ltd. This vital fact and finding of the Id. CIT(A) has remained unassailed before us. As such, the Id. CIT(A) cannot be said to have gone wrong in concluding that it was because of the fact that the Id. CIT, Gwalior, without giving any opportunity to the assessee of being heard, had passed the order u/s 127 of the Act just on the basis of the list provided by the ADIT (Inv.) in his proposal and also without going through the discussion made by the ADIT(Inv.) in his proposal, that such mistake in the centralization order passed u/s 127 of the Act had occurred, resulting in the centralization of M/s Welcome Coir Industries (firm) instead of M/s Welcome Coir Industries Ltd. (Company) with the DCIT/ACIT(Central), Agra. The CIT(A)'s observation that in this order, no reason for transferring the case u/s 127 of the Act is also mentioned, though it is mandatory, as has been judicially settled, that if such

reason for transfer is not mentioned in the order, such order passed u/s 127 of the Act shall not be considered as a valid order, because such order is not an administrative order, but a quasi-judicial order, also stands firm. This order, undisputedly, was not even served on the entity mentioned therein and for the service of this order, endorsement has been made to the concerned assessee through the Assessing Officer concerned, without specifying whether it is the erstwhile Assessing Officer [ITO-2(3), Gwalior], or the Assessing Officer with whom the case was centralized [ACIT (Central Circle), Agra]. Despite the CIT(A)'s direction, given in his letter dated 03.02.2012, the AO could not collect the record of the assessee mentioned in this order from its erstwhile Assessing Officer in Gwalior to find out whether this order of transferring of jurisdiction was served on the concerned assessee or not. As per the record of the assessee before the CIT(A) there was no evidence available to show that this jurisdiction order was served on the assessee before the initiation of any proceedings against it by the DCIT (CC), Agra. A certified copy of the same was provided to the assessee only after a direction was issued by the CIT(A) to the AO, on 05.01 2012. Thereupon, detailed submissions objecting to the jurisdiction of DCIT/ACIT (Central Circle), Agra over the assessee Company, being M/s Welcome Coir Industries Ltd. (PAN – AACW0311P) and not over the firm, M/s Welcome Coir Industries (PAN – AAAFW6113C), as mentioned in order u/s 127 of the Act, were filed vide letter

dated 10.02.2012 before the CIT(A), who observed that such facts available on record clearly showed that no proper communication was made with the assessee about its jurisdiction being transferred from Gwalior to the DCIT/ACIT (Central Circle), Agra, either at the time of passing of the order u/s 127, or even thereafter, when proceedings against it were initiated by the DCIT (CC), Agra on the basis of order passed u/s 127 of the Act. The details of the said jurisdiction order were disclosed by the AO only during the appellate proceedings before the CIT(A), and that too, only when he issued a direction to the AO and it was only thereupon, that the CIT(A) found that the entity centralised with the ACIT (CC), Agra on the strength of the jurisdiction order u/s 127 dated 24.03.2009 was different from the assessee and it had been intimated by the AR of the assessee to the Id. CIT(A), that the jurisdiction over the assessee still continued to be with the ACIT, Range-2, Gwalior.

18. On going through the remand report maintained by the AO for making the enquiry in view of direction issued by the CIT(A), the CIT(A) found that the AO had collected full details about the assessee Company and the same were available on the record provided by the assessee Company, as under (para 12.2 of the impugned order):

“(A) "Welcome Coir Industries Pvt. Ltd." was originally incorporated on 29.12.19889 under the Companies Act, 1956

with the Registrar of Companies, N.C.T. of Delhi & Haryana. Subsequently it became Public Ltd. and accordingly on the basis of necessary resolution on 20.01.1995 its name was changed to Welcome Coir industries Ltd. In support of such facts copy of fresh certificate of incorporation consequent upon change of name on conversion to public limited company issued by Registrar of Companies, N.C.T. of Delhi & Haryana on 10.03.1995 is enclosed herewith.

(B) That at the time of search and survey proceedings conducted on 30/31.03.2008 the address of regd. office of the assessee company was E-118, Preet Vihar, New Delhi. Presently the address of regd. office is as under:-

*101 – Barodia Tower,
Central Market, D Block,
Prashant Vihar, Rohini,
New Delhi-110085*

Such change of address has duly been informed by the assessee company to the concerned authorities. In support of such facts search report with regard to the company from the portal of ROC is enclosed herewith.

(C) That initially the Income Tax return(s) of the company were filed at Gwalior whereat the company had its works and administrative office and accordingly the address of the said place 113, Industrial Area, Malanpur, Bhind (M.P.) was duly shown in the return(s). Subsequently when such works site cum administrative office were closed then the assessee company

had filed return(s) showing address of its administrative office at Laxmi Bai Colony, Gwalior."

19. The CIT(A) found that a copy of return of the income for A.Y. 2001-02 of the assessee Company was on record, showing a loss of Rs. 1,30,46,717/-. This return was filed with the Jt. CIT Range-2, Gwalior and the address of the Company was mentioned as 113, Industrial Area, Malanpur, Bhind. A copy of another return of the assessee Company, for A.Y. 2004-05, filed with the CIT Range-2, Gwalior, showing a loss of Rs.3,15,084/-, having PAN - AAACW0311P and address at 113-Industrial Area, Malanpur, Bhind was also on record. From both these returns of the assessee, the CIT(A) found that M/s Welcome Coir Industries Ltd. (PAN-AAACW0311P) and M/s Welcome Coir Industries (PAN-AAAFV6113C) are two different entities and that the entity which was centralized with the AO u/s 127 vide order dated 24.03.2009 is the firm, M/s Welcome Coir Industries (PAN-AAAFW6113C) and not the assessee Company. Again, this remains unchallenged before us.

20. As per the CIT(A), in order to enquire about the jurisdiction matter, the AO had also made enquiry from the Computer Cell and he came to know that PAN – AAAM/V0311P belong to a Company, i.e., M/s Welcome Coir Industries (P) Ltd., having address at 3776/309, Nirmal Market, Netaji Subhash Marg, Darya Ganj, New Delhi, under the jurisdiction of the ITO-18(3), Delhi and M/s Welcome Coir

Industries is a firm, having address at M-19, Madhav Nagar, Gwalior and PAN-AAAFW6113C, which has been centralized in the Central Circle, Agra. The scanned copy of the information collected from the Computer Cell has been reproduced by the CIT(A), in para 12.4 of his order.

21. On the basis of the above-said information collected by the AO, the CIT(A) found it clear that the jurisdiction of the assessee Company was actually not centralized in the Central Circle, Agra; that PAN-AAACW0311P was originally allotted to the assessee Company, when it was incorporated as Welcome Coir Industries Pvt. Ltd. on 29.12.1989, with the Registrar of Companies, N.C.T. of Delhi & Haryana; that at that time, it was having its Registered Office at 3776/309, Nirmal Market, Netaji Subhash Darya Ganj, New Delhi and this PAN fell in the jurisdiction of the ITO Ward-18(3), which was still lying there, but later, it was converted into a public limited Company in March 1995 and it started filing its return of income with the Jt. CIT Range-2, Agra on the basis of its factory and administrative office address at 113, Industrial Area, Malanpur, Gwalior, Bhind (M.P); that however, its Registered Office remained in Delhi; that as per the Audited Balance Sheet of the assessee Company available on record, its Registered Office was earlier at 301, 3rd floor, 230E, Masjid Moth, New Delhi-110049, and then it shifted to E-118, Preet Vihar, New Delhi and on the date of survey conducted on the assessee during the course of search on the Shanker Gutkha

Group, its Registered Office was at E-118, Preet Vihar, New Delhi; and that its current Registered Office address is at 101 Barodia rower, Central Market, D Block, Prashant Vihar, Rohini, New Delhi-110085, as available on MCA-21, the website of the Ministry of Corporate Affairs, New Delhi. Scanned copy of the profile of the assessee Company as available on MCA-21 has been given in para 12.5 of the order under appeal. These facts also remain irrefuted and steadfast.

22. It was considering the above details available on record with respect to M/s Welcome Coir Industries Ltd., that the CIT(A) found it quite clear that the entity mentioned in the order passed u/s 127, dated 24.03.2009, by the Id. CIT, Gwalior, was not the same entity as M/s Welcome Coir Industries Ltd. and hence, the CIT(A) observed that it could not be said that M/s Welcome Coin Industries Ltd. was centralized to the DCIT/ACIT (Central Circle), Agra on the strength of the order passed u/s 127 of the Act vide order dated 24.032009 of the Ld. CIT, Gwalior. Actually, this fact was undisputedly admitted by the AO while submitting a report to the Joint Commissioner of Income Tax, Central Range, Kanpur, vide his letter dated 30.04.2012, stating that the jurisdiction of the assessee Company was actually not centralized in the Central Circle, Agra. However, this report was not forwarded to the CIT(A) and in the hearing held by the CIT(A) on 14.02.2013, the AO and the JCIT tried to justify the jurisdiction of ACIT (Central Circle), Agra over the assessee in view of the order u/s 127 of the Act, taking the plea that such

mistake in the jurisdiction order can be considered to have been cured in view of the provisions of section 292B of the Act, due to compliances made by the assessee Company to the notices issued to it during the assessment proceeding for A.Y. 2008-09. However, as observed by the CIT(A), no further submission was made by them to substantiate their plea that any defect in jurisdiction order can be cured by invoking the provisions of section 292B, to show that any entity mentioned in the jurisdiction order having different PAN and status can be considered to be a different entity, if that entity has made compliances before the AO .

23. The CIT(A) still went through the assessment record of A.Y. 2008-09 to examine the nature of compliances made by the assessee Company, on the basis of which, the jurisdiction assumed by the AO on the assessee company could be justified.

24. He found that the first notice u/s 142(1)(i), dated 14.07.2009, for A.Y. 2008-09, had been issued by the AO after receiving the jurisdiction order passed u/s 127 vide order dated 24.03.2009. In accordance with the jurisdiction order, this notice was issued to M/s Welcome Coir Industries, M-19, Madhav Nagar, Gwalior (PAN-AAAFW8113C). The note-sheet of the case record had also been prepared in the name of the entity mentioned in the order u/s 127, i.e., M/s Welcome Coir Industries, M-19 Madhav Nagar, Gwalior (PAN-AAAFW8113C). Here, a small

error of writing '8' in the PAN, instead of '6' was considered by the Id. CIT(A) as a typographical error, because the other details of the PAN were found to be the same as those of AAAPW6113C. The CIT(A) found that as per the search report prepared by the Investigation Wing , since this entity was reported to be connected to the Shanker Gutkha Group, this notice was served on Shri Laxman Das Kealawani of this Group, but later on, this notice was returned by him, saying that no person of his family is connected with this entity. The scanned copy of this notice stands reproduced in para 14.1 of the order under challenge.

25. The CIT(A) found that subsequently, another notice dated 10.08.2009 was issued it was served on Shri Anil Gupta, who was found to be the Managing Director of the assessee Company, when a survey was conducted at its Registered Office at E-118, Preet Vihar, New Delhi 30.01.2008. During the survey, Shri Arun Gupta, brother of Shri Anil Kumar Gupta informed about Shri Anil Kumar Gupta being a Director of the Company, M/s. Welcome Coir Industries Ltd., and living at 50-New Raja Mandi Colony, Raja Mandi, Agra. In view of the above information in his possession, the AO was found to have issued two notices u/s 142(1)(i) to Shri Anil Gupta for M/s Welcome Coir Ltd. at its Registered Office at E-118, Preet Vihar, New Delhi and at the residential address of Shri Anil Kumar Gupta, at 50-New Raja Mandi Colony, Raja Mandi, Agra and both these notices were found served on Shri Anil Gupta. It was seen that in these notices, though the name of the

entity stood corrected to that of M/s Welcome Coir Industries Ltd., to show that notice was issued to the assessee Company, the PAN continued to be mentioned as that appearing in the order passed u/s 127, which belonged to a firm having a similar name of M/s Welcome Coir Industries, but did not pertain to the assessee Company. Scanned copies of these two notices are contained in para 14.2 of the order appealed against.

26. The CIT(A) observed that it appeared that it was at this stage, that the AO became aware of the correct name and status of the entity against whom he was exercising his power to initiate assessment proceedings by assuming jurisdiction over that entity, but no evidence was available on record to show that he took any corrective step with the concerned authorities to get the necessary correction made in the order u/s 127, so that jurisdiction over the correct entity could be transferred to him. The CIT(A) observed that the AO did not even care to check as to whether the PAN being quoted by him in the notice belonged to a firm, because the fourth letter in the PAN was 'F', instead of 'C'. According to the CIT(A), as per the scheme of PAN, the fourth letter shows the status of the entity. If it is an 'F', it would belong to a firm and if it is a 'C', it would belong to a Company. Therefore, if the entity against whom the AO was exercising his jurisdictional power was a Company, as discussed in the search report of the Investigation Wing, corrective steps ought to have been taken by him to get the order u/s 127 revised after

noticing the discrepancy in the PAN, which had not been done. These observations in the impugned order yet again remain firm, having not been refuted before us.

27. The CIT(A) has further observed that subsequent to issuing of the above notice u/s 142(1) to the assessee Company through its Managing Director and asking it to file its return of income for A.Y. 2008-09, the AO had further issued a notice u/s 142(1), dated 22.09.2009, calling for the details of nature and source of the credit and debit entries in the bank accounts of the assessee, maintained with Union Bank of India, Gwalior (A/c No. 51700101003301) and H.D.F.C. Bank, Sanjay Place, Agra (A/c No. 01212340000123). A scanned copy of this notice is reproduced by the CIT(A) in para 14.4 of his order. In this notice, for the first time, along with mentioning the name of the assessee correctly, the AO has mentioned its PAN correctly as AAACW0311P, but nothing was found available on record to show as to how the AO came to know about this PAN, and still, no step was seen to have been taken by the AO to get the order u/s 127 of the Act revised by getting the name, address and PAN of the entity correctly mentioned in this order to confer the jurisdiction to him over the assessee against whom he was exercising his power to carry out assessment proceedings for A.Y. 2008-09 and also deciding subsequently to exercise his power to reopen the cases of the assessee u/s 147 of the Act for the other three assessment years, i.e., A.Ys. 2003-04, 2004-05 and 2005-06. The CIT(A) observed that it is a settled principal of law that jurisdiction

cannot be assumed by consent; that it has to be given either by the statute itself, or by the authorities under the statute, who are empowered by the statute in this behalf; that therefore, jurisdiction over a particular case is transferred to another officer only when an order to this effect is passed; and that however, it appeared that the AO did not care to follow this principal of law to assume jurisdiction over the assessee correctly by getting the necessary correction made in the order u/s 127 after coming to know that the entity against whom he was exercising jurisdiction was different from the one mentioned in the order u/s 127. The said legal position and the factual situation based on record, as brought out by the CIT(A) face no dispute before us at the hands of the Department.

28. It is held by the Hon'ble Supreme Court in case of “K.P. Mohammed Salim vs. Commissioner of Income-tax”, Cochin (2008) 300 ITR 302 (SC) that:

“The power of transfer in effect provides for a machinery provision. It must be given its full effect. It must be construed in a manner so as to make it workable. Even section 127 of the Act is a machinery provision. It should be construed to effectuate a charging section so as to allow the authorities concerned to do so in a manner where for the statute was enacted.”

29. This decision has correctly been applied by the CIT(A). No contra ruling has been cited before us. Thus, the CIT(A) has rightly observed that under the order dated 24.03.2009, passed by the Id. C.I.T. Gwalior u/s 127 of the Act, the entity centralized with the ACIT (Central Circle) is M/s Welcome Coir Industries with PAN AAAPW6113C which pertains to a firm and it was earlier getting assessed with ITO-2(2), Gwalior, while the assessee, M/s Welcome Coir Industries Ltd. is a Company having a different PAN AAAPW0311P. Also, in this order, nothing has been discussed as to whether before passing of this order, any reasonable opportunity of being heard was ever given to the concerned entity or not and as per the information collected by the CIT(A) from the office of the Id. C.I.T., Gwalior, it has been found that the order u/s 127 of the Act was passed just on the basis of the approval granted by the CCIT, Bhopal and no opportunity of being heard was given to the assessee before passing of this order. It has also been found that the reason for transferring the case u/s 127 of the Act was not mentioned in the order. Further, and importantly, even if the order u/s 127 dated 24.03.2009 is considered to be existing even today, as not having been challenged in a court under appropriate proceedings, the AO cannot assume jurisdiction on the assessee, M/S Welcome Coir Industries Ltd. on the strength of this order, because the entity centralized with the DCIT/ACIT (CC) on the basis of this order is M/s Welcome Coir Industries, the firm and not M/s Welcome Coir Industries Ltd., the Company,

as even admitted by the AO in his letter dated 30.04.2012 written to the JCIT, Central Range, Kanpur.

30. The ld. CIT(A) has, in the above manner, discussed threadbare all the facts and circumstances as well as the legal position appertaining to the case and has arrived at a most just and proper decision. The order under appeal is an elaborate well reasoned one, and we do not find any reason to differ therewith. The same is accordingly confirmed, rejecting the grievance sought to be raised by the Department as shorn of merit and non est.

ITA No. 269/Agra/2013

31. In this case, one issue raised by the Department, for A.Y. 2008-09, by way of Ground No. 3, is that the ld. CIT(A) overlooked the provisions of section 292BB of the Act, despite the fact that power of attorney was filed by the Director of the assessee Company, various notices were received by it, hearings were attended and compliances were made.

32. In this regard, section 292BB of the Act, deems a notice to be valid where the assessee appears and makes compliance. The provision precludes the assessee in such circumstances from raising any objection regarding the service of notice. Now, in our discussion regarding ITA Nos. 266/Agra/2013 to 267/Agra/2013 (supra), we have upheld the observations made by the ld. CIT(A) and his conclusion about the lack of jurisdiction of the AO over the assessee. Once the AO

did not have jurisdiction over the assessee, the question of service of notice on the assessee by such AO is no question, as deemed service of notice u/s 292BB of the Act does not deal with, nor would cure such jurisdictional defect, i.e., the absence of jurisdiction. As discussed by the Id. CIT(A) in Para 12.10 of his order, the AO claims jurisdiction by virtue of the order dated 24.03.2009, passed u/s 127 of the Act, i.e., by way of transfer of jurisdiction. However, the said order has been found to be void-ab initio, as the case of the assessee was not centralized there-under, as has been elaborately discussed herein, while dealing with ITA Nos. 266/Agra/2013 to 267/Agra/2013. Thus, the AO never acquired jurisdiction over the assessee. Therefore, section 292BB of the Act does not come to the aid of the Department. Compliances would not bestow jurisdiction on the AO, once such jurisdiction never lay with the AO to begin with. “Acquiance neither confers, nor takes away jurisdiction” is the applicable legal maxim here. Accordingly, this grievance of the Department is rejected as sans merit.

33. Another issue raised, by way of Ground No. 2, is against the action of the Id. CIT(A) in deleting the addition of Rs.40,41,140/-, made on account of deemed interest on advances. As per the Department, the Id. CIT(A) did not appreciate that the assessee has not shown any interest from the huge advances of Rs.5,05,51,750/- and he [the CIT(A)] ignored the evidence brought on record by the AO.

34. The CIT(A)'s findings (impugned order, para 13) on this issue are as follows:

“13. In view of the argument taken by the AO against the objection of the assessee on the issue of jurisdiction, stating that the objection of the assesses on jurisdiction should not be considered in appeal after passing of the assessment order because such objection was not raised during assessment proceeding and all the compliances have been made by the assessee during assessment proceeding, I have also considered the addition made in the assessment order on merit. In the assessment order, the AO has made addition of Rs.40,44,140/- by computing deemed interest at rate of 8% on the total amount of Rs.5,05,51,750-. However, no evidence has been brought in the assessment order, whether such interest has been either charged or actually received by the assessee (appellant) or not. The Ld. AR has contended that the above amount of advances are shown in the name of group Companies of Shanker Gutkha Group (namely M/s LDK Builders (P) Ltd., M/s LDK Shares & Securities (P) Ltd. & M/s Shanker Merchant (P) Ltd.) and none of these companies have paid any interest to the assessee (appellant). In fact these companies have booked the amount of advances in their books of account as share capital and therefore, question of paying any interest to the assessee (appellant) did not

arise. Also, there is no evidence on record to show that any interest on such advances was paid by these companies to the assessee (appellant). In fact, during the assessment proceeding, when a letter dated 09.09.2010 was filed by the director of the assessee company, he has even asked the AO in this letter to let him know, if these three companies have provided any interest to the assessee (appellant) company but while completing the assessment order that is impugned in this appeal, the AO has not considered this letter of the assessee (appellant) company. Therefore, the AO has been asked to make necessary verification and produce, if any evidence is available with him to show that such interest has been charged or received by the assessee (appellant). However, despite giving sufficient opportunity to the AO, no such evidence could be produced and hence, in absence of any evidence about earning of any income by the assessee (appellant) on account of interest on such advances, such deemed interest on notional basis, cannot be charged to tax in the hand of the assessee (appellant) and therefore, I delete the amount of Rs,40,44,140/- added by the AO in the income of the assessee (appellant) as deemed interest.”

35. The assessment order has been annulled by the Id. CIT(A) on the issue of absence of jurisdiction with the AO, as also on the merits of this issue, the addition

has been deleted. The action of the Id. CIT(A) has been upheld by us qua the issue of absence of jurisdiction, as above. Such annulment of the assessment order on this jurisdictional aspect, which goes to the root of the matter, leaves nothing further surviving to be adjudicated. Accordingly, this grievance of the Department is rendered infructuous and it is rejected as such.

36. The issue of jurisdiction of the AO is the same as that in ITA Nos. 266 to 268/Agra/2013(supra) and it is covered by our observations made with regard to those appeals.

37. In the result, all the three appeals are dismissed.

Order pronounced in the open court on 16/10/2017.

Sd/-

**(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER**

Sd/-

**(A.D. JAIN)
JUDICIAL MEMBER**

Dated 16/10/2017

AKV

Copy forwarded to:

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

ASSISTANT REGISTRAR