

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 1461/Kol/2017
Assessment Year: 2012-13

| | | |
|---|-----|--------------------------------------|
| D. Craft Entertainment Pvt. Ltd. (PAN: AADCD0865G) | Vs. | Income-tax Officer, Wd-6(1), Kolkata |
| Appellant | | Respondent |

| | |
|-----------------------|-------------------------|
| Date of Hearing | 19.07.2018 |
| Date of Pronouncement | 12.10.2018 |
| For the Appellant | Shri Miraj D. Shah, FCA |
| For the Respondent | Shri N. Murmu, JCIT |

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the assessee is against the order of Ld. CIT(A)-23, Kolkata dated 28.04.2017 for AY 2012-13.

2. The assessee has raised legal issues by preferring additional grounds of appeal (i) that no notice u/s. 143(2) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) was issued by ITO, Ward-6(1), Kolkata (who framed the assessment order) was issued or served on the assessee. And the additional ground no. (ii) is that the notice issued by ITO, Ward No. 34(2), Kolkata u/s. 143(2) of the Act was without jurisdiction, hence, the assessment order framed by ITO, Ward-6(1), Kolkata without issuing notice u/s. 143(2) of the Act was null in the eyes of law and, therefore, deserves to be quashed.

3. Briefly stated facts as observed by the AO, Ward No. 6(1), Kolkata are that the assessee company filed its return of income electronically declaring income of Rs.8950/-. Later case was selected for scrutiny. Notice u/s. 143(2) of the Act was served from office of

ITO, Ward-34(2). Then the jurisdiction of the case was transferred to ITO, Ward-6(1), Kolkata and a notice was also issued from this ward. According to AO, summons u/s. 131 of the Act were sent to the directors of the assessee company but summons were returned un-served and no compliance was made on behalf of the assessee company. Thereafter, show cause notice was sent through Speed Post which has been returned un-served. As no compliance was made on behalf of the assessee till the completion of assessment, the AO was left with no alternative but to pass the assessment order dated 13.03.2015 u/s. 144 of the Act. Thereafter the AO observed that the assessee company was incorporated on 21.01.2009 and has shown the figure of Rs.15,36,90,000/- as share premium during the assessment year under consideration. According to AO, the source of huge premium has not been explained by the assessee company. Therefore, considering the above share capital claimed by the assessee company to have been introduced during the FY 2011-12 with high premium amounting to Rs.15,66,00,000/- (share capital of Rs.29,10,000/- + premium of Rs.15,36,90,000/-) was treated as unexplained cash credit in the books of the assessee company u/s. 68 of the Act. Aggrieved, by the said order assessee preferred an appeal before the Ld. CIT(A), who confirmed the action of the AO. Aggrieved, the assessee is in appeal before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. Before us, the Ld. AR while raising the legal issue contended that no notice was issued by the ITO, Ward-6(1), Kolkata u/s. 143(2) of the Act and which was served upon the assessee; and even though the notice was issued u/s. 143(2) of the Act was by ITO, Ward-34(2), Kolkata [as per ITO, Ward -6(1)] who had no jurisdiction to assess the corporate entity like the assessee company, hence the assessment order framed by the AO (ITO, Ward-6(1), Kolkata) without issuing notice u/s. 143(2) upon the assessee company is 'null' in the eyes of law and, therefore, deserves to be quashed. It was also submitted by the Ld. AR that the assessee company did not receive any scrutiny notice u/s. 143(2) of the Act from ITO, Ward-34(2), Kolkata though it has been acknowledged by the AO in the assessment order by ITO, Ward-6(1), Kolkata. Since the assessee did not receive any notice the assessee company could not represent or file documents and comply before the ITO in the said proceedings. It was also submitted by the Ld. AR that the assessee company was

not aware of the purported transfer of jurisdiction from ITO, Ward-34(2), Kolkata to ITO, Ward-6(1), Kolkata since it did not receive any notice u/s. 127 of the Act from the Pr. CIT-12, Kolkata transferring the file from ITO, Ward-34(2), Kolkata to ITO, Ward-6(1), Kolkata. He also brought to our notice that the assessee company did not receive any notice u/s. 142(1) of the Act from ITO, Ward-6(1), Kolkata as stated by AO in the assessment order. Because of which there was no compliance from the part of assessee in the said proceedings before ITO, Ward-6(1), Kolkata. Ld. AR of the assessee further submitted that assessee company's registered office is situated at 8, Lyons Range, Kolkata-700 001, therefore, the territorial and entity-wise jurisdiction were vested with ITO, Ward-6(1), Kolkata by virtue of Notification issued by CBDT u/s. 120 of the Act dated 31.07.2001 (Notification No. 228/2001) and also by virtue of latest Notification No. 50/2014 dated 22.10.2014. So, according to Ld. AR, since the ITO, Ward-34(2), Kolkata did not enjoy any jurisdiction over the assessee-company and thus the notice u/s. 143(2) of the Act claimed to have been issued by the ITO, Ward-34(2), Kolkata against the assessee company was without jurisdiction so, bad in law and, therefore, the notice issued by an officer/authority who does not enjoy jurisdiction is non-est in the eyes of law. Ld. AR also brought to our notice that the claim of ITO, Ward-6(1), Kolkata in the assessment order that the file of assessee was transferred from ITO, Ward-34(2), Kolkata is itself illegal since it was pointed out by the Ld. AR that in the impugned assessment order there was no reference or mention by the AO (ITO Ward-6(1), Kolkata) of any order of transfer of jurisdiction passed by the concerned Pr. CIT u/s. 127 of the Act. According to Ld. AR, in any case, the assessee has not been served with any such order i.e. transfer order u/s. 127, or notice u/s. 143(2) or 142(1) etc. Thus, according to Ld. AR, the transfer of file from ITO, Ward-34(2), Kolkata to ITO, Ward-6(1), Kolkata itself is bad in law; And in any case the assessment order passed by ITO, Ward-6(1) without issuing notice u/s. 143(2) within the prescribed period of time as statute stipulates is also bad in law and needs to be quashed. On the other hand, the Ld. DR heavily relied on the orders of the lower authorities and urged before the bench to confirm the action of Ld. CIT(A).

5. After going through the aforesaid contentions, we note that the assessee is a corporate entity, being a company registered under the Companies Act, 1956 and having

registered office in the area mentioned in item (a) of column (4) i.e. PIN 700 001 of the notification no. 228/2001 dated 31.07.2001 (page 18 of paper book) issued by CBDT u/s. 120 of the Act and also in reference to later Notification of CBDT No. 50/2014 dated 22.10.2014. The Designated Income Tax Authority as per serial No. 159 is Principal Commissioner/Commissioner of Income Tax, Kolkata-2; Headquarter is Kolkata, West Bengal (Page 14 of paper book). Whereas a perusal of Notification of CBDT No. 228/2001 dated 31.07.2001 (Page 20 of paper book) reveals that Commissioner of Income Tax, Kolkata-XII has jurisdiction over persons other than companies deriving income from sources other than income from business or profession (though residing in PIN 700 001). We also note from Notification No. 50/2014 dated 15.11.2014, issued from the office of Principal Chief Commissioner of Income-tax, West Bengal & Sikkim which takes effect from 15.11.2014 (page 5 of paper book) that Principal Commissioner of Income Tax/Commissioner of Income Tax, Kolkata-2, is the designated officer and under him Addl. CIT/Jt. CIT, Range-6, Kolkata has been placed under his charge (page 7 of paper book). On perusal of page 9 reveals that under the Pr. CIT/CIT, Kolkata-12 the Addl. CIT/Jt. CIT, Range-34, Kolkata has been placed under him (page 9 of the paper book). Thus from a perusal of the aforesaid facts reveal that the assessee being a company registered under the Companies Act, 1956 and having its registered office in area covered by Pin No. 700001, the Pr. CIT/CIT, Kolkata-2 enjoyed jurisdiction over the assessee company. In the light of the Notification of CBDT dated 22.10.2014 [as well as Notification No. 228/2001 dated 31.07.2007] and, therefore, ITO, Ward-6(1), Kolkata who falls under the jurisdiction of Pr. CIT/CIT, Kolkata-2 only had the jurisdiction to assess the income of the assessee. Thus we record a finding of fact and law that the ITO, Ward-6(1), Kolkata was the officer/authority who was vested with the jurisdiction of Assessee [i.e. AO of the assessee company]. We note that the impugned assessment order framed by the AO dated 13.03.2015 was passed by the jurisdictional ITO, Wd-6(1), Kolkata. However, the main grievance of the assessee company is that before scrutinizing the assessment u/s. 143(3) of the Act, notice u/s. 143(2) of the Act needs to have been issued by ITO, Ward-6(1), Kolkata was sine qua non as held by the Hon'ble Supreme Court in Hotel Bluemoon 321 ITR 362 (SC) was in fact not issued by him [ITO, Wd-6(1), Kolkata] before completing the assessment u/s. 143(3)/144 the Act. So the jurisdictional fact which needs to be ascertained by us is whether ITO, Ward-6(1),

Kolkata issued notice on the assessee u/s 143(2) of the Act before framing the scrutiny assessment. We note that the ITO, Wd-6(1), Kolkata has passed a best judgment assessment u/s. 144 of the Act alleging non-participation on the part of the assessee company during the assessment proceedings. We note that in the assessment order framed by ITO, Wd-6(1) Kolkata, he has mentioned about notice u/s.143(2) of the Act issued not by him but by ITO, Wd-34(2), Kolkata and has mentioned clearly that he [ITO, Wd-6(1), Kolkata] has issued only notice u/s. 142(1) of the Act. We note from a perusal of the impugned assessment order passed by ITO, Wd-6(1), Kolkata there is no whisper/mention about any notice issued by him u/s. 143(2) of the Act or even notice issued before framing best judgment u/s. 144 of the Act. As per the ITO, Wd-6(1), Kolkata, notice u/s. 143(2) of the Act has been issued by ITO, Wd-34(2), Kolkata and not by himself before framing the scrutiny assessment u/s. 143(3)/144 of the Act. It is no longer res integra that issuance of notice u/s. 143(2) is sine qua non before deciding to proceed to scrutinize the assessment of income of an assessee u/s. 143(3) of the Act. Since the department has failed to adduce any evidence to contradict the claim of assessee that ITO, Wd-6(1), Kolkata who was the jurisdictional AO did not issued notice u/s. 143(2) of the Act before deciding to scrutinize and frame assessment u/s 143(3)/144 of the Act, the legal challenge made by the assessee by way of additional ground nos. 1 to 3, (which reads as under) needs to succeed:

“Additional Ground-1: For that no notice issued u/s 143(2) of the IT Act 1961 was served on the assessee and hence the assessment order passed deserves to be quashed.

Additional Ground-2: For that the notice issued u/s 143(2) of the IT Act 1961 was beyond jurisdiction and bad in law and hence the assessment order passed deserves to be quashed.

Additional Ground-3: For that the transfer of case without order u/ s 127 of the IT Act 1961 was bad in law and hence the assessment order passed deserves to be quashed.”

6. We find that no notice u/s. 143(2) was issued by ITO, Wd-6(1), Kolkata before completing the assessment. We note that ITO, Wd-34(2), Kolkata did not enjoy the jurisdiction over the assessee company by virtue of both the earlier Notification No. 228/2001 dated 31.07.2001(CBDT) as well as the latest Notification No. 50/2014 dated 22.10.2014 of CBDT as discussed above. Therefore, the assessment completed by ITO, Wd-6(1), Kolkata on the strength of the notice issued u/s. 143(2) of the Act by ITO, Wd-34(2),

Kolkata (who did not enjoy jurisdiction) is non-est in law and, therefore, is bad in law and consequently null in the eyes of law. Moreover, we also take note that Pr. CIT/CIT-12, Kolkata under whom ITO, Ward-34(2), Kolkata functioned has not issued any order of transfer of the jurisdiction as contemplated u/s. 127 of the Act to ITO, Wd-6(1), Kolkata. The Hon'ble jurisdictional High Court in Kusum Goyal (2010) 329 ITR 283 (Cal) has clearly spelt out that the ITO on its own cannot transfer the jurisdiction without order from the competent authority. In this case, we note that there is no mention in the assessment order of any transfer order passed by the concerned CIT-12, therefore, the contention of the ITO, Ward-6(1), Kolkata that the jurisdiction has been transferred from ITO, Wd-34(2) to ITO, Wd-6(1), Kolkata is also without authority and vitiates the transfer of jurisdiction as claimed by the AO in the assessment order and thus this fact also vitiates the assessment order. In the light of the above as well as the contention of the assessee that no opportunity of hearing was rendered to it by ITO, Wd-6(1), Kolkata before framing assessment u/s. 144 of the Act which omission on the part of AO also is against principles of natural justice and the impugned assessment u/s 144 of the Act is fragile for non-adherence of principles of natural justice on the part of AO. Therefore, looking from any angle as discussed above and especially taking note that the impugned assessment order passed by the ITO, Wd-6(1), Kolkata without issuing notice u/s. 143(2) of the Act is *corum non-judice* and therefore null in the eyes of law and, therefore, need to be quashed and we quash the impugned assessment order dated 13.03.2015 passed by ITO, Wd-6(1), Kolkata. The additional grounds raised by the assessee are allowed.

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

Order is pronounced in the open court on 12th October, 2018.

Sd/-

(Dr. A. L. Saini)
Accountant Member

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 12th October, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – D. Craft Entertainment Pvt. Ltd., C/o D. J. Shah & Co.,
Kalyan Bhavan, 2, Elgin Road, Kolkata-700 020.
2. Respondent – ITO, Ward-6(1), Kolkata.
3. CIT(A)-23, Kolkata
4. CIT, Kolkata
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary