

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Godara, Judicial Member)**

**ITA No. 1149/Kol/2019**

Assessment Year: 2012-13

**K.A. Wires Ltd.....Appellant**

**Chatterjee Intl Centre**

**11<sup>th</sup> Floor**

**Room No. 11**

**33A, Chowringhee Road**

**Kolkata - 700 071**

**[PAN : AADCK 7401 M]**

**Vs.**

**Income Tax Officer, ward - 8(3), Kolkata.....Respondent**

**Appearances by:**

*Shri S.M. Surana, Adovate & Shri N.P. Jain, Advocate, appeared on behalf of the assessee.*

*Shri A.K. Nayak, CIT D/R & Shri Dhrubajyoti Ray, JCIT D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : December 4<sup>th</sup>, 2019

Date of pronouncing the order : January 22<sup>nd</sup>, 2020

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) - 3, Kolkata, (hereinafter the "Id.CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 23/04/2019, for the Assessment Year 2012-13.

2. The assessee is a company and is engaged in the business of zinc manufacturing. It filed its return of income electronically for the Assessment Year 2012-13 on 07/09/2012 declaring a loss of Rs.(-)Rs.37,99,257/-. The Assessing Officer completed the assessment u/s 143(3) of the Act on 30/03/2015 determining the total income of the assessee at Rs.1,02,00,743/- *inter alia* making an addition u/s 68 of the Act being share capital and share premium received by the company from three (3) associate companies. Out of this Rs,1,40,00,000/- addition, the Assessing Officer states that a protective addition of Rs.40,00,000/- is made in the hands of the intermediary companies. Aggrieved the assessee carried the matter in appeal without success. The Id. First Appellate Authority, upheld the order of the Assessing Officer.

3. Further aggrieved, the assessee is before us.

4. The assessee filed an application for admission of additional ground. The addition ground reads as follows:-

*“ For that the assessment is bad in law since no valid notice u/s 143(2) was issued by the Assessing Officer, who was vested with the jurisdiction to issue notice within due time allowed under the law and as such the entire proceedings are bad in law and the assessment is liable to be quashed.”*

On merits, grounds are raised against the addition made u/s 68 of the Act.

4.1. The ld. Counsel for the assessee submitted that the jurisdiction of the assessee was with ITO, Ward-8(3), Kolkata and whereas ITO, Ward-33(1), Kolkata, issued the notice u/s 143(2) of the Act on 06/08/2013 and thereafter on 03/02/2014, the file was transferred to ITO, Ward-8(3), Kolkata. He submitted that ITO Ward-8(3), Kolkata should have issue notice u/s 143(2) of the Act, as required by law, as he was the officer having jurisdiction over the assessee company. He pointed out that there is no change in the address of the company during the previous years, as well as for the following years and always remained the same and that the address on which the PAN Card was taken is also the same address and that the jurisdiction of the assessee is and was always with ITO, Ward-8(3), Kolkata. He relied on a number of case-law for the proposition that, non-issuance of notice u/s 143(2) of the Act, by the officer having jurisdiction over the assessee, makes the assessment bad in law. He submitted that, the return of income for previous years as well as the subsequent Assessment Years were filed before the ITO Ward-8(3), Kolkata. He relied on a number of case-law in support of his contentions on the issue of jurisdiction, which we would be dealing as and when required.

4.2. On merits, he submitted that all the investments were made by Group Companies and that all documents required under law were filed before the Assessing Officer to prove the identity and creditworthiness of the companies who applied for shares and the genuineness of the transactions and that the assessee has discharged the burden of proof that lay on it on this issue of addition made u/s 68 of the Act.

5. The ld. D/R, on the other hand, opposed the contentions of the assessee and submitted that notice u/s 143(2) of the Act was issued by ITO Ward-33(1), Kolkata, and

that the assessee should have objected under law as required by Section 124(3) of the Act, within one month of receipt of this notice. He pointed out that the assessee is entitled to question the jurisdiction of the Assessing Officer within a period of one month from the date on which he was served with a notice u/s 142(1) or 143(2) of the Act. He further argued that order u/s 127 of the Act was passed on 10/01/2014, and later the file was transferred to ITO, Ward-8(3), Kolkata. He distinguished the judgments relied upon by the assessee and also relied on certain decisions, of Courts which as per the ld. D/R, are in favour of the revenue. We would be discussing as and when necessary these judgements which were cited.

5.1. On merits, the ld. D/R submitted that on all such issues of addition made of share capital introduction u/s 68 of the Act, the Bench has been consistently remanding such matters back to the file of the Assessing Officer for fresh adjudication, in accordance with law. He pointed out that in this case, certain protective addition has also been made by the Assessing Officer and hence the Bench may consider setting aside the matter to the file of the Assessing Officer to verify as to what happened in the case of protective assessments.

5.2. In reply, the ld. Counsel for the assessee relied on certain case-law and submitted that Section 124(3) of the Act, comes into play, only when the officer issuing a notice has jurisdiction and does not apply to a case where there is no inherent jurisdiction to a Assessing Officer. He argued that any act by a non-jurisdictional Assessing Officer is *void ab initio* and cannot be rectified.

6. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

7. The address of the assessee as given in the return of income and as given in the PAN Card, has not undergone any change for the previous assessment years, this year and for the subsequent assessment years. A perusal of the copy of return of income filed by the assessee for the Assessment Year 2010-11, 2011-12, 2012-13 & 2013-14, demonstrate that it was filed with the same address, before the ITO, Ward-8(3), Kolkata.

There is no dispute that it was only the ITO, Ward-8(3), Kolkata, who had and continued to have the jurisdiction over the assessee company. The PAN card also has the same address for all these years. There is no change in address of the assessee company.

7.1. It is also not in dispute that the notice u/s 143(2) of the Act dt. 06/08/2013 was issued by the ITO Ward-33(1), Kolkata. The assessee does not fall under the jurisdiction of this officer. A perusal of the order sheet entries demonstrate that, after issuance of notice u/s 143(2) of the Act on 06/08/2013, the ITO, Ward- 33(1), Kolkata, transferred the file to ITO, Ward-8(3), Kolkata on 03/02/2014. Thereafter, ITO, Ward-8(3), Kolkata, issued notice u/s 143(1) on 10/10/2014 and completed the assessment u/s 143(3) of the Act on 30/03/2015. The ITO Ward-8(3), Kolkata, who had the jurisdiction over the assessee, did not issue notice u/s 143(2) of the Act to the assessee. The issue before us is whether the non-issuance of notice u/s 143(2) of the Act, by the Assessing Officer having jurisdiction over the assessee makes the assessment bad in law.

8. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

8.1. Jurisdiction of the Income Tax Authorities is conferred by the Board (Central Board of Direct Tax) u/s. 120(1) & (2) of the LT. Act, 1961. The Section reads as follows:

*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 anyone 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 <sup>1</sup>[Principal Director General or] Director General or <sup>14</sup>[Principal Director or] Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;*

*(b) empower the <sup>1</sup>[Principal Director General or] Director General or <sup>14</sup>[Principal Chief Commissioner or] Chief Commissioner or <sup>14</sup>[Principal Commissioner or] Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.*

*(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.*

8.2. From a plain reading of the above, it is clear that u/s 120(1) of the Act, the Income Tax Authorities will have to exercise Acts only in accordance with the jurisdiction conferred by the Board. U/s 120(3) of the Act, such powers can be conferred by the Board having regard to the territorial area, class of person, income or class of the cases. The CBDT under sec. 120(5) of the Act, can also confer jurisdiction on two or more Assessing Officers (concurrent jurisdiction). The CBDT can also by notification confer powers on the authorities for the purpose of assessment as may be notified in the notification. This shows that concurrent jurisdiction can be exercised only when CBDT confers such jurisdiction u/s 120(4) and 120(5) of the Act.

8.3. In accordance with the powers conferred u/s. 120 (1) and 120(2) of the Act, the CBDT issued notification on no. 191/2002(F.No.187/9/2002-ITA-1 dated 30.7.2002) whereby the CBDT conferred the jurisdiction by specifying the Designation of the specific Income Tax Authorities, its Head Quarters, Territorial Area, Persons or classes of persons and cases or class of cases.

8.4. As per the above referred notification, the assessee's being a company, the case fell under the jurisdiction of Commissioner of Income Tax, Kolkata-III, Kolkata vide serial no. 205 of the notification. The jurisdiction of the assessee fell with the Assessing Officer being ITO ward 8(3), Kolkata, who was under the charge of Commissioner of Income tax -Kolkata III.

8.5. The Authorities under the Income Tax, after the jurisdiction is conferred in them by virtue of notification u/s 120(1) and 120(2) of the Act, have to perform their functions as per sec. 124 of the Act. Section 124 of the Act, reads as under:

**124. (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 Principal Director General or Director General or the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner; or where the question is one relating to areas within the jurisdiction of different Principal Director General or Directors General or Principal Chief Commissioners or] Chief Commissioners or Principal Commissioners or Commissioners, by the Principal Director General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or] Commissioners concerned or, if they are not in agreement, by the Board or by such Principal Director General or] Director General or Principal Chief Commissioner or Chief Commissioner or Principal 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.

(c) where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under subsection (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.

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

(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been

*vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120.*

8.6. The clear and unambiguous words used in section 124(1) of the Act, are that the Assessing Officer should be vested with the Jurisdiction by virtue of an order, notification or directions issued u/s. 120(1) or u/s. 120(2) of the Act. Therefore, only the Officer who has been vested with the jurisdiction conferred u/s 120(1) and 120(2) of the Act can act as Assessing Officer and issue notice under sec. 143(2) of the Act, since “he shall have jurisdiction” are the words as has been used in sec. 124(1) of the Act.

8.7. Even though the Assessing Officer have been vested with the Jurisdiction u/ s. 124(1) of the Act, by the Board, yet the assessee may dispute such jurisdiction vested u/s 124(1) of the Act, in the Assessing Officer. Such dispute can be raised u/s. 124(3) of the Act, within one month of the issue of notice u/s. 143(2) of the Act. This sub section, therefore, clearly stipulates that the assessee can dispute the jurisdiction of the Assessing Officer to issue notice even though such jurisdiction was vested in him by the direction or order issued u/ s. 120(1) or 120(2) of the Act, for some reasons.

8.8. In this case, the jurisdiction of the assessee was never vested with the Assessing Officer, Ward 33(1) , (non corporate assessee ward) who issued notice u/s. 143(2) of the Act. In fact, the assessee also filed return before ITO, Ward-8(3), Kolkata who was having jurisdiction over the assessee as per the Boards Notification, which fact is evident from the copy of acknowledgements of return of income for the last few years. The notice under sec. 143(2), however, was issued in this case by ITO, Ward 33(1), Kol who has not been vested with the jurisdiction over the assessee company by CBDT.

8.9. Under the scheme of “e” filing of return, the assessee has to fill PAN on the return. It has to also fill its address and some of the details are picked-up by the assessee. If the Department's system fails to correctly transfer the return to the jurisdictional Assessing Officer and transfer the same to a Assessing Officer though who has no jurisdiction as per the CBDT's notification, such mistake cannot confer the jurisdiction on such an Assessing Officer. Jurisdiction can be conferred only by notification u/ s 120(1) and 120(2) of the Act only.

8.10. The Ld DR submitted that there was transfer order of the assessee's case for the assessment year in question, from ITO Ward 33(1) to ITO Ward 8(3). There can be a valid transfer order from ITO Ward 33(1) only if he was vested with the jurisdiction over the assessee. As he was never vested with the jurisdiction either by the notification of the CBDT or by any order of the Commissioner of Income tax earlier to the issue of notice u/ s 143(2) of the Act, he could not have validly transferred the case to ITO, Ward-8(3), Kolkata. The file/case was restored to its jurisdictional area. When the said ITO Ward 33(1) was not having valid jurisdiction at the time of issue of notice u/ s 143(2) of the Act, then the notice is bad in law. The transfer of the folder from ITO Ward 33(1) to ITO Ward 8(3) in fact establishes that the revenue realised that the ITO Ward 33(1) had no jurisdiction.

8.11. The Ld DR also raised the issue that u/s 120(4) and 124(5) of the Act, there can be concurrent jurisdiction. There is no dispute over that. However there is no direction or order or notification u/ s 120(1) or 120(2) of the Act, conferring concurrent jurisdiction to the ITO Ward 33(1) along with ITO Ward 8(3) u/ s 120(1) or u/ s 120(2) of the Act, which is the condition mentioned in section 120(4) and 120(5) of the Act.

8.12. The Ld DR for the purpose of his submission also read out para 19 of the decision of ITAT in the case of Rungata Irrigation in ITA No 1224/K/2019 dated 6.9.2019. The said decisions is in favour of the assessee. The Ld CIT(DR) has relied on para 19 which is in fact in favour the assessee. The Tribunal has fully analyzed the entire provisions of section 120, 124 and 127 of the Act, in para 13, 14,15,17, 18, 21 of the order with regard to the issue of vesting of jurisdiction and transfer etc and held that the issue of notice by non-jurisdictional AO was bad in law and without jurisdiction.

8.13. The Ld DR argued that the assessee did not dispute the jurisdiction u/ s 124(3) of the Act and hence by not disputing the same, the right to challenge the jurisdiction is lost forever. This would have been so, had the ITO, Ward-33(1), Kolkata, had original jurisdiction over the assessee. This is not the case. When an authority does not have jurisdiction, then the act done by such authority is bad in law and is *void ab-initio*

8.14. This issue came up for consideration in the following cases:

*(i) Rungta Irrigation Ltd. referred to above with relevant paragraphs and paragraph 36.*

*(ii) Smriti Kedia Calcutta High Court 339 ITR page 37*

*(iii) Indorama Software Solutions Ltd. Mumbai Bench ITA No. 5211 and 5290(Mum) of 2011 dated 7.9.2012*

8.15. In the case of *Mahalchand Motilal Kothari & Co (ITA No. 1851/1852/Kolj2002, ITAT, D-Bench, Kol dated 28.7.2006* wherein the Tribunal considered the notification dated 30.7.2002 and held that after issue of the notification the Assessing Officer who was earlier vested the jurisdiction lost the jurisdiction and even though the order of the CIT(A) was received by him at the time when he was having jurisdiction, yet the Assessing Officer who has been divested of the jurisdiction on 30.7.2002 cannot file the appeal after the said date. In that case even the authorization was also granted for filing the appeal by the CIT-XIII, Kolkata who lost the jurisdiction after the notification. In that case after the dismissal of the appeal of the Department by the Tribunal on the aforesaid ground of jurisdiction, the Revenue filed an appeal before the Hon'ble High Court but the same was dismissed. The Revenue thereafter came up with condonation petition and a filed fresh appeal before the ITAT but the same was also dismissed in ITA No. 1768 and 1769/Kol/2006, B-Bench on 15.9.2014. The Revenue filed an appeal before the Hon'ble High Court which was dismissed with the following observations:

*"The appeal carried by the ACIT-39 to the Appellate Tribunal was dismissed as not competent. The order of the Appellate Tribunal was challenged by the Revenue in this Court. This Court did not interfere with the order of the Tribunal and the matter rested there without this Court's order being challenged by the Revenue before the Supreme Court. In the present case, the matter pertains to the same assessment year when the ITO-44 has preferred an appeal where the initial assessment was not done by the ITO-44 but such assessment 'was conducted by the ACIT-39 at a point of time when ACIT-39 lost jurisdiction over the assessee pursuant to the said CBOT Notification 2002*

*Since there was a fundamental error, the Appellate Tribunal dismissed the appeal as incompetent since the order of the Assessing Officer who*

*had no jurisdiction to undertake the assessment qua the assessee could never have been found to be legal or resurrected."*

8.16. While deciding the issue in the case of *Mahalchand Motilal Kothari & Co.*, (supra) the ITAT relied on the Judgement of Calcutta High Court in the case of "*West Bengal State Electricity Board*" 278 ITR 218. In that case the Hon'ble Calcutta High Court held that jurisdiction cannot be conferred by default or by agreement and the decision without jurisdiction is a nullity. The Hon'ble High Court also relied on a number of Judgements while arriving at such a conclusion.

8.17. The Hon'ble Allahabad High Court in the case of *V.P. Electronics Corporation Ltd in ITA No. 79 of 2015 dated 1.3.2017* has also taken similar view wherein the provisions of sec. 124(3) were also referred to. It was held that when the notice was not issued by the competent authority, i.e an Assessing Officer having jurisdiction, then the assessment is a nullity.

8.18. In the case of *Deepchand Kothari reported in 171 ITR 381(Raj)* it was held that the Assessing Officer who was having no jurisdiction to initiate the proceedings then such proceedings are *ab-intio- void*. Further the Hon'ble High Court relying on the Judgement of the Hon'ble Supreme Court in the case of *Kiran Singh Vs Chaman Paswan*, it was held that the Jurisdictional issue can be taken up at any stage of the proceedings, even at the time of execution of decree.

8.19. The ITAT, Kolkata in the case of *Ganesh Reality and Mall in ITA No. 581/Kol/2017* held that if no jurisdiction was conferred on a particular authority the issue of notice or completion of assessment by such authority is illegal.

8.20. In the case of *P.V. Doshi Vs CIT* the Gujarat High Court held that the jurisdictional issue can be taken up at any stage of the proceedings.

8.21. In the case of *Rajmandir Estates (386 ITR 162)* the Hon'ble Calcutta High Court held that if the Commissioner Income tax issuing notice u/ s. 263 has lost the Jurisdiction then the notice and order issued by him is a nullity.

8.22. The Lucknow Bench of the ITAT in *ITA No. 89 and 90/LKW /2015 dated 16.4.2015 in the case of Md Rizwan* held that notice u/ s 143(2) issued by non-jurisdictional Assessing Officer is a nullity.

8.23. Same view have been taken a number of other cases some of which are under:-

1. <i>A.L. Ahuja v/s. DCIT SOT (2003) page 475 at page 480</i>	<i>If at the time of issue of notice u/s. 158BC the Assessing Officer had no jurisdiction the assessment is illegal.</i>
2. <i>Income Tax officer vs. Sarkar &amp; Co. 1954 AIR 613 Calcutta.</i>	<i>If at the time of filing, of the appeal the ITO had no seisin over he assessee's case and case is transferred by the Commissioner of Income Tax from ITO Ward-III(2) to some other Officer, on the date of filing of the Appeal, the ITO Ward III(2) cannot file the Appeal and the appeal of the department rightly dismissed by the ITAT.</i>
3. <i>Ram Krishna Ramnath vs. Commissioner of Income Tax AIR 1932 Page 65 Nagpur</i>	<i>When by notification dated 28<sup>th</sup> March, 1923 the powers conferred on the ITO should be exercised by the ACIT the Notice issued by the ITO was illegal</i>
4. <i>CIT West Bengal and another vs. Anil Kumar Roy Choudhury and another reported in 66 ITR page 367</i>	<i>The decision of the Calcutta High Court in Sarkar &amp; Co. 1954 AIR 613 Calcutta was approved and held that if the case is transferred by the commissioner or The board then the income tax officer from whom the file is transferred shall have no concern with the appeal.</i>
5. <i>Commercial Enterprises vs. State of Orissa 81 sales tax cases page 84</i>	<i>Annulment of assessment is permissible where the taxing authority had no jurisdiction to assessee.</i>
6. <i>Sain Baba Mohansing 90 ITR page 197</i>	<i>Proceedings taken by an authority who lacked jurisdiction is ab initio void.</i>
7. <i>Rajeevkumar Donerria v. Asst. Commissioner of Income Tax 94 ITD page 344</i>	<i>Only the assessing officer who at the relevant time of filing of the appeal has the jurisdiction can file the appeal. An appeal filed by an officer who has no jurisdiction to file the appeal is non est.</i>

8.24. The Hon'ble Gujarat High Court in the case of *Jolly Fantasy World Ltd., Tax appeal no. 1254 of 2014, judgement dated 9.3.2015* held that there cannot be waiver of Jurisdiction, even if the assessee has participated in the proceedings.

8.25. Consent cannot confer jurisdiction and if the notice issued is without jurisdiction it is invalid as was held in *Resham Petrotech Ltd. ITA O. 2777/ Ahd/2011 dated 10.2.2012*

8.26. The Hon'ble Bombay High Court in *ITA No.127 OF 2006* in the case of *The Commissioner of Income Tax-I, Lalit Kumar Bardia, judgement dt. 11.7.2017*, held that the transfer of jurisdiction subsequently cannot validate the action already taken.

8.27. The Ld. DR cited the judgement of the Hon'ble Supreme Court in the case of *I - Ven Interactive Limited (Civil Appeal No. 8132 of 2019 dated 18.10.2019)*. This judgement is not on the issue of jurisdiction of the Assessing Officer. In that case, there is no dispute that the assessing officer issuing notice had jurisdiction over the assessee. In that case the selection of the return for scrutiny was generated under automated system of the Income Tax Department which picks up the address of the assessee from the PAN database. The notice u/ s 143(2) was sent at the assessee's address available as per the PAN database. Intimation for further hearing and three more notices were sent at the same address as available in the PAN. Finally, the assessee appeared before the tax authority but challenged the notices saying that these notices were not served upon him and that he never received notice u/s 143(2) of the Act and that further subsequent notices served and received by the assessee were beyond the period of limitation prescribed under the law. The assessee submitted that he changed his address and the new address was mentioned in the return of income filed for subsequent years. The assessee also submitted that he filed Form No.18 with Registrar of Companies, regarding change of address. No separate intimation was given to the Assessing Officer by the assessee regarding change of address. The Court held that mere mentioning of the new address on subsequent return without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed, is not enough and sufficient. The court found that the assessee claimed to have filed a letter for change of address but such letter was never produced before any of the authorities. It was held that on the facts of the case, the notice issued on the address available on the PAN data base was proper and valid service of notice u/s 143(2) of the Act. The court held that the change of address in the database of PAN is must, in case of change of the name of the company and/ or any change in the registered office of the

corporate office of the assessee and the same has to be intimated to the Registrar of Companies in the prescribed format i.e., Form 18 and after completing the said requirement, the assessee is required to approach the Department with the copy of the said document and then the assessee is required to make an application for change of address in the departmental database of the PAN. In the present case the assessee has failed to do so. This judgment is on the issue of service of notice. It is not an issue as to whether the Assessing Officer has jurisdiction over the assessee. As already stated, it is not a case of notice being issued by a non-jurisdictional Assessing Officer.

It is therefore clear that the issue in the case before the Hon'ble Supreme Court was not with regard to the jurisdiction of the officer in issuing the notice but was with regard to the service of notice on the proper address. The said judgement therefore does not help the department on this issue of jurisdiction now before us. Jurisdiction has to be conferred u/s 120 of the Act. Any act by an authority without jurisdiction is *ab-initio void*.

8.28. In view of the above discussion, as the Assessing Officer who had jurisdiction over the assessee i.e., ITO Ward – 8(3), Kolkata had not issued the notice to the assessee u/s 143(2) of the Act as mandatorily required under the Act, the assessment framed u/s 143(3) of the Act, is bad in law as held by the Hon'ble Supreme Court in the case of *ACIT & Anr. Vs. Hotel Blue Moon: 321 ITR 362 (SC)*. Hence we quash the same.

9. As we have held that the assessment is bad in law, in view of the non-issuance of the statutory notice u/s 143(2) of the Act by the Assessing Officer, having jurisdiction over the assessee, we would not go into the merits of the case as it would be an academic exercise.

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

***Kolkata, the 22<sup>nd</sup> day of January, 2020.***

***Sd/-***  
**[S.S. Godara]**  
 Judicial Member

Dated : 22.01.2020  
*{SC SPS}*

***Sd/-***  
**[J. Sudhakar Reddy]**  
 Accountant Member

*Copy of the order forwarded to:*

1. **K.A. Wires Ltd**  
**Chatterjee Intl Centre**  
**11<sup>th</sup> Floor**  
**Room No. 11**  
**33A, Chowringhee Road**  
**Kolkata - 700 071**
2. **Income Tax Officer, ward - 8(3), Kolkata**
3. **CIT(A)-**
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches