

आयकर अपीलिय अधीकरण, न्यायपीठ – “ए” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.1137/Kol/2019
Assessment Year :2009-10

Girish Chand Agarwal D-5A, Meeera Marg Vandana Apartment, Bani Park, Jaipur-302012 [PAN No.AEOPA 7922 H]	V/s.	Income Tax Officer, Ward-46(1), 3, Govt. Place (West),B.B.D Bag, Kolkata-700 001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S.M. Surana, Advocate & Shri N.M. Bhansali, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Ram Bilash Meena, CIT-DR
सुनवाई की तारीख/Date of Hearing	24-12-2019
घोषणा की तारीख/Date of Pronouncement	29-01-2020

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2009-10 arises against the Principal Commissioner of Income Tax-16 Kolkata's M.No.PCIT-16/Kol/u/s263/2018-19/8438-40 dated 29.03.2019, involving proceedings u/s 263 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance plead that the PCIT herein has erred in law and on facts in assuming is u/s. 263 of the Act revision jurisdiction vide following detailed discussion:-

"In this case the assessment for A.Y. 2009-10 was completed on 30.12.2012. u/s. 147 read with section 143(3) of the Income-tax Act, 1961. Original return of income was filed for A.Y. 2009-10 at a total income of Rs.3,08,8691-. A return was also filed on 31.08.2016 through e-filing in response to notice u/s.148. The assessment was reopened on the following grounds by the ITO, Wd-3(2), Jaipur who has recorded satisfaction for re-opening as under:

"As per information received from sub-registrars, the assessee has sold property/properties at Khasra No. 376, 377, 378, 379, 381, 393/2314, Kukas, Amer, Jaipur on 29.07.2008. As per the provisions of section 50C of the Income tax Act, 1961 the sale consideration or registered value, whichever is higher, is Rs.73,67,140/-. As per the records available with this office the assessee has not filed his return of income for A. Yr. 2009-2010, consequent to non-filing of return of income by the assessee it is established that income from capital gained amounting to Rs.73,67,140/- has escaped assessment. Hence, it is a fit case for issuance of notice u/s. 148 of the IT Act, 1961/or A.Yr. 2009-2010.

In view of the above reasons, it is requested that necessary approval as laid down under sub section (2) of Section 151 of the I T Act, 1961 may kindly be accorded".

2. Subsequently, the case was transferred to ITO, Ward-46(1), Kolkata from the I.T.O., Ward-3(2), Jaipur on the basis of PAN transfer of the assessee. The re-assessment proceeding u/s. 147 was therefore started by the ITO, Ward-46(1), Kolkata vide issue of notice u/s. 148 read with section 143(2) of the IT. Act, 1961 on 07.11.2016. During the reassessment proceeding the ITO.,Ward-46(1), Kolkata has called for information u/s.133(6) from sub-registrar, Jaipur-VI, Rajasthan regarding the market value of the property sold by the assessee jointly with his wife, Mrs. Asha Agarwal on 29.07.2008. The I.T.O., Ward-46(1), Kolkata has issued two letters to Sub-registrar, Jaipur-VI, Rajasthan first on 19.09.2016 which was returned unserved and secondly on 13.12:2016 which was served. However, it was stated by the I.T.O, Ward-46(1), Kolkata that no reply was received. The A.O. has then relied upon the photocopy of a letter from Patwari of Gram Kukus, Tehsil Alwar, District-Jaipur certifying that the agricultural land was situated more than 9 km away from the Municipal Limits and the land was an agricultural land. The A.O. has not verified the said certificate from the Patwari directly and that no letter u/s. 133(6) was issued to the said Patwari regarding confirmation of certificate and no attempt was made by the A.O. to verify the genuineness and correctness of the certificate. The A.O. completely relied upon the submission of the assessee and the alleged certificate of the Patwari and accordingly no capital gain was taxed on the sale of the said land and the re-assessment u/s. 148 was completed at the original return of income of Rs. 3,08,869/-.

3. Subsequently, a letter dated 03.10.2017 was received from the Pr.C.I.T-1, Jaipur stating that the daughter of the assessee, Miss Puja Agarwal has also sold land which was adjacent to the land sold by Sri G.C. Agarwal, the assessee, in the, same year and the addition on account of capital gain from the said sale of the land by assessee's daughter, Miss Puja Agarwal was made by the I.T.O., Ward-3(2), Jaipur on the basis of the verification carried out by Sri Ravinder Pratap Singh, Patwari, Tehsil Alwar along with income-tax Inspector, Sri P. C. Gupta on 16.09. in the joint inspection it was found that the said land sold by the assessee was within 5.7 km distance of Municipal oration of Jaipur and therefore the land was not an agricultural land and it was a capital asset us. 2(14) of the I.T Act, 1961. Another letter was received from Pr. C.I.T.-I, Jaipur wherein it was stated that Sri Ramrai Sharma, Patwari who has given certificate dated 03.09.2016 to Sri G.C. Agarwal, the

assessee and who has produced this certificate before the I.T.O, Wd-46(1),Kolkata at the time of re-assessment was incorrect and fabricated . It is found that the said Patwari has since retired and he had given a letter dated 15.09.2017 to ITO Ward,-3(2), Jaipur stating that the earlier certificate issued by him was without any actual verification of the land. However, the location of the land was also verified by Tehsilder of the Tehsil Alwar, Jaipur vide letter No. LA/2017/5809 dated 25.09.2017 (In Hindi) who has also confirmed that the Patwari in the latest report has given the location of the land within 5.7 km of Municipal Corporation of Jaipur after joint verification of Patwari and ITI. Based on this information in case of Puja Agarwal, proceeding u/s. 263 was carried out and the matter has reached to the Hon'ble High Court, Rajasthan.

4. In view if the information received from Pr. C.I.T.-I, Jaipur , the case records of Sri Girish Chandra Agarwal was called for by me and examined and it was found that the A.O. has not taxed the capital gain out of the sale of the land on the basis of a xerox letter issued by Patwari produced by the assessee, which was found incorrect subsequently, during a joint verification of I.T.I. , Jaipur and Patwari, Tehsil Alwar Jaipur. Therefore the re-assessment order dated 30.12.2016 was found erroneous and hence prejudicial to the interest of revenue.

5. A notice u/s, 263 of the Income tax Act, 1961 was issued to the assessee on 11.05.2018 at his Howrah address. However, notice could not be served on the ground of "left" as per the postal authority report. Subsequently, another notice was issued at the Howrah address of G.C. Agarwal at 1st Floor, Flat No. 14, Building No. 4, CMS Road, Shantinagar Colony, Liluah, Howrah-711 101. The notice was served through affixation by I.T.O., Ward-46(I), Kolkata through Notice Server on 22.11.2018. However, no response was received in reply to this office notice dated 22.11.2018 also. Subsequently, reminder was issued to the assessee at the Howrah address vide letter dated 04.02.2019 which was also returned by the postal authority. Finally, a letter of opportunity for hearing was sent on 12.03.2019 at the address of the daughter of the assessee, Miss Puja Agarwal at Jaipur which was available from the correspondence folder of the Assessing Officer. The said notice has been served on assessee on 19.03.2019.

6. The relevant portion of the 263 notice are as under:

"In the instant case, return of income for the assessment year 2009-10 was filed by the assessee declaring total income of Rs. 3,08,869/- and the assessment was completed u/s 147 of the I.T. Act, 1961 on 30.12.2016 on the basis of returned income.

Subsequently, it was found that the Assessment was completed considering the plot of land sold by the assessee during the assessment year as Agricultural land on the basis of the copy the purported certificate produced by the assessee from Patwari of Gram Kukus Thesil Amer, Dist. Jaipur certifying that the land in question 11las an Agricultural land situated more than 9 KM away from Municipal limits, without proper verification of its context viz. authenticity at admissibility from Tehsildar who was the competent authority to certify the nature and its distance from the limit of local Municipal Corporation.

In view of the above, the Assessment Order passed u/s147 dated 30.12.2016 appears to erroneous and prejudicial to the interest of revenue. Since, the land was treated as an Agricultural land which consequently exempted the assessee from making payment of tax on capital gain without due verification and enquiry.

Considering the above facts, the undersigned is proposing to revise the assessment Order you may please furnish your written or oral submission on 30.11.2018 at 12.30 P.M "

7. In response to opportunity letter issued on 12.03.2019 the assessee has sought adjournment vide letter dated 19.03.2019 and asked for seven days time. Accordingly the assessee was given further time upto 28.03.2019 to furnish written submission. On 26.03.2019" Sri N.M. Bhansali, Advocate attended and filed a written submission dated 25.03.2019 along with 'Vakalatnama'. A copy of the same submission has also been received by post from the assessee on 28.03.2019 which is placed on record. The contents of the submission are as under.

"I have received your above show-cause notice u/s 263 dtd. 12.03.2019 alongwith copy of notice dtd. 11.05.2018, 02.11.2018 and 04.02.2019 allegedly sent at my old address. In this connection I state that I had not received any noticed dtd. 11.05.2018, 02.11.2018 and 04.02.2019 as alleged in your notice dtd. 12.03.2019. It appears that notices were sent by you at my old address even though my new address of Jaipur was intimated to the A.O. in 2015 itself. From the copy of your earlier notice it is alleged that the assessment order passed u/s 147 dtd. 30.12.2016 appears to be erroneous and prejudicial to the interest of revenue. Since the land was treated as agricultural land which exempted the assessee from making payment of tax on capital gain without due verification and enquiry. In response to your show-cause I state that the assessment was completed by the A. O. after detailed scrutiny and after examination of necessary details, evidences, bank statements and also after making enquiry u/s 133(6). In this connection correspondence with the IT.O. is enclosed herewith. Therefore your allegation that the assessment was completed without making proper enquiry is wrong and incorrect. Therefore assessment so made is erroneous and prejudicial to the interest of revenue and the provisions of sec. 263 are not attracted in my case.

I would like to invite your kind attention that the power u/s 263 cannot be invoked to correct each and every type of mistake committed by the A.O. Every erroneous order cannot be disturbed U/S 263. The power of suo-motu revision u/s 263(1) of the IT. Act, 1961 is in the nature of supervisory jurisdiction and can be exercised only if circumstances specified therein exist - vide observations of the Bombay High Court - 203-ITR-108 (Bom) in the case of Gabriel India Ltd. Your petitioner states that it is well settled in law that the power u/s 263 of the income Tax Act 1961 can be exercised only when the assessment order is '**prejudicial to the interests of the revenue**' as well as erroneous order. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. .

This view has been well settled by the Apex Court in the case of Malabar Industrial Co. Ltd - Vs-Commissioner of Income Tax 243-ITR-83, Commissioner of Income Tax (Central), Ludhiana - Vs - Max India Ltd 295-ITR-282, Commissioner of Income Tax, Shimla -Vs- Greenworld Corporation 314-ITR81. The Learned Commissioner of Income Tax exercised his powers u/s 263 of the IT Act 1961 merely to substitute his view with that of the assessing officer which is beyond the scope of his powers u/s 263 of the IT Act, 1961. In the case of CIT-Vs-MAX India Ltd. 295-ITR-282 (SC) the Hon'ble Supreme Court has held that the phrase "**prejudicial to the interest of Revenue**" in sec. 263 of the Income tax Act, 1961 has to be in conjunction

with the expression "**erroneous**" order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of Revenue". It has also been held that the revision u/s 263 cannot be made merely because the CIT is not satisfied with the order passed by the Assessing Officer. In the case referred above the Hon'ble court held that where the view expressed by the A.O. is a possible view, the CIT cannot hold the Asst. order as an erroneous order prejudicial to the interest of Revenue. Further it is well settled in law that there is a distinction between "**lack of inquiry**" and "**inadequate inquiry**". If there was any inquiry, even inadequate, that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Income-tax Act, 1961, merely because he had a different opinion in the matter of reliance in this regard is made on the decision of the Delhi High Court in the case CIT v. Anil Kumar Sharma [2011] 335 ITR 83/[2010] 194 Taxman 504 (Delhi).

Without prejudice to the contention that the provisions of sec. 263 are not attracted in the facts of my case and the proceeding deserves to be dropped, I state that I do not agree with the issues raised in your notice as the sale consideration of agricultural land was established by the copy of Deed and the certificate of the Tahesildar, Patwari, who is the competent authority in this matter. Further enquiry u/s.133(6) was also made by the A.O. The A.O has rightly assessed the income of the assessee after considering all the materials, therefore your allegation of the assessment papers to be erroneous and prejudicial to the interest of revenue is wrong and unfounded I, therefore, request you to kindly consider the matter judicially and drop the proceedings u/s.263 under intimation to me".

8. *The assessment record and submission of the assessee have been examined by me. The only issue under consideration for revision proceedings is whether the land sold by the assessee at Jaipur vide registration document No.2008396001129 dated 29.07.2008 was the capital asset and capital gain was liable to be taxed by the Assessing Officer. As has been discussed in para 2,3 and 4 above, both Tehsilder, Alwar, Jaipur and Patwari have physically inspected the said land on 16.09.2017 and have certified that the land was located within 5.7 km. distance of Municipal limit of Jaipur city. Therefore, the land was not an agricultural land and it was a capital asset u/s.2(14) of the Income-tax Act, 1961. The Patwari who earlier gave a letter to the assessee copy of which was produced before the Assessing Officer has also withdrawn his certificate by letter dated 15.09.2017 to ITO,Wd-3(2), Jaipur and has admitted that the said certificate was issued by him without actual physical verification of the location of the land. In view of the validation of location of the said land by Tehsilder of the Tehsil Alwar, Jaipur vide letter No. LA/2017/5809 dated 25.09.2017 which was submitted before the ITO,Wd-3(2), Jaipur it is a foregone conclusion that the said land was situated within 5.7 km. distance of Municipal limit of Jaipur Municipal Corporation limit, opposite of Jaipur Golden Petrol Pump and power house. Therefore, in view of the concrete evidences there is no iota of doubt left that the land was not an agricultural land but the capital asset u/s.2(14) of the Income-tax Act, 1961 and the Assessing Officer has not carried out detailed verification and enquiries into the location of the land and genuineness of the alleged certificate of the Patwari submitted by the assessee which is now found to be false. The huge burden was cast upon the Assessing Officer in the re-assessment proceeding u/s.148 when the assessment was re-opened by the Assessing Officer himself on the ground of escapement. In this context casual assessment done by the Assessing Officer was highly uncalled for. The Assessing Officer is therefore erred completely in allowing the exemption u/s.10 of the Income-tax Act, 1961 to the assessee and not bring into the tax the capital gains which the assessee was liable to pay u/s.45 of the*

Income-tax Act, 1961. The assessment order is therefore found erroneous and in so far as it is prejudicial to the interest of revenue.

9. *The Hon'ble Kolkata High Court in the case of M/s Raj Mandir Estate Pvt. Ltd. (2016) 70 Taxmann.com 124 (CAL) has held that the inadequate enquiry is a valid ground for revision of assessment u/s.263. The IT AT, Kolkata in the case of Subhalakshmi Vanijya Pvt. Ltd. Vs. CIT (2015) in **ITA No.1104/KOL/2015** by order dated 30-07-2015 has held that the fact that no enquiry was conducted in the case is sufficient to itself for invoking of provisions of section 263. The Hon'ble Supreme Court in the case of Deniel Marchants(P) Ltd. vs. ITO by order dated 29.11.2017, has dismissed **SLP No.23976/2017** of the assessee in favour of Revenue for 263 proceeding and has upheld the view of Hon'ble Calcutta High Court that inadequate enquiry is a valid ground for setting aside order u/s.263 and that the CIT has directed A.O. to carry out detailed enquiry, which was perfectly valid to ascertain the genuineness & sources of share application money.*

10. *After having considered the position of law and facts of the case discussed above, the assessment order u/s.143(3) dt.30.12.2016 passed by the Assessing Officer is held erroneous and in so far as it is prejudicial to the interest of revenue. The assessment order u/s.143(3) dt.19.12.2016 passed by the Assessing Officer is hereby cancelled and the Assessing Officer is directed to pass a fresh assessment order. On the issues for which the assessment is directed to be revised u/s.263 of the Income-tax Act, 1961, the Assessing Officer is directed to complete the revision assessment proceeding and pass a speaking order after carrying out any further enquiries necessary and marshalling necessary facts and documents on the issue of genuineness of claim of huge agricultural income. The assessee should be provided sufficient opportunity before passing any assessment order."*

3. Learned authorized representative invited our attention to the assessee's petition dated 28.11.2019 seeking to raise an additional ground that the Assessing Officer had not issued any valid notice u/s 148 before completing the re-assessment in question dated 30.12.2016 forming subject-matter of revision proceedings. The Revenue objected the assessee's admission of additional ground that such a plea challenging validity of re-assessment itself is not admissible and that too by way of its additional plea sought to be raised at this stage belated stage. We find no merit in Revenue's instant technical argument. This tribunal's co-ordinate bench's decision in M/s D.D. Deposits & Advances Pvt. Ltd., vs. Commissioner of Income Tax-1, Kolkata in **ITA No.1214/Kol/2013** decided on 11.05.2018 has declined the Revenue's identical plea as under:-

"7. We sought to know what is to whether the assessee could raise such a plea in the instant proceedings involving question of validity of CIT's order passed u/s. 263 of the Act. Learned counsel takes as to a co-ordinate bench's order **ITA No.764-766/Kol/2014** in M/s Classic Flour & & food Processing Pvt. Ltd. Kolkata vs. CIT-IV,

Kolkata decided on 05.04.2017. Learned co-ordinate bench held that an assessment is in the nature of primary proceedings whereas revision process u/s. 263 of the Act is a collateral one wherein validity of the former can always be challenged. This tribunal's decision in M/s Westlife Development Ltd. vs. Principal CIT in ITA No. 686/Mum/2016 places reliance upon hon'ble apex court's judgment in Kiran Singh & Ors. vs. Chaman Paswan & Ors.(1955) 1 SCR 117 (SC). Their lordships are of the view that a decree passed by a court without jurisdiction is a nullity which could be put to challenge in execution or in collateral proceedings. Their lordships conclude that any defect of jurisdiction in pecuniary or territorial or in respect of subject-matter of the action strikes at the very authority of the court to pass any decree and the same would not curable even by consent of the parties. Mr. Surana takes pains to enlighten us that hon'ble Rajasthan high court's judgment in Decp chand Kothari vs. CIT (1988) 179 ITR 381 (Raj) adopts the very reasoning in civil jurisprudence to income tax proceedings as well.

8. Learned counsel next relies upon this tribunals co-ordinate bench decision in Dr. SB Kalidhar vs. ITO Ward-4 in **ITA No.1082/Del/2016** decided on 27.11.2017. Learned co-ordinate bench there is annuls similar assessment / re-assessment on the ground that non issue of notice u/s 143(2) of the Act after filing of a return renders entire assessment / re-assessment to be bad in the eyes of law. It quotes hon'ble apex court's judgment in *ACIT vs. Hotel Blue Moon* (2010) 321 ITR 362 (SC) whilst quashing the assessment in question to be non est & void.

9. MR. Surana lastly takes us to the case records as well including assessment notings. He states that there is no copy of the relevant notice in assessment records. His further contention is that neither assessee had authorized anyone nor its auditor had ever put in appearance before the Assessing Officer during the re-assessment in question. We invited learned counsel's attention to the fact that the same auditor had represented the assessee even in section 263 as well as consequential assessment framed on 26.07.2014. Mr. Surana reiterates that once the original assessment / re-assessment is non est, the above auditor's subsequent act and conduct or that of the assessee itself cannot validate the same as held in hon'ble apex court's decision (supra). He therefore prays that the impugned re-assessment framed on 28.12.2010 is to be held non est, null and void at the threshold itself and therefore, there is no scope for the CIT to exercise his jurisdiction vested u/s. 263 of the Act.

10. Mr. Usman (CIT DR) represents the Revenue. He first of all informs us that the assessment record in Xerox is available with him. He submits during the course of hearing that since the assessing officer had not made proper enquiries during the course of re-assessment, the CIT has rightly initiated the impugned proceedings as upheld upto the apex court. There is no scope left therefore in the instant second round once the tribunal's order upholding the section 263 proceedings of the Act is affirmed upto hon'ble apex court. He pleads that it would be an anomalous situation if the instant second round disturbs tribunal's earlier finding (supra) having already concluded that CIT had rightly exercised his revision jurisdiction as re-assessment order dated 28.12.2010 is erroneous causing prejudice to the interest of the Revenue.

11. Learned CIT-DR emphasizes that relevant assessment records duly corroborate the fact that the Assessing Officer had issued u/s 143(2) notice on 16.11.2009 as followed by Section 142(1) notice. Mr. Usman states that the assessee's third substantive ground in question takes advantage of the CIT above crucial observation (supra) going against the assessment records. He pleads that the same are not

binding on the Revenue since they are neither appealable nor rectifiable at its behest. He further invites our attention to the CIT's notice(s) initiating section 263 proceedings dated 21.12.2011 and 15.01.2013, as well as assessee's reply thereto on the latter date to the effect that it had filed all the relevant details and documents as called during the assessment from time to time. The assessee had asserted as per its reply that all of its books of account, bills, vouchers and other supporting documents had also been called by the Assessing Officer for examination as produced in the course of scrutiny followed by independent verification through notice / summons issued u/s 133(6) / 131 of the Act. Learned DR further submits in the end that the re-assessment in question is neither *non est* nor void so as not to be revised in u/s 263 jurisdiction vested with the CIT. We posed a specific query to the Revenue as to whether the assessment records comprise of the relevant notices issued u/s 143(2) or u/s. 142 142(1) or not. The reply received is in negative. The Revenue emphasises that there is sufficient material on record indicating that said notice(s) had very much been issued but not forming part of the case records since the same has seen multiple rounds of proceedings involving movement of the case file from one authority to another. Learned DR quotes Section 292B of the Act as well that the assessee cannot plead non issuance of notice at this belated stage once it had defended the relevant assessment is revision proceedings.

12. We have given our thoughtful consideration to rival submissions. Suffice to say, we have already narrated the basic facts that our instant adjudication is confined to assessee's third substantive ground that the CIT could not have revised the re-assessment in question framed on 28.12.2010 since the latter one is a non est order in the eyes of law not exigible to revision. We quote all the relevant case law relied upon at the assessee's behest (*supra*) to observe first of all that it is very much open for the assessee to challenge validity of the re-assessment in section 263 proceedings on the ground that same are non est in the eyes of law. Co-ordinate bench's decision(s) (*supra*) have already concluded that assessment proceedings are primary proceedings whereas those u/s 263 of the Act are in the nature of collateral proceedings. The question before us in this backdrop of facts is as to whether the Assessing Officer can be held to have issued notices u/s 143(2) or 142(1) of the Act or not. In case the reply is in negative, it would render the entire re-assessment bad in the eyes of law as per hon'ble apex court's decision in *Hotel Blue Moon* (*supra*) followed in this tribunal's co-ordinate bench's order. We now revert back to the relevant facts of the case. It emerges from the case records that the Assessing Officer had initiated the impugned re-opening vide section 148 notice issued on 03.11.2009. These assessment file notings dated 16.11.2009 make it clear that he had issued section 143(2) as well as section 142(1) notice(s). Learned counsel's case is that there is no such notice on record. We find no merit in the instant plea as the above narrated assessment notings make it clear that Assessing Officer had indeed issued the said two notices. We quote section 114(e) of the Indian Evidence Act to presume as a court that the Assessing Officer had performed an official act of completing re-assessment in assessee's case as per the prescribed procedure. We reiterate that although assessee has pleaded of neither it itself nor its authorized representative to have appeared during the course of scrutiny in furtherance to the said notice(s), the above narrated 'facts speak otherwise wherein it had not even filed its authorized representative affidavit to rebut the above assessment notice(s). The very auditor had been continuing to represent the assessee's right from re-assessment to section 263 proceedings as well as the consequential assessment framed on 26.07.2014. We take note of the assessee's reply filed before the CIT (*supra*) as well defending the above assessment to have been completed after calling necessary books, bills, vouchers as well as supporting documents for examination as produced at its behest followed by notice / summons

issued u/s. 133(6) and 131 of the Act; respectively. We are of the view in these facts that the assessee could not have placed on record the required documents within any notice at all before section 133(6)/131 process. The assessee's instant substantive ground therefore appears to be as well worded one wherein it has sought to reiterate the CIT's observation only that the Assessing Officer had not issued the said statutory notice(s) before completing the assessment in question. We conclude in view of these facts that the CIT's said observation is against the assessment records. Mere on non production of the notice(s) in question; in our considered view, is not sufficient to conclude that the Assessing Officer had not issued sec. 143(2) and sec. 142(1) notices which is view of the above overwhelming supportive evidence in the nature of assessment proceedings before us. We quote sec. 136 of the Act to conclude that the legislature has indeed treated proceedings before us Income Tax authorities to be judicial proceedings as well."

4. Coming to admission of assessee's additional ground, we note that hon'ble apex court's landmark decision in *National Thermal Power Corporation. Ltd. vs. Commissioner of Income-tax* (1998) 229 ITR 383 (SC) considered in *All Cargo Global Logistics Ltd. vs. DCIT* (2012) 137 ITD 26 (Mum) holds that the tribunal can very well entertain an additional ground in order to determine the correct taxable in case provided the relevant facts are already on record. We go by the very reasoning herein as well to admit assessee's additional ground.

5. We now advert to the relevant factual matrix. There is hardly any dispute that it is the assessee's sale deed dated 28.07.2008 regarding 1.93 hect land in khasrh No. 376 to 393 measuring 7 bighas 16 biswa for ₹24,55,200/- which forms the subject-matter of the instant lis. The assessee's case throughout is that the said land is agricultural not forming a capital asset sec.2(14) of the Act since situated at a distance of 9 K.M. from the municipal limits. We further find that after the execution of the assessee's sale deed, the ITO Ward-3(2) Jaipur had issued sec. 148 notice dated 23.03.2016 after forming reasons to believe that her taxable income liable to be assessed as escaped assessment. The assessee's letter dated 27.06.2016 pleaded that he had been regularly filing his returns before ITO Ward-46(1) Kolkata. The relevant re-assessment forming subject-matter under challenged dated 30.12.2016 also indicates that after receiving the assessee's said letter / petition, the ITO Ward-3(2) Jaipur transferred sec.148 proceedings to ITO

Ward-46(1) Kolkata vide its speed post letter dated 11.07.2016 and the impugned re-assessment stood framed thereafter.

6. Mr. Surana submits in this factual backdrop that the Assessing Officer Jaipur did not have territorial jurisdiction in assessee's case and therefore, the entire re-assessment deserves to be quashed as *non est*. The Revenue's case on the other hand is that the ITO at Jaipur transferred the case to ITO Ward-46(2) Kolkata after coming to know about the assessee to have been regularly assessed in the latter jurisdiction. We find no force in Revenue's argument. The fact remains undisputed is that ITO Ward-3(2) Jaipur who had issued sec. 148 notice dated 23.03.2016 did not have territorial jurisdiction to assess the appellant / taxpayer. The latter assessing authority i.e., ITO Ward-46(1) Kolkata who framed the assessment had never issued any sec. 148 notice at all. We observe in these peculiar facts and circumstances that the relevant re-assessment framed in assessee's case is not substantiate for want of a valid sec. 148 notice issued by the Assessing Officer having territorial jurisdiction. Hon'ble jurisdictional high court's decision in (2016) 383 ITR 546 *Ramshila Enterprise Pvt. Learned. Vs. DCIT, Central Circle, Kolkata* (Cal) holds that the proceedings without concerned authority having territorial jurisdiction are not upheld. We therefore hold that the re-assessment forming subject-matter of PCIT's sec. 263 assumption of revision jurisdiction itself stands quashed. His revision directions under challenge are therefore *non est* to the limited extent being in the nature of collateral proceeding only. We order accordingly.

7. This assessee's appeal is allowed in above terms.

Order pronounced in the open court 29/01/2020

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Kolkata,
*Dkp Sr.P.S

दिनांक:- 29/01/2020

कोलकाता ।

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Girish Chand Agarwal D-5A, Meera Marg Vandana Apartment,
Bani Park, Jaipur-302012
2. प्रत्यर्थी/Respondent-ITO Ward-46(1), 3, Govt. Place (West0, B.B.D. Bag, Kolkata-001
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।