

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C', NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No.1627/Del./2016
Assessment Year: 2010-11

Shri Manoj Kumar, Prop. Balaji Engineers & Consultants, 547/1, Bhim Palace, Near Union Bank of India, New Railway Road, Gurgaon	Vs.	ACIT, Circle-62(1), New Delhi
PAN :AGQPK1786P		
(Appellant)		(Respondent)

Appellant by	Shri J.S. Kochar, CA
Respondent by	Shri S.N. Meena, Sr. DR

Date of hearing	20.02.2020
Date of pronouncement	24.02.2020

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 27/01/2016 passed by the learned CIT(Appeals)-20, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2010-11 raising following grounds:

1. *That the learned CIT(A) erred in upholding the validity of the assessment order, as no notice u/s 143(2) of the Income Tax Act, 1961 ('the Act') was issued by the 'Assessing Officer' of the assessee within the limitation period.*
 - 1.1 *That the learned CIT(A) erred in relying upon Section 292BB, when the issue raised by the appellant was one of validity of the notice u/s 143(2) dated 01.09.2011 of the Act, and not of service of the same.*
 - 1.2 *That the learned CIT(A) erred in upholding the validity of notice dated 01.09.2011 by DCIT Circle 21(1) (who admittedly was not the Assessing Officer of the assessee) on the ground that the address given in the return came under his jurisdiction, when special jurisdiction had been vested in Circles/Wards of Range 38 for assessing the cases of contractors and where the assessee was regularly assessed in the past and even the designation of the Assessing Officer generated by the Central Processing Centre in case of e- filed return of the assessee was "Circle 38(2), C.R. bid. New Delhi"*
2. *That the learned CIT(A) erred in sustaining the addition of Rs. 25,1 1,087 out. of Rs. 42,16,362 on account Wages and Salaries paid by the assessee to the manpower deployed with its various customers, on a presumptive basis, without finding any specific payment to be non genuine or not for the purpose of business of the assessee.*
 - 2.1 *That the learned CIT(A) erred in sustaining the addition of Rs. 25,1 1,087 out of Rs. 42,16,362 on account Wages and Salaries paid by the assessee to the. manpower deployed with its various customers, by wrongly calculating the rate of Gross Profit.*
 - 2.2 *That the learned CIT(A) erred in sustaining the addition of Rs. 25,1 1,087 out of Rs. 42,16,362 on account Wages and Salaries paid by the assessee to the manpower deployed with its various customers, against which full revenue had been accounted for by billing the same to its customers.*
3. *That the learned CIT(A) erred in not cancelling the addition of Rs. 45,00,000 made by the AO on the basis of AIR information allegedly received by him, as it was made in violation of the principles of natural justice and against the specific mandate of Section 142(3) of the Act, as such information was never made available to the assessee nor his comments were sought thereon.*
 - 3.1 *That the learned CIT(A) erred in not considering the evidences of the source of deposit of Rs. 45,00,000 made by the assessee on the plea that the same had been filed towards the end of the appellate proceedings, despite the fact that such evidences were filed at the at the instance of CIT(A) himself, who required them to be filed long after the matter had been finally heard.*
 - 3.2 *That at any rate, the learned CIT(A) erred in sustaining the addition of Rs. 45,00,000 made under Section 68 of the Act, when*

admittedly such amount was not found credited in the books maintained by the assessee.

2. Briefly stated facts of the case are that the assessee filed return of income electronically on 15/10/2010, declaring total income of ₹ 18,32,891/-. The case was selected for scrutiny assessment and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued on 01/09/2011 by the Deputy Commissioner of Income-tax, Circle 21(1), New Delhi ('DCIT'), which was served at the address of the assessee located at 239, Second Floor, Vardhman Mall, Outer Ring Road, Pritampura, Delhi-110034/-. Subsequently, the DCIT, issued show cause notice u/s 144 at the address located at 547/1, New Railway Road, Near Union Bank, Old Gurgaon, Haryana. On the objection raised by the assessee vide letter dated 07.08.2012 filed on 08.08.2012, challenging the jurisdiction of the Assessing Officer who issued the notice under section 143(2) of the Act, the scrutiny proceedings were transferred to the Income Tax Officer, Ward- 38(2), who passed the assessment under section 143(3) of the Act on 01/03/2013. On further appeal, the assessee challenged the validity of the issue of notice under section 143(2) of the Act by the non-jurisdictional Assessing Officer and also challenged the additions on merit. The Ld. CIT(A) in the impugned order upheld the validity of the notice issued on the ground that it was the moral duty of the assessee to bring the fact of jurisdictional Assessing Officer within the limitation period for issue of notice under section 143(2) of the Act and failure in doing so, it was the fault on the part of the assessee. The Ld. CIT(A)

partly allowed the appeal. Aggrieved with the finding of the Ld. CIT(A), the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. In the ground Nos. 1 to 1.2, the assessee has challenged validity of the notice issued under section 143(2) of the Act by the non-jurisdictional Assessing Officer. In ground nos. 2 to 3.2, the assessee has challenged additions on merit.

3.1 Before us, the learned counsel of the assessee filed a paper-book containing pages 1 to 49 and referred to various pages to support the ground No. 1 to 1.2. The learned counsel contended that the assessee is a labour contactor and was engaged in supply of the manpower. He submitted that per master notification dated 03/07/2001 issued by the Central Board of Direct Taxes (CBDT) and subsequent order by the Joint Commissioner of the Income-tax dated 01/08/2001, the jurisdiction of persons having income from business of contactorship, including supply of the labour for carrying out any work was assigned to the Joint Commissioner of Income-Tax, Range-38, New Delhi. The learned Counsel submitted that assessments for assessment years 2007-08 and 2009-10, have been completed by the Assistant Commissioner of Income Tax, Circle - 38 , New Delhi and Income Tax Officer, Ward 38(2) respectively, who falls under jurisdiction of Joint Commissioner of Income-tax, Range-38, New Delhi. He submitted that for the year under consideration return of income was filed electronically mentioning jurisdiction under Range 38, New Delhi. Thus, according to him, the jurisdiction of the assessee lies in Range- 38, New Delhi. The

learned Counsel submitted that the notice under section 143(2) of the Act for the year under consideration could have been issued within six month from the end of the financial year i.e. 30/09/2011. He submitted that first notice under section 143(2) of the Act dated 01/09/2011 has been issued by the Deputy Commissioner of Income Tax, Circle - 21, New Delhi, which is not the jurisdictional Assessing Officer in the case of the assessee. He submitted that though case was transferred by the DCIT, Circle - 21, New Delhi subsequently to the correct jurisdiction and order was passed by the Assessing Officer having correct jurisdiction, however, no notice under section 143(2) has been issued by the jurisdictional Assessing Officer within the limitation period available as per the proviso to section 143(2) of the Act, and therefore, the assessment order passed is *void ab initio* and need to be quashed.

3.2 On the contrary, the learned DR relied on the order of the Ld. CIT(A) who has upheld the validity of the assessment order.

3.3 We have heard the rival submission of the parties on the issue in dispute and perused the relevant material on record. Before us, the assessee has challenged validity of the notice dated 01.09.2011 under section 143(2) of the Act issued by the non-jurisdictional Assessing Officer. The Ld. CIT(A) has reproduced the factual position and upheld the validity of the notice issued under section 143(2) of the Act mainly on the ground that the assessee remain silent on the notices issued under section 143(2) and 142(1) of the Act till 31/03/2012 and thereafter, only raised the issue of the validity of notice under section 143(2) of the Act.

According to the Ld. CIT(A), this conduct of the assessee was neither correct technically nor morally. The finding of the Ld. CIT(A) on the issue in dispute is reproduced as under:

“5.3 I have considered the additional ground of appeal filed on 27/01/2015 questioning the jurisdiction of the A.O to issue notice under section 143(2) by Deputy Commissioner of Income Tax, Circle 21(1) and subsequent order passed under section 143(3) by Income Tax Officer, Ward 38(2), New Delhi.

I have gone through the assessment records and following facts have emerged;

1. The appellant had filed the return of income for A.Y:2010-11 on 15/10/2010 through e-filing.

2. That the address given by the appellant in the return of income was 239, 2nd Floor, Vardhman Premium Mall, Outer Ring Road, Pitampura, New Delhi-110034.

3. As per the territorial jurisdiction, the A.O i.e Deputy Commissioner of Income Tax, Circle 21(1), New Delhi issued notice under section 143(2) and dispatched with proper evidence of service to the address given by the appellant in the return of income requiring him to attend to his office on 12/09/2011 to file details in support of the return filed by him. The appellant did not respond to the notice.

4. Another notice was issued under section 143(2) and 142(1) along with the questionnaire on 16/03/2012 requiring the appellant to file details by 26/03/2012. The appellant again chose to ignore the notice.

5. A show cause notice was issued by the A.O on 19/06/2012 requiring him to submit details by 26/06/2012 failing which assessment would be completed under section 144 of the Act. During the service of the notice, it was informed at the given address that the premise is now occupied by his sister on rent. And that Sh Manoj kumar is residing in Gurgaon and his office address is 547/1, New railway road, Near Union Bank, Gurgaon, Haryana. Thereafter, notice under section 143(2)/142(1) along with the questionnaire was issued at the Gurgaon address on 29/06/2012 requiring him to appear on 05/07/2012. No compliance was made.

6. That the appellant had chosen not to inform the department about the change of address.

7. Again a show cause was issued on 25/07/2012 requiring him to attend to the proceedings by 08/08/2012. In response to this show cause, the appellant had replied vide letter dated 08/08/2012 that his case is assessed in contractor's ward 38(2), CR Building, New Delhi and that he further requested to transfer the case to Income Tax Officer Ward 38(2) New Delhi.

8. Acting on the letter filed by the assessee, Deputy Commissioner of Income Tax, Circle 21(1) has transferred the file to Income Tax Officer Ward 38(2) who has issued notices under section 143(2)/142(1) on 30/08/2012. Assessee attended the proceedings.

9. That the appellant has never raised the issue of jurisdiction validity of the proceedings undertaken by the Income Tax Officer Ward 38(2) and attended the proceedings regularly. The order under section 143(3) was passed by Income Tax Officer Ward 38(2) on 01/03/2013.

I have considered the entire gamut of facts and circumstances. It is a fact that the first notice under section 143(2) was issued and dispatched at the address given by the appellant in the return of income. The appellant had never informed the department about the change of address. Hence, Deputy Commissioner of Income Tax 21(1) was totally justified in despatching the notice under section 143(2) as per the territorial jurisdiction. The address given by the appellant in any case is occupied by his sister, hence he cannot take the plea that he did not get the notice. The notices sent on the address never returned back hence it is presumed that the appellant had got the notices. Strangely, the appellant did not respond to the notices till after 31/03/2012, when it was quite evident to him that last date for issue of notice under section 143(2) had elapsed on 31/03/2012. It is only on 08/08/2012 that the appellant had sent the letter submitting that he is filing regular return in Ward 38(2), New Delhi. The Deputy Commissioner of Income Tax 21(1), had promptly transferred the assessment record to Income Tax Officer Ward, 38(2). The appellant had never raised the validity of notices under section 143(2)/142(1) sent earlier to him. Rather he had attended the assessment proceedings till the order is passed by the Income Tax Officer Ward 38(2). Even in the original appeal filed under section 250 of the Act, the appellant had not raised this issue. It is only subsequently i.e on 25/01/2015 that the appellant had filed additional ground of appeal challenging the validity of order passed under section 143(3) of the Act.

I have considered the entire gamut of the facts and circumstances. The appellant's conduct on this issue was neither correct technically nor morally. It is the duty of the assessee to inform the department about the change of address, which was not done by the assessee. Secondly, the assessee had chosen to remain silent on the notices issued to him under section 143(2) and 142(1) till after 31/03/2012 when it was evident to him that he can conveniently raise the issue of the validity of issuance of notice under section 143(2) at an appropriate time.

I have also taken into consideration the fact that the assessee never challenged the validity of notices issued to him by Deputy Commissioner of Income Tax 21 (1) and rather attended the assessment proceedings till the order was passed under section 143(3). Therefore, even section 292BB of the Act is attracted in this case.

The case laws cited by the appellant as reproduced in the previous para also is not of any help to the cause of the appellant as the facts and circumstances discussed here are quite distinguished from the facts of the cases cited in the judicial pronouncements relied upon by the appellant. In this particular case the assessee has not discharged his duty to inform the change of address to the authorities and that notices were indeed issued on the address given on the return of income. The premise is also occupied by the sister of the assessee and notices sent on the address have not returned back by the postal authorities.

In view of the foregoing, the appellant's additional ground of appeal is dismissed as not tenable."

3.4 Before us, the learned Counsel has referred to the master notification SO 732(E) dated 03/07/2001 issued by the Central Board of Direct Taxes (CBDT). The said Notification has provided jurisdiction of the persons having income from business of contractorship including supply of the labour for carrying out any work within the territorial area of national capital territory of Delhi to the Commissioner of income-tax, Delhi -XIII, New Delhi. For ready reference, The relevant notification is reproduced as under:

“THE GAZETTE OF INDIA: EXTRAORDINARY [Part II—Sec 3(ii)]

*MINISTRY OF FINANCE
(Department of Revenue)
CENTRAL BOARD OF DIRECT TAXES
NOTIFICATION
New Delhi, the 3rd July, 2001
(Income-tax)*

S.O. 732(E).— [n exercise of the powers conferred by sub-sections (1) and (2) of section 120 of the Income-tax Act, 1961 (43 of 1961), and in supersession of Government of India, Central Board of Direct Taxes, notifications number 679 dated 29th July, 1974; 1031 dated 12th August, 1975; 862 dated 26th March, 1975; 548(E) dated 9 July, 1990; S.O. 1062(E) dated 28th November, 2000 and 19/2001 dated 18th January, 2001, except as respects things done or omitted to be done before such supersession, the Central Board of Direct Taxes, hereby,-*

(a) directs that the Commissioners of Income-tax specified in column (2) of the

Schedule-I hereto annexed, having their headquarters at the places specified in the corresponding entries in column (3) of the said Schedule-I, shall exercise the powers and perform the functions in respect of such cases or classes of cases specified in the corresponding entries in column (6) of the said Schedule-I, or of such persons or classes of persons specified in the corresponding entries in column (5) of the said Schedule-1, in such territorial areas specified in the corresponding entries in column (4) of the said Schedule-I, and in respect of all incomes or classes of income;

(b) directs that the Commissioners of Income-tax specified in column (2) of the

Schedule-11 hereto annexed, having their headquarters at the places specified in the corresponding entries in column (3) of the said Schedule-II, shall exercise the powers and perform the functions in respect of any cases or classes of cases, of any persons or classes of persons in respect of all incomes or classes of income, in such territorial areas specified in the corresponding entries in column (4) of the said Schedule-11;

(c) authorizes the Commissioners of Income-tax referred to in this notification to issue orders in writing for the exercise of the powers and performance of the functions by the Joint Commissioners of Income-tax, who are subordinate to them, in respect of such cases or classes of cases specified in the corresponding entries in column (6)

of the Schedule-I and Schedule-II of such persons or classes of persons specified in the corresponding entries in column (5) of the said Schedules, in such territorial areas specified in the corresponding entries in column (4) of the said Schedules, and in respect of all incomes or classes of income;

(d) authorizes the Joint Commissioners of Income-tax referred to in clause(c) of this notification, to issue orders in writing for the exercise of the powers and performance of the functions by the Assessing Officers, who are subordinate to them, in respect of such specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, in respect of which such Joint Commissioners of Income-tax are authorised by the Commissioner of Income-tax under clause(c) of this notification.

Explanation.-

For the purposes of this notification, -
“residing “ means,-

(a) in the case of an individual, place of residence, unless otherwise provided in this notification;

(b) in the case of an Hindu Undivided Family, place of residence of the Karta, and,

(c) in the case of a firm or an association of persons or a body of individuals or a local authority and all other artificial juridical persons other than companies, the place where the head office is located.

2. This notification shall come into force with effect from 1-8-2001

Sl. No.	Designation of Income-tax authorities	Head-quarters	Territorial Area	Persons or classes of persons	Cases of classes of cases
1	2	2	4	5	5
33	Commissioner of Income-tax, Delhi-XIII	Delhi	(a) National Capital Territory of Delhi;	(a) Persons referred to in item (a) of column (6), being other than companies deriving income from sources other than income from business or profession and residing within the territorial area mentioned in item (a) of column (4); (b) persons referred to in item (a) of column (6), being other than companies deriving income from business or profession and whose, principal place of business is within the territorial area mentioned in item (a) of column (4);	(a) Persons whose principal source of income is from legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in Official Gazette under sub section (1) of section 44AA of the Income-tax Act, 1961 (b) persons having income business of contractor ship, including supply of labour for carrying out any work,

				(c) persons referred to in item (a) of column (6), being companies registered under the Companies Act, 1956, and having registered office in the area mentioned in item (a) of column (4).	
			b) Municipal Wards of Municipal Corporation of Delhi; (i) Qusab Pura (No 113); (ii) Paharganj (No.108); (iii) Sadar Bazar (No. 122); (iv) Qadam Sharif No. 131); (v) Manakpura (No. 132);	(d) all cases of persons referred to in item (c) of column (6), being other than companies deriving income from sources other than income from business or profession and residing within the territorial area mentioned in item (b) of column (4); (c) all cases of persons referred to in item (c) of column (6), being other than companies deriving income from business or profession and whose principal place of business is within the territorial area mentioned in item (b) of column (4).	(c) All cases of persons referred to in corresponding entries in items (d) and (e) of column (5).
34.	Commissioner of Income-tax, Delhi-XIV	Delhi	National Capital Territory of Delhi	Persons referred to in column (6), being other than companies deriving income from sources other than income from business or profession and residing within the territorial area mentioned in column (4);	Persons being employees of (a) Central Government (b) Government of National Capital Territory (c) Hospitals situated within the area mentioned in column (4) (d) University Grants Commission (e) Airlines (except those airlines which are registered in the territory of India)
35	Commissioner of Income-tax, Delhi-XV	Delhi	National Capital Territory of Delhi	Persons referred to in column (6), being individual or Hindu Undivided Family, deriving income from sources other than income from business or profession and residing within the territorial area mentioned in column (4);	Persons, being employees of (a) Banks (b) Public Sector Units (c) Schools and Colleges
36	Commissioner of Income-tax, Delhi-XV	Delhi	National Capital Territory of Delhi	Persons referred to in column (6), being individual or Hindu Undivided Family, deriving income from sources other than income from business or profession and residing within the territorial area mentioned in column (4);	Persons, not under the jurisdiction of Commissioner of Income-tax, Delhi-XIV and the Commissioner of Income-tax, Delhi-X V and having principal source of income from "Salary",

3.5 The learned Counsel, then further referred to the notification issued by the Commissioner of Income-tax, Delhi-XIII, New Delhi on 01/08/2001 along with corrigendum dated 14/08/2001, under which Range-38 was given jurisdiction over the persons having income from business of the contractorship, including supply of the labour for carrying out any work in that territorial

area of the National Capital Territory of Delhi to the Joint Commissioner of Income-tax, Range-38, New Delhi. The assessment in the case of the assessee for assessment year 2007-08, was completed by the Assistant Commissioner of Income Tax, Circle 38(1), New Delhi, who falls under the jurisdiction of Range -38, New Delhi. A copy of the assessment order is placed on page 12 to 14 of the paper-book. The assessment for assessment year 2009-10 has also been completed by the Income Tax Officer, Ward - 38(2), New Delhi, who also falls under the jurisdiction of Range-38, New Delhi. In view of the notification and assessment orders passed by the Income Tax Department, it is undisputed that during relevant period jurisdiction over the assessee being a labour contactor lied with Range-38, New Delhi.

3.6 The assessee filed return of income electronically mentioning the correct jurisdiction, however, the case was selected for scrutiny and first notice under section 143(2) of the Act for commencing scrutiny assessment was issued on 01/09/2011 by the Deputy Commissioner of Income, Circle -21(1), New Delhi. A copy of notice is placed on page 19 of the paper-book. This is also the admitted position that this notice has been issued by the Assessing Officer not having jurisdiction over the case.

3.7 The assessee did not make compliance of the above notice issued under section 143(2) of the Act and subsequent show cause notice under section 144 of the Act dated 25/07/2012 has been issued at another address. In response to this show-cause-notice, the assessee filed letter dated 08/08/2012 and submitted that correct jurisdiction over the assessee lied with ward 38(2),

New Delhi. The case was, accordingly then transferred to Income Tax Officer, Ward -38(2), New Delhi, who issued the notice under section 143(2) on 30/08/2012, a copy of which is available on page 22 of the paper-book. Thereafter, subsequent notices have been issued by the Income Tax Officer, Ward-38(2) and assessment was completed by him on 01/03/2013.

3.8 During the course of appellate proceeding before the Ld. CIT(A), the then Assessing Officer, filed remand report wherein, he admitted that the jurisdiction over the assessee lied with ward 38(2) , New Delhi but at the time of the issuance of notice under section 143(2) dated 01/09/2011, the PAN was lying with circle 37(1), New Delhi. The Assessing Officer has also admitted that the case was transferred to correct jurisdiction after 07/08/2012 and thereafter, notice under section 143(2) was issued on 30/08/2012. The relevant part of the remand report dated 07/05/2012, a copy of which is available on page 28-32, is reproduced as under:

“Point No.2: Yes, as per ITS records (copy enclosed), at the time of issuance of 143(2) notice dated 01/09/2011, PAN was lying with Cir-37(1)/the erstwhile Cir-21(1). The jurisdiction of the assessee was lying with ITO, Ward-38(2), New Delhi, as the assessee was doing business of a contractor.

Point No.3: As per record in this office, first notice u/s 143(2) was issued on 01/09/2011 by the erstwhile DCIT, Cir-21(1), New Delhi. However, on the request of the assessee, vide letter dated 07/08/2012, the case was transferred to the erstwhile ITO, Ward-38(2)/present ITO, 62(2) and subsequently, 143(2) notice was issued by the ITO, Ward-38(2) on 30.08.2012.”

3.9 In view of the above facts and circumstances, it is evident that notice under section 143(2) dated 1/09/2011 issued by the DCIT, Circle -37(1) was not valid being issued by Assessing Officer not having jurisdiction over the assessee. The notice under section 143(2) by the correct jurisdiction Assessing Officer has been issued on 30/08/2012, whereas the limitation for issue of the notice under section 143(2) of the Act expired on 30/09/2011 and therefore, this notice being beyond the period of limitation, it is not a valid notice.

3.10 The contention of the Revenue is that the assessee did not bring the fact of correct jurisdiction before the expiry of the limitation period and, therefore, this mistake is curable under section 292BB of the Act. We do not agree with the contention of the Revenue, because, the fault of mistake of issue notice on 01/09/2011 by the non-jurisdictional officer lied with the Department. There is no law, which requires the assessee to intimate the correct jurisdiction to the Income Tax Department and it is the responsibility of the Department to ensure that notice has been issued in accordance with the law. This responsibility cannot be shifted to the assessee although the assessee intimated as soon as the show cause notice was received at address at Gurgaon. As far as section 292BB is concerned, objection as to service of notice (not served upon the assessee, not served upon the assessee in time or served upon the assessee in improper manner) stands waved if the assessee has participated in the assessment proceeding. But in the instant case, as per the proviso to section 143(2) of the Act, no notice

could have been served on the assessee after the expiry of the six-month from the end of the financial year in which return is filed. The relevant provision is reproduced as under:

“Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.”

3.11 The learned Counsel of the assessee before us has relied on the decision of the Hon’ble Delhi High Court in the case of Sunworld infrastructure (P) Ltd. Vs ITO, Ward 24(3) New Delhi (2015) 64 raxmann.com 471(Delhi). The fact of the said case reproduced in para 3 of the decision of the Hon’ble Delhi High Court are reproduced as under:

“3. The learned counsel for the respondent submitted that the impugned notice was not time-barred inasmuch as it was in continuation of an earlier notice under Section 143(2) issued by the Income Tax Officer, Ward-12(2), Bangalore on 10.09.2013. But, in our view, this does not save the impugned notice under Section 143(2). The reason for this is that the purported notice dated 10.09.2013 issued under Section 143(2) by the Assessing Officer at Bangalore was without jurisdiction inasmuch as the Assessing Officer at New Delhi had jurisdiction over the case. This fact was immediately pointed out by the assessee/petitioner by virtue of its letter dated 17.09.2013 where it had clearly indicated that it was regularly filing returns in Delhi and that the jurisdiction of the case was in Delhi. On this basis, it was requested that the said notice issued by the Bangalore office be withdrawn. Thereafter, the Income tax Officer, Ward-6(1) (1), Bangalore wrote to the Income Tax Officer, Ward-24(3), New Delhi on the subject of transfer of scrutiny assessment records in the case of the petitioner. The said letter reads as under:—

*“OFFICE OF THE INCOME TAX OFFICER
WARD-6(1)(1), No. 14/3, 4th Floor, Rastrothana Bhavan (Opp. RBI)
Nrupatunga Road, Bangalore-560 001
F. No.TRF/ITO-W-6(1)/2014-15 Dated: 16/12/2014*

Income Tax Officer,
 (Company Ward-2493),
 Central Revenue Building,
 IP Estate,
 New Delhi-110002

Madam/ sir,

Sub: Transfer of scrutiny assessment records in the case of M/s Sunworld Infrastructure Pvt. Ltd-reg.

** **

The above mentioned case was selected for scrutiny under CASS for A.Y. 2012-13 & 2013-14 notices u/s. 143(2) was issued at the address available as per PAN data. On verification it is noticed that the jurisdiction of the vests with your office. Accordingly, case record is transferred herewith for necessary action at your end.

Yours faithfully,

(LOKESHA)

Income-tax Officer.

Ward-6(1)(1), Bangalore"

3.12 In the facts of the case, the Hon'ble High Court held that the purported notice under section 143(2) dated 10/09/2003 was without jurisdiction. The relevant finding of the Hon'ble Delhi High Court is reproduced as under:

"4. It is evident from the aforesaid letter that it is only the records of the case which were transferred and the case itself had been transferred, the same would have to be directed under Section 127 of the said Act. No such order of transfer has been made and the above letter dated 16.12.2014 is indicative of the fact that the Bangalore Office of the Income Tax Department did not have jurisdiction in this case.

5. That being the position, the purported notice under Section 143(2) issued on 10.09.2013 was one without jurisdiction and cannot be regarded as a valid notice. The first notice, therefore, which was issued by an Officer having jurisdiction was on 24.12.2014. This was issued clearly beyond the period of limitation which has been prescribed, i.e., beyond 30.09.2013 in this case. As such, the impugned notice dated 24.12.2014 issued under Section 143(2) of said Act is barred by time. The same is quashed."

3.13 Thus, respectfully following the finding of the Hon'ble Delhi High Court, we hold that the notice dated 01/09/2011 issued by the CIT, Circle -37(1) was without jurisdiction and, thus, it was invalid and the notice dated 30/08/2012 issued by the ITO, Ward 38(2), New Delhi issued by the correct Jurisdiction Officer, was beyond the period of limitation and therefore, this was also invalid. Thus, assessment order passed without acquiring the correct jurisdiction for a scrutiny by way of notice under section 143(2) is *void ab initio* and thus we quash the same. As we have already quashed, the assessment order we are not adjudicating on the issue raised on merit of the addition.

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

Order pronounced in the open court on 24th February, 2020.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

Dated: 24th February, 2020.

RK/-(D.T.D.S.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi