

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH : KOLKATA

[Before Hon'ble Shri J. Sudhakar Reddy, AM and Hon'ble Shri S.S. Godara, JM]

**ITA No.2179/Kol/2016**

A.Y 2012-13

Income Tax Officer  
Ward 10(1),  
P-7, Chowringhee Square, 3<sup>rd</sup>  
Floor, Kolkata-69  
(अपीलार्थी /Appellant)

Vs. Anamika Dealcom Pvt.Ltd  
AD-76, Salt Lake City, Sector  
Kolkata-64  
PAN No. AAICA 4631 Q  
(प्रत्यर्थी /Respondent)

**C.O No. 34/Kol/2019**

[a/o ITA No. 2179/Kol/2016]

Anamika Dealcom Pvt.Ltd  
AD-76, Salt Lake City  
Sector, Kolkata-64

Vs. Income Tax Officer  
Ward-10(1), P-7, Chowringhee Square  
Kolkata-69

(प्रतयाक्षेपक/Cross-objector)

(प्रत्यर्थी /Respondent)

आवेदक की ओर से/By Assessee : Shri Somnath Ghosh, Advocate,

राजस्व की ओर से/By Respondent : Smt.Ranu Biswas, Addl. CIT-DR

Date of Hearing (Virtual) : 19-10-2020

Date of Pronouncement : 22 -10-2020

### **ORDER**

**Shri S.S. Godara, JM:**

This Revenue' appeal and assessee's cross objection for assessment year 2012-13 arise against the Commissioner of Income Tax(Appeals)-4 Kolkata's order dated 09.09.2016 passed in case No.740/CIT(A)-4/Ward-10(1)/Kol/15-16 reversing the Assessing Officer's action treating the latter's share application / premium of Rs. 6

crores as unexplained cash credits in assessment order dated 22-03-2015 involving proceedings u/s 143(3) of the Income-tax Act, 1961 (in short 'Act'); respectively.

Heard both the learned parties. Case file perused.

2. The Revenue's sole substantive grievance raised in its appeal ITA No. 2179/Kol/2016 pleads that the Assessing Officer's assessment order had rightly invoked the above stated addition on account of assessee's failure in discharging onus of identity, genuineness and creditworthiness of the share application / premium's investors of Rs. 6 crores. The Revenue seeks to revive the said addition which stands deleted in the lower appellate proceedings.

3. Mr. Ghosh invited our attention to the assessee's pleadings in its Cross Objection **No. 34/Kol/2019** that the impugned assessment itself is invalid in the eyes of law for want of a valid section 143(2) notice. The assessee has admittedly raised the instant plea for the first time before the tribunal. We, therefore, afforded ample opportunity to the department to rebut the same.

4. We have received a report from Office of the Addl. CIT-DR, ITAT, Kolkata dated 29-01-2020 inter-alia stating therein that the ITO, Ward 24(3) Kolkata had issued section 143(2) notice dated 07.08.2013 to the assessee whereas the section 143(3) assessment in question has been framed by TRO-4, Kolkata (acting as the Assessing Officer). It is further overtaken stated therein that the assessee had filed its return on 30-09-2012 followed by ITO, Ward 24(3), Kolkata issued section 143(2) notice dated 07-08-2013 transfer of assessment to the ITO, Ward-10(1) Kolkata vide order dated 24-10-2013 and further assigned to the TRO-4 Kolkata dated 22.09.2014, taxpayer's appearance on 05-09-2013 alongwith audit report and other relevant documents and the regular assessment framed on 22-03-2015. It is further highlighted that the assessee had

never objected to Assessing Officer's throughout jurisdiction in and therefore, it is stopped from raising any such plea in view of sec. 120,124 and 127 of the Act & case law hon'ble Delhi high court in **Writ Petition No. 11844/2016** Abhishek Jain vs. Income Tax Officer dated 01-06-2018, (2014) 46 taxman.com 169 (Del) Commissioner of Income Tax vs. S.S. Ahluwalia &, (1972) 84 ITR 26 (Cal), Smt Sumitra Devi Khirwal vs. Commissioner of Income Tax.

5. We have given our thoughtful consideration to the above question of Assessing Officer's jurisdiction going to root of the matter. We would like to reiterate here that Revenue itself is fair enough in admitting the clinching fact that ITO, Ward 24(3), Kolkata only had issued 143(2) notice dated 07-08-2013 to the assessee without having his jurisdiction since it was the TRO-4, Kolkata who was supposed to frame assessment in the taxpayer's case. The latter authority never issued sec.143(2) notice to the assessee. There can hardly be any dispute that issuance of notice u/s. 143(2) from the competent Assessing Officer is a mandatory condition as per *ACIT vs. Hotel Blue Moon* (2010) 321 ITR 362. This tribunal's in *D. Craft Entertainment Pvt. Ltd vs. Income Tax Officer, Ward-6(1), Kolkata* in **ITA No. 1461/Kol/2017** decided on 01.10.2018 holds that such an assessment in absence of section 143(2) notice issued from the Assessing Officer having jurisdiction is rendered invalid as under:-

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

*3. Briefly stated facts as observed by the AO, Ward No. 6(1), Kolkata are that the assessee company filed its return of income electronically declaring income of Rs.8950/-. Later case was selected for scrutiny. Notice u/s. 143(2) of the Act ~served from office of ITO, Ward-34(2). Then the jurisdiction of the case was transferred to ITO, Ward-6(1), Kolkata and a notice was also issued from this ward. According to AO, summons u/s. 131*

*of the Act were sent to the directors of the assessee company but summons were returned un-served and no compliance was made on behalf of the assessee company. Thereafter, show cause notice was sent through speed post which has been returned un-served. As no compliance was made on behalf of the assessee till the completion of assessment, the AO was let with no alternative but to pass the assessment order dated 13.03.2015 u/s. 144 of the Act. Thereafter the AO observed that the assessee company was incorporated on 21.01.2009 and has shown the figure of Rs.15,36,90,0001- as share premium during the assessment year under consideration. According to AO, the source of huge premium has not been explained by the assessee company. Therefore, considering the above share capital claimed by the assessee company to have been introduced during the FY 2011-12 with high premium amounting to Rs.15,66,00,0001- (share capital of Rs.29,10,0001- + premium of Rs.15,36,90,0001-) was treated as unexplained cash credit in the books of the assessee company u/s. 68 of the Act. Aggrieved, by the said order assessee preferred an appeal before the Ld. CIT(A), who confirmed the action of the AO. Aggrieved, the assessee is in appeal before us.*

*4. We have heard rival submissions and gone through the facts and circumstances of the case. Before us, the Ld. AR while raising the legal issue contended that no notice was issued by the ITO, Ward-6(1), Kolkata u/s. 143(2) of the Act and which was served upon the assessee; and even though the notice was issued u/s. 143(2) of the Act was by ITO, Ward-34(2), Kolkata [as per ITO, Ward -6(1)] who had no jurisdiction to assess the corporate entity like the assessee company, hence the assessment order framed by the AO (ITO, Ward-6(1), Kolkata) without issuing notice u/s. 143(2) upon the assessee company is 'null' in the eyes of law and, therefore, deserves to be quashed. It was also submitted by the Ld. AR that the assessee company did not receive any scrutiny notice u/s. 143(2) of the Act from ITO, Ward-34(2), Kolkata though it has been acknowledged by the AO in the assessment order by ITO, Ward-6(1), Kolkata. Since the assessee did not receive any notice the assessee company could not represent or file documents and comply before the ITO the said proceedings. It was also submitted by the Ld. AR that the assessee company was not aware of the purported transfer of jurisdiction from ITO, Ward-34(2), Kolkata to ITO, Ward-6(1), Kolkata since it did not receive any notice u/s. 127 of the Act from the Pr. CIT-12, Kolkata transferring the file from ITO, Ward-34(2), Kolkata to ITO, Ward-6(1), Kolkata. He also brought to our notice that the assessee company did not receive any notice u/s. 142(1) of the Act from ITO, Ward-6(1), Kolkata as stated by AO in the assessment order. Because of which there was no compliance from the part of assessee in the said proceedings before ITO, Ward-6(1), Kolkata. Ld. AR of the assessee further submitted that assessee company's registered office is situated at 8, Lyons Range, Kolkata-700001, therefore, the territorial and entity-wise jurisdiction were vested with ITO, Ward-6(1), Kolkata by virtue of Notification issued by CBDT u/s. 120 of the Act dated 31.07.2001 (Notification No. 228/2001) and also by virtue of latest Notification No. 50/2014 dated 22.10.2014. So, according to Ld. AR, since the ITO, Ward-34(2), Kolkata did not enjoy any jurisdiction over the assessee-company and thus the notice u/s. 143(2) of the Act claimed to have been issued by the ITO, Ward-34(2), Kolkata against the assessee*

*company was without jurisdiction so, bad in law and, therefore, the notice issued by an officer/authority who does not enjoy jurisdiction is non-est in the eyes of law. Ld. AR also brought to our notice that the claim of ITO, Ward-6(1), Kolkata in the assessment order that the file of assessee was transferred from ITO, Ward-34(2), Kolkata is itself illegal since it was pointed out by the Ld. AR that in the impugned assessment order there was no reference or mention by the AO (ITO Ward-6(1), Kolkata) of any order of transfer of jurisdiction passed by the concerned Pr. CIT u/s. 127 of the Act. According to Ld. AR, in any case, the assessee has not been served with any such order i.e. transfer order u/s. 127, or notice u/s. 143(2) or 142(1) etc. Thus, according to Ld. AR, the transfer of file from ITO, Ward-34(2), Kolkata to ITO, Ward-6(1), Kolkata itself is bad in law; And in any case the assessment order passed by ITO, Ward-6(1) without issuing notice u/s. 143(2) within the prescribed period of time as statute stipulates is also bad in law and needs to be quashed. On the other hand, the Ld. DR heavily relied on the orders of the lower authorities and urged before the bench to confirm the action of Ld. CIT(A).*

*5. After going through the aforesaid contentions, we note that the assessee is a corporate entity, being a company registered under the Companies Act, 1956 and having registered office in the area mentioned in item (a) of column (4) i.e PIN 700 001 of the notification no. 228/2001 dated 31.07.2001 (page 18 of paper book) issued by CBDT u/s. 120 of the Act and also in reference to later **Notification of CBDT No. 50/2014** dated 22.10.2014. The Designated Income Tax Authority as per serial No. 159 is Principal Commissioner/Commissioner of Income Tax, Kolkata-2, Headquarter is Kolkata, West Bengal (Page 14 of paper book). Whereas a perusal of Notification of CBDT No. 228/2001 dated 31.07.2001 (Page 20 of paper book) reveals that Commissioner of Income Tax, Kolkata-XII has jurisdiction over persons other than companies deriving income from sources other than income from business or profession (**though residing in PIN 700001**).*

*We also note from Notification No. 50/2014 dated 15.11.2014, issued from the office Principal Chief Commissioner of Income-tax, West Bengal & Sikkim which takes effect from 15.11.2014 (page 5 of paper book) that Principal Commissioner of Income Tax/Commissioner of Income Tax, Kolkata-2, is the designated officer and under him Addl CIT/Jt..CIT, Range-6, Kolkata has been placed under his charge (page 7 of paper book). On perusal of page 9 reveals that under the Pr. CIT/CIT, Kolkata-12 the Addl.CIT/Jr. CIT. Range-34, Kolkata has been placed under him (page 9 of the paper book). Thus from a perusal of the aforesaid facts reveal that the assessee being a company registered under the Companies Act, 1956 and having its registered office in area covered by Pin No.700001, the Pr. CIT/CIT, Kolkata:2 enjoyed jurisdiction over the assessee Company. In the light of the Notification of CBDT dated 22.10.2014 [as well as Notification No. 228/2001 dated 31.07.2007] and, therefore, ITO, Ward-6(1), Kolkata who falls under the jurisdiction of Pr. CIT/CIT, Kolkata-2 only had the jurisdiction to assess the income of the assessee. Thus w,£ record a find in of fact and*

*law that the ITO Ward-6 1 Kolkata Was the officer authority who was vested with the 'urisdiction of Assessee i.e. Aa of the assessee com an. We note that the impugned assessment order framed by the AO) dated 13.03.2015 was passed by the jurisdictional ITO, Wd-6(1), Kolkata. However, the main grievance of the assessee company is that before scrutinizing the assessment u/s. 143(3) of the Act, notice u/s. 143(2) of the Act needs to have been issued by ITO, Ward-6(1), Kolkata was sine qua non as held by the Hon'ble Supreme Court in Hotel Bluemoon 321 ITR 362 (SC) was in fact not issued by him [ITO, Wd-6(1), Kolkata] before completing the assessment u/s. 143(3)1144 the Act. So the jurisdictional fact which needs to be ascertained by us is whether ITO, Ward-6(1), Kolkata issued notice on the assessee u/s. 143(2) of the Act before framing the scrutinyassessment. We note that the ITO, W d-6(1),Kolkata has passed a best judgment assessment u/s. 144 of the Act alleging non-participation on the part of the assessee company during the assessment proceedings. We note that in the assessment order framed by ITO,Wd-6(1) Kolkata, he has mentioned about notice u/s.143(2) of the Act issued not by him but by ITO, Wd-34(2), Kolkata and has mentioned clearly that he [ITO, Wd-6(1), Kolkata] has issued only notice u/s. 142(1) of the Act. We note from a perusal of the impugned assessment order passed by ITO, Wd-6(1), Kolkata there is no whisper/mention about any notice issued by him u/s. 14~f the Act or even notice issued before framing best judgment u/s.144 of the Act. As per the ITO, Wd-6(1), Kolkata, notice u/s. 143(2) of the Act has been issued by ITO, Wd-34(2), Kolkata and not by himself before framing the scrutiny assessment u/s.143(3)/144 of the Act. It is no longer res integra that issuance of notice u/s.143(2)is sine qua non before deciding to proceed to scrutinize the assessment of income of an assessee u/s. 143(3) of the Act. Since the department has failed to adduce any evidence to contradict the claim of assessee that ITO, Wd-6(1), Kolkata who was the jurisdictional AO did not issued notice u/s. 143(2) of the Act before deciding to scrutinize and frame assessment u/s143(3)/144 of the Act, the legal challenge made by the assessee by way of additional ground nos. 1 to 3, ( **which reads as under**) needs to succeed:*

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

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

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

6. We find that no notice u/s. 143(2) was issued by ITO, Wd-6(1), Kolkata before

*completing the assessment. We note that ITO, Wd-34(2), Kolkata did not enjoy the jurisdiction over the assessee company by virtue of both the earlier Notification No.228/2001 dated 31.07.2001(CBDT) as well as the latest Notification No. 5012014 dated 22.10.2014 of CBDT as discussed above. Therefore, the assessment completed by ITO, Wd- 6(1), Kolkata on the strength of the notice issued u/s. 143(2) of the Act by ITO, Wd-34(2), Kolkata (who did not enjoy jurisdiction) is non-est in law and, therefore, is bad in law and transfer of the jurisdiction as contemplated u/s. 127 of the Act to ITO, Wd-6(1), Kolkata. The Hon''ble jurisdictional High Court in Kusum Goyal (2010) 329 ITR 283 (Cal) has clearly spelt out that the ITO on its own cannot transfer the jurisdiction without order from the competent authority. In this case, we note that there is no mention in the assessment order of any transfer order passed by the concerned CIT-12, therefore, the contention of the ITO, Ward-6(1), Kolkata that the jurisdiction has been transferred from ITO,Wd-34(2) to ITO, Wd-6(1), Kolkata is also without authority and vitiates the transfer of jurisdiction as claimed by the AO in the assessment order and thus this factual so vitiates the assessment order. In the light of the above as well as the contention of the assessee that no opportunity of hearing was rendered to it by ITO, Wd-6(1), Kolkata before framing assessment u/s.144of the Act which omission on the part of AO also is against principle so factual justice and the impugned assessment u/s 144 of the Act is fragile for non-adherence of principle of natural justice on the part of AO. Therefore, looking from any angle as discussed above and especially taking note that the impugned assessment order passed by the ITO, Wd-6(1). Kolkata without issuing notice u/s. 143(2) of the Act is corum non-judice and therefore null in the eyes of law and, therefore, need to be quashed and we quash the impugned assessment order dated 13.03.2015 passed by ITO, Wd-6(1), Kolkata. The additional grounds raised by the assessee are **allowed**. “*

6. We adopt the above detailed discussion *mutatis mutandis* to conclude that impugned assessment order dated 22-03-2015 had been framed without the competent Assessing Officer's sec. 143(2) notice issued to the assessee. The same is declared invalid for this precise reason. The assessee succeeds in its Cross Objection **No. 34/Kol/2019**. The Revenue's appeal **ITA No. 2179/Kol/16** for the assessment year 2012-13 is dismissed as the necessary corollary.

All other Revenue's and assessee's pleadings in above appeal and cross objection are rendered academic.

7. This Revenue's appeal **ITA No. 2179/Kol/2016** is dismissed and assessee's **Cross Objection No.34/Kol/2019** is allowed. Ordered accordingly. ***A copy of this common order be placed in the respective case files.***

**Order pronounced in the Court on 22-10-2020**

Sd/-

[ J.Sudhakar Reddy ]

(लेखा सदस्य)

Accountant Member

Dated : -10-2020

Sd/-

[ S.S.Godara ]

न्यायिक सदस्य

Judicial Member

\*\*PRADIP, Sr. PS/DKP Sr.P.S.

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

1. आवेदक /Assessee-M/s Anamika Dealcom Pvt. Ltd., AD-76,Salt Lake City, Kolkata-64
2. राजस्व /Revenue-ITO-Wd-10(1), Aaykar Bhawan,3<sup>rd</sup> Floor, P-7, Chowringhee Square, Kolkata-700 069
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
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 ।