

आयकर अपीलीय अधीकरण, न्यायपीठ –“C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri J. Sudhakar Reddy, AM and Shri A. T. Varkey, JM]

I.T.A. No. 2456/Kol/2019
Assessment Year: 2012-13

Shivam Dhatu Udyog Ltd. (PAN: AAICS8785R)	Vs.	Deputy Commissioner of Income- tax, Circle-3(1), Kolkata.
Appellant		Respondent

Date of Hearing	24.02.2021
Date of Pronouncement	10.03.2021
For the Appellant	Shri Miraj D. Shah, AR
For the Respondent	Shri Sandeep Choube, CIT, DR

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-5, Kolkata dated 14.10.2019 for AY 2012-13.

2. At the outset, Ld. AR for the assessee Shri Miraj D. Shah drew our attention to the additional ground raised by the assessee which is as under:

“1. For that the assessing officer issuing the notice u/s.143(2) of the I. T Act, 1961 did not have jurisdiction over the case, of the assessee hence, the notice is bad in law and the assessment order passed on the basis of such notice is bad in law and should be quashed.

2. For that the assessment order .was passed without service of any valid notice u/s. 143(2) of the I.T. Act, 1961 and therefore the assessment order passed is bad in law and should be quashed.

3. That in the facts and circumstances of the case, the assessment order u/s. 143(3) of the IT Act 1961 was without jurisdiction and bad in law and thus the entire assessment order be quashed and or cancelled.”

3. On a perusal of this additional ground it is discerned that the assessee is raising a legal issue in respect of jurisdiction of the AO (DCIT, Circle-3(1), Kolkata) (hereinafter called the ‘AO’) to have passed the scrutiny assessment order u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) on the ground that the AO did not issue the

mandatory statutory notice u/s. 143(2) of the Act before framing the assessment order u/s 143(3) of the Act on 17.03.2015.

4. We note that this is purely a legal issue, which has been raised by the assessee for the first time before us, which action of assessee has been opposed by the Ld. DR for admission itself, since according to Ld DR, it was not raised before the Ld. CIT(A). However, we are inclined to admit these grounds of appeal being purely legal in nature and no other documents are required to adjudicate the same. For that we rely on the decision of the Hon'ble Supreme Court in the case of NTPC Ltd. Vs. CIT 229 ITR 383 (SC). Assailing the action of the AO to have framed the assessment u/s. 143(3) of the Act without issuing notice u/s. 143(2) of the Act, the Ld. AR drew our attention to page 1 of the paper book, a perusal of which we note that section 143(2) notice was issued by ITO, Gorakhpur. For ready reference the same is seen as under:

Notice under Section 143(2) of the Income - Tax Act, 1961
Office of the DC/ACIT(2), GORAKHPUR

PAN No : AAICS8785R Dated : 08/08/2013

TO
M/S SHIVAM DHATU UDYOG PRIVATE LIMITED
FL NO 1
2ND FLOOR
GOVIND MAHAL
3 WOOD STREET
KOLKATA
WEST BENGAL 700016

Sir/Madam,

There are certain points in connection with the return of income submitted by you on 28th September 2012 for the assessment year 2012-13 on which I would like some further information.

2. You are hereby required to attend my office on 23rd August 2013 at 11:00 AM either in person or by a representative duly authorised in writing in this behalf or produce or cause there to be produced at the said time any documents, accounts and any other evidence on which you may rely in support of the return filed by you.

Yours faithfully

ASSESSING OFFICER

NAME: [Signature]

Designation



5. From a perusal of the aforesaid Notice u/s. 143(2) of the Act, it is discerned that the same was issued on 08.08.2013 by DCIT, Circle-2, Gorakhpur (State of U. P.). And the assessee duly objected to the jurisdiction of the DCIT, Circle-2, Gorakhpur stating that the

assessee company has its registered office at Kolkata i.e. in the State of West Bengal. Realizing the mistake, DCIT, Circle-2, Gorakhpur transferred the case to the AO, Kolkata who admittedly have not issued the mandatory statutory notice u/s. 143(2) of the Act; and has issued only notice u/s. 142(1) of the Act and has framed the assessment u/s. 143(3) of the Act, which according to the Ld. AR is without jurisdiction and bad in law. For that he cited the following case laws i.e. M/s Rungta Irrigation Ltd. vs. ACIT in ITA No. 1224/Kol/2019 order dated 06.09.2019 relevant portion of it is re-produced as under:

“13. For understanding the legal position with regard to the jurisdiction of Income tax authorities, it is pertinent to make reference to provisions of Section 120, 124, 127 and 129 of the Act which are reproduced herein below:

120. Jurisdiction of income- tax authorities

(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.

(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 any one 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 Director General or Director to perform such functions of any other income- tax authority as may be assigned to him by the Board;

(b) empower the Director General or Chief 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

(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.

124. Jurisdiction of Assessing Officers

(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 beenvested 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 Director General or the Chief Commissioner or the Commissioner; or where the question is one relating to areas within the jurisdiction of different Directors General or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director General or Chief 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 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 subsection (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 (1) of section 142 or under section 148 for the Making of the return or by the notice 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 sub-section (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.]

127. Power to transfer cases

(1) The Pr. Director General or Director General or Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner,—

(a) where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation: *In [section 120](#) and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.*

129. Change of incumbent of an office

Whenever in respect of any proceeding under this Act an income- tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income- tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard."

14. A bare reading of the foregoing provisions reveal that an Assessing Officer (AO) has been vested with the jurisdiction by virtue of the directions or orders issued by the Board under sub-section (1) or sub-section (2) of section 120 of the Act. The direction u/s. 120(1) is given by the Board, for the exercise of the powers and performance of the functions by all or any of the Income Tax Authorities, as specified u/s. 116 of the Act. As per sub-section (2) of Section 120 of the Act, the Board may delegate its powers to Income tax authorities as specified in Section 116, for issuing the 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 that authority. We also note that the concurrent jurisdiction can be vested in more than one AO, which is discernible by a conjoint reading of Section 120(5) with Section 120(2) of the Act. Section 124(1) of the Act confers jurisdiction on an AO, by virtue of jurisdiction vested by any direction or order issued by CBDT under sub-section (1) and / or (2) of section 120 of the Act. The AO is vested with the jurisdiction u/s. 124 of the Act, over any area within the limits of such area, he shall have jurisdiction over any person (assessee) carrying on a business or profession and if the place at which he (assessee) carries on his business or profession is situated within the area ear-marked for him (AO); or if that person's (assessee's) business or profession is carried on in more places than one, then if the principal place of his business or profession is situated within the jurisdictional territorial area, the AO gets jurisdiction. Other than the assessee who are not in Business or Profession, in their cases, the AO will be vested with the jurisdiction if the person (assessee) is residing within the territorial area ear-marked by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120 of the Act speaks about. However, when there is a question to be determined as to whether an AO has jurisdiction to assess any person then it would be decided by the authorities as stipulated in sub-section (2) of section 124 of the Act by Directors General or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned, as the case may be). In case, if the question is one relating to areas within the jurisdiction of different Income tax authorities (Directors General or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners as stipulated therein) then if the other Income-tax authority also agrees then the question will be resolved mutually or else it will be referred to the CBDT. So, once the AO of an assessee is vested with the jurisdiction u/s. 124 read with sec. 120(1) & (2) of the Act and issues statutory notices against an assessee, no person (assessee) shall be entitled to call in question the jurisdiction of an AO within the period prescribed under clauses (a), (b) and (c) of section 124(3) of the Act. We also note that sec. 124(5) saves the action of the AO who has territorial jurisdiction over the assessee in respect of the income earned by the assessee from the territorial jurisdiction vested in him by virtue of any directions or orders issued u/s. 120(1) or (2) of the Act. So, this saving provision which saves the action of an AO is limited to the income accruing or arising or received within the limits of his territorial area as conferred to him (AO) by order under sub-sec. (1) or (2) of sec. 120 of the Act and not otherwise. So, this saving provision will come into play only in the first place the AO is vested with the jurisdiction by an order/direction issued under sub-sec. (1) or (2) of sec. 120 of the Act. Thus, as per the scheme of the Act, it can be seen that sections 120 and 124 vest jurisdiction on Income Tax Authorities and on AO respectively and, therefore, both sections i.e. sections 120 and 124 of the Act must be read in conjunction and harmoniously to decide the territorial jurisdiction which is prescribed by the direction or orders by the CBDT under sub-sec. (1) or (2) of sec. 120 of the Act."

6. The Ld. A.R submits that the notice u/s 143(2) of the IT Act 1961 dated 08/08/2013 was issued by the DCIT, Circle 2, Gorakhpur, State of Uttar Pradesh was bad in law as the

DCIT Circle 2 Gorakhpur did not have jurisdiction by virtue of section 124/120 of the Act over the assessee which was based in Kolkata and is situated at State of West Bengal. Thus, according to him, the notice u/s 143(2) of the Act issued by DCIT, Gorokhpur was without jurisdiction and consequent actions were bad in law. Further, according to him, the case was transferred by DCIT, Gorakhpur to DCIT, Kolkata and the consequent framing of assessment order in this case passed by the DCIT, Circle- 3(1), Kolkata was without issue of any valid notice u/s 143(2) of the IT Act 1961 so bad in law.

7. It was brought to our notice by the Ld. A.R that the transfer of case from Gorakhpur to Kolkata was not made by passing any order u/s 127 of the Act and therefore the assessment by DCIT (Kolkata) is bad in law as held in *Kusum Goyal vs. ITO* (329 ITR 283).

8. According to Ld. A.R the law it is well settled that if the assessing officer who is not having jurisdiction over the case of the assessee issues notice u/s 143(2) of the Act, such notice is bad in law and invalid and all subsequent action including the assessment order passed on the basis of such notice is bad in law and void ab initio.

9. In this regards he relied on the decision of the order passed by the ITAT Kolkata Bench of the Tribunal in the case of *M/s Hillman Hosiery Mills Pvt. Ltd. vs. DCIT*, in ITA No. 26341Ko112019, order dated 12.01.2021, under similar circumstances held as follows:-

*“10. In this case, the ITO Ward-3(3), Kolkata, issued notice u/s 143(2) of the Act on 04/09/2014. In reply, on 22/09/2014, the assessee wrote to the ITO, Ward-3(3), Kolkata, stating that he has no jurisdiction over the assessee. Thereafter on 31/07/2015, the DCIT, Circle-11(1), Kolkata, had issued notice u/s 142(1) of the Act to the assessee. The DCIT, Circle-11(1), Kolkata, completed assessment u/s 143(3) of the Act on 14/03/2016. The issue is whether an assessment order passed by DCIT, Circle-11(1), Kolkata, is valid as admittedly, he did not issue a notice u/s 143(2) of the Act, to the assessee. This issue is no more res-integra. This Bench of the Tribunal in the case of *Soma Roy vs. ACIT* in ITA No. 462/Kol/2019; Assessment Year 2015-16, order dt. 8th January, 2020, under identical circumstances, held as under:-*

“5. After hearing rival contentions, I admit this additional ground as it is a legal ground, raising a jurisdictional issue and does not require any investigation into the facts. The ld. Counsel for the assessee submitted that as per Board Instruction No. 1/2011 [F. No. 187/12/2010-IT(A-I)], dt. 31/01/2011, the jurisdiction of the assessee is with the Assistant Commissioner of Income Tax, Circle-1, Durgapur, as the assessee is a non-corporate assessee and the income returned is above Rs.15,00,000/- and whereas, the statutory notice u/s 143(2) of the Act, was issued on 29/09/2016, by the Income Tax Officer, ward-1(1), Durgapur, who had no jurisdiction of the case. He submitted that the assessment order was passed by the ACIT, Circle-1(1), Durgapur, who had the jurisdiction

over the assessee, but he had not issued the notice u/s 143(2) of the Act, within the statutory period prescribed under the Act. Thus, he submits that the assessment is bad in law.

5.1. On merits, he rebutted the findings of the lower authorities. The Id. Counsel for the assessee relied on certain case-law, which I would be referring to as and when necessary.

6. The Id. D/R, on the other hand, submitted that the concurrent jurisdiction vests with the ITO as well as the ACIT and hence the assessment cannot be annulled simply because the statutory notice u/s 143(2) of the Act, was issued by the ITO and the assessment was completed by the ACIT. He further submitted that the assessee did not object to the issue of notice before the jurisdictional Assessing Officer and even otherwise, Section 292BB of the Act, comes into play and the assessment cannot be annulled. On merits, he relied on the orders of the lower authorities.

7. I 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, I hold as follows:-

8. I find that there is no dispute in the fact that the notice u/s 143(2) of the Act dt. 29/09/2016 has been issued by the ITO, Wd-1(1), Durgapur. Later, the case was transferred to the jurisdiction of the ACIT on 11/08/2017. Thereafter, no notice u/s 143(2) of the Act was issued by the Assessing Officer having jurisdiction of this case and who had completed the assessment on 26/12/2017 i.e., ACIT, Circle-1(1), Durgapur. Under these circumstances, the question is whether the assessment is bad in law for want of issuance of notice u/s 143(2) of the Act.

9. This Bench of the Tribunal in the case of Shri Sukumar Ch. Sahoo vs. ACIT in ITA No. 2073/Kol/2016 order dt. 27.09.2017, held as follows:-

"5. From a perusal of the above Instruction of the CBDT it is evident that the pecuniary jurisdiction conferred by the CBDT on ITOs is in respect to the 'non corporate returns' filed where income declared is only upto Rs.15 lacs ; and the ITO doesn't have the jurisdiction to conduct assessment if it is above Rs 15 lakhs. Above Rs. 15 lacs income declared by a non- corporate person i.e. like assessee, the pecuniary jurisdiction lies before AC/DC. In this case, admittedly, the assessee an individual (non corporate person) who undisputedly declared income of Rs.50,28,040/- in his return of income cannot be assessed by the ITO as per the CBDT circular (supra). From a perusal of the assessment order, it reveals that the statutory notice u/s. 143(2) of the Act was issued by the then ITO, Ward-1, Haldia on 06.09.2013 and the same was served on the assessee on 19.09.2013 as noted by the AO. The AO noted that since the returned income is more than Rs. 15 lacs the case was transferred from the ITO, Ward-1, Haldia to ACIT, Circle-27 and the same was received by the office of the ACIT, Circle-27, Haldia on 24.09.2014 and immediately ACIT issued notice u/s. 142(1) of the Act on the same day. From the aforesaid facts the following facts emerged:

i) The assessee had filed return of income declaring Rs.50,28,040/-. The ITO issued notice under [section 143\(2\)](#) of the Act on 06.09.2013.

ii) The ITO, Ward-1, Haldia taking note that the income returned was above Rs. 15 lacs transferred the case to ACIT, Circle-27, Haldia on 24.09.2014.

iii) On 24.09.2014 statutory notices for scrutiny were issued by ACIT, Circle-27, Haldia.

6. We note that the CBDT Instruction is dated 31.01.2011 and the assessee has filed the return of income on 29.03.2013 declaring total income of Rs.50,28,040/-. As per the CBDT Instruction the monetary limits in respect to an assessee who is an individual which falls under the category of 'non corporate returns' the ITO's increased monetary limit was upto Rs.15 lacs; and if the returned income is above Rs. 15 lacs it was the AC/DC. So, since the returned income by assessee an individual is above Rs.15 lakh, then the jurisdiction to assess the assessee lies only by AC/DC and not ITO. So, therefore, only the AC/DC had the jurisdiction to assess the assessee. It is settled law that serving of notice u/s. 143(2) of the Act is a sine qua non for an assessment to be made u/s. 143(3) of the Act. In this case, notice u/s. 143(2) of the Act was issued on 06.09.2013 by ITO, Ward-1, Haldia when he did not have the pecuniary jurisdiction to assume jurisdiction and issue notice. Admittedly, when the ITO realized that he did not had the pecuniary jurisdiction to issue notice he duly transferred the file to the ACIT, Circle-27, Haldia on 24.09. 2014 when the ACIT issued statutory notice which was beyond the time limit prescribed for issuance of notice u/s. 143(2) of the Act. We note that the ACIT by assuming the jurisdiction after the time prescribed for issuance of notice u/s. 143(2) of the Act notice became quorum non iudice after the limitation prescribed by the statute was crossed by him.

Therefore, the issuance of notice by the ACIT, Circle-27, Haldia after the limitation period for issuance of statutory notice u/s. 143(2) of the Act has set in, goes to the root of the case and makes the notice bad in the eyes of law and consequential assessment order passed u/s. 143(3) of the Act is not valid in the eyes of law and, therefore, is null and void in the eyes of law. Therefore, the legal issue raised by the assessee is allowed. Since we have quashed the assessment and the appeal of assessee is allowed on the legal issue, the other grounds raised by the assessee need not to be adjudicated because it is only academic. Therefore, the additional ground raised by the assessee is allowed.

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

10. Per-Contra, the Ld. CIT, DR contended that the AO (DCIT, Circle-3(1), Kolkata) has passed the order u/s. 143(3) of the Act after issuing notice u/s. 142(1) of the Act and has framed the assessment, since the DCIT, Circle-2, Gorokhpur has already issued notice u/s. 143(2) of the Act, therefore, he does not want us to interfere with the order of the AO (DCIT, Circle-3(1), Kolkata).

11. We have heard rival submissions and gone through the facts and circumstances of the case. The admitted position is that the assessee is a company and its registered office is at Kolkata (State of West Bengal). For the assessment year (AY 2012-13) a notice u/s. 143(2) of the Act has been issued by DCIT, Circle-2, Gorokhpur (State of U.P.). Thus, we note that the DCIT, Circle-2, Gorokhpur did not enjoy the territorial jurisdiction u/s 124 or by virtue of section 120 of the Act or by transfer as per Section 127 of the Act. It is not disputed that the AO (DCIT, Circle-3(1), Kolkata) who passed the assessment order u/s. 143(3) of the Act had the jurisdiction and he has not issued fresh notice u/s. 143(2) of the Act before framing the assessment u/s. 143(3) of the Act. Now only the legal issue is whether the AO (DCIT, Circle-3(1), Kolkata) would have framed the assessment u/s. 143(3) of the Act without issuing and serving Notice u/s. 143(2) of the Act on the assessee. This legal issue is no longer res-integra. The issuance of notice u/s. 143(2) is mandatory for framing scrutiny notice u/s. 143(3) of the Act as held by the Hon'ble Supreme Court in the case of CIT V Hotel Blue Moon (2010) 321 ITR 362 (S.C) wherein the Hon'ble Supreme Court has held that issue of a legally valid notice u/s. 143(2) is mandatory for usurping jurisdiction to frame scrutiny assessment u/s. 143(3) of the Act and in the absence of a valid notice u/s 143(2) the scrutiny assessment u/s 143(3) cannot be framed and omission to issue notice u/s 143(2) of the Act is not a curable defect.

12. Since the assessee has been able to demonstrate before us that there has been no notice issued u/s. 143(2) of the Act by the AO (DCIT Circle-3(1), Kolkata before he framed to scrutiny assessment u/s. 143(3) of the Act dated 17.03.2015, the assessment order is null in the eyes of law and the assessee succeeds on the legal issue raised before us. Since the AO (DCIT, Circle-3(1), Kolkata did not issue the mandatory notice u/s 143(2) of the Act, he did not enjoy the jurisdiction to frame the assessment u/s. 143(3) of the Act. Therefore, the order passed by the AO (DCIT, Circle-3(1), Kolkata is null in the eyes of law and it has to be quashed. We order accordingly.

13. We are not inclined to go in to the merits of the action of AO because it has become academic.

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

Order is pronounced in the open court 10.03.2021.

Sd/-

(J.S. Reddy)
Accountant Member

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 10.03.2021

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. Shivam Dhatu Udyog Ltd., Fl.No.1, 2nd floor, Govind Mahal, 3, Wood Street, Kolkata-700 016.
2. Respondent – DCIT, circle-3(1), Kolkata.
3. The CIT(A)-6, Kolkata (sent through e-mail)
4. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata