

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA
(Virtual Court)**

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

**I.T.A. No. 604/Kol/2020
Assessment Year: 2012-13**

M/s. Eversafe Securities Pvt. Ltd.....Appellant
[PAN: AACCE 8490 R]

Vs.

ITO, Ward-5(3), Kolkata.....Respondent

Appearances by:

Sh. Miraj D. Shah, A/R, appeared on behalf of the Assessee.

Sh. Praveen Kishor, CIT (Sr. D/R), appeared on behalf of the Revenue.

Date of concluding the hearing : March 25th, 2021

Date of pronouncing the order : April 30th, 2021

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the assessee directed against the order of the Learned Commissioner of Income Tax (Appeals)-13, Kolkata [hereinafter the "CIT(A)"], passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), dated 27.03.2019 for the Assessment Year 2012-13.

2. The assessee is a company and is in the business of investment in share and securities. It filed its original return of income for the AY 2012-13 on 18.09.2012 declaring total income of ₹1060/-. The case was selected for scrutiny and the AO completed the assessment u/s 143(3) of the Act on 14.03.2015 determining the total income of the assessee at ₹14,48,45,000/-, inter alia making an addition on account of unexplained share application money with high premium u/s 68 of the Act. The assessee carried the matter in appeal. The first appellate authority passed an *ex-parte* order and confirmed the order of the AO.

3. Aggrieved, the assessee is in appeal before us.

4. The Id. Counsel for the assessee submitted that the Id. CIT(A) was wrong in stating that none appeared on behalf of the assessee before him in response of notices. He drew the attention of the Bench to page-2 of the paper book filed by the assessee, which contained photocopy of the order sheet entry of the Id. CIT(A). In this copy of the order sheet entry it is recorded that on 03.04.2019 Mr. S.S. Lohia, FCA, A/R had filed written submissions and the case was heard. He argued that the Id. CIT(A) has not considered these written submissions and other papers on record and has dismissed the case of the assessee only on the ground that written submissions were not filed and that nobody appeared, both of which are factually wrong. He submitted that the AO in this case made the addition on the ground that share holder of the assessee company did not respond to notices issued u/s 131 of the Act. He submitted that these notices were not served and that the assessee is ready to produce all the share holders of the assessee company before the AO and comply with all the directions of the AO in this regard. Thus he pleads the case may be set aside to the file of the AO for fresh adjudication in accordance with law.

4.1. The Id. Counsel for the assessee argued in ground nos. 2, 3 & 4 which are on the issue of jurisdiction. The Id. Counsel for the assessee referred to page-4 of the paper book which is a copy of the notice issued u/s 143(2) of the Act on 12.08.2013 to the assessee, by ITO, Ward-4(3), Kolkata. He submitted that ITO, Ward-4(3), Kolkata does not have jurisdiction of the case of the assessee. Hence on 04.09.2013 the assessee has in response to the notice u/s 143(2) of the Act dated 12.08.2013 written to the ITO, Ward-4(3), Kolkata that he has no jurisdiction over its case and hence the notice is not legally valid.

4.2. He pointed out that the case was then transferred by ITO, Ward-4(3), Kolkata to ITO, Ward-4(4), Kolkata and thereafter to ITO, Ward-5(3), Kolkata, who is the officer having jurisdiction over the assessee's case. He submitted that this transfer from ITO, Ward-4(4), Kolkata to ITO, Ward-5(3), Kolkata was done on 27.12.2015. He pointed out that, ITO, Ward-5(3), Kolkata did not issue any notice u/s 143(2) of the Act to the assessee as required by law. Hence he argued that the assessment order passed by ITO, Ward-5(3), Kolkata u/s 143(3) of the Act on 14.03.2015 is bad in law.

4.3. For this proposition that the assessment order passed u/s 143(3) of the Act without issuance of notice u/s 143(2) of the Act by the AO having jurisdiction over the assessee is bad in law he relied on the following judgements:

i) *Pr. CIT vs. Oberoi Hotels Pvt. Ltd. 409 ITR 132 (Cal).*

ii) *ACIT vs. Hotel Blue Moon 321 ITR 328 (SC).*

4.4. He further relied on the decision of the Hon'ble Supreme Court in the case of *CIT vs. Laxman Das Khandelwal* reported in [2019] 108 taxmann.com 183 (SC) for the proposition that non-issuance of notice u/s 143(2) of the Act is a jurisdictional issue and it cannot be cured by having recourse to Section 292BB of the Act.

4.5. He argued that it is well settled in law that, if the AO is not having jurisdiction over the case of the assessee and issues notice u /s 143(2) of the Act, then all the subsequent acts including the assessment order passed based on such notice is bad in law and *void-ab-initio*. For this proposition, he relied on the following case laws:

i) *Hillman Hosiery Mills Pvt. Ltd., Kolkata vs. D.C.I.T.,Circle-11(1), Kolkata* in *ITA 2634/KOL/2019* dated 12.01.2021.

ii) *K.A.Wires Ltd., Kolkata vs. I.T.O.,Ward-8(3), Kolkata* in *ITA 1149/KOL/2019* dated 22.01.2020.

4.6. He submitted that this jurisdictional issue has to be adjudicated and in case he fails on the issue of jurisdiction that, then the assessment be restored to file of the AO for fresh adjudication in accordance with law on the ground of violation of principles of natural justice.

5. The ld. Sr. D/R Mr. Praveen Kishor opposed the contention of the assessee and submitted that the PAN of the assessee was in the jurisdiction of ITO, Ward-4(3), Kolkata, as per the address of the assessee and database of the Department and hence, ITO, Ward-4(3), Kolkata had issued a notice u/s 143(2) of the Act to the assessee. He submits that once the assessee has pointed out that ITO, Ward-4(3), Kolkata does not have jurisdiction, the case was transferred to the AO having jurisdiction and ultimately ITO, Ward-5(3), Kolkata passed the assessment order u/s 143(3) of the Act. He submitted that in such cases it cannot be said that notice u/s 143(2) of the Act was

issued to the assessee by the ITO who had no jurisdiction over the assessee. He argued that in the Department jurisdiction is shifted dynamically and any officer who had at that particular point jurisdiction can issue a notice and that the assessment is a continuous process. As one of the officers issued notice u/s 143(2) of the Act, he submits that the validity of the assessment order should be upheld.

5.1. On the issue of violation of principles of natural justice, the ld. D/R submitted that he has no objection to the case being restored to the file of the AO for fresh adjudication in accordance with law provided that, the assessee undertakes to produce all the share holders and their representatives before the AO for examination.

6. In reply, the ld. Counsel for the assessee drew the attention of the Bench to the notification issued by the CBDT with respect to jurisdiction of the assessee as per their geographical locations, corporate and non-corporate assesseees, salaried persons/business/professionals etc. and submitted that a perusal of the same clearly demonstrates that, ITO, Ward-4(3), Kolkata has no jurisdiction over the case of the assessee. He submitted that jurisdiction based on certain criteria is conferred by the CBDT on an officer and simply because PAN data is with a particular officer, jurisdiction of an assessee cannot be said to have been conferred on that officer. He argued that computer system cannot confer jurisdiction under the Act. He also referred to the letter written by the ITO, Ward-5(1), Kolkata dated 17.03.2021 to the Pr. CIT-2, Kolkata, where he had acknowledged that ITO, Ward-4(3), Kolkata has no jurisdiction over the case. He further pointed out that in this report dated 17.03.2021 the ITO clearly states that the notice issued by ITO, Ward-5(3), Kolkata is not traceable and it could not be located in the system also. Thus he submits that this is a clear admission on the part of the Revenue on the facts of this case.

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

8. We first take up the issue of jurisdiction. ITO, Ward-4(3), Kolkata issued notice u/s 143(2) of the Act on 12.08.2013 to the assessee. The assessee on 04.09.2013 replied as follows:

"Kindly refer to the above. A notice U/s 143(2) of the Income Tax Act, 1961 dated 12/08/2013 was served on for Asst year 2012-13.

In this regard and as per our information you do not hold the charge and jurisdiction over our case. As per our understanding I.T.O. Ward 5(3) holds jurisdiction over this case.

In view of the above, we submit that notice issued and proceeding undertaken by you in our case is not valid as per law and you are requested to kindly do the needful in this regards.

Kindly note that compliance to your notice is without prejudice to our right to challenge the validity of the proceeding including the issue of jurisdiction or limitation.

Accordingly, the provisions of section 292BB or any other provisions will not validate the proceeding."

(Emphasis ours)

8.1. Admittedly, no notice u/s 143(2) of the Act was issued to the assessee by ITO, Ward-5(3), Kolkata. This fact is admitted by the ITO, Ward-5(1), Kolkata in his letter addressed to the Pr. CIT-2, Kolkata in F. No. I.T.O./W-5(1)/KOL/2020-21/165 dated 17.03.2021. We extract part of this for ready reference:

"However from the Notice U/s. 143(2) dated 12/08/2013 attached with your above letter, it is observed that the said notice was issued by the then ITO, Ward 4(3), Kolkata as PAN was lying with him. Address of assessee Eversafe Securities, pvt.Ltd. was 41, N.S.Road, Kolkata 700001. Jurisdiction of 41 ,N.S.Road, KolKata 700001 were lying with ITO, Ward 5(3), Kolkata, and for this file was transferred to ITO, Ward 5(3), Kolkata.

For notice issued by ITO, Ward 5(3), Kolhata, since file is not traceable, attempt was made to locate from the system. No such Notice was found in system."

8.2. The issue is whether the assessment order passed u/ s 143(3) of the Act dated 14.03.2015 by the ITO, Ward-5(3), Kolkata is bad in law when a notice u/s 143(2) of the Act was not issued by the jurisdictional assessing officer.

8.3. This Bench of the Tribunal in the case of *Hillman Hosiery Mills Pvt. Ltd.* (supra) 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 noncorporate 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 have 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 judge 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.

9.1. This Bench of the Tribunal in the case of Krishnendu Chowdhury vs. ITO reported in [2017] 78 taxmann.com 89 (Kolkata-Trib.) held as follows:-

"Return of income of assessee was Rs. 12 lakhs - As per CBDT instruction, jurisdiction for scrutiny assessment vested in Income-tax Officer and notice under section 143(2) must be issued by Income-tax Officer, Ward-1, Haldia and none other - But, notice was issued by Asstt. Commissioner, Circle Haldia much after CBDT's instruction and knowing fully well that he had no jurisdiction over assessee - Whether, therefore, notice issued by Asstt. Commissioner was invalid and consequently assessment framed by Income-tax Officers becomes void since issue of notice under section 143(2) was not done by Income-tax Officers as specified in CBDT instruction No. 1/2011."

9.2. The Hon'ble High Court of Calcutta in the case of West Bengal State Electricity Board vs. Deputy Commissioner of Income Tax, Special Range - I, reported in [2005] 278 ITR 218 (Cal.) has held as follows:-

"Section 254 of the Income-tax Act, 1961 - Appellate Tribunal - Powers of - Assessment years 1983-84 to 1987-88 - Whether a question of law arising out of facts found by authorities and which went to root of jurisdiction can be raised for first time before Tribunal - Held, yes Whether jurisdiction of Assessing Authority is not dependent on date of accrual of cause of action but on date when it is initiated - Held, yes - Whether once a particular jurisdiction is created, same must be prospective and cannot be retrospective and it has to be interpreted having regard to manner in which it has been sought to be created - Held, yes - Assessee"

9.3. The Hon'ble Supreme Court in the case of CIT vs. Laxman Das Khandelwal [2019] 108 taxmann.com 183 (SC), held as follows:-

"7. A closer look at Section 292BB shows that if the assessee has participated in the proceedings it shall be deemed that any notice which is required to be served upon was duly served and the assessee would be precluded from taking any objections that the notice was (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner. According to Mr. Mahabir Singh, learned Senior Advocate, since the Respondent had participated in the proceedings, the provisions of Section 292BB would be a complete answer.

On the other hand, Mr. Ankit Vijaywargia, learned Advocate, appearing for the Respondent submitted that the notice under Section 143(2) of the Act was never issued which was evident from the orders passed on record as well as the stand taken by the Appellant in the memo of

appeal. It was further submitted that issuance of notice under Section 143(2) of the Act being prerequisite, in the absence of such notice, the entire proceedings would be invalid.

8. The law on the point as regards applicability of the requirement of notice under Section 143(2) of the Act is quite clear from the decision in *Hotel Blue Moon's case* (supra). The issue that however needs to be considered is the impact of Section 292BB of the Act.

9. According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section.

The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure.

The Section is not intended to cure complete absence of notice itself."

10. Respectfully following the propositions of law laid down in all these case-law and applying the same to the facts of the case, we hold that the assessment order is bad in law for the reason that the Assessing Officer having jurisdiction over the assessee, has not issued a notice u/s 143(2) of the Act as required by the statute. Notice issue by the officer having no jurisdiction of the assessee is null and void. When a notice is issued by an officer having no jurisdiction, Section 292BB of the Act, does not come into play. Coming to the argument of the ld. D/R that objection u/s 124(3) of the Act has to be taken by the assessee on rectifying notice u/s 143(2) of the Act from a non-jurisdictional assessing officer, I am of the view that I need not adjudicate this issue, as I have held that non-issuance of statutory notice/s 143(2) of the Act by the jurisdictional Assessing Officer makes the assessment bad in law. Under these circumstances, we allow this appeal of the assessee."

11. Respectfully following the same, we have to hold that the assessment order passed by the DCIT, Circle-11(1), Kolkata, without issuance of notice u/s 143(2) of the Act, is bad in law. If it is held that the ITO Ward-3(3), Kolkata, has jurisdiction over the assessee, then the assessment order passed by the DCIT, Circle-11(1), Kolkata, would become bad in law as it would be an order passed by an officer who has no jurisdiction. Looking at it either way, we find that the assessment is bad in law."

(Emphasis ours)

8.4. This Bench of the Tribunal in the case of *K.A. Wires Ltd.* (supra) held as follows:

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

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

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

7.1. It is also not in dispute that the notice u/s 143(2) of the Act dt. 06/08/2013 was issued by the ITO Ward-33(1), Kolkata. The assessee does not fall under the jurisdiction of this officer. A perusal of the order sheet entries demonstrate that, after issuance of notice u/s 143(2) of the Act on 06/08/2013, the ITO, Ward- 33(1), Kolkata, transferred the file to ITO, Ward-8(3),

Kolkata on 03/02/2014. Thereafter, ITO, Ward-8(3), Kolkata, issued notice u/s 143(1) on 10/10/2014 and completed the assessment u/s 143(3) of the Act on 30/03/2015. The ITO Ward-8(3), Kolkata, who had the jurisdiction over the assessee, did not issue notice u/s 143(2) of the Act to the assessee. The issue before us is whether the non-issuance of notice u/s 143(2) of the Act, by the Assessing Officer having jurisdiction over the assessee makes the assessment bad in law.

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

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

120. (1) income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise' of the powers and performance of the functions by all or any of those authorities.

Explanation. - For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1).

(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income- tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to anyone or more of the following criteria, namely:-

(a) territorial area;

(b) persons or classes of persons;

(c) incomes or classes of income; and

(d) cases or classes of cases.

(4) Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein, -

(a) authorise any 1[Principal Director General or] Director General or 14[Principal Director or] Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;

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

(5) The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.

(6) Notwithstanding anything contained in any direction or order issued under this section, or in section 124, the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification.

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

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

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

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

124. (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction-

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Principal Director General or Director General or the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner; or where the question is one relating to areas within the jurisdiction of different Principal Director General or Directors General or Principal Chief Commissioners or] Chief Commissioners or Principal Commissioners or Commissioners, by the

Principal Director General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or] Commissioners concerned or, if they are not in agreement, by the Board or by such Principal Director General or] Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer-

(a) where he has made a return under sub-section (1) of section 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 115WE or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.

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

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

(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under subsection (1) or sub-section (2) of section 120.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Since there was a fundamental error, the Appellate Tribunal dismissed the appeal as incompetent since the order of the Assessing Officer who had no jurisdiction to undertake the assessment qua the assessee could never have been found to be legal or resurrected."

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

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

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

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

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

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

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

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

1. A.L. Ahuja v/s. DCIT SOT (2003) page 475 at page 480	If at the time of issue of notice u/s. 158BC the Assessing Officer had no jurisdiction the assessment is illegal.
2. Income Tax officer vs. Sarkar & Co. 1954 AIR 613 Calcutta.	If at the time of filing, of the appeal the ITO had no seisin over he assessee's case and case is transferred by the Commissioner of Income Tax from ITO Ward-III(2) to some other Officer, on the date of filing of the Appeal, the ITO Ward III(2) cannot file the Appeal and the appeal of the department rightly dismissed by the ITAT.
3. Ram Krishna Ramnath vs. Commissioner of Income Tax AIR 1932 Page 65 Nagpur	When by notification dated 28 th March, 1923 the powers conferred on the ITO should be exercised by the ACIT the Notice issued by the ITO was illegal

4. CIT West Bengal and another vs. Anil Kumar Roy Choudhury and another reported in 66ITR page 367	The decision of the Calcutta High Court in Sarkar & Co. 1954 AIR 613 Calcutta was approved and held that if the case is transferred by the commissioner or The board then the income tax officer from whom the file is transferred shall have no concern with the appeal.
5. Commercial Enterprises vs. State of Orissa 81 sales tax cases page 84	Annulment of assessment is permissible where the taxing authority had no jurisdiction to assessee.
6. Sain Baba Mohansing 90 ITR page 197	Proceedings taken by an authority who lacked jurisdiction is ab initio void.
7. Rajeevkumar Donerria v. Asst. Commissioner of Income Tax 94ITD page 344	Only the assessing officer who at the relevant time of filing of the appeal has the jurisdiction can file the appeal. An appeal filed by an officer who has no jurisdiction to file the appeal is non est.

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

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

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

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

It is therefore clear that the issue in the case before the Hon'ble Supreme Court was not with regard to the jurisdiction of the officer in issuing the notice but was with regard to the service

of notice on the proper address. The said judgement therefore does not help the department on this issue of jurisdiction now before us. Jurisdiction has to be conferred u/s 120 of the Act. Any act by an authority without jurisdiction is *ab-initio* void.

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

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

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

9. Respectfully following the propositions of law laid down in these case laws to the facts of the case we hold that the notice issued by the ITO, Ward-4(3), Kolkata u/s 143(2) of the Act on 12.08.2013 is without jurisdiction and hence *non-est* in law. It is *ab-initio* void.

10. The assessment order passed by the AO, ITO, Ward-5(3), Kolkata u/s 143(3) of the Act on 14.03.2015 was without issuance of mandatory notice u/s 143(2) of the Act, by the AO having jurisdiction over the assessee. Thus the assessment order passed u/s 143(3) of the Act, without issuance of valid notice u/s 143(2) of the Act is bad in law as held by the Hon'ble Supreme Court in the case of *Hotel Blue Moon* (supra). Thus we allow the ground nos. 1-4 in favour of the assessee and quash the assessment order passed u/s 143(3) of the Act dated 14.03.2015. As we have quashed the assessment order on the ground of above discussion, we do not adjudicate the other grounds raised by the assessee as it would be an academic issue.

11. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 30th April, 2021.

Sd/-
[Aby T. Varkey]
Judicial Member

Dated: 30.04.2021

Bidhan (P.S.)

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Copy of the order forwarded to:

1. ***M/s. Eversafe Securities Pvt. Ltd., 92, Dighirpar Road, Patipukur, Kolkata-700 048.***
2. ***ITO, Ward-5(3), Kolkata.***
3. CIT(A)- 13, Kolkata (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches