

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH “SMC”, LUCKNOW**

**[Through Virtual Hearing]**

**BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

**ITA No. 319/Lkw/2018  
Assessment Year 2013-14**

Devendra Kumar Shah, 701 Urvashi Apartment, 7/292, Tilak Nagar, Kapur - 208002 PAN – ABMPS 9132J	Vs.	ITO -3(5), Kanpur - 208001
(Appellant)		(Respondent)

Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri Harish Gidwani, DR
Date of hearing	02/08/2021
Date of pronouncement	/08/2021

**ORDER**

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Kanpur dated 26.03.2018 pertaining to Assessment Year 2013-14.

2. At the time of hearing, the Id. AR has argued only Ground No.1 which is on jurisdictional issue. The Id. AR at the outset submitted that the order has been passed by ITO, Ward-3(5) whereas notice u/s. 143(2) of the Act was issued by the ITO-1(1), Kanpur. Our attention was invited to the copy of assessment order wherein in Para 1 itself the Assessing Officer himself has noted this fact that the notice u/s. 143(2) of the Act issued by the ITO-1(1), Kanpur and then the case was transferred to ITO-3(1), Kanpur and

whereas the order has been passed by ITO, Ward 3(5) who again is not a jurisdictional Assessing Officer. It was submitted that the assessee has been filing his return of income from his address 7/186A-1, Kanpur and in this respect our attention was invited to P.B. pages 28 to 33 where the copies of income tax returns for AYs 2011-12 to 2013-14 was placed. It was submitted that as per these income tax returns assessee had been filing returns with ITO, Ward-3(1). Our attention was also invited to copy of application as moved before Income Tax PAN Services Unit, Belapur dated 17.11.2012 placed at pages 127 to 128 whereby the address of the assessee was changed from Swaroop Nagar, Kanpur to Tilak Nagar, Kanpur and our attention was also invited to P.B. pages 129 wherein the PAN Services Unit had confirmed change of address of the assessee. It was submitted that the new address also falls with Assessing Officer Ward-3(1). Our attention was also invited to copy of Form-26AS where the new address of the assessee has been mentioned. In view of these facts it was submitted that since the assessment order has been passed by Assessing Officer who has not given the notice u/s. 143(2) of the Act the assessment order passed by Assessing Officer is null and void and it was prayed that the same may be annulled. Reliance in this respect was placed on the decision of Mohd. Rizwan of Hon'ble Allahabad High Court and further reliance was placed on an order of Lucknow Bench of the Tribunal in the case of Bajrang Bali Industries.

3. The Id. DR, on the other hand, filed a copy of PAN data record of the assessee and submitted that at the time of issuing of notice u/s. 143(2) of the Act the PAN was not with ITO 3(5) and the same was lying with Income Tax Officer-1(1) and which was

transferred to Income Tax Officer-3(5) on 05/12/2014 and in this respect filed copy of PAN data record of assessee and therefore, he argued that the notice was rightly issued by Assessing Officer Ward-1(1) as the PAN was laying with him. It was submitted that the order passed by Assessing Officer, Ward 3(5) is in continuation of notice u/s. 143(2) of the Act issued by Assessing Officer, Ward 1(1) and therefore it was prayed that the ground taken by assessee be dismissed.

3.1 In the rejoinder it was submitted that very fact that Assessing Officer who had issued notice u/s. 143(2) of the Act dated 03.09.2014 transferred the case record on 09.09.2014 to Assessing Officer, Ward-3(1) itself proves that the jurisdiction over the said case was not with Assessing Officer 1(1) of the Act but was always with Assessing Officer, Ward-3(1), and therefore, in view of no notice u/s. 143(2) by Assessing Officer, Ward 1(1) or Ward 3(5) the assessment order is bad in law.

4. I have heard the rival parties and have gone through the material placed on record. I find that it is undisputed fact that the notice u/s. 143(2) of the Act was issued by ITO, Ward-1(1) which fact is apparent from the copy of assessment order itself wherein the Assessing Officer has noted this fact. This is also an admitted fact that after issue of notice u/s. 143(2) of the Act by ITO, Ward 1(1) the case was transferred to ITO, Ward- 3(1), Kanpur on 09.09.2014 and notice u/s. 142(1) of the Act along with questioner was issued to the assessee on 10.10.2014 by the ITO of Ward 3(5). It is also not disputed that ITO 3(1) or 3(5) did not issue fresh notice u/s. 143(2) of the Act. From the copies of returns for AYs.

2010-11 and 2013-14 it is observed that the assessee has been filing its return of income from address of 7/186A-1, Swaroop Nagar, Kanpur and the jurisdiction mentioned on the I.T. return is Ward 3(1). The assessee vide application dated 17.11.2012 requested the Income Tax PAN Services Unit to change his address from Swaroop Nagar, Kanpur to Tilak Nagar and it was accepted also and was conveyed to the assessee by the Income Tax Service Unit and copy of such application and its acceptance is placed at P.B. pgs. 127 to 129. On this acceptance letter the date of change is not mentioned however the fact remains that assessee had filed application for change of address on 17.11.2012 and Form No. 26AS generated by Income Tax Department also contains the new address which means that the department had taken note of the new address and the new address also falls within the jurisdiction of Assessing Officer Ward-3(1). Therefore, the notice u/s. 143(2) of the Act should have been issued by the Assessing Officer having jurisdiction over the assessee which has not been done and similarly the orders should have been passed by the same Assessing Officer who had issued notice u/s. 143(2) of the Act.

4.1 Lucknow Bench of the Tribunal in the case of Bajrang Bali Industries, under similar facts and circumstances has held as under:

*5. We have heard the rival parties and have gone through the material placed on record. It is undisputed fact that the assessment order dated 11.03.2016 has been passed by DCIT-2, Kanpur who had issued notice u/s 143(2) on 07.09.2015. The provisions relating to time limit for issue of statutory notice u/s 143(2) are contained in the provisions to Section 143(2) itself which provides that no notice under this section shall be served*

*on the assessee after the expiry of six months from the end of financial year in which the return is furnished.*

*6. In the present case, the return of income was furnished on 30.09.2013. The financial year in which the return was filed expired on 31.03.2014 and therefore, last date for issue of notice was 30.09.2014. The statutory period for issuance of notice u/s 143(2) expired on 30.09.2014 and by 30.09.2014 the notice u/s 143(2), which was within the prescribed period of time, was issued only by DCIT-IV, Kanpur who had no jurisdiction over the case, as the DCIT-IV himself had transferred the case to DCIT-2, Kanpur vide memo dated 20.08.2015, a copy of which is placed at paper book Page 3. Therefore from the above facts and circumstances, it become apparent that the first Assessing Officer who issued notice on 30.09.2014 had no jurisdiction to assess the assessee and, therefore, he transferred the case to DCIT-2, Kanpur who though had jurisdiction to assess the assessee but issued notice u/s 143(2) only on 07.09.2015 by which date period for issuance of notice had expired. We further find that no order u/s 127 of the Act was passed by the Assessing Officer to transfer the case from Kanpur-4 to Kanpur-2. The Assessing Officer who had jurisdiction to assess the assessee issued notice u/s 143(2) only on 07.09.2015 which was beyond the prescribed time limit for issuance of such notice. Therefore, the notice issued u/s 143(2) by DCIT, Kanpur-2 beyond the statutory period of time is without jurisdiction and therefore, any order passed in consequence of such notice is also liable to be quashed. Therefore, we are in agreement with the argument of Ld. AR. Accordingly, additional grounds of appeal 5 to 8 are allowed. Since we have decided the legal issues, in favour of assessee the grounds on merits of the case have become infructuous and have not been adjudicated."*

5. The Hon'ble jurisdictional High Court of Allahabad in the case of Mohd. Rizwan in ITA No. 100 of 2015 framed the following questions of law:

*"(i) Whether notice under Section 148 of Act, 1961 is a procedural step or jurisdictional.*

*(ii) Whether notice issued by an authority having no jurisdiction can attain validity by referring to Section*

*292BB of Act, 1961 only for the reason that Assessee participated before transferee Assessing Authority.*

*(iii) Whether a jurisdictional issue could have been raised by Assessee at any stage or the objection at the subsequent stage is not permissible in view of Section 124(3)(a).*

*(iv) Whether assessment made by Assessing Officer, after transfer of a case, from the stage when another officer had already issued notice under Section 148, though had no*

*jurisdiction in the matter and transferee authority did not issue any fresh notice, can be said to be valid."*

6. While answering the above questions the Hon'ble Court has held as under:

1. *"We, therefore, find that all the aforesaid questions formulated above can be considered together for the reason that principal issue engaging attention of this Court in this case is "if a notice under Section 148 of Act, 1961 was issued by incompetent Officer, i.e., one who has no jurisdiction, mere fact that subsequently on the objection of Assessee with regard to jurisdiction, matter is transferred to another A.O., can a valid assessment be made by him without issuing a fresh notice under Section 148 of Act, 1961?"*

2. *Sri Manish Misra, learned counsel for appellant placed reliance on Section 292BB of Act, 1961 so as to contend that Assessee having participated before transferee A.O., any defect of notice will not make assessment invalid.*

3. *Per contra, learned counsel for Assessee submitted that notice issued by Competent Authority for initiating reassessment proceedings is a jurisdictional step. An invalid or illegal notice will vitiate entire reassessment proceedings. Section 292BB will not help Revenue in this matter. Entire reassessment proceedings made by transferee A.O., who did not issue any fresh notice under Section 148 of Act, 1961, are illegal and has rightly been set aside by Tribunal.*

4. *Before considering rival submissions, we may place on record brief factual matrix giving rise to above dispute.*

5. *For A.Y. 2010-11, Income Tax Department received AIR information from Punjab National Bank, Lucknow (hereinafter referred to as "PNB") stating that Assessee has deposited cash of*

Rs. 70,19,000/- in Financial Year (hereinafter referred to as "F.Y.") 2009- 10 in his bank account. In order to verify source of deposit, a non- statutory notice dated 25.08.2011 was issued by ITO-IV(1), Lucknow requiring Assessee to file details. Shri R.U. Khan, Advocate appeared and filed reply but details were insufficient. Consequently, after recording reasons for initiating proceedings under Section 147 of Act, 1961, a notice under Section 148 of Act, 1961 was issued and served upon Assessee through speed post on 18.11.2011. He was required to file Return of Income for the relevant year. Since Assessee failed to comply with said notice, ITO-IV(1), Lucknow proposed to pass order under Section 144 of Act, 1961 on the basis of material available on record.

6. Case was thereafter transferred to ITO-V(2), Range-V, Lucknow by designated A.O. on 11.04.2012 for the reason that jurisdiction of the case of Assessee was with said Officer and not with ITO-IV(1), Range-IV, Lucknow.

7. Shri K.S. Rastogi, another Advocate, appeared on behalf of Assessee before jurisdictional A.O., and filed acknowledgment of Income Tax Return declaring income of Rs. 2,18,610/- but could not explain deposit of cash of Rs. 70,19,000/- in Saving Bank Account.

8. Assessee was offered opportunities vide notices dated 14.12.2012, 02.01.2013, 05.02.2013 issued under Section 142(1) of Act, 1961 fixing 28.12.2012, 10.01.2013 and 15.02.2013. Still, Assessee failed to comply show cause notices. For non-compliance under Section 271(1)(b) of Act, 1961, a show cause notice was also issued on 05.02.2013. Still Assessee did not cooperate. Hence, a show cause notice for completion of assessment under Section 144 of Act, 1961 was issued on 08.03.2013 fixing case for 15.03.2013. Assessment was finalized on 18.03.2013 computing total income as Rs. 72,37,610/-.

9. A.O. passed another order imposing penalty under Section 271(1)(b) of Act, 1961 of Rs. 40,000/, i.e., Rs. 10,000/- each, for four defaults under Section 271(1)(b) of Act, 1961.

10. Another appeal was preferred against penalty order dated 30.09.2013 which was also dismissed by Commissioner of Income Tax (Appeal)-II, Lucknow (hereinafter referred to as "CIT(A)-II") vide order dated 30.09.2014 passed separately.

11. Assessee then preferred further Appeals No. 89 and 90/LKW/2015 before Tribunal which have been allowed vide order dated 16.04.2015 and order of assessment as well as penalty under Section 271(1)(b) of Act, 1961 have been set aside.

12. The sole ground found favour with Tribunal is that notice under Section 148 of Act, 1961 was issued by ITO-IV(1), Lucknow

*who had no jurisdiction in the matter and after transfer of case, ITO- V(2) who had jurisdiction in the matter, proceeded to make assessment without issuing notice under Section 148 of Act, 1961 which was mandatory, being a jurisdictional step. Earlier notice issued by an authority having no jurisdiction would vitiate the entire proceedings as said notice issued by an incompetent Authority will not be a valid notice under Section 148 of Act, 1961.*

*13. Learned counsel appearing for Assessee contended that relevant A.Y. is 2010-11 which ended on 31.03.2010. Even if, no Return is filed within time specified under Section 139(1) of Act, 1961, still Assessee could have filed Return under Section 139(4) of Act, 1961 upto 31.03.2012, i.e., before expiry of one year from the end of relevant A.Y. Return was actually filed by Assessee on 17.02.2012, hence it was within the ambit of Section 139(4) of Act, 1961. Though, there was sufficient time to file Return and even time for issue of notice under Sections 142(1) and 143(2) of Act, 1961 making assessment under Section 143(3) of Act, 1961 was subsisting, a notice under Section 148 of Act, 1961 was issued through speed post on 18.11.2011 by ITO-IV(1), Lucknow who had no jurisdiction over Assessee. It shows that Section 148 of Act, 1961 was invoked as if it is a substitute of Section 142 of Act, 1961 which is misconceived and incorrect. Apparent reason for initiating reassessment proceedings under Section 148 of Act, 1961 is AIR information received from PNB showing cash deposit of Rs. 70,19,000/- in Assessee's Saving Bank Account. Since notice under Section 148 of Act, 1961 dated 18.11.2011 was void having been issued by an Officer having no jurisdiction, further notice issued under Section 143(2) of Act, 1961 by same Officer on 17.02.2012 is also void, Ab initio and illegal.*

*14. Learned counsel for Assessee submitted that ITO-IV(1), Lucknow, admittedly, had no jurisdiction and, before us also, this fact has not been disputed by learned counsel appearing for Revenue. As per letter dated 21.02.2012, issued to various Income Tax Officers, effective from 01.06.2010, Assessee was actually within the jurisdiction of ITO Range-V and not ITO Range-IV. Case was transferred to A.O. having jurisdiction on 11.04.2012. The jurisdictional A.O., however, completed assessment without issuing notice under Section 148 of Act, 1961 on 18.03.2013 adding cash deposits in the income of Assessee. He also issued an order under Section 271(1)(b) of Act, 1961 imposing penalty of Rs. 40,000/-.*

*15. It is also contended on behalf of Assessee, when alleged AIR information was available at the relevant time for making regular assessment under Section 143(3) of Act, 1961, against Return filed under Section 139(4) of Act, 1961, ex-FACie, there was no reason to*

*initiate reassessment proceedings under Sections 147/148 of Act, 1961.*

16. *Chapter XIV of Act, 1961 contains provisions laying down procedure for assessment and it runs from Sections 139 to 158. Broadly, Section 139(1) casts an obligation on every person to furnish voluntarily a Return of his total income or total income of any other person in respect of which he is assessable if such total income during previous year exceeds maximum amount which is not chargeable to Income Tax.*

17. *Where Assessee fails to file voluntary Return under Section 139(1) within time prescribed, A.O. may issue a notice under Section 142(1) requiring such person to furnish a Return of his income in the prescribed form. Such Return can be directed to be filed before the end of relevant A.Y.*

18. *Section 139(4) provides that a person who has not furnished a return within the time allowed under sub-Section (1), or within the time allowed under a notice issued under Section 142(1), may furnish return for any previous year at any time before expiry of one year from the end of relevant A.Y. or before completion of assessment, whichever is earlier.*

19. *A notice under Section 142(1) can also be issued to a person who has made a Return under Section 139, requiring to produce such accounts or documents as A.O. may require. For the purpose of exercising power under Section 142(1), before issuing notice, A.O. must be satisfied that the documents needed for the purpose of making assessment, have some bearing on the pending assessment.*

20. *This Court in **Juggilal Kamlapat Cotton and Spinning and Weaving Mills Co. Ltd. Vs. ITO 1983 (142) ITR 710 (Alld)** has observed that arriving at such a satisfaction is a part of jurisdictional fact so that A.O. acquires jurisdiction to issue a notice under Section 142(1) for production of any document only, if, after application of mind, he arrived at a conclusion that documents directed to be produced would have a bearing on the assessment and he requires the same for making assessment.*

21. *Where a Return has been filed under Section 139 or in response to notice under Section 142(1), but A.O., where he has reason to believe that any claim of loss, exemption, deduction, etc. made Return inadmissible, serve on the Assessee a notice specifying particulars of such claim, etc. and may require Assessee to produce relevant evidence as material to justify such need.*

22. *Where A.O. does not find any reason to issue notice under Section 143(2), it may make assessment summarily under Section*

*143(1). The period within which notice under Section 143(2) can be served is during F.Y. in which Return is furnished or within six months from the end of month in which Return is furnished whichever is later. On the date specified in the notice under Section 143(2), or soon or later, A.O. can pass an order in writing accepting or rejecting claims and make an assessment determining total income.*

*23. Where a person fails to file Return voluntarily or after service of notice, A.O. may proceed to make a best judgment assessment after taking into account all relevant materials which A.O. has gathered.*

*24. Sections 147 and 148 relates to procedure for reassessment or opening of assessment where A.O. has reason to believe that any income chargeable to tax has escaped assessment for any A.Y.*

*25. Section 148 provides for issue of notice where income has escaped assessment and A.O. intends to make reassessment or re-computation under Section 147.*

*26. Looking into the scheme of procedure for assessment as briefly discussed above, we find that, in the present case, dispute relates to A.Y. 2010-10 (F.Y. 2009-10, i.e., 01.04.2009 to 31.03.2010). Time to file Return of income under Section 139(4) was obviously available to Assessee upto 31.03.2012. It is also not disputed that return was actually filed by Assessee on 17.02.2012. In these circumstances, we do not find any occasion on the part of Revenue to have served a notice under Section 148 of Act, 1961 upon Assessee on 18.11.2011 inasmuch as neither assessment was made till date nor there was any occasion to assume that there was any escapement of income from assessment. This entire exercise of reassessment commencing from notice dated 18.11.2011, in our view, and even otherwise, was illegal.*

*27. Now we come to legality of notice issued under Section 148. Admittedly, it was issued by a Designated Officer authorized to receive AIR information and make inquiry. Thereafter, said Designated Officer was supposed to furnish entire material to Competent A.O. for further action.*

*28. In the present case, notice under Section 148 was not issued by A.O. having jurisdiction over Assessee and instead it was issued by Designated Officer authorized to collect AIR information and make inquiry in this regard. No notice was issued under Section 148 admittedly by Jurisdictional A.O.*

*29. Section 148 clearly talks of issue of notice by A.O. Meaning thereby, A.O. having jurisdiction over Assessee. In fact, it is his satisfaction which is to be recorded for justifying reopening of*

*assessment/reassessment proceedings as contemplated under Section 147 and recording of reasons for the same purpose is mandatory. The satisfaction of A.O. could not have been hired or be delegated to any other authority.*

**30. In Commissioner of Income Tax, Kerala Vs. Thayaballi Mulla Jeevaji Kapasi 1967 (66) ITR 147 (SC),** Court held that notice under Section 148 cannot be regarded as mere procedural requirement. It is a condition precedent for initiation of proceeding for assessment.

**31. In Y. Narayana Chetty and another Vs. Income Tax Officer, Nellore and others 1959 (35) ITR 388 (SC),** it was held, that, if notice issued is invalid or not properly served, any proceeding taken by A.O. to back assess, would be illegal and void.

**32. A Constitution Bench, in Sardar Baldev Singh Vs. Commissioner of Income Tax, Delhi (1960) 40 ITR 605 (SC),** a *pari materia* provision, i.e., Section 34 under old Indian Income Tax Act, 1922 (hereinafter referred to as "Act, 1922") was considered and it was held that A.O. having power to issue notice should be a particular A.O. having jurisdiction over Assessee at the time of issue of requisite notice. If notice issued by any other A.O. or notice is bad for any reason, than such back assessment would be illegal.

**33. In Anirudhsinhji Jadeja and another Vs. State of Gujarat 1995 (5) SCC 302,** Court held, if a statutory authority has been vested with jurisdiction he has to exercise it according to its own discretion.

**34. In K.K. Loomba and Mrs. Uma Loomba Vs. Commissioner of Income Tax and others 2000 (241) ITR 152 (Delhi)** it was held that A.O. having natural jurisdiction over the area would have jurisdiction to assess, issue notice under Section 148 as well and it cannot be done by anyone else.

**35. Punjab and Haryana High Court in the case of Lt. Col. Paramjit Singh Vs. Commissioner of Income Tax and another 1996 (220) ITR 446 (Punjab)** said "a notice for reassessment can be issued only by A.O. who had concluded the proceedings."

**36. We, however, do not go to that extent for the reason that there may be any subsequent change resulting in change of jurisdiction of A.O. Notice of reassessment can be issued by such an Officer but not by Officer who has no jurisdiction for assessment/reassessment.**

**37. In Commissioner of Income Tax Vs. Rajeev Sharma**

**2011(336) ITR 678, Court observed "provisions contained in Section 148 of Act, 1961 with regard to escaped assessment must be construed strictly with regard to procedure prescribed for escaped assessment."**

38. *The reason for issuance of notice by Competent A.O. is quite obvious inasmuch as such notice could have been issued only when concerned A.O. has reason to believe that some income has escaped assessment and recomputation/reassessment is needed. Now such satisfaction can be of that A.O. only who has jurisdiction in the matter and not of any third party.*

39. *We, therefore, hold that in the present case, no valid notice under Section 148 was issued by Jurisdictional A.O. before making assessment/reassessment and, therefore, proceedings of reassessment pursuant to notice issued under Section 148 by an incompetent Officer are void and Ab initio.*

40. *When a notice under Section 147/148 issued is a jurisdictional step, it cannot be treated to be mere irregularity curable under Section 292BB. In fact, Section 292BB has no application to a case where no valid notice has been issued by Competent A.O. This is clear from a bare reading of Section 292BB of Act, 1961 which reads as under:-*

**"292BB.** Where An ASSessee hAS Appeared in Any proceedings or co-operAted in Any inquiry relating to An ASSEssment or reASSEssment, it shall be deemed thAt Any notice under Any provision of this Act, which is required to be served upon him, hAS been duly served upon him in time in ACCorDance with the provisions of this Act And such ASSessee shall be precluded from tAKing Any objection in Any proceeding or inquiry under this Act 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:*

**Provided** thAt nothing contAined in this section shall Apply where the ASSessee hAS rAised such objection before the completion of such ASSEssment or reASSEssment."

41. *The curability permitted under Section 292BB is with regard to service of notice upon Assessee and not with regard to competence of authority who has issued notice.*

42. *A similar question was considered in Commissioner of Income Tax, Gujarat-II Vs. Kurban Hussain Ibrahimji*

*Mithiborwala 1972 (4) SCC 394 and Court said "Income Tax Officer's jurisdiction to reopen an assessment under Section 34 depends upon issuance of a valid notice. If notice issued by him is invalid for any reason, entire proceedings taken by him would become void for want of jurisdiction." Court then held that notice was invalid as A.O. had no jurisdiction to revise assessment then it cannot be treated to be mere irregularity so as to validate proceedings of assessment if the Assessee had participated.*

**43.** *Similar is the view taken by a Full Bench of this Court in **Laxmi Narain Anand Prakash Vs. Commissioner of Sales Tax, Lucknow AIR 1980 ALL 198.***

*44. The contention of learned counsel for Revenue that participation of Assessee before Jurisdictional A.O. would operate as acquiescence or waiver and will not invalidate proceedings is thoroughly misconceived.*

*45. In **Karnal Improvement Trust, Karnal Vs. Smt. Prakash Wanti and another (1995) 5 SCC 159**, Court said that acquiescence does not confer jurisdiction and erroneous interpretation should not be permitted to perpetuate and perpetrate defeating of legislative animation.*

**46.** *In **Abdul Qayume Vs. Commissioner of Income Tax 1990 (184) ITR 404**, Court said "an admission or an acquiescence cannot be a foundation for assessment where the income is returned under an erroneous impression or misconception of law."*

*47. It is well settled that a jurisdiction can neither be waived nor created even by consent and even by submitting to jurisdiction, an Assessee cannot confer upon any jurisdictional authority, something which he lacked inherently.*

*48. Even if, it can be said that Assessee submitted to jurisdiction of A.O., law is that Assessee cannot confer jurisdiction on an authority who did not have the same and we find support from **Commissioner of Income Tax Vs. Hari Raj Swarup and sons (1982) 138 ITR 462 (Alld.)**.*

*49. In **Mir Iqbal Husain Vs. State of U.P. 1963 (50) ITR 40**, it was held that requirement of valid notice cannot be waived. The mere fact that Assessee filed Return of Income pursuant to invalid notice would not render notice valid or validate subsequent proceedings which are vitiated in law for want of valid notice.*

**50.** *In **Raza Textile Ltd. Vs. Income Tax Officer, Rampur (1973) 87 ITR 539 (SC)**, Court said that it is incomprehensible to think that a quasi-judicial authority like A.O. can erroneously*

*decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen.*

**51.** *If an order is passed by a judicial or quasi-judicial authority having no jurisdiction, it is an obligation of Appellate Court to rectify the error and set aside order passed by authority or forum having no jurisdiction. This is what was held in **State of Gujarat Vs. Rajesh Kumar Chimanlal Barot and another AIR 1996 SC 2664.***

**52.** *In view of above discussion, we have no manner of doubt to answer all the four questions against Revenue and in favour of Assessee.*

**53.** *Therefore, appeal lacks merit. Dismissed.”*

7. In view of the above facts and circumstances and judicial precedents the argument taken by assessee is valid and therefore Ground Nos.1 & 2 are allowed. Nothing was argued on merits of the case therefore rest of the grounds are dismissed as not pressed.

8. In the result, the appeal filed by the assessee is partly allowed.

(Order pronounced in the open court on 17/08/2021)

Sd/-  
**(T.S. KAPOOR)**  
**ACCOUNTANT MEMBER**

Aks -  
Dtd. 17/08/2021

*Copy of order forwarded to:*

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order

Assistant Registrar