IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2370/Bang/2019
Assessment Year: 2015-16

Deputy Commissioner of Income-tax Circle-1 Bellary	**Vs.**	Shri Hothur Mohamed Iqbal Plot No.5,6,7 Hothur House Near Nandi School Cantonment Ballari 583 104 **PAN No.AADPI3635C**
APPELLANT		**RESPONDENT**

C.O. No.5/Bang/2020 (Arising out of ITA No.2370/Bang/2019)
Assessment Year: 2015-16

Shri Hothur Mohamed Iqbal Plot No.5,6,7 Hothur House Near Nandi School Cantonment Ballari 583 104	**Vs.**	Deputy Commissioner of Income-tax Circle-1, Bellary
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Vilas V. Shinde, D.R.
Respondent by	:	Shri Shiv Prasad Reddy, A.R.

Date of Hearing	:	26.08.2021
Date of Pronouncement	:	30.09.2021

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by revenue and cross objection by assessee are directed against the order of CIT(A) dated 17.9.2019**.** The revenue has raised the following grounds:-

1. *The order of the learned commissioner of Income-tax (Appeal) is opposed to law and facts of the case.*

2. *In the facts and circumstances of the case, the Ld. CIT(A) erred in interpreting the Explanation-1 to Section 10(10D) of the Act which was inserted by the Finance Act, 2013 w.e.f. A.Y. 2014-15, which clearly provides that a Keyman Insurance Policy which has been assigned to any person during its term, with or without consideration, shall continue to be treated as Keyman Insurance Policy.*

3. *In the facts and circumstances of the case, the CIT(A) erred in taking the date of assignment of policy instead of date of actual receipt of maturity claim, as engrained in the intent and content of the Law, while assessing the income of the assessee.*

4. *Each of the above grounds is without prejudice to one another and the appellant craves to add, delete, amended or otherwise modify one or more of the above grounds either before or at the time of hearing of this appeal.*

2. The assessee raised the following objections in its cross objections:

1. The appeal of the revenue is devoid of any merit and liable to be dismissed as not maintainable.

2. The Learned CIT(A):

(i). Failed to appreciate that there was no Notice u/s 143(2) issued by the jurisdictional assessing officer i.e., the Assistant Commissioner of Income Tax (ACIT), Circle 1, Bellary, before completing the impugned assessment order and therefore, the same is void-ab initio.

(ii). Failed to appreciate that the learned ITO, Ward 1(1), Belgaum, who issued the Notice u/s 143(2) dated, 25-

09-2017 had no jurisdiction over the case and therefore, the impugned assessment order passed u/s 143(3) (4) cited, 21-12-2017 is void-ab initio.

(iii). Failed to appreciate that the return of income was not filed under the jurisdiction of the learned ITO, Ward 1(1), Belgaum and further, there was no order u/s 127 transferring the jurisdiction of the case to the assessing officer at Bellary, contrary to the observations in para 6 of page 4 of his order.

(iv). Failed to appreciate that it was not a case where the Notice u/s 143(2) was issued by the jurisdictional assessing officer and subsequently there was change of the incumbent officer as per section 129 or transfer of jurisdiction by an order u/s 127 of the Act.

For these and other Grounds of Cross Objection that may be taken at the time of hearing, it is most respectfully prayed that the Hon'ble ITAT may be pleased to dismiss the Appeal of the Revenue and allow the Cross Objections of the Respondent.

3. Facts of the issue are that the assessee is an individual and Director in a company by name M/s. Hothur Ispat Pvt. Ltd. and also a partner in various firms. Assessee filed return of income for the assessment under consideration declaring income at Rs.28,15,200/- vide acknowledgement No.458911991220916 on 22.9.2015. The case was selected for scrutiny through CASS. Accordingly, notice u/s 143(2) of the Income-tax Act,1961 ['the Act' for short] dated 25.9.2017 was issued to the assessee and served on him on 27.9.2017 by ITO Ward-1(1), Belgaum. Subsequently, the case was transferred by ITO Ward-1(1), Belgaum to ITO Ward-1, Bellary. According to the PAN jurisdiction and thereon due to the income monetary limits, the case was transferred from ITO Ward-1, Bellary to ACIT Circle-1, Bellary. Accordingly, notice u/s 129 & 142(1) of the Act dated 16.1.2017 along with questionnaire was served upon the assessee on 22.11.2017. On 30.10.2017, assessee

written a letter to ITO Ward-1(1), stating that the present assessee is stationed at Bellary and regularly being assessed at Bellary, but scrutiny notice u/s 143(2) of the Act for the assessment year 2015-16 in this case of the assessee served by ITO Ward-1(1) to the assessee and requested the ITO Ward-1(1) to transfer the case to the jurisdiction of ACIT or ITO Bellary as this will facilitate a lot to the assessee if otherwise all the while considers to attend the hearing at Belgaum, which is very inconvenient and involves expenditure. In respect of this, A.O. proceeded to complete the assessment and while framing the assessment, A.O. observed that one firm, wherein the assessee is a partner namely Sharmeen Transport Company taken a keyman policy on 22.2.2005 by Rs.5 crores and assigned the same to the assessee on 2.6.2009 and assessee received the maturity amount of Rs.7.34 crores on 20.2.2015 on maturity. The A.O. observed that after insertion of explanation-1 to section 10(10D) of the Act charged Rs.7.34 crores to tax. Again, this assessee went in appeal before CIT(A). Before Ld. CIT(A), the assessee raised the ground with regard to the legality of issue of notice u/s 143(2) of the Act, which was decided against the assessee, however, on merit, the CIT(A) observed that matured keyman insurance amount received by the assessee not taxable on assignment that the amendment made to the Finance Act, 2013 to section 10(10D) of the Act is not retrospective as held for Bombay High Court in the case of Prashant J. Agarwal 243 Taxman 119.

4. Against deletion of the addition, revenue is in appeal before us. With regard to the issue of notice u/s 143(2) of the Act, assessee is in appeal before us.

5. First, we take up the revenue's appeal. These findings of ours is without prejudice to our findings in assessee's C.O. No.5/Bang/2020 with regard to legal issue on issue of notice u/s

143(2) of the Act. The Ld. D.R. submitted that the amendment to the explanation (1) to section 10(10D) of the Act, a keyman insurance policy would not change its character even if there is any assignment in favour of the assessee during the tenure of the policy. He submitted that since in the case of the assessee the policy matured after the amendment came into force, it will not come within the purview of section 10(10D) of the Act.

6. On the other hand, Ld. A.R. submitted that the firm by name Sharmeen Transport Company has taken keyman insurance policy in the name of assessee on 22.2.2005 and after payment of initial premium, the policy was assigned to the assessee on 2.6.2009 and which is matured on 10.12.2015 and maturity amount has been received by the assessee on 20.2.2015 of Rs.7.34 crores. According to the A.R. as per section 10(10D) of the Act, the maturity value of insurance amount except keyman insurance policy is not taxable. He submitted that since the keyman insurance policy was assigned in favour of the assessee on 2.6.2009, which is prior to 1st April, 2014. Therefore, keyman insurance policy was converted into an ordinary insurance policy prior to amendment to explanation 1 to section 10(10D) of the Act, which is prospective, which will not be applicable to the assessee. In this context, he relied on the various judgements.

1. Ravi Poddar Vs. ACIT 164 ITD 104, wherein held that an amount of keyman insurance policy is not taxable policy in his favour but at the time of actual receipt.
2. Naresh Kumar Trehan ITA No.3882/Del/2013 for assessment year 2008-09 dated 10.1.2014 wherein held that:-

"Thus, the issue depends on the question as to whether on assignment of the insurance policy to the assessee, it changes its character from Keyman insurance also to an ordinary policy. It is because of the reason that if it

remains Keyman insurance policy, then the maturity value received is subjected to tax as per section 10(10D) of the Act. On the other hand, if it had become ordinary policy, the premium received under this policy, ih view of the aforesaid section 1,0(10D) itself, the same would not be subjected to tax. •

Once there is no assignment of. company/ employer in favour of the individual, the character of the insurance policy changes and it gets converted into an ordinary policy. Contracting parties also change inasmuch as after the" assignment which is accepted by the insurance, the contract is now between the insurance company and the individual and not the company/ employer no more remains the contracting parties. We have to bear in mind that law permits such an assignment even LIC accepted the assignment and the same is permissible. There is no prohibition as to the assignment or conversion under the Act. Once there is an assignment, it leads to conversion and the character of policy changes. The insurance company has itself clarified that on assignment, it does not remain a keyman policy and gets converted into an ordinary policy. In these circumstances, it is not open to the Revenue to still allege that the policy in question is Keyman policy and when it matures, the advantage drawn. therefrom is taxable. Once has to keep in mind on maturity, it does not the company but who is an individual getting the matured value of the insurance." The combined judgement of Delhi High Court earlier in dases of Rajan Nanda and Naresh Trehan and Escorts Heart institute and Research Centre, delivered on 16/ 12/2011, also support the same view as above. The High Court states as follows. " In these circumstances, it is not open to the revenue to still allege that the policy in question is keyman policy and when it matures, the advantage drawn therefore is taxable. One has to keep in mind on maturity, it does not the company but who is an individual who getting the matured value of the insurance"

4.2 We have considered the rival submissions of both the parties and have perused the record of the case. Before Id. CIT(A) it was clarified that as per para 14.4 of the circular, the surrender value is taxable in the hands of the Key Man but in the case of present assessee he had paid the surrender value to the organizations which took out the said policies, and such surrender value has been taxed in the hands of Institute. Both the parties agree that this issue is covered by the decision of Hon'ble Delhi High Court in assessee's own case. vide ITA No. 165/2011. CIT vs. Dr. Naresh Kumar Trehan. wherein the Hon'ble Delhi High Court has observed as under:

> *50. "The Tribunal has taken the view that the Keyman insurance policy was taken in a particular year and assigned in the next year and both these events had taken place in the years preceding the assessment year in question. The Tribunal took note of the certificate obtained by the assessee from the LIC whereby it had certified that a Keyman insurance policy after assignment assumed the status of an ordinary insurance policy. The Tribunal also took note of the relevant provisions of the Act and the aforesaid CBDT Circular to hold as under:*
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> > *"All this shows that from the time of taking out the policy upto its maturity, the Legislature has envisaged the treatment to be*

given with regard to sums involved in the hands of the players involved. The players involved obviously are two-one, the person on the life of whom the insurance policy is taken out and second the person who takes out such policy. The premium is borne by the second person. Where such a dual role comes to an end, the very essence of the keyman Insurance Policy is lost. This is the reason why the LIC of India confirmed that after assignment of a Keyman Insurance Policy in the name of the individual and the premiums thereafter being paid by such individual, the hitherto Keyman Insurance Policy becomes an ordinary policy. In this case, on the date of maturity, the policy in question is rightly to be accepted as an ordinary insurance policy."

51. The Tribunal while giving requisite relief brought to tax the amount of surrender value at the time of assignment subject to verification by the ***AO.*** *It also rejected the alternative argument of the assessee that in case the sum received on maturity was held to be taxable then deduction be allowed for the premia paid by the assessee after the assignment of the policy, which were embedded in the maturity amount and not claimed as a deduction in the tat assessments.*

52. Thus, the issue depends on the question as to whether on assignment of the insurance policy to the assessee, it changes its character from Keyman insurance also to an ordinary policy. It is because of the reason that if it remains Keyman insurance policy, then the maturity value received is subjected to tax as per section 10(10D) of the Act. On the other hand, if it had become ordinary policy, the premium received under this policy, in view of the aforesaid section 10(10D) itself, the same would not be subjected to tax.

53. Once there is no assignment of company/employer in favour of the individual, the character of the insurance policy changes and it gets converted into an ordinary policy. Contracting parties also change inasmuch as after the assignment which is accepted by the insurance, the contract is now between the insurance company and the individual and not the company/employer no more remains the contracting parties. We have to bear in mind that law permits such an assignment even LIC accepted the assignment and the same is permissible. There is no prohibition as to the assignment or conversion under the Act. Once there is an assignment, it leads to conversion and the character of policy changes. The insurance company has itself clarified that on assignment, it does not remain a keyman policy and gets converted into an ordinary policy.

In these circumstances, it is not open to the Revenue to still allege that the policy in question is Keyman policy and when it matures, the advantage drawn therefrom is taxable. Once has to keep in mind on maturity, it does not the company but who is an individual getting the matured value of the insurance.

54. No doubt, the parties here, viz., the company as well as the individual taken huge benefit of these provisions, but it cannot be treated as the case of tax evasion. It is a case of arranging the affairs in such a manner as to avail the state exemption as provided in Section 10(10D) of the Act. Law is clear. Every assessee has right to plan its affairs in such a manner which may result in payment of least tax possible, albeit, in conformity with the provisions of Act. It is also permissible to the assessee to take advantage of the gaping holes in the provisions of the Act and to see whether these provisions allow the assessee to arrange their affairs to ensure lesser payment of tax. If that is permissible, no further scrutiny is required and this would not amount to tax evasion. Benefit inured owing to the combined effect of a prudent investment and statutory exemption provided under section 10(10D) of the Act, the section does not envisage of any bifurcation in the amount received on maturity on any basis whatsoever. Nothing can be read in section 10(10D) of the Act, which is not specifically provided because any attempt in that behalf as contended by Revenue would be tantamount to legislation and not interpretation.

55. *Accordingly, we answer the questions of law as framed in favour of the assessee and against the Revenue. As a result, the appeals of the Revenue are dismissed and those of the assesses are hereby allowed."*

5. Facts being not in dispute. respectfully, following the decision of Honble Delhi High Court. the Revenue's appeal is dismissed."

7. We have heard the rival submissions and perused the materials available on record. In this case, the policy has been taken by firm named Sharmeen Transport Company on 22.2.2005 for an amount of Rs.5 crores. It was assigned to the assessee on 2.6.2009. The policy was matured on 20.2.2015 and assessee received an amount of Rs.7.34 crores. The A.O. invoked the explanation 1 to section 10(10D) of the Act. Now we will go through the provisions of section 10(10D) of the Act and also the explanation 1 to this section. The provision of section 10D of the Act which was made it clear that any amount under the LIC policy including bonus would not be taxable. However, the aforesaid provision have certain exceptions as provided in clause (A) which provided that any sum received under keyman insurance policy would not be eligible for exemption. In case of the assessee that an assignment of policy was made on 2.6.2009 and maturity amount was received on 22.2.2015. Now the contention of the A.R. is that amendment brought to

explanation 1 to section 10(10D) of the Act by the Finance Act, 2013 w.e.f. 1st April, 2014 would not be applicable to the assessee's case since the assignment in the case of name of assessee has taken place much prior to the amendment.

8. As discussed earlier, section 10(10D) of the Act specifically excluded any sum received under a keyman insurance policy from exemption u/s 10(10D) of the Act. By Finance Act, 2012, w.e.f. 1.4.2013, explanation 1 was inserted explaining the expression "Keyman Insurance Policy". The aforesaid explanation was further amended by Finance Act, 2013 w.e.f. 1.4.2013 by adding following words:

> *Explanation 1.--For the purposes of this clause, "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration;*

9. A reading of the aforesaid Explanation would make it clear that a Keyman Insurance Policy, even if, is assigned to a person at any time during the term of the Policy, would not change its nature and character, but would still remain a Keyman Insurance Policy. Thus, after the amendment to Explanation-1, a Keyman Insurance Policy even on assignment would remain such, hence, would come within the exception provided under section 10(10D)(b) of the Act, therefore, would not be eligible for exemption under section 10(10D) of the Act. The object of the aforesaid amendment has been further clarified by CBDT in Circular no.3 of 2014, dated 21st January 2014, by stating that by taking advantage of the legal loophole in the provision of section 10(10D) of the Act, exemption is claimed in cases wherein though originally Policies were Keyman Insurance Policy, but during its term it is assigned to some other person. The Circular makes it

clear that with a view to plug such loophole and check such practices to avoid payment of tax, the provision of section 10(10D) of the Act was amended to provide that Keyman Insurance Policy assigned during its term shall continue to be treated as a Keyman Insurance Policy, hence, would not be eligible for exemption under section 10(10D) of the Act. No doubt, the amendment to Explanation-1 to section 10(10D) of the Act is applicable from the assessment year 2014-15. If we apply the provisions of section 10(10D) of the Act to the facts of the present case, undisputedly, the Policy was assigned in the name of the assessee on 02.06.2009,, whereas, it matured on 10.02.2015, i.e., during the. previous year relevant to assessment year 2015-16. Thus, it is very much clear that at the time of maturity of the Keyman Insurance Policy, the amendment to section 10(101D) of the Act by way of Explanation-1, has already been made effective, therefore, would be applicable. That being the case, the maturity value received on the Keyman Insurance Policy would be taxable at the hands of the assessee. The decisions relied upon by the learned Authorised Representative having been rendered prior to the amendment to Explanation-1 to section 10(10D) of the Act, would not be applicable to the facts of the present case. In fact, in case of CIT v/s Prashant J. Agarwal, ITA no.465 of 2014, judgment dated 26 th September 2016, 243 Taxmann 119 (Bombay HC) the Hon'ble High Court has made it clear that any sum received under the assigned Keyman Insurance Policy prior to assessment year 2014-15, would be eligible for exemption under section 10(10D) of the Act, as the amendment in Explanation-1 would apply only from 1st April 2014. The aforesaid observations of the Hon'ble Jurisdictional High Court rather supports the case of the Revenue as in the present case, the Keyman Insurance Policy has matured on 20.2.2015. Thus, the assessee received the amount on maturity of Keyman Insurance Policy after coming into effect of the amended Explanation-1 to section 10(10D) of the Act. The decision relied by assessee may not

be of any help to the assessee as there is no retrospective application of the provision. In this view of the matter, in our considered opinion, the assessee is not eligible to claim exemption under section 10(10D) of the Act on the maturity value of the Keyman Insurance Policy.

Accordingly, the appeal of the revenue is allowed without prejudice to the findings in C.O. filed by the assessee.

9.1. Now coming to the C.O., the contention of the A.R. is that notice issued u/s 143(2) of the Act by ITO Ward-11(1), Belgaum is without jurisdiction and as such the assessment order was framed is ab initio.

10.1 It is submitted that issue of a valid Notice u/s 143(2) of the Act is a condition precedent for a valid assessment. It also requires to be mentioned and emphasized that the provisions of section 292BB apply only when there is issuance of a valid Notice u/s 143(2) and the dispute is confined to its service. It is settled law that the provisions of section 292BB are not applicable to the facts of the present case for the following reasons:

(i) Admittedly and indisputably, there is no Notice u/s 143(2) issued by the jurisdictional AO i.e., ACIT, Circle-1, Bellary.

(ii) The objection to the Notice u/s 143(2) dated, 25-09-2017 was taken before the learned ITO, Ward-1, Belgaum, who has not disputed the objection or the lack of jurisdiction, and further, sent the case records to the jurisdictional AO at Bellary, acting on the objections of the assessee.

The L. A.R. relied on following decisions:

P.N. Krishnamurthy (2020) 58 CCH 0413 (Bang Trib)

10.2. The Hon'ble Jurisdictional Tribunal in the case of F.N. Krishnamurthy (2020) 58 CCH 0413 (Bang Trib) considered an IDENTICAL issue where the Notice u/s 143(2) was not issued by the jurisdictional assessing officer but another officer within the same range. In this relied upon case, the Notice u/s 143(2) came to be issued by the ITO, Ward 6(2)(2), Bengaluru whereas the assessment order was passed by the ITO, Ward 6(2)(3), Bengaluru. In contrast the Notice u/s 143(2) is issued by ITO, Ward 1(1), Belgaum, who is not even within the Range or within the Commissionerate or Chief Commissionerate in the case of the assessee.

10.3. The Hon'ble Tribunal considered the landmark decisions on this issue including the decision of the Hon'ble Supreme Court in the case of Hotel Blue Moon (2010) 321 ITR 362 (SC) and held that the jurisdiction was not vested in ITO, Ward 6(2)(2), Bengaluru and consequently, the Notice u/s 143(2) was bad in law. It may be mentioned that the assessment order in this case was issues; under the seal & signature of ITO, Ward 6(2)(3), Bengaluru who was the jurisdictional assessing officer. The Hon'ble Tribunal was pleased to quash the assessment order on the ground that there was no valid Notice issued u/s 143(2) by the assessing officer having jurisdiction over the case, which is fundamental for assuming the jurisdiction, to pass the order u/s 143(3)of the Act.

10.4 (a). Balaji Enterprise vs. ACIT [2021] '24 taxmann.com 78 (Guwahati - Trib.)

In this case, the Notice u/s 143(2) was issued by the ITO, Shillong, who transferred the case to the jurisdictional assessing

officer, ACIT, Guwahati. The jurisdictional AO - ACIT Guwahati completed the assessment order u/s 143(3). The case was transferred to the ACIT, Guwahati, accepting the objection of the assessee to the issue of Notice u/s 143(2) and exercise of jurisdiction by the ITO, Shillong. The Hon'ble Tribunal held that the Notice u/s 143(2) issued by the ITO, Shillong was invalid and in the absence of Notice u/s 143(2) by the jurisdicticr.al AO, Lhe assessment order was invalid.

The Hon'ble Tribunal further held that the case was not saved by reference to Section 124(3), because the officer issuing the Notice u/s 143(2) was not empowered to act either u/s 124 or u/s 127. The facts are IDENTICAL to the case of the assessee - as indisputably, the ITO, Ward-1, Belgaum did not have jurisdiction over the case and the case records were sent to the ACIT, Circle-1, Bellary (jurisdictional AO) acting on the objection of the assessee.

(b). Prashanth Chandra vs. CIT [2016] 387 ITR 88 (All)

The Hon'ble High Court of Allahabad in this case had an occasion to consider whether the Notice u/s 143(2) could be issued by an assessing officer who did not have the jurisdiction over the territorial area as per section 124(1). The Hon'ble HC entertained the Writ Petition, since it was a jurisdictional issue, even though the alternative remedy by way of appeal was available, ric:1 quashed the Notice u/s 143(2) as without jurisdiction. In that case, the ITO Lucknow continued the proceedings after the issue of Notice u/s 143(2) against the Mr. Prashant Chandra, who had objected to the Notice u/s 143(2), without referring the matter to the specified authority for determination of correct jurisdiction as per sub-section (2) of section 124.

The case of the appellant stands on a much better footing because there is no dispute that the learned ITO, Ward-1, Belgaum did not have jurisdiction at all, unlike in the aise before the Hon'ble HC in Prashanth Chandra (Supra) where there was transfer of the case from one place/city to another place/city and the earlier AO issued the Notice u/s 143(2) even after the transfer of the case by the competent authority.

(c) Laxman Das Khandelwal [2019] 108 taxmann.com 183 (SC)

The Hon'ble Supreme Court held that in the absence of a valid Notice u/s 143(2), the assessment order passed u/s 143(3) was invalid and the lack of jurisdiction is not cured by referring to section 292BB of the Act. Ic held that section 292BB may be pressed into service only if there is a valid Notice emanating from the Department and only the infirmities that are curable and not complete lack of jurisdiction i.e., absence of Notice.

(d) Arti Securities & Services Ltd. [2021] 123 taxmann.com 395 (Lucknow - Trib.)

In this case, the Notice u/s 143(2) was issued by the DCIT-4, Kanpur and one more Notice u/s 143(2) was also issued by the DCIT-6, Kanpur on the same day. However the case was then transferred by the DCIT, Kanpur to ITO, Kanpur on ground of monetary limit prescribed by the CBDT in its Instruction No.172011, dated, 3001-2011, as per which the jurisdiction was vested with the ITO, Kanpur since the total income declared was below Rs.20,00,000/-.

The Hon'ble Tribunal was pleased to hold that the assessment order was invalid since there was no valid Notice issued u/s 143(2) by the jurisdictional assessing officer i.e., ITO, Kanpur.

10.5 In view of the above it is submitted that the case of the assessee is unassailably on stronger foundation as the ITO, Ward-1, at far way place - Belgaum, issuing the Notice u/s 143(2) had no jurisdiction and there was no valid Notice u/s 143(2) issued by the jurisdictional assessing officer, who passed the assessment order.

11. On the other hand, the D.R. submitted that the jurisdiction of the assessee was originally with ITO Ward-1(1) Belgaum and he issued a notice u/s 143(2) of the Act to assessee on 25.9.2017. Subsequently, the case was transferred by ITO Ward-1(1) Belgaum to ITO Ward-1, Bellary according to the PAN jurisdiction and thereon due to the income monetary limits the case was transferred from ITO Ward-1 Bellary to ACIT Circle-1, Bellary. The first notice issued u/s 143(2) dated 25.9.2017 by ITO Ward-1(1) Belgaum is correct. There is no violation of law. Thereafter, the case was rightfully transferred u/s 127 of the Act to ITO Ward-1, Bellary basing on the PAN jurisdiction. Thereafter, the proceedings were continued after issuing the notice u/s 129 of the Act. As per the provisions of the Act, the new incumbent officer would get into the shoes of the predecessor officer who has initiated the assessment proceedings and issued the notice u/s 143(2) of the Act and there is no necessity of issuing fresh notice u/s 143(2) of the Act by new incumbent officer to the assessee to assume the jurisdiction, so as to frame the assessment. Thus, there is no merit in the arguments of Ld. A.R. that jurisdiction assumed by A.O. Bellary is bad in law.

12. We have heard the rival submissions and perused the record. In this case, the original jurisdiction of the assessee was with the

ITO Ward-1 Belgaum and who issued the notice u/s 143(2) of the Act dated 25.9.2017 to the assessee. Subsequently, the case was transferred by ITO Ward-1(1) Belgaum to ITO Ward-1 Bellary and the assessment was framed by ACIT Circle-1, Bellary due to income monetary limit. In between there was a transfer of file u/s 127 of the Act from the office of ITO Ward-1 Belgaum to ITO Ward-1 Bellary. According to the Ld. D.R., there is a valid transfer in accordance with the law u/s 127 of the Act. Now we will proceed to examine the provisions of section 127 of the Act.

13. We have carefully considered the rival submissions. Section 127 of the Act reads as follows:

"Power to transfer cases".

127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal 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 Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—

(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or] Chief Commissioners or Principal Commissioners or] Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal 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 [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any 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, 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."

14. It can be seen from the provisions of Sec.127(4) of the Act that the necessity of re-issuing any notice already issued by transferor AO by the transferee AO is not necessary but on the date on which a notice is issued the transferor AO should have held valid jurisdiction. In this case the notice u/s.143(2) of the Act was issued by the transferor AO on 26.4.2016 whereas he had no jurisdiction over the Assessee. Therefore the provisions of Sec.127(4) of the Act cannot come to the rescue of the revenue.

15. We find the facts of the present case are identical to the case already decided by the ITAT Kolkata Bench in the case of Rungta

Irrigation Ltd. in ITA No.1224/Kol/2019 dated 6.9.2019. The issue in the case before the ITAT Kolkata Bench in the case of M/S.Rungta Irrigation Ltd. Vs. ACIT in ITA No.1224/Kol/2019 order dated 6.9.2019 was whether, non-issue of notice u/s.143(2) by the AO who passed the assessment order will render the order of assessment void or was it a curable defect. It was the plea of the Assessee that as held by the Hon'ble Supreme Court in Hotel Blue Moon 321 ITR 362 (SC), non-issue of notice u/s.143(2) by the AO who passed the order of assessment renders the order of assessment a nullity. The factual details in that case were as follows:

1. Upto 08.10.2008 DCIT, Circle-15(1), New Delhi was the AO of assessee on the basis of territorial jurisdiction.

2. On 08.10.2008 CIT-V, Delhi transferred the jurisdiction over the assessee's case u/s. 127 to DCIT,Central Circle-1, Ranchi.

3. From 09.10.2008 to 03.11.2017 DCIT, Central Circle-1, Ranchi was the AO of assessee for all proceedings under the Act.

4. 28.07.2016 ACIT, Circle-21(1), New Delhi issued notice u/s. 143(2) to the assessee.

5. 30.06.2017 ACIT, Circle-21(1), New Delhi issued notice u/s. 142(1) to the assessee.

6. 17.07.2017 Assessee objected to jurisdiction of ACIT, Circle-21(1), New Delhi.

7. 07.08.2017 Show Cause Notice/proposal for centralization of assessee's case at Kolkata Issued by Pr. CIT7, Delhi.

8. 16.08.2017 Assessee objected to the jurisdiction of Pr. CIT7, New Delhi.

9. 24.10.2017 Pr. CIT, Central Patna issued Show Cause Notice for centralization of assessee's case under the charge of Pr. CIT, Central 2, Kolkata.

10. 03.11.2017 Pr. CIT, Central Patna passed order u/s. 127 centralizing the assessee's case with ACIT, Central Circle-3(1), Kolkata under the charge of Pr. CIT, Central 2, Kolkata.

11. 09.11.2017 ACIT, Central Circle-3(1), Kolkata intimates the assessee u/s. 129 being the succeeding AO for AY 2015-16.

12. 05.12.2017 Notice u/s 142(1) issued by ACIT, Central Circle-3(1), Kolkata for AY 2015-16.

13. 29.12.2017 Assessment order framed u/s. 143(3)of the Act by ACIT, Central Circle-3(1), Kolkata for AY 2015-16 ITA Nos.1037 & 1038/Bang/2019

16. According to the revenue as per section 127of the Act, which deals with transfer of jurisdiction of a case specifically provides in sub-section (4) of section 127 that there is no necessity to re-issue of any statutory notices already issued by the AO from whom the case is transferred. The Tribunal held that after the order of the CIT-V, New Delhi dated 08.10.2008 transferring the jurisdiction of the assessee's case to DCIT, Central Circle, Ranchi, the CIT, Delhi became functus officio and thereby his subordinate officers viz., ACIT, Circle 21(1), New Delhi, could not have issued notice u/s. 143(2) dated 28.07.2016 and in that view of the matter the notice issued by the ACIT, Circle-21(1), New Delhi u/s 143(2)was without jurisdiction and, therefore, non-est in the eyes of law. The Tribunal held that the ACIT, Central Circle-3(1), Kolkata who framed the assessment order dated 29.12.2017 pursuant to transfer of case ordered by PCIT, Central Patna dated 03.11.2017 u/s. 127 of the Act, without there being valid issuance of notice u/s 143(2) of the Act and therefore the said order is bad in law as held by the Hon'ble Supreme Court in 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 absence of a valid notice u/s 143(2) is not a curable defect. The Tribunal also noticed that it's view in the case of Hotel Blue Moon (supra) was reiterated by the Hon'ble Apex Court in the case of CIT Vs Laxman Das Khandelwal(417 ITR 325

(SC). The relevant observations of the Hon'ble Supreme Court were extracted and are as follows:

"5. At the outset, it must be stated that out of two questions of law that arose for consideration in Hotel Blue Moon's case the first question was whether notice under Section 143(2) would be mandatory for the purpose of making the assessment under Section 143(3) of the Act. It was observed:-

"3. The Appellate Tribunal held while affirming the decision of CIT (A) that non-issue of notice under Section 143(2) is only a procedural irregularity and the same is curable. In the appeal filed by the assessee before the Gauhati High Court, the following two questions of law were raised for consideration and decision of the High Court, they were:

"(1) Whether on the facts and in circumstances of the case the issuance of notice under Section 143(3) of the ncome Tax Act, 1961 within the prescribed time-limit for the purpose of making the assessment under Section 143(3) of the Income Tax Act, 1961 is mandatory? And (2) Whether, on the facts and in the circumstances of the case and in view of the undisputed findings arrived at by the Commissioner of Income Tax (Appeals), the additions made under Section 68 of the Income Tax Act, 1961 should be deleted or set aside?"

4. The High Court, disagreeing with the Tribunal, held, that the provisions of Section 142and sub-sections (2) and (3) of Section 143 will have mandatory application in a case where the assessing officer in repudiation of return filed in response to a notice issued under Section 158-BC(a) proceeds to make an inquiry. Accordingly, the High Court answered the question of law framed in affirmative and in favour of the appellant and against the Revenue. The Revenue thereafter applied to this Court for special leave under Article 136, and the same was granted, and hence this appeal.....

13. The only question that arises for our consideration in this batch of appeals is: whether service of notice on the assessee under Section 143(2) within the prescribed period of time is a prerequisite for framing the block assessment under Chapter XIV-B of the Income Tax Act, 1961?

27. The case of the Revenue is that the expression "so far as may be, apply" indicates that it is not expected to follow the provisions of Section 142, sub-sections (2) and (3) of Section 143 strictly for the purpose of block assessments. We do not agree with the submissions of the learned counsel for the Revenue, since we do not see any reason to restrict the scope and meaning of the expression "so far as may be, apply". In our view, where the assessing

officer in repudiation of the return filed under Section 158-BC(a) proceeds to make an enquiry, he has necessarily to follow the provisions of Section 142, sub-sections (2) and (3) of Section 143."

6. The question, however, remains whether Section 292BB which came into effect on and from 01.04.2008 has effected any change. Said Section 292BB is to the following effect:-

"292BB. Notice deemed to be valid in certain circumstances.--Where an assessee has appeared in any proceeding or cooperated 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."

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 an 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 ITA Nos.1037 & 1038/Bang/2019 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 Blue Moon's case. 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. Since the facts on record are clear that no notice under Section 143(2) of the Act was ever issued by the Department, the findings rendered. by the High Court and the Tribunal and the conclusion arrived at were correct. We, therefore, see no reason to take a different view in the matter."

17. In the present case, admittedly notice u/s 143(2) of the Act dated 25.9.2017 was issued by ITO Ward-1(1) Belgaum. However, he is not the concerned assessing officer of the assessee and actual assessing officer was ITO Ward-1 Bellary/ACIT Circle-1 Bellary. Being so, the notice issued u/s 143(2) of the Act, ITO Ward-1(1) Belgaum is without jurisdiction. Consequently, the assessment framed by ACIT Circle-1 Bellary on the basis of such notice issued u/s 143(2) dated 25.9.2017 by ITO Ward-1(1) Belgaum cannot be sustained. In these circumstances, decision of Kolkata bench rendered in the case of Rungta Irrigation Pvt. Ltd. is applicable to the facts of present case and also judgement of coordinate bench in the case of Golf View Homes Ltd. in ITA Nos.1037-1038 /Bang/2019 dated 10.2.2021 are clearly applicable to the facts of the present case, wherein it was held as follows:

"19.11 In the present case, admittedly no notice u/s.143(2) was issued by the AO who had jurisdiction over the Assessee at all material point of time. The Assessee filed return of income on 30.9.2015, with the DCIT-Circle-11(3), Bangalore. A notice u/s.143(2) of the Act, dated 26.4.2016 was issued by the DCIT, CC-1(3), who ceased to have jurisdiction over the Assessee w.e.f

27.5.2013. Thereafter ITA Nos.1037 & 1038/Bang/2019 notice u/s.142(1) dated 5.10.2017 was issued by the. Deputy Commissioner of Income Tax (DCIT)-Circle -11 (3) (Presently Circle-3(1)(2), Bangalore). An order of Assessment dated 7.12.2017 was passed u/s.143(3) of the Act by the Deputy Commissioner of Income Tax (DCIT)-Circle -11 (3) (Presently Circle- 3(1)(2), Bangalore). As already stated, Admittedly there was no notice issued by the Deputy Commissioner of Income Tax (DCIT)- Circle -11 (3) (Presently Circle- 3(1)(2), Bangalore) who completed the Assessment and was the AO who had jurisdiction with the Assessee w.e.f. 27.5.2013. In those circumstances, the decision of the ITAT Kolkata Bench rendered in the case of Rungta Irrigation Pvt.Ltd. (supra) will be clearly applicable to the facts of the present case.

19.12. We also find that the Hon'ble Karnataka High Court in the case of Nittu Vsanth Kumar Mahesh Vs. ACIT W.P.No.2387/2019(T-IT) in its judgment dated 11.4.2019 reported in (2019) Taxman 277 (Karnataka) has taken a view that non- service of notice u/s.143(2) of the act renders the order of assessment bad in law and that the provisions of Sec.292BB of the Act cannot cure such a defect. Therefore the decision of the Hon'ble Kerala High Court in the case of Pandinjarekara Agencies Pvt.Ltd. (supra) on which the learned CIT(A) placed reliance will not be of any assistance to the plea of the Revenue.

19.13. For the reasons set out above, we uphold the objections raised by the Assessee against the validity of the impugned order u/s 143(3) for AY 2015-16. We accordingly hold that since in the present case no valid notice u/s 143(2) was issued by the AO who held jurisdiction over the case of the Assessee the consequent order passed u/s 143(3) dated 7.12.2017 was legally unsustainable and therefore is null in the eyes of law and therefore quashed. The assessee accordingly succeeds on the preliminary legal issue raised before us. Consequently, the other grounds of appeal raised by the Assessee in its appeal does not require any consideration. The appeal of the Assessee for AY 2015-16 is accordingly allowed."

17.1 In view of the aforesaid discussion, we quash the impugned assessment order.

18. In the result, the C.O. of the assessee is allowed.

Order pronounced in the open court on 30th Sept, 2021

Sd/-	**Sd/-**
(Beena Pillai)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 30th Sept, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.