

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH "C" KOLKATA**

Before Shri Rajpal Yadav, Vice President (KZ) and  
Shri Shri Manish Borad, Accountant Member

आयकर अपील सं.य/ ITA No.1136/Kol/2019 Assessment Year:2015-16
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Shri Anil Kumar Khetawat, GB, Rameswara Apartment, 19A, Sarat Bose Road, Bhowanipore, Kolkata-700 020.	<b>बनाम</b> V/s.	ACIT, Circle-31, Kolkata 10B, Middleton Row, Income Tax Office, Kolkata-700 071.
PAN: AGCPK9743J		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant/Assessee	Shri Sunil Surana, FCA,Ld.AR
प्रत्यर्थी की ओर से/By Respondent/Department	Shri Anand Kumar Singh, Addl CIT,Ld.DR
सुनवाई की तारीख/Date of Hearing	06-04-2022
घोषणा की तारीख/Date of Pronouncement	26-05 -2022

**आदेश /O R D E R**

PER MANISH BORAD, AM.

This appeal of the assessee for the assessment year 2015-16 is directed against the order of Id. Commissioner of Income-tax (Appeals)-09, Kolkata dated 12-03-2019, which is arising out of the assessment order framed u/s. 143(3) of the Income Tax Act dated 22-

09-2017 passed by Assistant Commissioner of Income Tax, Circle-31, Kolkata.

2. The assessee has raised the following grounds of appeal:-

*1. For that the Ld. CIT(A) erred in confirming the order passed by the AO U/s. 143(3) when the notice u/s. 143(2) was issued by the AO having no jurisdiction over the assessee and therefore the entire assessment proceedings should be held as-initio-void.*

*2. For that the Ld. CIT(A) erred in confirming the disallowance amounting to Rs.13,65,536/- being the interest paid which was allowable deduction while computing the total income and even otherwise the issue was outside the scope of limited scrutiny.*

*3. For that on the facts and circumstances of the case the disallowance of interest expenses was unjustified and not in accordance with law.*

3. At the outset, Ld. Counsel for the assessee has stated that legal issue raised in Ground No. 1 is squarely covered in favour of the assessee by the decision of this Tribunal in the case of Shri Sukumar Chandra Sahoo, Purba Medinipur Vs. ACIT, Circle-27, Haldia, Purba Medinipur, ITA No. 2073/Kol/2016 dated 27.09.2017 in view of the fact that as per Instruction ( No. 1/2011 dated 31.01.2011) issued by CBDT (Central Board of Direct Taxes), the jurisdiction of 'non-corporate assessee' having income above Rs. 15 lakhs in case assessee is residing in *Muffasil* area and income above of Rs. 20 lakhs if residing at metro citifies, lies with ACIT/DCIT. However, in the instant case even when the assessee is not a corporate and is

residing at Kolkata and income declared in Income-tax Return is more than Rs. 20 lacs, notice issued u/s. 143(2) of the Act is issued by the ITO, Ward 34(2), Kolkata. Since valid notice u/s. 143(2) of the Act was not issued, the assessment proceedings deserves to be quashed. The Ld. Counsel for the assessee also relied on written submissions placed on record.

4. Per contra, on the legal issue the Learned Departmental Representative vehemently argued supporting the orders of the lower authorities.

5. We have heard the rival contentions and perused the records placed before us. Admittedly, the assessee is an individual residing at Kolkata and income of Rs. 91,71,740/- was declared in the return for the AY 2015-16 filed on 25-08-2015. Notice for scrutiny issued u/s. 143(2) of the Act dt. 29-07-2016 by the ITO,W-34(2), Kolkata, placed at page-8 of the paper book. Referring to the claim made by Ld. Counsel for the assessee, the notice issued u/s. 143(2) of the Act was not valid in view of the said CBDT Instruction No. 1/2011 dated 31.01.2011. We find that this tribunal in the case of Shri Sukumar Chandra Sahoo (*supra*) has dealt with similar issue in relevant findings from this order at para 4.5 and 6, is reproduced herein below:-

*“4. Brief facts of the case are that the assessee is an individual who filed his return of income for the year under consideration wherein he declared total income to the tune of Rs.50,28,040/-. The Ld. AR for the assessee submitted that as per the CBDT Instruction No. 1/11 (F. No. 187/12/2010-IT(AT) dated 31.01.2011 CBDT fixed new monetary limit in Mufassil areas, according to which income above Rs. 15 lacs for ‘non corporate*

assessee' and Rs.20 lacs for 'corporate returns' has to be assessed by ACIT/DCIT. Thus, according to Ld. Counsel, since Haldia is a Muffasil area and instructions given by the CBDT is binding on the officers of the Department and since the assessee has declared more than Rs. 50 lacs as his returned income, then the scrutiny assessment can be done only by the ACIT/DCIT and not by the ITO who does not have the jurisdiction to do so. For ready reference, Instruction No. 1/2011 is reproduced below:

**“INSTRUCTION NO. 1/2011 (F. NO. 187/12/2010-IT(A-1), DATED 31-1-2011**

*References have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship.*

*An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:*

	<i>Income Declared (Mofussil areas)</i>		<i>Income Declared (Metro cities)</i>	
	<i>ITOs</i>	<i>ACs/DCs</i>	<i>ITOs</i>	<i>DCs/ACs</i>
<i>Corporate returns</i>	<i>Upto Rs. 20 lacs</i>	<i>Above Rs. 20 lacs</i>	<i>Upto Rs. 30 lacs</i>	<i>Above Rs. 30 lacs</i>
<i>Non corporate returns</i>	<i>Upto Rs. 15 lacs</i>	<i>Above Rs. 15 lacs</i>	<i>Upto Rs. 20 lacs</i>	<i>Above Rs. 20 lacs</i>

*Metro charges for the purpose of above instructions shall be Ahmedabad, Bangalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune.*

*The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from 1-4-2011.”*

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 had the pecuniary jurisdiction to issue notice he duly transferred the file to the ACIT, Circle-27, Haldia on 24.09. 2014 when the ACIT issued statutory notice which was beyond the time limit prescribed for issuance of notice u/s. 143(2) of the Act. We note that the ACIT by assuming the jurisdiction after the time prescribed for issuance of notice u/s. 143(2) of the Act notice became *qoarum non judice* 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.”*

6. From perusal of the above finding of this tribunal, we find that the same is squarely applicable on the facts of the instant case so much shows that the assessee being a non corporate residing at Kolkata having income above Rs. 20 lakhs, the jurisdiction was with DCIT/ACIT and notice for selecting the case of the assessee for scrutiny u/s. 143(2) of the Act was only with ACIT/DCIT. Since in the instant case said Instruction of CBDT has not been followed and the ITO having no jurisdiction over the assessee issued notice u/s. 143(2) of the Act, the same is bad in law and thus, the assessment proceedings becomes *void ab initio*. We, therefore, quash the impugned assessment proceedings and allow the legal ground No.1 raised by the assessee.

7. As regards the other grounds (Nos. 2 & 3) raised by the assessee on merits, we find no reason to adjudicate the same being academic in nature as we have already quashed the assessment proceedings.

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

The order pronounced in the open Court on 26 .05.2022

Sd/-  
(RAJPAL YADAV)  
VICE PRESIDENT

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Dated :26<sup>th</sup> May, 2022

\*\*PP/SPS

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

1.अपीलार्थी/Appellant/Assessee: Shri Anil Kumar Khetawat, GB, Rameswara Apartment, 19A, Sarat Bose Road, Bhowanipore, Kolkata-700 020.

2. प्रत्यर्थी/Respondent/Department: ACIT, Circle-31, Kolkata 10B, Middleton Row, Income Tax Office, Kolkata-700 071.

3. संबंधित आयकर आयुक्त / Concerned CIT

4. आयकर आयुक्त- अपील / CIT (A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata

6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Assistant Registrar  
ITAT, Kolkata