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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.1179/Bang/2022)
Assessment Year: 2012-13

Sri Annesh H.No.2-28(F1) Deeksha Nilaya, Vidyaranya Nagara, Hirebettu Village, Herebettu Post Parkala Udupi 576 107 **PAN NO : AZSPA7704Q**	**Vs.**	ITO Ward-1 Chikmagalur
APPELLANT		**RESPONDENT**

Appellant by	:	Shri S.V. Ravishankar, A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Department

Date of Hearing	:	08.02.2023
Date of Pronouncement	:	23.02.2023

O R D E R

This appeal by assessee is directed against order of CIT(A) dted 16.12.2022. In this case, the assessment order was passed u/s 147 r.w.s. 144 of the Income-tax Act,1961 ['the Act' for short] on 24.12.2018 for the assessment year 2012-13, wherein the AO made addition at Rs.17,41,238/- towards unexplained deposit in following bank accounts and interest earned thereon:

SL. NO.	NAME *OF THE BANK* & BRANCH	ACCOUNT NUMBER	AMOUNT DEPOSITED (*IN* RS.)	INTEREST AMOUNT (IN RS.)
1.	M/S SRI DURGA PARAMESHWARI CREDIT CO-OP *SOCIETY LTD., PARKALA*	TERM DEPOSITS	9,00,000/-	81,000/- *(estimated @ 8% in* absence of any *detail/ date)*
2.	*M/S SRI DURGA PARAMESHWARI CREDIT* CO-OP SOCIETY LTD., PARKALA	742	5,00,000/-	*12.862/-*
3	*SYNDICATE* BANK, PARKALA	01612200085049	2,46,000/-	1,3767-
TOTAL			16,46,000/-	95,238/-

2. Against the ex-parte order of AO, assessee carried appeal before NFAC, Delhi by way of following grounds:-

1. *The order of the learned A in so far as it is against the appellant is opposed to law, equity, and weight of evidence, probabilities, facts and circumstances of the case.*

2. *The impugned order of Assessment u/s 144 u/s 147 is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 147 of the 'Act' did not exist and have not been complied with and consequently, the assessment requires to be annulled under the facts and in the circumstances of the appellant's case.*

3. *On the facts and in the circumstances of the case and in law and without prejudice to Ground No. 2, the Order of assessment bad in law in as much as that no notice us 148 was issued by the jurisdictional AO before concluding the assessment thereby Order without legal and proper notice is nullity under law and therefore liable to be quashed as void ab-initio.*

4. *On the facts and in the circumstances of the case and in law and without prejudice to Ground No. 2 and Ground No. 3, the Order of assessment bad in law in as much as the Order suffers from jurisdictional defects by not*

complying the mandatory provisions of Section 124 read with Section 127 of the Act and thus the impugned Order liable to be quashed as non-est.

5. *On the facts and in the circumstances of the case and in law and without prejudice to Ground No. 2 to Ground No.4, the impugned additions of Rs.17,41,238/- on account of cash deposit into bank account and treating the cash deposit as 'Income[1] by the learned AO without any conclusive evidence of character of the cash deposit and further based on presumptions and probability is liable for total deletion.*

6. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

2.1. The NFAC, Delhi has given a notice of hearing and result of that notice is as follows:

SNo.	HEARING NOTICE DATED	HEARING DATE	REMARKS
1.	Notice dated 31. 12.2020	15.01.2021	No compliance
2.	Notice dated 22. 04.2021	07.05.2021	No compliance
3.	Notice dated 24. 11. 2022	11.11.2022	Filed condonation of delay
4.	Notice dated 01.12.2022	07.12.2022	No compliance

2.2 Finally, the ld. CIT(A) disposed of the appeal ex-parte by observing as under:

> *"7. During the appellate proceedings, the appellant has only submitted submission in the form of 'Statement of Facts'. After that neither he has replied to hearing notices nor submitted any documentary evidence/information to prove his side. Sufficient and adequate opportunities were afforded to the appellant as indicated at table at page no 2. No reply whatsoever has been submitted by the appellant. Even the assessment was completed under Section 144 of the Income Tax Act, 1961 due to non-compliance on the part of the appellant. It can be safely presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer. Thus, the appeal raised by the appellant is dismissed."*

2.3 Against this assessee is in appeal before us by way of following grounds:-

1. *"The order of the learned Commissioner of Income Tax (Appeals) in so far as it is against the appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstances of the case.*

2. *The appellant denies himself liable to be assessed to a total income of Rs. 17,41,238/- as against the total income of the appellant of Rs. NIL for the AY 2012-13 on the facts and circumstances of the case.*

3. *The learned CIT(A) was not justified in confirming the additions of Rs. 17,41,238/- as being unexplained money, on the facts and circumstances of the case.*

4. *Legal issues:*

    a. *The notice issued U/s 148 of the act is bad in law.*

    b. *The authorities below failed to appreciate that the officer issuing the notice U/s 148 of the Act, did not possess jurisdiction to issue notice and consequently the entire proceedings are bad in law, on the facts and circumstances of the case*

    c. *The authorities below failed to appreciate that the reassessment proceeding emanating on an invalid notice is void ab initio, on the facts and circumstances of the case.*

    d. *The sanction obtained for issue of notice U/s 148 of the Act is bad in law, since the sanctioning authority also did not possess jurisdiction over the appellant and consequentially, the sanction, is without authority, on the facts and circumstances of the case.*

    e. *The learned CIT(A) failed to appreciate that the order of assessment passed under section 144 r.w.s 147 of the Act is bad in law since the mandatory conditions as envisaged in the Act to assume jurisdiction under section 148 did not exist or having not been complied with and consequently, the reassessment requires to be cancelled on the facts and circumstances of the case.*

    f. *The learned CIT(A) failed to appreciate the order of assessment is further bad in law and void ab initio as the learned assessing officer had no reason to believe that the income of the Appellant has escaped assessment and the said reasons amounted to merely reasons to suspect on the facts and circumstances of the Appellant's case.*

    g. *The learned CIT(A) was not justified in failing to adjudicate the legal grounds raised on jurisdiction to issue notice U/s 148 of the act and the order passed is bad in law, on the facts and circumstances of the case.*

5. ***Additions of cash deposits:***

a) The authorities below failed to appreciate that the cash deposited of Rs. 16,17,5007- was out of trade receipts and also out of opening cash and could not be considered as income, on the facts and circumstances of the case.

b) The authorities below failed to appreciate that the sale consideration could not have been treated as income and the profits arising if any, alone could have been added as income of the appellant on the facts and circumstances of the case.

c) Without prejudice and not conceding that the entire deposits were out of the sale proceeds and withdrawals from bank, the income was to be estimated on a percentage of gross receipts of similar businesses, on the facts and circumstances of the case.

d) Without further prejudice, the income could not be estimated over and above 8% of gross receipts, on the facts and circumstances of the case.

6. Fixed deposits:

a) The learned CIT(A) was not justified in confirming the addition of Rs. 9 lacs, being fixed deposits in the name of the appellant as income, on the facts and circumstances of the case.

b) The authorities below, failed to appreciate that no addition of the opening balances of Rs. 3 lacs of the earlier year could be made, on the facts and circumstances of the case.

c) The authorities below failed to appreciate that the deposits of Rs. 6 lacs were made out of the funds available in the bank account and the source of the deposits, since available, no additions could be made, on the facts and circumstances of the case.

d) Without prejudice, the source of the fixed deposits, being sale proceeds of the business, no additions could have been made, which would amount to taxing the capital of the appellant, on the facts and circumstances of the case.

e) Without further prejudice, the deposits since already considered under the head of cash deposits, the addition of Rs. 9 lacs amounted to taxing the same income twice, which is impermissible, on the facts and circumstances of the case.

7. Interest income:

a) The learned CIT(A) was not justified in confirming the interest income of Rs. 95,238/-, on the facts and circumstances of the case.

b) The authorities below failed to appreciate that the interest income was required to be taxed on receipt, i.e. on cash basis, since the

appellant was not following the mercantile method of accounting and the interest if any ought to be taxed in the year of credit into the savings account of the appellant, on the facts and circumstances of the case.

c) The authorities below failed to appreciate that the interest income received in a subsequent year, would be taxable subject to the limits prescribed in the year of receipt, on the facts and circumstances of the case.

d) The authorities below failed to appreciate that the computation of interest was erroneous and the interest has been earned for only a part of the year, on the facts and circumstances of the case.

e) Without further prejudice, the appellant denies himself to be assessed to the interest over and above the interest of Rs. 44,250/-, on the facts and circumstances of the case.

8. The appellant denies himself to pay interest under section 234A, 234B and section 234C in view of the fact there is no additional liability to additional tax as determined by the learned Assessing Officer.

9. The Appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.

10. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered."

3. The ld. A.R. submitted that the assessee is a resident and in the business of retail merchant, trading in flowers. The assessee has not filed a return for the AY 2012-13 since the total income earned from business activity was below the income limits prescribed. The assessee purchases flowers and sell the same after preparation of the same into garlands, strings, etc. on two or three days of the week, depending upon the pilgrim inflow on auspicious days. The flowers are sold off in its entirety on a few days, however there is always some left over of the flowers, which wither away and has to be discarded and treated as loss. In the above circumstances, the assessee carries on business only for a part of the year and the incomes earned is sufficient only to meet his expenditure on inputs, transport and incidental expenditure and after setting off the loss on account of decay of flowers, which have a very short life span of a day, there was no income which could be considered as income for the year. The

assessee is required to invest heavily to source the flowers, due to the seasonal nature of the flowers and further the same is usually procured through auctions for which the assessee is required to maintain a small capital in the form of liquid capital, considering that the flowers have a life span from one day to less than three days, depending upon the flower. The assessee submitted that the entire transactions of the business are carried out in cash, both for purchase and for sale, since the produce is grown by farmers and the same has to be settled immediately upon purchase. Further, the sale is also in the form of cash and sold to total strangers who visit temples and the same cannot be sold on credit.

3.1 The assessee submitted that the learned assessing officer has reopened the assessment based upon the cash deposits into the bank account on the premise that the same was from unaccounted sources. The learned assessing officer has issued notices and thereafter upon obtaining the bank accounts of the assessee proceeded to make additions of the cash deposits and also the fixed deposits made but of the said cash deposits, which has resulted in double addition. The assessing officer has also made an addition of the interest earned out of the fixed deposits and added the same to the income of the assessee and raised a demand. The assessee submitted that on the merits of the matter, which would demonstrate that the learned assessing officer has made additions of the capital and also made additions of the fixed deposits, which were out of funds lying in the bank, amounting to double addition. The list of FD as per the show cause notice would demonstrate that the fixed deposits of Rs. 3 lacs were opening balances and thus no additions could have been made of opening balances. Further the additional deposits of Rs. 6 lacs have been made on two dates, (i.e. 2 lacs on 15/10/2012 and Rs. 4 lacs on 30/12/2012), which are available in the bank account on the respective dates, which would demonstrate that the fixed deposits

have been made out of funds available in the bank account, itself and no separate addition of Rs. 6 lacs ought to have been made. In view of the above, the assessee submitted that the addition of Rs. 9 lacs (opening balance of Rs. 3 lacs + 6 lacs) is bad in law and amounts to double addition, in the hands of the assessee. The learned assessing officer has arrived at the peak credit of Rs. 5 lacs based upon the cash deposit, which the assessee has stated to be deposits from sale proceeds from business and the entire cash deposits could not be treated as income and the profit arising from the sale of flowers alone could be treated as income of the assessee. The assessee submitted that the authorities below ought to have appreciated that the entire deposits were the trading receipts of the business and the profits on the entire deposits of Rs. 16,17,500/- odd (i.e. 13,70,000 + 2,47,500/-), if any, ought to have been considered as trading receipts and income estimated at 8% of gross receipts, which comes to Rs. 1,29,400/-, which is well below the limits prescribed for filing the return of income.

3.2 The assessee submitted that the interest computed by the assessing officer on the fixed deposits was also erroneous since the new deposits have been made during the year and the observation that the date of making the FD was not available, is contrary to record, since the letter issued by the co-operative society was available on the record of the revenue and the interest if any ought to have been restricted to the period of the present period for which it was made. The assessee has listed the dates for easy reference:

Fixed deposit amount	Opening date and period of holding	Interest
3,00,000/-	Opening balance - 12 months	27,000/-
2,00,000/-	15/10/2012 - 5.5 months	8,250/-
4,00,000/-	30/12/2012 - 3 months	9,000-
	Total interest	44,250/-

3.3 In view of the above, the interest on a presumption could not have exceeded Rs. 44,25O/-, which the learned assessing officer has erred in computing for the whole year. Without prejudice and not conceding that the assessee has not received the interest, the interest if any on the fixed deposits are to be taxed in the year of receipt, since the assessee does not maintain books of account and the interest earned is to be taxed on receipt basis, provided the income in the year of receipt exceeds the limits prescribed. In view of the above, the assessee submitted that the reopening for the year on the premise that the interest from the fixed deposits, could not have exceeded **Rs. 44,25O/-** and therefore the income escaping assessment was below Rs. 1,00,000/- and the satisfaction that the reopening was to bring to tax the income escaping assessment, was bad in law. The assessee stated that the authorities below failed to appreciate that the concept of income escaping assessment of Rs.1,00,000/- was required to be appreciated as income of Rs.1,00,000/- in excess of the limits prescribed for which the assessee was required to file his return of income, which in the instant case was lower than the limit prescribe of Rs 1,80,000/-, considering the combined income of business and the FD interest, totaling Rs. l,73,650/- and the assessing officer could not have arrived at the satisfaction that the income of the assessee had escaped assessment. The assessee aggrieved by the order of the assessing officer has preferred an appeal before the learned CIT(A), raising grounds on legal issues and also on the merits of the matter. The learned CIT(A), while reproducing the observations of the AO and the submissions of the assessee, proceeded to dismiss the appeal, without there being any adjudication on the legal issues. The assessee submitted that he was prevented by reasonable cause in filing documents and submissions before the learned CIT(A) and alternatively submitted that the appreciation of the legal grounds raised ought to have been appreciated by calling for a remand report on the

jurisdiction to issue notices U/s 148 of the act. The assessee has contended that the officer issuing the 148 notice was not the jurisdictional officer, which is demonstrated in the below instances;

a. Assessee has filed returns for AY 2015-16, 2016-17 and 2017-18, in Chikmagalur, well before the date of issue of first notice by 1TO, Ward -3 Udupi, (10/10/2017).

b. The sanction by the superior officer had to be made by indicating the PAN, by which date the authorities below were aware that the assessee was assessed in Chikmagalur.

c. The transfer of the file to the jurisdictional officer, i.e., ITO, Ward-1, Chikmagalur, affirms the fact that the ITO, Ward-3, Udupi, did not possess jurisdiction over the assessee.

d. The ITO, Ward-1, Chikmagalur, has not issued a fresh notice U/s 148 of the act, to continue with the reassessment proceedings.

3.4 The revenue has sought to place reliance upon the decision in the case of Abhishek Jain v. Income-tax officer, Ward-55(1), New Delhi [2018] 405 ITR 1 (Delhi) WRIT PETITION (CIVIL) NO. 11844 OF 2016 JUNE 1, 2018, for the proposition that the jurisdiction cannot be questioned after a month of issuance of the 148 notice.

3.5 The assessee has filed a case law compilation on the legal issues and has relied upon the decision in **Charu K Bagadia v ACIT, [2022] 448 ITR 563 (Madras) dated 27/06/2022,** which squarely covers this legal issue and the observations

3.6 The above decision of the Madras high court has followed the decision of **Pr. CIT v. Mohd. Rizwan Prop. [IT Appeal No. 100 of 2O15, dated 30-3-2017],** which has relied upon several Supreme

Court decisions to dismiss the appeal of the revenue and in favour of the assessee.

3.7 The assessee further submitted that the decision of the Madras High Court has been rendered much later in 2022 and upon considering the decision of various High Courts as is evident in the order available on the file.

3.8 In view of the above, the assessee submitted that the later wisdom is required to be followed and without prejudice, where there are conflicting decisions on various authorities, the view in favor of the assessee, is required to be followed. The assessee placed reliance upon the decision of Vegetable products for the above proposition.

3.9 The assessee aggrieved by the order of the ld. CIT(A) preferred this appeal raising grounds on the merits of the matter and also on the legal issues in support of his contention that the entire additions are required to be deleted in full. In light of the above and the grounds raised the assessee prayed to allow this appeal for the advancement of substantial cause of justice by quashing the proceedings initiated by officers who did not possess jurisdiction over the assessee.

4. On the other hand, the ld. D.R. submitted that this was not the issue before the ld. CIT(A). Hence, the Tribunal shall not adjudicate this ground. If the Tribunal wants to consider this ground, the same may be remitted to the ld. CIT(A) for his consideration.

5. We have heard the rival submissions and perused the materials available on record. Admittedly, the assessee raised the ground relating to reopening before ld. CIT(A) as follows:

2. *"The impugned order of Assessment u/s 144 u/s 147 is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 147 of the 'Act' did not exist and have not been complied with and consequently, the*

assessment requires to be annulled under the facts and in the circumstances of the appellant's case.

3. *On the facts and in the circumstances of the case and in law and without prejudice to Ground No. 2, the Order of assessment bad in law in as much as that no notice us 148 was issued by the jurisdictional AO before concluding the assessment thereby Order without legal and proper notice is nullity under law and therefore liable to be quashed as void ab-initio.*

4. *On the facts and in the circumstances of the case and in law and without prejudice to Ground No. 2 and Ground No. 3, the Order of assessment bad in law in as much as the Order suffers from jurisdictional defects by not complying the mandatory provisions of Section 124 read with Section 127 of the Act and thus the impugned Order liable to be quashed as non-est. "*

5.1 Further, the ld. CIT(A) without adjudicating the legal issue dismissed the appeal holding that assessee was not interested in pursuing his appeal. As per section 251(1)(a) of the Act, power of ld. CIT(A) is co-terminus with the AO and he has the power of enhancement. He could not dismiss the appeal by ex-parte by observing that the assessee is not interested in pursuing it's appeal. He ought to have decided the appeal on merit instead of holding that assessee is not interested in pursuing the appeal when he has the power of enhancement.

5.2 My aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Premkumar Arjundas (HUF) (2017) 297 CTR 614 (Bom). In the aforementioned case the Hon'ble jurisdictional High Court had observed as under:

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of s. 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under s. 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact

w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the s. 251(1)(a) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."

5.3 I, thus, not being persuaded to subscribe to the dismissal of the appeal by the CIT(Appeals) for non-prosecution.

5.4 Coming to the legal issue raised by the assessee and framing of assessment thereafter, it has to be noted that notice u/s 148 of the Act dated 26.3.2018 was issued by ITO, Ward-3, Udupi. However, the assessee has been framed by ITO, Ward-1, Chikmagaluru.

6. The ld. D.R. submitted that on the basis of information received from M/s. Sri Durga Parameshwari Credit Co-op. Society Ltd., Parkala, Udupi that during the financial year 2011-12 relevant to assessment year 2012-13, the assessee has deposited a sum of Rs.9 lakhs. On perusal of the office records, it is noticed that assessee has not filed any return of income for said assessment year. Since the deposit made was Rs.9 lakhs, which was beyond maximum exempt income for taxation for assessment year 2012-13, notice u/s 148 of the Act was issued on 26.3.2018 by ITO Ward-3, Udupi to furnish the following details:

1. Copy of return of income filed for AY 2012-13, if any.
2. Copy of Statement of account/s maintained by you in M/s. Shri Durgaparameshwari Credit Co-operative Society Ltd., Karkala, for the period 1.4.2011 to 31.03.2012.
3. Copy of statement of the Account/s maintained by you in any other bank, at any place for the period 1.4.2011 to 31.03.2012.

4. Copy of books of accounts, bills, receipt, vouchers, etc. maintained, if any, if applicable, in your case for FY 2011-12 relevant to AY 2012-13.
5. Details of all kind of receipts for the FY 2011-12 relevant to AY 2012-13.

6.1 Thus, it was the contention of the ld. D.R. that in case of assessee, the assessment was rightly reopened by the ITO Ward-3 Udupi by recording the reasons and the assessment was framed u/s 144 of the Act by ITO Ward-1, Chikamagaluru as this has been transferred from ITO Ward-3, Udupi to ITO Ward-1, Chikamagaluru as the assessee was residing in D.No.6, Siddapura Math Gatta, Kadur Taluk, Chikamagalur 577 148. Therefore, no infirmity did emerge in assuming the jurisdiction by ITO Ward-1, Chikamagauru for framing assessment in question.

7. I heard the rival submissions and perused the materials available on record. Before me, it is a claim of the ld. A.R. that ITO Ward-1, Chikamagaluru had wrongly assumed jurisdiction and framed the assessment u/s 144 of the Act vide order dated 24.12.2018. On perusal of he record placed before me, I find that ITO Ward-1 Chikamagaluru who was vested with the territorial jurisdiction over the case of the assessee as the present assessee has been residing in D.No.6, Siddapura Math Gatta, Kadur Taluk, Chikamagalur 577 148. However, as seen from the notice dated 142(1) of the Act dated 14.11.2018, the ITO Ward-1, Chikamagaluru has received the records from ITO Ward-3 Udupi. It is pertinent to mention herein that in respect of specific request of bench to produce the copy of reason recorded and notice issued u/s 148 of the Act, the ld. Standing Counsel failed to furnish the same before the bench. However, I noted from the notice issued u/s 142 of the Act dated 14.11.2018 as follows:-

(2)

No.142(1) NOTICE/ITO-1/2018-19

Office of the
Income Tax Officer, Ward – 1,
Chikamagalur Court Road,
Chikamagalur – 577101.
Contact No. – 08262 - 235437
E-mail i.d – chickmagalur.ito1@incometax.gov.in
Date: 14.11.2018.

To
SH. ANNESH S K,
D. NO. – 6, SIDDAPURA MATH GATTA,
KADUR TALUK,
CHIKAMAGALUR – 577148.
PAN – AZSPA7704Q

Madam/Sir,

Sub: Notice u/s 142(1) of the Income Tax Act, 1961 – Your own – PAN – ASZPA7704Q – A.Y.2012-13 - reg.
Ref: 1. Notice u/s 148 of the Income Tax Act, 1961 issued on 26.03.2018 by ITO, Ward – 3, Udupi.

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Please refer to the above.

This Office is in receipt of your case for A.Y.2012-13 from the Office of Income Tax Officer, Ward -3, Udupi. It is ascertained from the records that you have been issued the notice u/s 148 of the Income Tax Act, 1961, dated 26.03.2018 by the Income Tax Officer, Ward – 3, Udupi, for the A.Y.2012-13. The reason for issue of notice u/s 148 in your case is that you have not filed the Return of Income for F.Y.2011-12 relevant to A.Y.2012-13 but have deposited Rs.9,00,000/-in M/s Shri Durgaparameshwari Credit Co-operative Society Ltd., Karkala, during the year. It is also ascertained from the said records that you have not furnished any Return of Income in response to the notice issued u/s 148. In view of this, you are required to furnish the following details before this Office.

1. Copy of Return of Income filed for A.Y.2012-13, if any.
2. Copy of statement of Account/s maintained by you in M/s Shri Durgaparameshwari Credit co-operative Society Ltd., Karkala, for the period 01.04.2011 to 31.03.2012.

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3. Copy of statement of the Account/s maintained by you in any other Bank, at any place for the period 01.04.2011 to 31.03.2012.
4. Copy of Books of Accounts, Bills, Receipt, Vouchers etc. maintained, if any, if applicable, in your case for F.Y.2011-12 relevant to A.Y.2012-13.
5. Details of all kind of receipts for the F.Y.2011-12 relevant to A.Y.2012-13.

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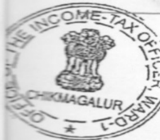
The details/documents called for as mentioned above, should reach this Office within 7 days from the receipt of this notice. If no reply is received, it will be presumed that you are not in possession of proper explanation/sources or any other relevant details/documents in support of the said deposits. If you wish to appear in person for this purpose, please do so on any working day within 7 days from the receipt of this notice along with the details/documents as called for above.

Please note that this notice may also be treated as notice issued u/s 129 of the I.T.Act, 1961.

Yours faithfully

(SANJEEV KUMAR)
Income Tax Officer,
Ward – 1, Chikamagalur



7.1 Hence, it is clear that notice u/s 148 of the Act has been issued by ITO Ward-3, Udupi by recording "reason to believe" that income has escaped from assessment. Further, as observed from the notice issued u/s 142 of the Act, ITO Ward-3, Udupi after reopening the case of the assessee u/s 147 of the Act, he said to have transferred the records to the ITO Ward-1, Chikamagaluru i.e. AO who was vested with the jurisdiction over the case of the assessee. It is the claim of the ld. A.R. that no order for transferring the case of the assessee from ITO Ward-3 Udupi to the ITO Ward-1, Chikamagaluru was passed as required as per the mandate of section 127 of the Act. Even otherwise, the Standing Counsel has not established that notice u/s 127 of the Act has been issued to the present assessee before transferring the assessee's case records from ITO Ward-3, Udupi to ITO Ward-1, Chikamagaluru. Be that as it may, I, at this stage is not concerned with the existence of transfer of order u/s 127 of the Act.

7.2 Coming back to the facts of the case, I find that assessee has not complied the notice issued u/s 148 of the Act dated 26.3.2018 by ITO Ward-3 Udupi or to the notice issued u/s 142(1) of the Act dated 14.11.2018 by ITO Ward-1 Chikamagaluru. However, the ITO Ward-1, Chikamagaluru framed the assessment treating the unexplained deposit into various bank accounts and interest thereon at Rs.17,41,238/- as income of assessee vide order dated 24.12.2018.

7.3 Now the contention of the ld. A.R. is that as the jurisdiction over the case of the assessee was undeniably vested with the ITO Ward-1 Chikamagaluru, therefore, ITO Ward-3, Udupi who had no jurisdiction over the assessee's case had clearly travelled beyond his jurisdiction and wrongly reopened the case of the assessee u/s 147 of the Act on 26.3.2018 and thereafter wrongly transferred the case without order u/s 127 of the Act to the ITO Ward-1, Chikamagaluru.

Since ITO Ward-3 Udupi has no jurisdiction of assessee at the time of issuing notice u/s 148 of the Act on 26.3.2018, the notice issued by him to the present assessee is bad in law. Consequently, the assessment was framed on the strength of the said notice u/s 148 of the Act is also bad in law which cannot stand on its own legs. In these facts of the present case, I fail to understand that as to on what basis ITO Ward-3, Udupi had assumed jurisdiction over the case of assessee and reopened the same u/s 147 of the Act, specifically when the assessee has been residing in D.No.6, Siddapura Math Gatta, Kadur Taluk, Chikamagalur 577 148 on which the address the assessment order u/s 144 of the Act dated 24.12.2018 was framed. In other words, the territorial jurisdiction over the present assessee has been with the ITO Ward-1 Chikamagaluru and the assessment has been framed by ITO Ward-3, Udupi. However, notice u/s 148 of the Act dated 26.3.2018 has been issued by ITO Ward-3 Udupi by recording reasons u/s 147 of the Act. In my opinion, ITO Ward-1, Chikamagaluru passed the assessment order u/s 144 of the Act after receiving the case records merely proceeded with on the basis of the notice issued u/s 148 of the Act dated 26.3.2018 by ITO Ward-3 Udupi. In my considered view, the invalid assumption of jurisdiction by the ITO Ward-3 Udupi u/s 147 of the Act could not have been validated by a simplicitor transfer of the assessee's case to ITO Ward-1 Chikamagaluru i.e. ITO who was vested with the requisite jurisdiction over the case of assessee. Even if it is assumed that there was a transfer of jurisdiction over the case of the assessee from ITO Ward-3, Udupi to ITO Ward-1 Chikamagaluru then, in the backdrop of the fact of the case that ITO Ward-3 Udupi had de hors valid assumption of jurisdiction over the case that assessee to reopen the case, it was incumbent on the part of the ITO Ward-1, Chikamagaluru to have validly assumed jurisdiction u/s 147 of the Act by satisfying the requisite conditions which were sine-qua-non for framing of a valid assessment u/s 143(3)/144 r.w.s. 148 of the Act by him. In sum

and substance, it is a case before me where ITO Ward-3 Udupi who had no jurisdiction over the case of the assessee had invalidly assumed jurisdiction and reopened the assessment u/s 147 of the Act and issued a notice u/s 148 of the Act while for the ITO Ward-1 Chikamagaluru who was vested with the jurisdiction over the case of the assessee had after receiving the case records of the assessee framed assessment vide assessment order dated 24.12.2018 without validly assuming jurisdiction by satisfying the requisite conditions, viz., recording "reasons to believe" and issuing notice u/s 148 of the Act which form the sine-qua-non for framing of valid assessment within the meaning of section 147 of the Act. My aforesaid view is fortified by the judgement of Bombay High Court in the case of CIT Vs. Lalitkumar Bardia in ITA No.127 of 2006 dated 11.7.2017, wherein it was observed as under:

"*17. In this case, it is undisputed position that the return of income was filed declaring undisclosed income at 'Nil' on 5.5.2000 in response to the notice dated 22.9.1999 issued under Section 158 BC of the Act and not consequent to notice u/ss. 142(1)(i) of the Act which was issued as late as 12.8.2000. In the above view, it is clear that the bar of Section 124(3) of the Act would not prohibit the respondent/assessee from calling in question the jurisdiction of the Deputy Commissioner of Income Tax, Nagpur in passing the Assessment Order beyond the period provided therein. It needs to be pointed out that amendment by Finance Act, 2016 which is w.e.f. 1.6.2016 brings within ambit of Section 124(3) of the Act cases when notice is issued consequent to search u/s.I53(A) or 153(C) of the Act preventing/prohibition an assessee from raising the issue of jurisdiction. It does not include notices issued u/s.158 BC of the Act. This further supports the view that time bar u/s. 124(3) of the Act to question the jurisdiction of the Income Tax Officer would not apply to the cases where return has been filed consequent to notice u/s. 158 BC of the Act.*

18. It was next submitted that even absent statutory provision, the respondent/assessee is barred from raising the issue of jurisdiction after having participated in the proceedings before the Deputy Commissioner of Income Tax, Nagpur on 18 itll27.06.odt principle of waiver of its right to question his jurisdiction. A waiver would mean a case where a party decides not to exercise its right to a particular privilege, available under the law. In this case, the Respondent/assessee has a right not to be assessed to tax by an Income Tax Officer, who is not the Assessing Officer. However, the waiver can only be of one's right/privilege but non- exercise of die same will not bestow jurisdiction on a person who inherently lacks jurisdiction. Therefore, the principle of waiver cannot be invoked so as to confer jurisdiction on an Officer who is acting under the Act when

he does not have jurisdiction. The Act itself prohibits an Officer of Income Tax from exercising jurisdiction u/s. 158 BC of the Act, unless he . is an Assessing Officer. This limit in power of the Income Tax Officer in exercise of jurisdiction is independent of conduct of any party. Waiver can only be of irregular exercise of jurisdiction and not of lack of jurisdiction. The decision of the Delhi High Court in Venad Properties v. CIT, 340 ITR 463 relied upon by the Appellant/Revenue is a case of non-service of notice before passing of an order by an Officer having inherent jurisdiction. Therefore, it is a case of irregular exercise of jurisdiction and not absence of jurisdiction to issue notice. Therefore, it will have no application.

19. It is a settled position in law that mere participation in 19 itl 127.06.odt proceedings or acquiescence will not confer jurisdiction. The Apex Court in Kanwar Singh Saini (supra) made observations, which are apposite to the issue at hand and which read as under :

> *"22. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. (Vide United Commercial Bank Ltd v. Workmen, Nai Bahu v. Lala Ramnarayan, Natraj Studios (P) Ltd. v. Navrang Studios, Sardar Hasan Siddiqui v. STAT, A.R. Antulay v. R.S. Nayak, Union of India v. Deoki Nandan Aggarwal, Karnal Improvement Trust v. Parkash Wanti, U.P. Rajkiya Nirman Nigam Ltd. v. Indure (P) Ltd., State of Gujarat v. Rajesh Kumar Chimanlal Barot, Kesar Singh v. Sadhu, Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and CCE v. Flock (India) (P) Ltd.) 20 itI127.06.odt*

20. It was lastly submitted that, by virtue of the subsequent Order dated 18.1.2000 passed by the Commissioner of Income Tax, Raipur, the earlier order dt.6.7.1999 passed u/s. 127 of the Act by him stands revived. Consequently, all the proceedings taken between 6.7.1999 till the Order dated 18.1.2000 by the Deputy Commissioner of Income Tax, Nagpur become regular and he will retrospectively enjoy the status of the Assessing Officer even on 22.9.1999, when he issued the notice u/s.!58BC of the Act.

21. Transfer of proceedings u/s.127 of the Act cannot be retrospective so as to confer jurisdiction on a person who does not have it. Section 127 of the Act does not empower the Authorities under the Act to confer jurisdiction on a person who does not have jurisdiction with retrospective effect. In fact, the explanation under Section 127 of the Act clearly provides that all the proceedings under the Act which are pending on the date of such order of transfer and all the proceedings which may be commenced after date of such order of transfer would stand transferred to the Assessing Officer to whom the case is transferred by Section 127(1) of the Act. This provision makes it clear that though transfer would come into effect from the date the order of Commissioner

passed under Section 127(1) of the Act, the proceedings already commenced would not abate and continue with new Assessing Officer, who assumes charge consequent to transfer subject of course lo the pending notices 21 itll27.06.odt being within jurisdiction of the Officer issuing the notices. It is not a provision which validates without jurisdiction notice issued by an Income Tax Officer. If the submission of the Revenue on the above account is to be accepted, then an order which is without jurisdiction could be bestowed with jurisdiction by passing an order of transfer with retrospective effect. Section 127 of the Act does not validate notices/orders issued without jurisdiction, even if they are transferred to a new Officer by an Order under Section 127 of the-Act.

22. For the aforesaid reasons, the above substantial question of law is answered in the negative i.e. in favour of the respondent/assessee and against the appellant/revenue."

7.4 In my considered view, ITO Ward-1 Chikamagaluru had framed the assessment vide order u/s 144 of the Act dated 24.12.2018 without validly assuming jurisdiction u/s 147 of the Act, therefore, the same cannot be sustained and is liable to be quashed. I, thus, in terms of above discussion, quash the assessment framed by ITO Ward-1, Chikamagaluru u/s 144 of the Act dated 24.12.2018.

7.5 Further, the ld. D.R. strongly placed reliance on the judgement of Delhi High Court in the case of Abhishek Jain Vs. ITO in W.P. No.11844/2016 dated 1.6.2018, wherein it was held as under:

"13. We would recapitulate the facts in brief.

(i) Petitioner accepts that the savings account in ICICI Bank, Sector 27, Noida, U.P. with communication address as A-32, Sector-5, Noida-201301 i.e. factory, where the petitioner works belongs to him. Petitioner had furnished a copy employee identity card and a letter from the employer confirming the Noida address. KYC form records the address of the petitioner as A-32, Sector-5, Noida.

(ii) Petitioner has not given his Permanent Account Number or updated his permanent address in the bank account.

(iii) Petitioner has not specifically challenged and disputed cash deposits of Rs.12,18,609/- in the savings bank account in the period relevant to the assessment year 2009-10. This Information regarding cash deposits was mentioned in the 'Annual Information Return', filed by the ICICI Bank.

(iv) As the address of the petitioner mentioned in the bank account was located in Noida, Income-Tax Officer Ward No.1(1), Noida was informed. Income-Tax Officer Ward No.1(1) had issued three letters under Section 133(6) dated 16th August, 2015, 14th December, 2015 and 11th January, 2016, to the petitioner seeking information and clarification. The first and the third letters were sent by the registered post to the petitioner at A-32, Sector-5, Noida, and the second letter was sent to the petitioner at FF-50, 3rd floor, Laxmi Nagar New Delhi-110092. The two letters sent to the Noida address were not received back unserved and the letter dated 14th December, 2015 was served by affixture at the Laxmi Nagar, Delhi address.

(v) In the aforesaid circumstances the Income-Tax Officer, Ward 1(1), Noida recorded reasons to believe and had issued notice dated 18th February, 2018 under Section 148 of the Act.

(vi) This notice dated 18th February, 2018 under Section 148 of the Act was sent by speed post on 19th February, 2018.

(vii) Petitioner did not respond or file his return of income in response to this notice.

(viii) The Income-tax Officer Ward No.1 (1), Noida, had then issued notice under Section 142(1) of the Act dated 27th April, 2016 requiring the petitioner to comply with the directions contained therein including filing of return.

(ix) The petitioner thereafter responded and wrote to the Income-

Tax Officer Ward No.1 (1), Noida for the first time on 19th May, 2016.

(x) The petitioner in his response dated 19th May, 2016 did not specifically dispute receipt of the notice under Section 148 of the Act, though the word "alleged" was used.

(xi) Petitioner in his objections dated 15th November, 2016, had stated that the alleged notice under Section 148 had not been served on him till 31st March, 2016 and hence, notice (sic. proceeding) was illegal and barred by time. Impliedly, the petitioner had accepted that notice dated 18th February, 2016 under Section 148 of the Act was served.

14. Petitioner, we have no hesitation in observing, had deliberately not responded at least to the notice dated 18th February, 2016 under Section 148 of the Act. This muteness and belated response was intentional and malevolent as the petitioner wanted to object to jurisdiction of the Income- Tax Officer Ward No.1(1), Noida post 31st March, 2016. Thereafter, in view of time mandate in Section 149 of the Act, Income Tax Officer, Ward No. 36(1), Delhi, could not have issued fresh notice under Section 148 of the Act.

15. Contention of the petitioner predicated on lack of jurisdiction of the Income-Tax Officer Ward No.1(1), Noida on first glance appears to have strength, but on thoughtful consideration the contention must be rejected and should fail in view of the statutory provisions and peculiar facts of this case. On the legal position, we would like to refer to the decision dated 14th March, 2014 of the Delhi High Court authored by one of us (myself) in Income-Tax Appeal No. 255/2002, Commissioner of Income-tax Delhi- XVI Vs. S.S. Ahluwalia. However, we begin by reproducing Section 120 and Section 124 of the Act which read:

> *"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 any one or more of the following criteria, namely :--*
> >
> > *(a) territorial area;*
> > *(b) persons or classes of persons;*
> > *(c) incomes or classes of income; and*
> > *(d) cases or classes of cases.*
> >
> > *(4) Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,--*
> >
> > *(a) authorise any Director General or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;*
> > *(b) empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by a 25[Joint] Commissioner 26[or a 25[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 25[Joint] Commissioner 26[or 25[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 25[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.]

XXXXX

124. Jurisdiction of Assessing Officers.- (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has 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 Director General or the Chief Commissioner or the Commissioner; or where the question is one relating to areas within the jurisdiction of different Directors General or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.

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

(a) where he has made a return under sub-section (1) of section 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.

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

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

16. Section 120 of the Act which relates to jurisdiction of the Income-tax Authorities stipulates that Income-tax Authorities shall exercise any of the powers and perform all or any of the functions conferred or assigned to such authority by or under this Act as per the directions of the Board i.e., Central Board of Direct Taxes. As per Explanation to sub-section(1), the power can also be exercised, if directed by the Board, by authorities higher in rank. Under sub-section (2), the Board can issue orders in writing for exercise of power and performance of functions by the Income-tax Authorities and while doing so in terms of sub-section (3), the Board can take into consideration and have regard to the four-fold criteria namely, territorial area; persons or classes of persons; incomes or classes of income; and cases or classes of cases. Thus, the Act does not authoritatively confer exclusive jurisdiction to specific Income Tax Authority. It is left to the Board to issue directions for exercise of power and functions taking into consideration territorial area, class/types of persons, income and case, and Board have been given wide power and latitude. The said Section by necessary implication postulates and acknowledges that multiple or more than one Assessing officer could exercise jurisdiction over particular assessee. Concurrent jurisdictions are therefore not an anathema but an accepted position under the Act. The term "jurisdiction" in Section 120 of the Act has been used loosely and not in strict sense to confer jurisdiction exclusively to a specified and single assessing officer, to the exclusion of others with concurrent jurisdiction. It would refer to "place of assessment", a term used in the Income Tax Act, 1922. Sub-section (5) to Section 120 of the Act

again affirms and accepts that there can be concurrent jurisdiction of two or more assessing officers who would exercise jurisdiction over a particular assessee in terms of the four-fold criteria stated in sub-section (3) to Section 120. Second part of sub-section (5) states that where powers and functions are exercised concurrently by Assessing Officers of different classes, then the higher authority can direct the lower authority in rank amongst them to exercise the powers and functions.

17. Concurrent jurisdiction is reflected and recognized in Section 124 of the Act, which was interpreted in S.S. Ahluwalia (Supra), in the following words:-

> *34. On analyzing the new Section 124, it is viewed that as per subsection (1), Assessing Officer has jurisdiction in respect of persons carrying on business or profession where such business or profession was being carried out or situated within the area or where the business or profession was carried on in different areas, if the principal place of business or profession was situated within the area. Assessing Officer under sub-clause (b) also had jurisdiction in respect of any other person(s) residing within the area. Residence and place of business being the basis. Sub-section (2) stipulates that question/ dispute of jurisdiction among two or more Assessing Officers, if raised, shall be determined by the Director- General, Chief Commissioner or the Commissioner, or if the question relates to areas falling within the jurisdiction of different Directors- General, Chief Commissioners or Commissioners, then by the Directors- General, Chief Commissioners or Commissioners concerned, and if they are not in agreement, by the Board or by such Director-General, Chief Commissioner or Commissioner that the Board may by an Official Gazette specify. Subsection (3) further stipulates that the objection to the jurisdiction could be questioned by an assessee or a person within one month from the date on which return of income under Section 139(1) was made or within one month from the date of issuance of notice under Section 142(1) or 143(2) or after completion of assessment, whichever was earlier. If no return of income was made, objection to the jurisdiction could be entertained, if made within the time allowed by way of notice under Section 115WD(2)/142(1)/115WH(1)/148 of the Act to make the return or by notice under first proviso to Sections 115WF or 144 to show cause why the assessment should not be completed by the best judgment of the Assessing Officer, whichever was earlier. Sub-section (4) lays down that when an assessee raises a dispute regarding jurisdiction of the Assessing Officer and the Assessing Officer if not satisfied with the correctness of the claim, he shall refer the matter for determination as per sub- section (2) of Section 124, however, this should be done before the assessment was made. The aforesaid Section, therefore, postulates waiver of objection to assumption of jurisdiction by the Assessing Officer. Time limit for raising the objection stands stipulated. Principle of deemed waiver applies. This could only happen when the authority does not lack or suffer from inherent lack of subject matter jurisdiction. When there is inherent lack of subject matter jurisdiction, principle of waiver does not apply. The principle being simple that by consent one cannot confer jurisdiction on authority which lacks inherent subject matter jurisdiction.*

The provisions ensure that conflict between Assessing Officers having concurrent jurisdictions is avoid and curtailed and the assessment proceeding do not get misdirected on side issues. Such deviation should be avoided. It is also clear that question of jurisdiction cannot be made subject matter of appeal, as the issue has to be decided on the administrative side by the Commissioner/Commissioners/ Board. Appeal can, however, be filed questioning the action of the Assessing Officer in not following the procedure mentioned/stipulated in Section 124. In Wallace Brothers & Co. Ltd. v. CIT [1945] 13 ITR 39, Federal Court had held that the objection to place of assessment could not be raised in an appeal against the assessment under the Income Tax Act, 1922. This view was affirmed by the Supreme Court in RaiBahadur Seth Teomal Vs. The Commissioner of Income Tax,[1959] 36 ITR 9(SC) holding that the objection as to the place of objection under the 1922 Act could not be made a subject or issue before the appellate forums including the Tribunal and reference to the High Court. Thus, the question of place or authority of the particular Assessing Officer was the matter of administrative convenience and not strictly a matter of subject matter jurisdiction and where there was an error or erroneous exercise by the Assessing Officer/Commissioner notwithstanding the challenge within stipulated time, it could be corrected by way of writ jurisdiction. The position is no different under the Act i.e. Income Tax Act 1961, as was elucidated by a Division Bench of this Court in Kanji Mal & Sons vs. C.I.T. (1982) 138 ITR 391 (Del), wherein reference to said two decisions was made and it was observed that if the assessee fails to raise objection before the Income Tax Officer within the time, he will be shut out from raising the question altogether. Further, if the issue was raised and decided by the Commissioner, the decision would be final and cannot be questioned in the appellate forums but where the Income Tax Officer does not refer the question to the Commissioner, the following proposition emerges:

"But where he raises the issue but the ITO does not refer the question to the CIT as in the present case (or the CIT or the Board does not decide the question before the assessment is completed) what will be the result of such failure ? Clearly, one answer to the question would be that this failure should not be held to vitiate the assessment altogether and that it should be open to the appellate authority to set aside the assessment for being redone in accordance with law after having the matter referred to the CIT and obtaining his decision. There is nothing wrong in adopting this course and it will not prejudice anyone. By adopting this course, the appellate authority will not be deciding the question of jurisdiction itself but will only be getting it done by the appropriate authority. The appellate order will not also help the department in any way if eventually the CIT (or the Board) comes to the conclusion that the ITO, who completed the assessment, had no jurisdiction in the matter and it will not confer any right on any other ITO having jurisdiction to proceed against the assessee, if he is otherwise not competent to do so. It will only help the department in the event of the CIT (or the Board) coming to the conclusion that the ITO who completed the assessment had the jurisdiction so to do.

The above approach to the issue derives support from the recent decision of the Supreme Court in the case of KapurchandShrimal v. CIT [1981]131ITR451. In that case (under the 1922 Act) the ITO completed the assessments of an HUF without disposing of the claim for partition that had been made by the members of the family. Before the Tribunal, the assessee contended that the assessments should be cancelled but the department contended that even if there had been a violation of s. 25A of the Act the proper order to be passed was either to direct the ITO to give effect to Section 25A or to set aside the assessments with a direction to the ITO to pass fresh orders of assessment. The Tribunal came to the conclusion that the assessments were in clear violation of the procedure prescribed for that purpose in s. 25A and cancelled the same. The Tribunal added : "We do not consider it necessary to direct first assessments. It would be open to the ITO to do so if the law otherwise so permits."

The Supreme Court held that this was not the right procedure to be adopted. It observed as follows (p.460) : "The Tribunal was, Therefore, right in holding that the assessments in question were liable to be set aside as there was no compliance with s. 25A(1) of the Act. It is, however, difficult to agree with the submission made on behalf of the assessee that the duty of the Tribunal ends with making a declaration that the assessments are illegal and it has no duty to issue any further direction. It is well known that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute. The statute does not say that such a direction cannot be issued by the appellate authority in a case of this nature. In interpreting s. 25A(1), we cannot also be oblivious to cases where there is a possibility of claims of partition being made almost at the end of the period within which assessments can be completed making it impossible for the ITO to hold an inquiry as required by s. 25A(1) of the Act by following the procedure prescribed therefor. We, however, do not propose to express any opinion on the consequence that may ensue in a case where the claim of partition is made at a very late stage where it may not be reasonably possible at all to complete the inquiry before the last date before which the assessment must be completed. In the instant case, however, since it is not established that the claim was a belated one, the proper order to be passed is to set aside the assessments and to direct the ITO to make assessments in accordance with the procedure prescribed by law. The Tribunal, Therefore, erred in merely cancelling the assessment orders and in not issuing further directions as stated above."

It was further observed:-

"It is, however, possible to look at the matter from another point of view. It can be said that the issue involved is one of jurisdiction and when an assessed puts it in challenge immediately he receives a notice or files a

return, it must be resolved one way or the other in the manner provided for in the statute before the ITO can assume jurisdiction to proceed further and complete an assessment. The statute requires this to be done before the assessment is made. A failure to do so will render the assessment null and void and without jurisdiction as held in Dina NathHemraj v. CIT [1927] 2 ITC 304 (All) which has been referred to and in no way disapproved in Teomal's case [1959]36ITR9(SC). Once the ITO fails to follow the statutory course prescribed before assessment, it can be said, he misses the bus and cannot be given a second chance to rectify matters. It appears that the Tribunal was inclined to accept this line of argument and to hold "that the AAC could not have rendered an assessment which was illegal into a legal assessment by putting the clock back, so to speak, and enabling the Commissioner to decide the question of jurisdiction." In the view of the Tribunal, "for the exercise of the Commissioner's jurisdiction, the sands had clearly run not". It is for this reason that the Tribunal also said that the department could not rely upon Jajodia's case [1971]79ITR505(SC) to uphold the validity of a direction of the redoing of the assessment."

However, in the facts of the said case, the Division Bench refrained from expressing their final conclusion on the question raised, though they were inclined to accept the former view that the assessment would not be a nullity, as the order of the Tribunal in the said case had attained finality and there was no reference at the instance of the Commissioner. It would be also important to reproduce the conclusion drawn by the Division Bench of the High Court on the said aspect which reads:-

"(2) The failure of the ITO to follow the above procedure may not render the assessment invalid. A view is possible that, in appeal, it is open to the AAC or the Tribunal to set aside the assessment and direct a fresh assessment after following the procedure mentioned in s.124(4) & (6) provided such a direction does not prejudice or affect the right of the assessee to challenge the reassessment as not being in accordance with any other provision of the Act. It is, however, not necessary to decide this question as the view of the Tribunal seems to be that such an assessment would be invalid and this matter is not in issue before us."

35. The said issue directly arises before us in the present appeals and it is time we give affirmative approval to the aforesaid principle as the question has been raised by the Commissioner. Reasons for the same are mentioned by the Division Bench of this Court in Kanji Mal's case (supra) and is also apparent and clear to us. Sub-section (4) and (6) of Section 124 and for that matter sub-section (2) and (4) of Section 124 after amendment w.e.f. 1st April, 1988 are procedural sections. They relate to administration and exercise of powers/authority by the Assessing Officers/Income Tax Officers and are not part of the substantive law. That the Act i.e. Income Tax Act 1961 being a complete code deals with substantive and procedural aspects. Section 120/124/127 govern the process of procedure for assessment and not the subject matter or its purpose. They relate to conduct of the Assessing Officer/Income Tax Officers and the assessees in respect of

the assessment proceedings. It is a matter of merely a process. A irregularity in procedure need not result in annulment unless the statute specifically stipulates to the contrary. The appellate authorities have right to put a clock back and direct the Income Tax Officer/Assessing Officer to follow the procedure notwithstanding the difference between mandatory and directory procedural norms. In Grindlays Bank vs. Income Tax Officer AIR 1980 656 (SC), the Supreme Court quashed the assessment order but then issued directions to make fresh assessment in the circumstances of the case. The said principle has been followed in cases of violation of principles of natural justice wherein an order of remit/remand when justified are passed. The courts have taken recourse of pragmatism and exigencies of the situation rather than legalistic approach of void and voidable (see Principle of Administrative Law, M.P. Jain and S.N. Jain, Fifth Edition, 2007 at pages 592-95).

36. In Budhia Swain and Ors.Vs. GopinathDev and Ors.(1999) 4 SCC 396, it was highlighted that distinction exists and was well recognized between lack of jurisdiction and mere error in exercise of jurisdiction. Lack of jurisdiction strikes at the very root of the action/act and want of jurisdiction might vitiate proceedings rendering the orders passed and exercise thereof, a nullity. But a mere error in exercise of jurisdiction would not vitiate the legality and validity of the proceedings and the said order was valid unless set aside in the manner known to law by laying a challenge, subject to law of limitation. The following portion of HiraLalPatni vs. Kali Nath, AIR 1962 SC 199 was quoted:

"... The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it."

37. The view we have taken, finds support from the decision of the Patna High Court in MahalliramRamniranjan Das vs. CIT (1985) 156 ITR 885, wherein the decision of Delhi High Court in Kanji Mal & Son's case (supra) was referred to. Reference was also made to the decision of the Supreme Court in Guduthur Bros. vs. ITO (1960) 40 ITR 298 (SC), and the matter was remanded to the authority to continue with the proceedings from the stage irregularity had occurred. It was observed that the tribunal was not right in annulling the assessment. It would be also appropriate here to refer to the decision in Hindustan Transport Co. vs. Inspecting Asstt. Commissioner of Income Tax and Anr. (1991) 189 ITR 326 of the Allahabad High Court-Lucknow Bench, wherein it has been observed as under:-

"A survey of the above provisions of the Act highlights the following situations. After creating the various Income Tax authorities, the Act does

not prescribe their respective jurisdiction or functions. Any case can be dealt with by any Income Tax authority with the possible exception of the Board. Accordingly, the various Income Tax authorities are of co-ordinate jurisdiction. What function or functions, which authority or officer, shall perform is left to be decided either by the Board or by the Commissioner. On what principles the Board and the Commissioner will allocate the functions is not indicated in the Act. The principle is, however, apparent from the nature of the enactment. The Act has been enacted with a view to collect revenue. Income Tax is the main source of revenue for the State. It is through revenue that the machinery of the State is run. It is desirable that the tax should be collected as early as possible. Collection of tax is preceded by assessment thereof. It is consequently desirable that the assessment proceedings should be completed expeditiously but expeditious disposal of an assessment does not mean that the assessee may be put to unwarranted harassment or prejudice. Therefore, the Board and the Commissioner shall take into account the convenience of the assessee also. It is with this purpose in view that it has been provided in Sub-section (1) of Section 127 that, whenever possible, an opportunity of hearing may be given to the assessee while transferring a case from one place to another. Since the assessee does not suffer any inconvenience or prejudice if a case is transferred locally, no such opportunity has been prescribed. From these provisions it is obvious that the Board and the Commissioner will exercise the power of allocation of functions to various authorities or officers in the exigency of tax collection with due regard to the convenience of the assessee. In other words, the allocation is a measure of administrative convenience. In such a situation, the concept of jurisdiction cannot be imported and, certainly, not in the sense of invalidating the resultant action on account of the defect in the exercise of functions.

Being an enactment aimed at collecting revenue, the Legislature did not intend collection of revenue to be bogged down on account of technical plea of jurisdiction. It has, therefore, prescribed the limit up to which the plea of jurisdiction may be raised. As provided in Section 124(5)(a), the right is lost as soon as the assessment has been completed. Even where the right is exercised before the assessment is completed, the question is to be decided by the Commissioner or by the Board. Courts do not come into the picture. From the above provisions of the Act, it is apparent that the Act does not treat the allocation of functions to various authorities or officers as one of substance. It treats the matter as one of procedure and a defect of procedure does not invalidate the end action. The answer to the first question, therefore, is that the power is administrative and procedural and is to be exercised in the interest of exigencies of tax collection and the answer to the second question is that, under the Act, a defect arising from allocation of functions is a mere irregularity which does not affect the resultant action."
38. In Commissioner of Income Tax vs. ShivkumarAgrawal (1990) 186 ITR 734 (Orissa), it was held that imposition of penalty by the Assistant Commissioner in view of the amendment was without jurisdiction in light of an earlier judgment but there was no dispute about validity of initiation of the said proceedings. Once proceedings were validly initiated but disposed

of by an officer having no jurisdiction, the proceedings do not come to an end but should be finalized by an officer having jurisdiction. Therefore, while accepting the decision of the tribunal on the question of cancellation of penalty, the High Court held that the proceedings had not been finalized and could be finalized by the Income Tax Officer. In the present case, proceedings were initiated both by the AO, Delhi and ITO, Dimapur. Even if it is assumed that the proceedings initiated by AO, Delhi were not in accordance with law, there is no finding and indeed the respondent did not contest the proceedings initiated by ITO, Dimapur. ITO, Dimapur had accepted that the assessment order should be passed by AO, Delhi. Even if the said opinion/belief was wrong, it would not affect the initial initiation of proceedings by ITO, Dimapur, who had passed the assessment orders in the second round.

39. A Division Bench of Bombay High Court in Commissioner of Income Tax vs. BharatkumarModi (2000) 246 ITR 693, referred to the well settled principle of law; setting out the difference between lack of jurisdiction and irregular exercise of authority/ jurisdiction. Proceedings are a nullity when the authority taking it, has a no power to have seisin over the case. But an order is not a nullity or in exercise of void abintio jurisdiction, when the Assessing Officer does not confront the assessee with the material in his possession. The said error is an irregularity which could be corrected by remitting the matter. Powers of annulment and power to set aside and remit the case, have to be exercised keeping in mind the distinction between lack of jurisdiction and irregularity in exercise of authority/jurisdiction. The latter can be rectified and should be rectified as early as possible. Annulment of assessment would mean that the entire assessment proceedings would become ab initio void and the consequences were different from merely setting aside."

18. S.S. Ahluwalia (supra), examines several decisions which were relied upon by the assessee in the said case and were held to be not germane and applicable. This decision also explains provisions of Section 127 of the Act and scope and ambit of the said power, to observe that the section does not speak of the transfer of jurisdiction but transfer of case as defined in Section

127. Expression "concurrent jurisdiction" is mentioned in sub-section (3) to Section 127 of the Act. Elucidating the legal effect of Sections 120, 124 and 127 of the Act, it was observed in S.S. Ahluwalia (Supra) :-

"(13)The provisions indicate that Sections120, 124 and 127 of the Act recognizes flexibility and choice, both with the assessee and the authorities i.e. the Assessing Office before whom return of income could be filed and assessment could be made. The Assessing Officer within whose area an assessee was carrying on business, resided or otherwise income had accrued or arisen (in the last case, subject to the limitation noticed above) has jurisdiction. Similarly, the Assessing Officer also has authority due to class of income or nature and type of business. The Act, therefore, recognized multiple or concurrent jurisdictions. Provisions of

Section124 ensure and prevent two assessments by different assessing officers, having or enforcing concurrent jurisdiction. There cannot be and the Act does not envisage two assessments for the same year by different officers. (Reassessment order can be by a different officer)."

19. We would reiterate that sub-section (1) to Section 124 states that the Assessing Officer would have jurisdiction over the area in terms of any direction or order issued under sub-section (1) or sub-section (2) to Section 120 of the Act. Jurisdiction would depend upon the place where the person carries on business or profession or the area in which he is residing. Sub-section (3) clearly states that no person can call in question jurisdiction of an Assessing Officer in case of non-compliance and/or after the period stipulated in clauses (a) and (b), which as observed in S.S. Ahluwalia (supra) would negate and reject arguments predicated on lack of subject matter jurisdiction. Where an assessee questions jurisdiction of the Assessing Officer within the time limit and in terms of sub-section (3), and the Assessing Officer is not satisfied with the correctness of the claim, he is required to refer the matter for determination under sub-section (2) before the assessment is made. Reference of matter under sub-section (2) would not be required when Assessing Officer accepts the claim of the assessee and transfers the case to another Assessing Officer in view the objection by the assessee. (In terms of sub-section (3) to Section 124 of the Act, the petitioner had lost his right to question jurisdiction of the Income Tax Officer, Ward No. 1(1), Noida.)

20. Sub-section (5) to Section 124, though limited in scope, would also be applicable in the facts and circumstances of the present case as the Income-Tax Officer, Ward-1 (1), Noida had the power to assess income accruing or arising within the area as it is not the case of the petitioner- assessee that the said officer did not have jurisdiction in view of location of the bank account and/or petitioner's place of work. Section 124(5) of the Act saves assessment made by an assessing officer provided that the assessment does not bring to tax anything other than income accruing, arising or received in that area over which the assessing officer exercises jurisdiction. However, notwithstanding Section 124(5), the Act does not postulate multiple assessments by different assessing officers, or assessment of part or portion of an income [see Kanjimal & Sons Vs. Commissioner of Income Tax, New Delhi, (1982) 138 ITR 391 (Del)]. Thus, it is necessary that the Assessing Officers having concurrent jurisdiction ensure that only one of them proceeds and adjudicate. This is the purport and objective behind sub-section (2) to Section 124 of the Act.

21. Contention of the petitioner that the transfer by Income-Tax Officer, Ward-1(1), Noida to Income-Tax Officer, Ward-58 (2), Delhi required an order under Section 127 of the Act is fallacious and without merit. Section 127 relates to transfer of case from one Assessing Officer having jurisdiction to another Assessing Officer, who is otherwise not having jurisdiction as per directions of the Board under Section 120 and Section 124 of the Act. Under sub-section (1), transfer order under Section 127 can be passed by the Director General, Chief Commissioner or Commissioners from one Assessing Officer to another Assessing Officer subordinated to them. Sub-section (2) applies where the

Assessing Officer to whom the case is to be transferred is not subordinated to the same Director General, Chief Commissioner or Commissioners of the Assessing Officer from whom the case is to be transferred. This is not a case of a transfer under Section 127 of the Act. This is a case in which the assessee had raised an objection stating that the Income-Tax Officer, Ward-1 (1), Noida should not continue with the assessment as the petitioner-assessee was regularly filing returns with the Income-Tax Officer, Ward-58 (2), Delhi. Objection as raised were treated as made in terms of sub-section (3) to Section 124, notwithstanding the fact that there was delay and non-compliance. The Income-Tax Officer, Ward-1 (1), Noida accepted the request/prayer of the petitioner and had transferred pending proceeding to the Assessing Officer, Ward-58 (2), Delhi. Therefore, there was no need to invoke and follow the procedure mentioned in sub-section (2) to Section 127 of the Act. Section 127 of the Act would come into play when the case is to be transferred from the Assessing Officer having jurisdiction to a third officer not having jurisdiction over an assessee (a case) in terms of the directions of the Board under section 120 of the Act. Section 127 of the Act could also apply when the department wants transfer of a case, and Sections 120 and 124 of the Act are not attracted.

22. Counsel for the petitioner had relied upon judgment of the Supreme Court in Hasham Abbas Sayyad Vs. Usman Abbas Sayyad & Ors., (2007) 2 SCC 355 which draws distinction between a person or authority lacking inherent jurisdiction which makes the order passed by them a nullity, and therefore, principle of estoppel, waiver and acquiescence or even res judicata which are procedural in nature, would not have any application. Such orders passed without jurisdiction would suffer lack of coram non judice and cannot be given effect to. This decision refers to Harshad Chiman Lal Modi Vs. DLF Universal Ltd. & Anr., (2005) 7 SCC 791, which classifies and draws jurisprudential difference amongst - territorial or local jurisdiction; pecuniary jurisdiction; and jurisdiction over the subject matter. As far as territorial or pecuniary jurisdictions are concerned, objection should be taken at the earliest possible opportunity and /or before the settlement of issues and not at the subsequent stage. Jurisdiction as to the subject matter is distinct and stands on a different footing.

23. In view of the above discussion, objections as to the jurisdiction of assessing officer in the present case cannot be equated with lack of subject matter jurisdiction. They relate to place of assessment. Income-Tax Officer Ward 1(1), Noida would not per se lack jurisdiction, albeit he had concurrent jurisdiction with the Income-Tax Officer Ward 36(1)/58, Delhi. In the facts of the present case the contention raised about the lack of jurisdiction would not justify quashing the notice under Section 147 /148 of the Act.

24. Accordingly, we do not find any merit in the present petition and the same is dismissed. Stay order is vacated. However, in the facts of the present case there would be no order as to costs.

7.6 Thus, the contention of the ld. D.R. is that the jurisdiction cannot be questioned after a month of issuance of notice u/s 148 of the Act.

7.7 In the decision of Amritsar Bench of Tribunal in the case of Sukhdev Singh Kang in ITA No.185/Asr/2018 dated 21.12.2021 wherein the Tribunal has taken a view that assessment framed on the basis of notice u/s 148 of the Act issued by ITO having no jurisdiction cannot be sustained and liable to be quashed.

7.8 In the case of Charu K. Bagadia Vs. ACIT the Hon'ble High Court of Madras reported in (2023) 146 taxmann.com 345 (Madras) has held as under:

"12. In the instant case, it could be seen that the assessment of the appellant was reopened upon receipt of information from the Directorate of Income-tax (I & CI), Mumbai, to the effect that she received a sum of Rs. 53,50,000/- for transfer of her FSI right in the property at Mumbai. Pursuant to the same, the first respondent issued notice dated 28-3-2018 under section 148 of the Act stating that he has reasons to believe that the income of the appellant chargeable to tax for the assessment year 2011-12 has escaped assessment within The meaning of section 147 of the Act; and therefore, he proposed to assess/reassess the income for the said assessment year and he directed the appellant to file her return of income in the prescribed form within 30 days from the service of notice. Upon receipt of the said notice, the appellant in her reply dated 26-4-2$] 8, pointed out that she is a permanent resident of Chennai and her PAN is AAKPK7417K and an assessee on the file of the second respondent; and she therefore, requested the first respondent to drop the proposal. Consequently, the files pertaining to the reassessment of the appellant were transmitted to the second respondent. Thereafter, without issuing any fresh notice under section 148 of the Act, the second respondent/jurisdictional Assessing Officer continued the reassessment proceedings initiated by the first respondent, who lacks jurisdiction to issue notice under section 148 of the Act, and sent a notice dated 14-12-2018 under section 143(2) r/w section 129 of the Act to the appellant, calling upon her to appear either in person or through an authorised representative and produce the documents in support of the return of income filed by her. Thus, both the notices issued by the respondents 1 and 2 respectively were challenged by the appellant.

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14. Applying the provisions of law as well as the legal proposition laid down in the aforesaid decisions to the facts of the present case, wherein, admittedly, the appellant is an assessee on the file of the second respondent and hence, the first respondent has no jurisdiction over the appellant to issue notice under section 148 for reopening the assessment for the relevant assessment year, after recording the reasons to believe that some of the income of the appellant has escaped assessment, this court is of the opinion that the notice dated 28-3-2018 issued by the first respondent under section

148 of the Act, without jurisdiction, lacks legal sanctity and hence, the same is held to be invalid. As a sequitur, the continuation of the reassessment proceedings by the second respondent, who is the Jurisdictional Assessing Officer, without issuing any fresh notice as contemplated under section 148, but issuing notice dated 14.12.2018 under section 143(2) r/w 129 of the Act, which applies only for change in incumbent within the same jurisdiction, is also held to be invalid.

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16. *As already held by this court, the first respondent, who recorded the reasons for reopening the assessment under section 148(2), has no jurisdiction over the appellant, to issue notice dated 28-3-2018 under section 148(1). Though the files pertaining to the reassessment proceedings of the appellant were transferred, the second respondent has no authority to continue the reassessment proceedings under section 129 and hence, the notice dated 14-12-2018 issued by him is also held to be invalid. The invalid notices so issued by the respondents vitiate the entire reassessment proceedings initiated against the appellant. Admittedly, no notice under section 148 was issued by the second respondent, who is the jurisdictional Assessing Officer, for reassessment of the return of income of the appellant, within the time frame stipulated under the Act. In this case, the limitation period of six years for reopening the assessment for the year 2011-12 under section 147 of the Act, came to an end on 31-3-2018. In such circumstances, there is no requirement for this court to go into the other issue based on the factual matrix projected by the appellant i.e., whether the appellant has disclosed fully and truly all the material particulars that are necessary for assessment for the relevant assessment year."*

7.9 Further, in the case of CIT Vs. Mohd. Rizwan in ITA No.100 of 2015 dated 30.3.2017 the Hon'ble Allahabad High Court held as under:

"32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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."

41. 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.

42. 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."

43. 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.

44. 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.

45. 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."*

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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."

52. 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.

53. 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.).

54. 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.

55. 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.

56. 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.

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

7.10. Further, I find that 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 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.

7.11 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.

7.12 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.

7.13 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."

7.14 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.

7.15 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.

7.16 In Commissioner of Income Tax, Gujarat-II Vs. Kurban Hussain Ibrahimji Mithiborwala 1972 (4) SCC 394 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.

7.17 Even otherwise, as seen from the above judgement in the case of Mohd. Rizwan cited (supra) is squarely applicable to the assessee's case and which is favourable to the assessee by following the ratio laid

down by Hon'ble Supreme Court in the case of CIT Vs. Vegetable Products Ltd. (88 IR 192), wherein held that "if the language is plain, the fact that the consequences of giving effect to it may lead to some absurd result is not a factor to be taken into account in interpreting the provision. It is for the legislature to step in and remove the absurdity. On the other hand, if two reasonable constructions of a taxing provisions are possible, that construction which favours the assessee must be adopted. This is a well-accepted rule of construction."

7.18 In view of this, I quash the assessment order framed by ITO Ward-1 Chikamagaluru vide order dated 24.12.2018 u/s 144 of the Act. As I have quashed the assessment order for want of jurisdiction on the part of ITO Ward-1, Chikamagaluru in framing the assessment, therefore, I refrain from adverting the other grounds of appeal raised by assessee before me as well as issues with regard to sustainability of the addition on merits.

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

Order pronounced in the open court on 23rd Feb, 2023

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 23rd Feb, 2023.
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.