

Grounds of appeal in IT (I.T)A No. 120/Bang/2022 for AY**2014-15:**

The impugned order of the learned Commissioner of Income-tax (Appeals)-12, Bengaluru, Karnataka passed under Section 250 of the Income Tax Act, 1961 is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. The learned Commissioner of Income-tax (Appeals) failed to adjudicate the ground of the appellant that the Assessment order passed by the learned Assessing officer under section 144 read with section 147 of the Act and served on the appellant by an e-mail dated 06.01.2020 is beyond the limit prescribed under section 153 of the Act and hence it is barred by limitation on the facts and circumstances of the case.

3. The learned Commissioner of Income-tax (Appeals) failed to adjudicate the ground of the appellant that the assessment order served on the appellant through e-mail dated 06.01.2020 did not bear a Document Identification Number (DIN) and therefore is invalid as per the guidelines issued by the Central Board of Direct Taxes on the facts and circumstances of the case

4. The learned Commissioner of Income-tax (Appeals) is not justified in law in confirming the additions made by the learned Assessing officer in respect of unexplained investments under section 69 of the Act to the extent of Rs. 31,10,000/- when the appellant has furnished complete details of the source of the cash which is deposited into his bank account on the facts and circumstances of the case.

5. The learned Commissioner of Income-tax (Appeals) failed to appreciate all the contents of the written submission filed by the appellant in respect of source of amounts for deposit in the bank account of the appellant on the facts and circumstances of the case.

6. The learned Commissioner of Income-tax (Appeals) erred in rejecting the sources explained by the appellant for making cash deposit in the bank account to the extent of Rs. 31,10,000/- on the facts and circumstances of the case.

7. The learned Commissioner of Income-tax (Appeals) failed to appreciate that the provisions of section 69 of the Act is not applicable and consequently invoking the provision of section 115BBE of the Act is invalid in law on the facts and circumstances of the case.

8. The Appellant denies himself liable to be charged interest under Section 234A and 234B of the Act on the facts and circumstance of the case.

9. The appellant craves for leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

10. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.

Grounds of appeal in IT(I.T)A No. 121/Bang/2022 for AY**2017-18:**

1. *The impugned order of the learned Commissioner of Income-tax (Appeals)-12, Bengaluru, Karnataka passed under Section 250 of the Income Tax Act, 1961 is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.*

2. *The learned Commissioner of Income-tax (Appeals) is not justified in confirming the additions made by the learned Assessing officer to the extent of Rs. 29,50,000/- as unexplained investments under section 69 of the Act, when the appellant has furnished complete details of the source of the cash which is deposited into his bank account on the facts and circumstances of the case.*

3. *The learned Commissioner of Income-tax (Appeals) failed to appreciate all the contents of the written submission filed by the appellant in respect of source of amounts for deposit in the bank account of the 'appellant on the facts and circumstances of the case.*

4. *The learned Commissioner of Income-tax (Appeals) erred in rejecting the sources explained by the appellant for making cash deposit in the bank account to the extent of Rs. 29,50,000/- on the facts and circumstances of the case.*

5. *The learned Commissioner of Income-tax (Appeals) failed to appreciate that the provisions of section 69 of the Act is not applicable and consequently invoking the provision of section 115BBE of the Act is invalid in law on the facts and circumstances of the case.*

6. *The learned Commissioner of Income-tax (Appeals) failed to adjudicate all the grounds of appeal filed by the appellant on the facts and circumstances of the case.*

7. *The Appellant denies himself liable to be charged interest under Section 234A, 234B and 234C of the Act on the facts and circumstance of the case.*

8. *The appellant craves for leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*

9. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.*

2. Brief facts of the case are as under:-

The assessee is a non resident individual and is a resident of U.S.A. For AY 2014-15, assessee had earned interest income and long term capital gains. For AY 2017-18, assessee had earned interest income and short term capital gains.

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3. It was noted from the assessment order, the assessee had not filed any return of income, however he had sold property of Rs.30 lakhs and had cash deposit of Rs.58,40,000/-. The ld.AO issued notice u/s. 148 of the Act after recording reasons. The assessee failed to respond to the notices and subsequently, the case was transferred from DCIT,Circle-1(1), Bangalore since it did not had jurisdiction over the case. Accordingly, notice u/s. 142(1) r.w.s. 129 was issued on 05.12.2019, in response to which, the assessee filed submissions on 06.12.2019 along with the return of income for assessment year under consideration declaring total income of Rs. 87,830/-. However, due to failure to e-verify, the return of income filed by the assessee was shown as invalid. It was submitted that, e-verification could not happen within the stipulated time. The Ld.AO gave opportunities to the assessee during the assessment proceedings and later on informed the assessee that the assessment will be concluded u/s. 144 r.w.s. 147 of the Act. The Ld.AO thus made addition in the hands of the assessee u/s.69 of the Act to the extent of Rs. 58,40,000/- as unexplained investment.

3.1.Aggrieved by the order of the ld.AO, assessee preferred appeal before the ld.CIT(A).The ld.CIT(A) confirmed the addition made by the Ld.AO partly.

4. Aggrieved by the order of the ld.CIT(A), assessee is in appeal before this *Tribunal*.

Before this *Tribunal*, the assessee challenged the legal issue on two counts i. regarding the limitation of passing the assessment order u/s. 144 r.w.s. 147 of the Act, ii. The assessee also

challenged that the assessment order passed is without Document Identification Number (DIN) is bad in law and therefore is invalid as per the guidelines issued by the CBDT.

4.1. On the first aspect of the legal challenge, the Ld.AR argued that, assessee had received the assessment order through e-mail dated 06.01.2020 and is therefore beyond the period of limit prescribed u/s. 153 of the Act. It is the submission of the ld.AR that, as the e-mail is dated 06.01.2020, the order passed is belatedly though the assessment order is dated 30.12.2019. The Ld.AR submitted that, what is to be considered is when the assessment order is issued so as to beyond the control of the authority concerned.

4.2. Admittedly, the limitation expires on 31.12.2019 and impugned order is dated 30.12.2019. The Ld.DR submitted that, the assessee is trying to argue on presumptions, without any cogent material to establish the dispatch of the order. Placing reliance on the generation of DIN which is filed by assessee itself before us today, the ld.DR submitted that, a separate DIN number has been generated in the present assessment order which reveals that the assessment order and the computation sheet has been passed on 30.12.2019. He, thus vehemently opposed the argument advanced by the ld.AR on this issue.

4.3. We have perused the submissions advanced by both the sides in light of records placed before us.

4.4. We find force in the submissions of the Ld.DR. In any event, there is nothing brought in record by the assessee to establish that the assessment order has been “made” after

31.12.2019 thereby making a time bar. We, therefore reject the first legal plea raised by assessee in Ground No.2

5. The second legal plea raised by the assessee is in respect of non generation of DIN number in the body of the assessment order passed u/s. 144 r.w.s. 147 of the Act dated 30.12.2019.

5.1. The ld.AR submitted that, Ld.AO passed assessment order on 30.12.2019 manually, without containing a DIN number. He submitted that, this was in violation of the CBDT circular No. 19 of 2019 dated 14.08.2019 and therefore, the entire assessment becomes bad in law. He submitted that, any communication in terms of clause (4) of the said circular, which is not conformity, should be treated as invalid. In support, he placed reliance on following decisions:

- i.) Decision of Hon'ble Kolkata High Court in case of Tata Medical Centre Trust vs CIT(E) reported in (2022) 140 taxmann.com 431*
- ii.) Co-ordinate Bench of this Tribunal in case of Intrado EC India Pvt.Ltd.vs. DCIT in IT(TP)A No. 239/Bang/2021 vide order dated 09.11.2022*

5.2. The Ld.DR submitted that on 30.12.2019 intimation letter for order u/s. 144 r.w.s. 147 of the Act was received by assessee fixing the DIN number. The Ld.DR thus submitted that on the same date of passing of the assessment order, the DIN number was generated and was intimated to the assessee. Therefore, the assessment order passed cannot be treated as invalidated.

5.3. We have perused the submissions advanced by both the sides in light of records placed before us.

To analyse the present issue, it is necessary to know the requirements under circular No. 19 of 2019 dated 14.08.2019 issued by CBDT. For the sake convenience, the same is reproduced as under:-

“CIRCULAR NO. 19/ 2019
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

*New Delhi, dated the 14th August,
2019.*

Subject: Generation/Allotment/Quoting of Document Identification Number in Notice/Order/Summons/letter/ correspondence issued by the Income Tax Department – reg.

With the launch of various e-governance initiatives, Income-tax Department is moving toward total computerization of its work. This has led to a significant improvement in delivery of services and has also brought greater transparency in the functioning of the tax administration. Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as "communication") were found to have been issued manually, without maintaining a proper audit trail of such communication.

2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), has decided that no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.

3. In exceptional circumstances such as, —

(i) when there are technical difficulties in generating / allotting / quoting the DIN and issuance of communication electronically; or

(ii) when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties: or

(iii) when due to delay in PAN migration. PAN is lying with non-jurisdictional Assessing Officer; or

(iv) when PAN of assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or

(v) When the functionality to issue communication is not available in the system,

the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner/Director General of income-tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner/ Director General of Income-tax for issue of manual communication in the following format-

" .. This communication issues manually without a DIN on account of reason/reasons given in para 3(i) / 3(ii) /3(iii) / 3(iv) / 3(v) of the CBDT Circular No ...dated (strike off those which are not applicable) and with the approval of the Chief Commissioner/Director General of Income Tax vide number dated

4. Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued.

5. The communication issued manually in the three situations specified in para 3- (i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, by —

- i. uploading the manual communication on the System.*
- ii. compulsorily generating the DIN on the System;*
- iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.*

6. An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.

7. Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the Income-tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by 31th October, 2019."

*Sd/
(Sarita Kumari)
Director (ITA.II)CBDT."*

5.4. On a bare perusal of the above circular, it is clear that, no communication shall be issued by the revenue authorities without allotting a DIN number that is necessary to be quoted in any correspondence issued by the revenue authorities. Except under exceptional circumstances as referred by the circular in para '3', the procedure has to be strictly followed. As per para '3' in, the event the DIN number is not mentioned in

any of the communication issued by the assessing authorities, should be with the written approval of Chief Commissioner/Director General of Income Tax and such details must be mentioned in the manual communication by the assessing authorities to the assessee. Para '4' of the circular clearly states that, any communication issued manually which is not in conformity with para '2' and para '3' of the circular shall be treated as invalid and shall be deemed to have never been issued.

5.5. The above view has been taken by the decisions that has relied by the ld.AR referred to hereinabove and also the decision of *Hon'ble Delhi Tribunal* in case of *M/s. Brandix Mauritius Holdings Ltd. vs DCIT* in *ITA No.1542/Del/2020 dated 19.09.2022.*

5.6. In view of the above discussions and the view consistently taken by this *Tribunal* in the above referred decisions, we hold that, the order passed by the Ld.AO u/s. 144 r.w.s. 147 of the Act dated 30.12.2019 is invalid and shall be deemed to have never been issued as per para '4' of the CBDT circular, since it is not in conformity with the requirements mentioned in para '3'. Accordingly, the additions made by the Ld.AO in the said assessment order is also rendered to be invalid and deleted.

Accordingly, ground No.3 raised by the assessee stands allowed.

As we have quashed the assessment order dated 30.12.2019, the other issues raised becomes infructuous.

Accordingly, the appeal filed by assessee for AY 2014-15 stands allowed.

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6. The assessee filed e-return of income u/s. 139(4) of I.T.Act, 1961 on 31.03.2018 declaring total income of Rs.16,02,458/-. The return of income was processed u/s. 143(1) that was accepted vide intimation dated 08.06.2018. The case was then selected for scrutiny by issuing a notice u/s. 143(2) of the Act on 24.09.2018 by ITO-Ward-1(2)(1). Subsequently another notice u/s. 143(2) was issued on 28.09.2018 by ITO-Ward-4(3)(4). Subsequently assessee received notice u/s. 142(1) r.w.s. 129 of I.T.Act, 1961 from the office of ITO-Ward-4(3)(4) on 24.06.2019. Thereafter, notice 142(1) r.w.s. 129 of I.T.Act, 1961 from the office of ITO-Ward-1(1) International Taxation was received by the assessee. One more notice u/s. 142(1) was issued to the assessee on 05.11.2019 asking for details of cash paid during previous FY 2015-16 and cash flow statement, bank account statements for FY 2015-16& 2016-17, in respect of which all relevant information and documents have been submitted by assessee vide submissions dated 20.12.2019.

6.1. The Ld.AO after considering the submissions of the assessee rejected the explanation and documents furnished and made additions in the hands of the assessee of Rs.57 lakhs as unexplained investment u/s. 69 of the Act.

6.2. Aggrieved by the order of the ld.AO, the assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) partly allowed the claim of the assessee after considering various documents filed by assessee.

Aggrieved by the order of the ld.CIT(A), assessee is in appeal before the *Tribunal*.

6.3. The assessee filed application for admission of additional grounds which reads as under:-

1. *The learned Assessing officer, Income Tax Officer, Ward-International Taxation 1(1), BLR, being the jurisdictional Assessing officer, has failed to issue a notice under section 143(2) of the Act, and consequently the entire assessment proceedings and the assessment order dated 30.12.2019 passed under section 143(3) of the Act is without jurisdiction and ought to be quashed on the facts and circumstances of the case.*

2. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*

3. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.*

6.3.1. It is submitted that the issue alleged by the assessee in grounds are purely legal in nature, and no new facts needs to be adverted for verification/adjudication of the same. He thus placed reliance on the decision of the *Hon'ble Supreme Court* in the case of *National Termal. Power Company Ltd.vs. CIT reported in 229 ITR 383* and decision of *Hon'ble Karnataka High Court* in the case of *Gundur Thimmappa & Sons vs. CIT reported in 70 ITR 70*

6.3.2. On the other hand, the Ld.DR strictly opposed the admission of additional grounds and submitted that there is no reasonable cause for not raising these grounds on earlier occasion and same to be rejected. The Ld.DR though objected for the admission, could not controvert the submissions that no new facts needs to be considered for adjudication of this issue.

6.3.3. We have perused the submissions advanced by both the sides in light of records placed before us. Regarding the admission of additional ground, the learned Authorised Representative submitted that admission of these additional

grounds does not require any investigation of fresh facts and which may be admitted in view of the judgement of *Hon'ble Supreme Court* in the case of *NTPC Ltd. Vs. CIT* reported in 229 ITR 383.

6.3.4. We have heard both the parties and perused the material on record. As held by the *Hon'ble Supreme Court* in the case of *NTPC Ltd. Vs. CIT* reported in 229 ITR 383, we are inclined to admit the additional grounds as argued by the Ld.AR.

Accordingly the application for admission of additional grounds stands allowed.

7. As the issue raised by the assessee in the Additional ground No.1 goes to the root cause of the case, we deem it appropriate to decide this issue first.

7.1. The Ld.AR submitted that, the assessee received the first notice u/s. 143(2) of the Act on 24.09.2018 issued by ITO, Ward-1(2)(1), Bangalore. Subsequently, another notice dated 28.09.2018 was issued to the assessee by ITO-Ward-4(3)(4). He submitted that the assessment order categorically records, the case was transferred from ITO, Ward-4(3)(4) as the assessee was non resident during the year under consideration and that ITO ward-4(3)(4) did not have jurisdiction to the assessee. The assessment order also records that since there was change of incumbent in the office notice u/s. 142(1) r.w.s 129 of the Act was issued through e-assessment portal on 15.07.2019 by ITO-Ward- International Taxation-1(1), Bangalore calling for details.

7.2. The Ld.AR submitted that ITO-Ward-International Taxation never issued a notice u/s. 143(2) of the Act to the assessee, and therefore did not assume jurisdiction to pass the assessment

order. Referring to AY 2014-15, the ld.AR submitted that, it was always International Taxation-1(1) who had the jurisdiction over the assessee and as the previous notices u/s. 143(2) of the Act that issued by non jurisdictional AO for year under consideration and that there was a transfer order passed, transferring the case to International Taxation, Ward-1(1), it was incumbent upon the Ld.AO of the International Taxation Ward-1(1) issue notice u/s. 143(2) of the Act.

7.3. The ld.AR submitted that the notices issued to the assessee for AY 2017-18 u/s. 143(2) of the Act was by non jurisdictional AO, and therefore, unless International Taxation Ward-1(1) issues fresh notice 143(2), assumption of jurisdiction cannot be conferred and entire assessment proceedings without issuance of notice u/s. 143(2) becomes *void ab initio*.

He placed reliance on the following decision in support of his submissions

- i. Hon'ble Supreme Court decision in the case of ACIT vs. SK Industries reported in 141 taxmann.com 569*
- ii. Hon'ble Karnataka High Court in the case of Nittur Vasanth Kumar Mahesh vs. ACIT reported in (2019) 265 taxman 277*
- iii. Hon'ble Kolkata High Court in the case of PCIT vs. Nompany and Sons reported in 136 taxmann.com 414*
- iv. Hon'ble Kolkata High Court in the case of PCIT vs. Cosmat Traders Pvt.Ltd. reported in (2023) 146 taxmann.com 207*
- v. ITAT Bangalore Tribunal in the case of Arwa Hararwala v. ITO Ward-7(2)(2) in ITA No. 01/Bang/2020*
- vi. ITAT Bangalore Tribunal in the case of Marlabs Innovations Pvt.Ltd. (succednor of Marlabs Software Pvt.Ltd.) vs. DCIT in ITA No. 457/Bamg/2019*

vii. ITAT Bangalore Tribunal in the case of *G.N.Mohan Raju v. ITO* reported in [2015] 167 TTJ 236.

7.4. On the contrary, the Ld.DR submitted that the assessee had participated in the assessment order and therefore, as per section 292BB of the Act, it is just a mere procedural irregularity and the non issuance of notice u/s. 143(2) of the Act by the AO of International Taxation, Ward-1(1) cannot make the entire assessment to be *void ab initio*. In response to the above submissions by the Ld.DR, the ld.AR placed reliance on the decision of Hon'ble Supreme Court in case of *CIT vs. Laxman Ds Khandelwal* reported in (2019) 108 taxmann.com 183 and *ACIT vs. Hotel Blue Moon* reported in (2010) 321 ITR 362.

7.5. We have perused the submissions advanced by both the sides in light of records placed before us. Admittedly, there is no notice issued by the AO who has been conferred with jurisdiction over the assessee and has merely proceeded to pass the assessment order by issuance of notice u/s. 142(1) of the Act dated 05.07.2019 and 05.12.2019.

7.6. Admittedly there was no notice issued by the Deputy Commissioner of Income Tax (DCIT)- Circle -11 (3) (Presently Circle-3(1)(2), Bangalore) who completed the Assessment and was the AO who had jurisdiction with the Assessee.

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

"Power to transfer cases.

127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so,

transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal ITA Nos.1037 & 1038/Bang/2019 Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,--

(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or] Chief Commissioners or Principal Commissioners or] Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re- issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.--In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

It can be seen from the provisions of Sec.127(4) of the Act that the necessity of re-issuing any notice already issued by transferor AO by the transferee AO is not necessary but on the date on which a notice is issued the transferor AO should have held valid jurisdiction. In this case the notice u/s.143(2) of the Act was issued by the transferor AO on 28/09/2018 who did not have jurisdiction over the Assessee. Therefore the provisions of Sec.127(4) of the Act cannot come to the rescue of revenue.

We find the facts of the present case are identical to the case already decided by the decision of *Hon'ble Kolkata Tribunal* in case of *Rungta Irrigation Ltd.* (supra). The issue in the case before the ITAT Kolkata Bench in the case of *M/S.Rungta Irrigation Ltd. Vs. ACIT in ITA No.1224/Kol/2019* order dated 6.9.2019 was whether, non-issue of notice u/s.143(2) by the AO who passed the assessment order will render the order of assessment void or was it a curable defect. It was the plea of the Assessee that as held by the *Hon'ble Supreme Court* in case of *Hotel Blue Moon* reported in 321 ITR 362, non-issue of notice u/s.143(2) by the AO who passed the assessment order renders the order of assessment proceedings a nullity. According to the revenue as per section 127 of the Act, which deals with transfer of jurisdiction of a case specifically provides in sub-section (4) of section 127 that there is no necessity to re-issue of any

statutory notices already issued by the AO from whom the case is transferred.

This Tribunal has consistently held in plethora of cases that, on transferring the jurisdiction of the assessee's case by an AO who had issued 143(2) notice, becomes, functus officio and the AO who subsequently frames the assessment order pursuant to transfer of case u/s.127 of the Act, has to mandatorily issue notice u/s 143(2) of the Act. This law has been held by *Hon'ble Supreme Court* in *CIT vs Hotel Blue Moon* reported in (2010) 321 ITR 362 (S.C). *Hon'ble Supreme Court* held that, issue of a legally valid notice u/s. 143(2) is mandatory for usurping jurisdiction to frame scrutiny assessment u/s. 143(3) of the Act and absence of a valid notice u/s 143(2) is not a curable defect. The view taken in the case of *Hotel Blue Moon (supra)* was reiterated by *Hon'ble Supreme Court* in another case of *CIT vs Laxman Das Khandelwal* in (2019) 108 taxmann.com 183. *Hon'ble Supreme Court* observed as under:

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

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

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

under Section 68 of the Income Tax Act, 1961 should be deleted or set aside?"

4. In said appeal arising from the decision of the Income Tax Appellate Tribunal ('the Tribunal', for short), the issue that arose before the High Court was the effect of absence of notice under Section 143(2) of the Income Tax Act, 1961 ('the Act', for short). The Respondent-Assessee relied upon the decision of this Court in *Asstt. CIT v. Hotel Blue Moon* [2010] 188 Taxman 113/321 ITR 362 (SC). On the other hand, reliance was placed by the Appellant on the provisions of Section 292BB of the Act to submit that the Respondent having participated in the proceedings, the defect, if any, stood completely cured.

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

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

"(1) Whether on the facts and in circumstances of the case the issuance of notice under Section 143(3) of the Income Tax Act, 1961 within the prescribed time-limit for the purpose of making the assessment under Section 143(3) of the Income Tax Act, 1961 is mandatory? And

(2) Whether, on the facts and in the circumstances of the case and in view of the undisputed findings arrived at by the Commissioner of Income Tax (Appeals), the additions made under Section 68 of the Income Tax Act, 1961 should be deleted or set aside?"

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

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13. The only question that arises for our consideration in this batch of appeals is: whether service of notice on the assessee under Section 143(2) within the prescribed period of time is a

prerequisite for framing the block assessment under Chapter XIV-B of the Income Tax Act, 1961?

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27. The case of the Revenue is that the expression "so far as may be, apply" indicates that it is not expected to follow the provisions of Section 142, sub-sections (2) and (3) of Section 143 strictly for the purpose of block assessments. We do not agree with the submissions of the learned counsel for the Revenue, since we do not see any reason to restrict the scope and meaning of the expression "so far as may be, apply". In our view, where the assessing officer in repudiation of the return filed under Section 158-BC(a) proceeds to make an enquiry, he has necessarily to follow the provisions of Section 142, sub-sections (2) and (3) of Section 143."

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

"292BB. Notice deemed to be valid in certain circumstances.— Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was –

(a) Not served upon him; or

(b) Not served upon him in time; or

(c) Served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

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

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

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

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

9. *According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself.*

10. *Since the facts on record are clear that no notice under Section 143(2) of the Act was ever issued by the Department, the findings rendered by the High Court and the Tribunal and the conclusion arrived at were correct.*

We, therefore, see no reason to take a different view in the matter.

In the present case, admittedly no notice u/s.143(2) was issued by the AO who had jurisdiction over the assessee at all material point of time. The assessee filed return of income on, with the 28/12/2019. A notice u/s.143(2) of the Act, dated 28/09/2018 was issued by ITO Ward 4(3)(4), who never had jurisdiction over the assessee. Thereafter, notice u/s.142(1) dated 05/11/2019 was issued by ITO Ward-1(1), International Taxation, and assessment order dated 28/12/2019 was passed u/s.144 r.w.s.147 of the Act by the ITO Ward-1(1), International Taxation, who had jurisdiction over the assessee.

In such circumstances, the decision of the of *Hon'ble Supreme Court* in case of *CIT vs. Hotel Blow Moon (Supra)*, and *CIT vs Laxman Das Khandelwal* will be clearly applicable to the facts of

the present case. We also find that *Hon'ble Supreme Court in a recent decision in case of CIT vs. S.K.Industries reported in (2022) 141 Taxmann.com 569* has taken identical view that where an Assessing Officer, passed an assessment order under section 143(3) without issuing notice under section 143(2) and only in pursuance with notice issued by another assessing officer under section 143(2), who had no jurisdiction over assessee at relevant time, such assessment order was liable to be set aside.

7.6. Admittedly, there was no notice issued by the ITO Ward 1(1) International taxation, had jurisdiction over the assessee and who completed the assessment. We have carefully considered the rival submissions. Section 127 of the Act reads as follows:

"Power to transfer cases.

127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal ITA Nos.1037 & 1038/Bang/2019 Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,--

(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or] Chief Commissioners or Principal Commissioners or] Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner from whose jurisdiction the case is to be transferred may, after

giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re- issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.--In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

7.7. It can be seen from the provisions of Sec.127(4) of the Act that the necessity of re-issuing notice under section 143(2), by the transferee AO is not necessary, but on the date on which the notice under section 143(2) is issued by the transferor AO, he must have held a valid jurisdiction over the assessee. In the present facts of the case, case the notice u/s.143(2) of the Act was issued by the transferor AO on 28/09/2018, did not have jurisdiction over the assessee. Therefore the provisions of Sec.127(4) of the Act cannot come to the rescue of revenue.

7.8. We find the *Hon'ble Supreme Court* in case of *Hotel Blue Moon* reported in 321 ITR 362, non-issue of notice u/s.143(2) by the AO who passed the assessment order renders the order of assessment proceedings a nullity. According to the revenue as per section 127 of the Act, which deals with transfer of jurisdiction of a case specifically provides in sub-section (4) of section 127 that there is no necessity to re-issue of any statutory notices already issued by the AO from whom the case is transferred.

7.9. This *Tribunal* has consistently held in plethora of cases that, on transferring the jurisdiction of the assessee's case by an AO who had issued 143(2) notice, becomes, *functus officio* and the AO who subsequently frames the assessment order pursuant to transfer of case u/s.127 of the Act, has to mandatorily issue notice u/s 143(2) of the Act. This law has been held by *Hon'ble Supreme Court* in *CIT vs Hotel Blue Moon* reported in (2010) 321 ITR 362 (S.C). *Hon'ble Supreme Court* held that, issue of a legally valid notice u/s. 143(2) is mandatory for usurping jurisdiction to frame scrutiny assessment u/s. 143(3) of the Act and absence of a valid notice u/s 143(2) is not a curable defect. The view taken in the case of *Hotel Blue Moon (supra)* was reiterated by *Hon'ble Supreme Court* in another case of *CIT vs Laxman Das Khandelwal* in (2019) 108 taxmann.com 183. *Hon'ble Supreme Court* observed as under:

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

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

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

4. In said appeal arising from the decision of the Income Tax Appellate Tribunal ('the Tribunal', for short), the issue that arose before the High Court was the effect of absence of notice under Section 143(2) of the Income Tax Act, 1961 ('the Act', for short). The Respondent-Assessee relied upon the decision of this Court in *Asstt. CIT v. Hotel Blue Moon* [2010] 188 Taxman 113/321 ITR 362 (SC). On the other hand, reliance was placed by the Appellant on the provisions of Section 292BB of the Act to submit that the Respondent having participated in the proceedings, the defect, if any, stood completely cured.

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

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

"(1) Whether on the facts and in circumstances of the case the issuance of notice under Section 143(3) of the Income Tax Act, 1961 within the prescribed time-limit for the purpose of making the assessment under Section 143(3) of the Income Tax Act, 1961 is mandatory? And

(2) Whether, on the facts and in the circumstances of the case and in view of the undisputed findings arrived at by the Commissioner of Income Tax (Appeals), the additions made under Section 68 of the Income Tax Act, 1961 should be deleted or set aside?"

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

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

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27. The case of the Revenue is that the expression "so far as may be, apply" indicates that it is not expected to follow the provisions of Section 142, sub-sections (2) and (3) of Section 143 strictly for the purpose of block assessments. We do not agree with the submissions of the learned counsel for the Revenue, since we do not see any reason to restrict the scope and meaning of the expression "so far as may be, apply". In our view, where the assessing officer in repudiation of the return filed under Section 158-BC(a) proceeds to make an enquiry, he has necessarily to follow the provisions of Section 142, sub-sections (2) and (3) of Section 143."

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

"292BB. Notice deemed to be valid in certain circumstances.— Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was –

(a) Not served upon him; or

(b) Not served upon him in time; or

(c) Served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

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

On the other hand, Mr. Ankit Vijaywargia, learned Advocate, appearing for the Respondent submitted that the notice under Section 143(2) of the Act was never issued which was evident from the orders passed on record as well as the stand taken by the Appellant in the memo of appeal. It was further submitted that issuance of notice under Section 143(2) of the Act being prerequisite, in the absence of such notice, the entire proceedings would be invalid.

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

9. According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself.

10. Since the facts on record are clear that no notice under Section 143(2) of the Act was ever issued by the Department, the findings rendered by the High Court and the Tribunal and the conclusion arrived at were correct.

We, therefore, see no reason to take a different view in the matter.

7.10. In the present case, admittedly no notice u/s.143(2) was issued by the AO who had jurisdiction over the assessee at all material point of time. The assessee filed return of income on 31/03/2018, under section 139(4). A notice u/s.143(2) of the Act, dated 24/09/2018 was issued by the ITO Ward 1(2)(1), who

never had jurisdiction over the assessee. Thereafter, another notice u/s.143(2) dated 28/09/2018 was issued ITO Ward-4(3)(4), who also did not have jurisdiction over the assessee. The case was transferred by ITO Ward 4(3)(4) on 24/06/2019 to ITO Ward-1(1), International Taxation who had jurisdiction over the assessee. The ITO Ward-1(1), International Taxation passed the assessment order dated 28/12/2019 was passed u/s.144 r.w. 147 of the Act.

7.11. In such circumstances, the decision of the of *Hon'ble Supreme Court* in case of *CIT vs. Hotel Blow Moon (Supra)*, and *CIT vs Laxman Das Khandelwal* will be clearly applicable to the facts of the present case. We also find that *Hon'ble Supreme Court* in a recent decision in case of *CIT vs. S.K.Industries reported in (2022) 141 Taxmann.com 569* took identical view that, where an assessing officer, passed assessment order under section 143(3), without issuing notice under section 143(2) and only in pursuance to notice issued by another assessing officer under section 143(2), who had no jurisdiction over the assessee at relevant time, such assessment order was liable to be set aside.

Accordingly, the additional grounds filed by assessee stands allowed.

As a result, we quash the assessment order dated 28/12/2019 as in the present case no valid notice u/s 143(2) was issued by the AO who held jurisdiction over the case of the assessee. The order thus passed u/s.144 r.w.s.147 dated 28/12/2019 is unsustainable in the eyes of law. As the assessee succeeds on the preliminary legal issue raised before us, other grounds of

appeal raised by the assessee on merits in the appeal for assessment year 2017-18 does not require any consideration.

Accordingly, the appeal filed by the assessee for assessment year 1017-18 stands allowed.

In the result the appeal filed by the assessee for assessment year 2014-15 & 2017-18 stands allowed.

Order pronounced on this 17th day of March, 2023.

**Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER**

**Sd/-
(Beena Pillai)
JUIDICIAL MEMBER**

Bangalore; Dated : 17th March, 2023.
Thirumalesh, Sr.PS

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr.CIT, Bengaluru.
4. The DR, ITAT, Bengaluru.
5. Guard File.

Asst.Registrar/ITAT, Bangalore