

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC', KOLKATA**

[Before Dr. Manish Borad, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 138/Kol/2023**  
**Assessment Year : 2013-14**

Amtek Financial Consultants Pvt. Ltd. PAN: AAJCA 0529 N Appellant	Vs .	ITO, Ward-4(3), Kolkata Respondent
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Date of Hearing	13.04.2023
Date of Pronouncement	03.05.2023
For the Assessee	Shri Miraj D. Shah, AR
For the Revenue	Shri Vijay Kumar, Addl. CIT

**ORDER**

**Per Sonjoy Sarma, JM:**

The instant appeal has been filed by the assessee against the order of Id. CIT(A)-2, Kolkata dated 23.08.2018. The assessee has raised the following grounds of appeal:

*"1. That the order passed by Ld. Assessing Officer is out of jurisdiction and not sustainable as per law as well as on the facts of the case. There was PINCODE jurisdiction transfer all over India by virtue of a notification of CBDT being Notification No. 64/2014[F. No. 187/40/2014 (ITA-1)] SO 2910 (E) dated 13.11.2014 and in accordance with the said notification area wise jurisdiction to different AO's was notified w.e.f. 15.11.2014. Such notification of allotment of jurisdiction for PCCIT West Bengal and Sikkim was put on the website and is available on Google under the head "office.incometaxindia.gov.in Kolkata under the head jurisdiction details of Principle CCIT West Bengal Income tax AO wise jurisdiction". It is apparent from the same that the jurisdiction of assessee shall henceforth was to be determined as per PINCODE address of assessee. Though the assessee vide its letter dated 26.10.2015 informed that his address was changed to Howrah and the AO Ward 4(3) had no jurisdiction over the address at Howrah. It is apparent from the first paragraph of assessment order that AO*

had knowledge of newly changed PAN & ROC address of assessee still the AO continued the proceedings in Ward 4(3)/Kolkata without following the notification issued by CBDT which was binding on him.

2. That the order passed u/s 144(1) by the Ld. Assessing Officer is wrong in law as well as in facts of the case.

3. That the Ld. Assessing Officer erred in law as well as in facts by not providing, reasonable opportunity to the appellant to defend its case and the same is against the principle of natural justice.

4. That the Ld. Assessing Officer erred in law as well as in facts by passing order on protective basis.

5. That the Ld. Assessing Officer erred in law as well as in facts by treating the appellant company as bogus/shell company on the basis of statement of third persons which were taken on the back of the assessee. The Ld. A.O had information that Shri Sajjan Kumar Garg and Shri Jibendra Mishra in their deposition before the DDIT(INV) -Unit-I(2), Kolkata u/s 131 has admitted that the appellant-company is a shell/paper company and its purpose is to provide accommodation entries. The copy of said information was never shared with the assessee for his rebuttal nor any opportunity was given to cross examine the evidence on which the assessing officer relied upon.

6. That the Ld. Assessing Officer erred in law as well as in facts by disallowing trading loss of Rs 1634000/- and expenses such as Salary of Rs 1080000/-, Misc Exp. 84284/-, coolie and cartage of Rs 38220/-, Travelling Expenses of Rs 99540/-and Advertising of Rs 39120/-on the ground that the appellant is a paper/shell company and above expenses are irrelevant and were never incurred without bringing on records any material evidence and Ld. Commissioner of Income Tax (Appeals) also confirmed the same mechanically.

7. For that the interest computed U/s. 234A/B/C of the I.T. Act 1961 is over charged and wrongly calculated and is not applicable in case of assessee. Hence the interest be deleted and or correctly computed.

8. That the appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.

9. That the appellant craves leave to, add or amend any of the grounds during the course of appellant proceedings.”

2. At the outset, ld. AR has submitted that in the instant appeal assessee has raised 9 grounds of appeal. However, ground

no. 1 to 3 are effective grounds which are needed to the adjudicated in this appeal. The rest grounds are supportive and consequential in nature. Grounds raised by the assessee relate to the jurisdiction of AO to issue the notice u/s 143(2) of the Act. Therefore, we are going to adjudicate the same and remaining grounds are substantive and consequential in nature, therefore, need not required to be adjudicated.

3. At the time of hearing, the ld. AR for the assessee has invited our attention that the impugned order of the assessment and brought to our notice that the AO himself has mentioned that the assessee had shown a total income of Rs. 7,950/- in the return of income filed on 11.05.2014 u/s 139(4) of the Act for the assessment year in question. He further brought to our notice that in the first para of the assessment order wherein it has been stated that notice u/s 143(2) dated 28.09.2015 issued by the ITO, Ward-4(3), Kolkata. The ld. counsel further in connection with the above fact submitted that in the case of assessee, the jurisdiction to issue notice u/s 143(2) of the Act lies with ITO, Ward-13(1), Kolkata in this regard assessee has not informed the department vide its letter dated 26.10.2015 stating that case of the assessee was lies with ITO, Ward-13(1), Kolkata. In this regard, it is submitted the copy of the letter dated 26.10.2015 is herein below:

ITA No. 138/Kol/2023  
AY: 2013-14  
Amtek Financial Consultants Pvt. Ltd.

**AMTEK FINANCIAL CONSULTANTS PVT. LTD.**  
CIN: U74140WB2010PTC156430

31, Lala Babu Shire Road,  
Belurmath,  
Howrah - 711202  
M. No. : 9051287648

Ref:

Date: 26.10.2015

To,  
The Hon'ble Principal Commissioner of Income Tax - 2,  
AayakarBhawan,  
P - 7, Chowringhee Square,  
Kolkata - 700 069

Dear Sir,

**PAN: AAJCA0529N**  
**Sub: Request for PAN Migration from ITO Ward 4(3)/Kol to**  
**ITO Ward 13(1)/Kol**

With reference to above we would like to state to your goodself that we have submitted our I.T>Returns upto A.Y. 2014-15 with ITO Ward 4(3)/Kol.

Now, our Regd. Office has shifted at 31, Lala Babu Shire Road, Belurmath, Howrah - 711202 which falls within the jurisdiction of ITO Ward 13(1)/Kol under the jurisdiction of Hon. Principal Commissioner of Income Tax - 5/Kol. A copy of Form No. INC - 22 dated 01.07.2015 filed with ROC, WB, in support of shifting of Registered Office, is enclosed herewith.

Under the circumstances your goodself is requested to transfer our PAN to ITO Ward 13(1)/Kol and oblige.

Thanking you,

Encl.: As above

**CC to:**

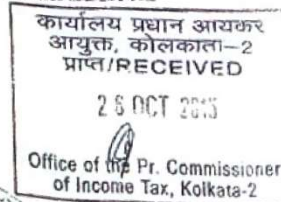
- 1) Hon. Pricipal Commissioner of Income Tax - 5,  
Kolkata.
- 2) Income Tax Officer,  
Ward: 4(3), Kolkata.
- 3) Income Tax Officer,  
Ward 13(1)/Kolkata.

Your's faithfully

for AMTEK FINANCIAL CONSULTANTS PVT. LTD

*Angna*

Director



4. He further contended that the ld. AO, Ward-4(3), Kolkata despite of having this information stated by the assessee, he has continued to exercise his jurisdiction over the assessee and passed assessment order against the assessee to whom he has no jurisdiction to pass such order u/s 144 of the Act. Therefore, the assessment order passed u/s 144/143(3) of the Act without issuance of notice u/s 143(2) of the Act from the AO having its jurisdiction over the assessee. He has further submitted that as per the settled principles of law, the issue of notice u/s 143(2) by the concerned AO, competent jurisdiction was since qua-non to assume jurisdiction to frame the assessment u/s 143(3) of the Act. The ld. counsel in this respect has relied upon the Hon'ble Supreme Court in the case of ACIT vs Hotel Blue Moon reported in 321 ITR 362 (SC). The ld. counsel, therefore, has submitted that in this case, the concerned AO did not issue any notice u/s 143(2) of the Act before the proceedings to frame the assessment u/s 143(3) of the Act. He has submitted that since concerned ITO, Ward-4(3) did not have any jurisdiction to issue notice u/s 143(2) of the Act as such, the said notice was issued by him did not have any legal sanctity. He further prayed that the assessment framed by the ITO, Ward-4(3), in this case was bad in law for want of issuance of notice u/s 143(2) of the Act. On the other hand, ld. DR could not controverted the aforesaid legal position based on aforesaid factual aspect put by the ld. counsel for the assessee. However, he relied upon the findings given by the Assessing Officer in the assessment order.

5. We have given our thoughtful consideration and perused the materials available on record. The identical issue also came into consideration before the Coordinate Bench of the Tribunal in the case of Bhagyalaxmi Conclave (P) Ltd. v. DCIT [IT Appeal No.2517/Kol/2019, dated 3-2-2021] wherein the Tribunal further relying upon various other decisions of the Co-ordinate Benches of the Tribunal has decided the issue in favour of the assessee and held that when the notice u/s 143(2) was issued by an officer who did not have jurisdiction to proceed with the assessment and the assessment was framed by the other officer who did not issue the notice u/s 143(2) before proceeding to frame the assessment, then such an assessment order was bad in law. The relevant part of the order passed in Bhagyalaxmi Conclave (P) Ltd. (supra) is reproduced as under:

*“5.2. The assessee relied on the recent decision of this Tribunal in the case of Hillman Hosiery Mills Pvt. Ltd. vs. DCIT, in ITA No. 2634/Kol/2019, order dated 12.01.2021. We find that the issues that arise in this appeal are clearly covered in favour of the assessee. This order followed the principles of law laid down in a number of other decisions of the ITAT, Kolkata Bench on this issue.*

*5.3. Kolkata “B” Bench of the Tribunal in the case of Hillman Hosiery Mills Pvt. Ltd.(supra) held as follows:*

*“10. In this case, the ITO Ward-3(3), Kolkata, issued notice u/s 143(2) of the Act on 04/09/2014. In reply, on 22/09/2014, the assessee wrote to the ITO, Ward-3(3), Kolkata, stating that he has no jurisdiction over the assessee. Thereafter on 31/07/2015, the DCIT, Circle-11(1), Kolkata, had issued notice u/s 142(1) of the Act to the assessee. The DCIT, Circle-11(1), Kolkata, completed assessment u/s 143(3) of the Act on 14/03/2016. The issue is whether an assessment order passed by DCIT, Circle-11(1), Kolkata, is valid as admittedly, he did not issue a notice u/s 143(2) of the Act, to the assessee. This issue is no more res-integra. This Bench of the Tribunal in the case of Soma Roy vs. ACIT in ITA No. 462/Kol/2019; Assessment Year 2015-16, order dt. 8<sup>th</sup> January, 2020, under identical circumstances, held as under:-*

*“5. After hearing rival contentions, I admit this additional ground as it is a legal ground, raising a jurisdictional issue and does not require any investigation into the facts. The ld. Counsel for the assessee submitted that as per Board Instruction No. 1/2011 [F. No. 187/12/2010-IT(A-I)], dt. 31/01/2011, the jurisdiction of the assessee is with the Assistant Commissioner of Income Tax, Circle-1, Durgapur, as the assessee is a non-corporate assessee and the income returned is above Rs.15,00,000/- and whereas, the statutory notice u/s 143(2) of the Act, was issued on 29/09/2016, by the Income Tax Officer, ward-1(1), Durgapur, who had no jurisdiction of the case. He submitted that the assessment order was passed by the ACIT, Circle-1(1), Durgapur, who had the jurisdiction over the assessee, but he had not issued the notice u/s 143(2) of the Act, within the statutory period prescribed under the Act. Thus, he submits that the assessment is bad in law.*

*5.1. On merits, he rebutted the findings of the lower authorities. The ld. Counsel for the assessee relied on certain case-law, which I would be referring to as and when necessary.*

*6. The ld. D/R, on the other hand, submitted that the concurrent jurisdiction vests with the ITO as well as the ACIT and hence the assessment cannot be annulled simply because the statutory notice u/s 143(2) of the Act, was issued by the ITO and the assessment was completed by the ACIT. He further submitted that the assessee did not object to the issue of notice before the jurisdictional Assessing Officer and even otherwise, Section 292BB of the Act, comes into play and the assessment cannot be annulled. On merits, he relied on the orders of the lower authorities.*

*7. I have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, I hold as follows:-*

*8. I find that there is no dispute in the fact that the notice u/s 143(2) of the Act dt. 29/09/2016 has been issued by the ITO, Wd-1(1), Durgapur. Later, the case was transferred to the jurisdiction of the ACIT on 11/08/2017. Thereafter, no notice u/s 143(2) of the Act was issued by the Assessing Officer having jurisdiction of this case and who had completed the assessment on 26/12/2017 i.e., ACIT, Circle-1(1), Durgapur. Under these circumstances, the question is whether the assessment is bad in law for want of issual of notice u/s 143(2) of the Act.*

*9. This Bench of the Tribunal in the case of Shri Sukumar Ch. Sahoo vs. ACIT in ITA No. 2073/Kol/2016 order dt. 27.09.2017, held as follows:-*

*“5. From a perusal of the above Instruction of the CBDT it is evident that the pecuniary jurisdiction conferred by the CBDT on ITOs is in respect to*

the 'non corporate returns' filed where income declared is only upto Rs.15 lacs ; and the ITO doesn't have the jurisdiction to conduct assessment if it is above Rs 15 lakhs. Above Rs. 15 lacs income declared by a non-corporate person i.e. like assessee, the pecuniary jurisdiction lies before AC/DC. In this case, admittedly, the assessee an individual (non corporate person) who undisputedly declared income of Rs.50,28,040/- in his return of income cannot be assessed by the ITO as per the CBDT circular (supra). From a perusal of the assessment order, it reveals that the statutory notice u/s. 143(2) of the Act was issued by the then ITO, Ward-1, Haldia on 06.09.2013 and the same was served on the assessee on 19.09.2013 as noted by the AO. The AO noted that since the returned income is more than Rs. 15 lacs the case was transferred from the ITO, Ward-1, Haldia to ACIT, Circle-27 and the same was received by the office of the ACIT, Circle-27, Haldia on 24.09.2014 and immediately ACIT issued notice u/s. 142(1) of the Act on the same day. From the aforesaid facts the following facts emerged:

- i) The assessee had filed return of income declaring Rs.50,28,040/-. The ITO issued notice under section 143(2) of the Act on 06.09.2013.
- ii) The ITO, Ward-1, Haldia taking note that the income returned was above Rs. 15 lacs transferred the case to ACIT, Circle-27, Haldia on 24.09.2014.
- iii) On 24.09.2014 statutory notices for scrutiny were issued by ACIT, Circle-27, Haldia.

6. We note that the CBDT Instruction is dated 31.01.2011 and the assessee has filed the return of income on 29.03.2013 declaring total income of Rs.50,28,040/-. As per the CBDT Instruction the monetary limits in respect to an assessee who is an individual which falls under the category of 'non corporate returns' the ITO's increased monetary limit was upto Rs.15 lacs; and if the returned income is above Rs. 15 lacs it was the AC/DC. So, since the returned income by assessee an individual is above Rs.15 lakh, then the jurisdiction to assess the assessee lies only by AC/DC and not ITO. So, therefore, only the AC/DC had the jurisdiction to assess the assessee. It is settled law that serving of notice u/s. 143(2) of the Act is a sine qua non for an assessment to be made u/s. 143(3) of the Act. In this case, notice u/s. 143(2) of the Act was issued on 06.09.2013 by ITO, Ward-1, Haldia when he did not have the pecuniary jurisdiction to assume jurisdiction and issue notice. Admittedly, when the ITO realized that he did not had the pecuniary jurisdiction to issue notice he duly transferred the file to the ACIT, Circle-27, Haldia on 24.09. 2014 when the ACIT issued statutory notice which was beyond the time limit prescribed for issuance of notice u/s. 143(2) of the Act. We note that the ACIT by assuming the jurisdiction after the time prescribed for issuance of notice u/s. 143(2) of the Act notice became *quorum non iudice* after the limitation prescribed by the statute was crossed by him. Therefore, the

issuance of notice by the ACIT, Circle-27, Haldia after the limitation period for issuance of statutory notice u/s. 143(2) of the Act has set in, goes to the root of the case and makes the notice bad in the eyes of law and consequential assessment order passed u/s. 143(3) of the Act is not valid in the eyes of law and, therefore, is null and void in the eyes of law. Therefore, the legal issue raised by the assessee is allowed. Since we have quashed the assessment and the appeal of assessee is allowed on the legal issue, the other grounds raised by the assessee need not to be adjudicated because it is only academic. Therefore, the additional ground raised by the assessee is allowed.

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

9.1. This Bench of the Tribunal in the case of *Krishnendu Chowdhury vs. ITO* reported in [2017] 78 taxmann.com 89 (Kolkata-Trib.) held as follows:-

**“Return of income of assessee was Rs. 12 lakhs - As per CBDT instruction, jurisdiction for scrutiny assessment vested in Income-tax Officer and notice under section 143(2) must be issued by Income-tax Officer, Ward-I, Haldia and none other - But, notice was issued by Asstt. Commissioner, Circle Haldia much after CBDT's instruction and knowing fully well that he had no jurisdiction over assessee - Whether, therefore, notice issued by Asstt. Commissioner was invalid and consequently assessment framed by Income-tax Officers becomes void since issue of notice under section 143(2) was not done by Income-tax Officers as specified in CBDT instruction No. 1/2011.”**

9.2. The Hon'ble High Court of Calcutta in the case of *West Bengal State Electricity Board vs. Deputy Commissioner of Income Tax, Special Range - I*, reported in [2005] 278 ITR 218 (Cal.) has held as follows:-

**“Section 254 of the Income-tax Act, 1961 - Appellate Tribunal - Powers of - Assessment years 1983-84 to 1987-88 - Whether a question of law arising out of facts found by authorities and which went to root of jurisdiction can be raised for first time before Tribunal - Held, yes Whether jurisdiction of Assessing Authority is not dependent on date of accrual of cause of action but on date when it is initiated - Held, yes - Whether once a particular jurisdiction is created, same must be prospective and cannot be retrospective and it has to be interpreted having regard to manner in which it has been sought to be created - Held, yes - Assessee”**

9.3. The Hon'ble Supreme Court in the case of *CIT vs. Laxman Das Khandelwal* [2019] 108 taxmann.com 183 (SC), held as follows:-

**“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. Respectfully following the propositions of law laid down in all these case-law and applying the same to the facts of the case, we hold that the assessment order is bad in law for the reason that the Assessing Officer having jurisdiction over the assessee, has not issued a notice u/s 143(2) of the Act as required by the statute. Notice issue by the officer having no jurisdiction of the assessee is null and void. When a notice is issued by an officer having no jurisdiction, Section 292BB of the Act, does not come into play. Coming to the argument of the ld. D/R that objection u/s 124(3) of the Act has to be taken by the assessee on rectifying notice u/s 143(2) of the Act from a non-jurisdictional assessing officer, I am of the view that I need not adjudicate this issue, as I have held that non-issuance of statutory notice/s 143(2) of the Act by the jurisdictional Assessing Officer makes the assessment bad in law. Under these circumstances, we allow this appeal of the assessee.”

*6. Respectfully following the propositions of law laid down in these orders stated above, we hold that the orders are bad in law for the reason that the assessing authority passed the order u/s 143(3) of the Act i.e. DCIT-13(1), Kolkata has not issued a notice u/s 143(2) of the Act and also for the reason that the jurisdiction of these cases lies with the ITO and not the DCIT. Hence all the orders passed by the ld. CIT(A) in these four cases are hereby quashed and the appeals of the assessee are allowed.”*

6. We respectfully follow the proposition of law as laid down in the case of Bhagyalaxmi Conclave (P) Ltd. (supra), we viewed that the order passed by AO is bad in law for the reasons that the AO passed the order u/s 143(3) of the Act as no jurisdiction to issue notice u/s 143(2) of the Act and also jurisdiction of the case lies with ITO, Ward-13(1), Kolkata and not with ITO, Ward-4(3), Kolkata. Therefore, the order passed by the ld. CIT(A) cannot be sustained, accordingly same is hereby quashed and appeal of the assessee is allowed.

7. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the open court on 03.05.2023.

Sd/-

(Manish Borad)  
Accountant Member

Sd/-

(Sonjoy Sarma)  
Judicial Member

Dated: 03.05.2023  
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Amtek Financial Consultants Pvt. Ltd., 31, Lala Babu Shire Road, Belurmath, Howrah-711202.
2. Respondent – ITO, Ward-4(3), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata