<u>आयकर अपीलीय अधिकरण, कोलकाता पीठ ''ए'', कोलकाता</u>

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri SonjoySarma, Judicial Member]

I.T.A. No. 170/Kol/2022
Assessment Year: 2008-09

Girik Estate Pvt. Ltd. (PAN: AABCG 1496 N)	Vs.	ITO, Ward-6(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	20.04.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	16.06.2023
For the Appellant/ निर्धारिती की ओर से	Shri Somnath Ghosh, Advocate
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT Sr. D.R

<u>ORDER / आदेश</u>

<u>Per Rajesh Kumar, AM:</u>

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-7, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 17.05.2016 for the AY 2008-09.

2. The Registry has pointed out that appeal is time-barred by 1639 days where the condonation petition filed by the assesse mentions the delay of 1401 days. The ld AR submitted that the appellate order dated 27.03.2018 was received by the assesse

on 11.04.2018. theld AR stated that on receipt of the order the same was forwarded to the consultant of the asssessee Shri Mihir Kumar Bandyopadhyay an Ex. CCIT and DGIT who was looking after the tax matter of the assesse post retirement. The ld AR also submitted that the appeal filing fee of Rs. 10,000/-was deposited by the assesse on the advice of the tax consultant on 7.06.2018 well within the limitation period. It was also claimed before us that the appeal documents were signed and handed over to the consultant of the assesse along with challan however due to his prolonged illness the appeal could not be filed. The ld AR then submitted that the said consultant expired on 4.2.2022 after prolonged illness during covid 19 by furnishing the death certificate to corroborate his arguments. The ld AR submitted that thereis no laxity or lapse on the part of the assesse as he has deposited the appeal fee within time and handed the signed documents to the counsel. The ld counsel therefore stated that the appeal of the assesse may be admitted for adjudication by condoning the delay as the delay is not attributable to the assessee nor the assessee is benefitted in any manner whatsoever by late filing of appeal.

4. On the other hand, ld. D.R. contended that the assessee should have been vigilant about all the issues relating to income-tax proceedings and any negligence on the part of the consultant of the assesse can not be lost sight of while condoning the delay.

5. We have duly considered the rival contentions and gone through the record carefully. We note that sub-section 5 of section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross-objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression "sufficient cause" employed in this Section has also been used identically in sub-Section 3 of Section 249 of the Act, which provides power to the Id. Commissioner(Appeal) to condone the delay in filing of the appeal before the Commissioner(Appeals). Similarly, it has been used in Section 5 of the Indian Limitation Act, 1963. Whenever interpretation and consideration of this

expression has been subject to consideration before the Hon'ble High Courts as well as before the Hon'ble Supreme Court then, the Hon'ble Courts were unanimous in their conclusion that this expression has to be construed liberally. We may make reference to the following observations of the Hon'ble Supreme court from the decision in the case of *Collector Land Acquisition Vs. Mst. Katiji& Others, 1987 AIR 1353:*

> *"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
>
> *2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
> *3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
>
> *4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
>
> *5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
>
> *6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so*."

6. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of *N.BalakrishnanVs. M. Krishnamurthy (supra).* It reads as under:

> *"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are*

meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. KuntalKumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered tliat in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a ITA No.201, 202 and 203/Ahd/2020 salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

7. We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice to say that the Hon'ble Courts are unanimous in their approach to propound that whenever the reasons assigned by an applicant for explaining the delay, then such reasons are to be construed with a justice oriented approach.

8. In the light of above, if we examine the facts of the present case, then it would reveal that basically the appeal has been filed after 1401 days of receipt of ld. CIT's order but almost two years are attributable to COVID period, i.e. March .2020 upto March, 2022. This appeal has been presented before the Tribunal on 11.04.2022. If credit of number of days allowed by the Hon'ble Supreme Court in its order dated September 23, 2021 in Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020 regarding cognizance for extension of limitation, then there is substantial delay at the part of the assessee. Moreover, making the appeal time-barred has not been used by the assessee as a tactics to avoid the litigation with the Revenue because

such strategy would not give any benefit to the assessee in this type of litigation. Therefore, we condone the delay and proceed to decide the appeal on merit.

9. Vide issue raised in ground no. 2, the assessee has assailed the order of Ld. CIT(A) upholding the assessment framed u/s 143(3) r.w.s. 147 of the Act of the Act which is invalid, ab-initio void, ultra vires and ex-facie nullity in the eyes of law.

10. Facts in brief are that the return of income was filed on 30.09.2008 showing total income of Rs. 48,23,545/- which was processed u/s 143(1) of the Act. Thereafter the case of the assesse was re-opened u/s 147 of the Act after receipt of information from Asstt. Commissioner of Income Tax , Central Circle 3(i) Kolkata vide letter dated 25.03.2015 to the effect that the assesse is beneficiary of accommodation entries given by Mr. Santosh Kumar Shah.Accordingly notice u/s 148 of the Act was issued on 29.03.2015 by Income Tax Officer Ward 6(2) Kolkata and in compliance the return of income was also filed on 28.04.2015 making simultaneous request for supply of reasons. The notice u/s 143(2) of the Act was issued by ITO, Ward-6(2), Kolkata 24.09.2015. The assessment was framed accordingly by the ITO Ward-6(2), Kolkata vide order dated 29.03.2016 passed u/s 143(3) r.w.s. 147 of the Act.

11. At the outset, the Ld. Counsel for the assessee submitted that the assessment passed u/s 143(3) r.w.s. 147 of the Act dated 29.03.2016 is void ,ultra vires and nullity in the eyes of law as the same was passed by the ITO, Ward-6(2), Kolkata whereas as per the CBDT circular 1/2011 [F. No. 187/12/2010-IT(A-I)] dated 31.01.2011, the Board has issued instruction in exercise of power u/s 119 of the Act that in case of corporate assessee where the income is declared above Rs. 30 Lacs in the return of income, the assessment would be framed by DC/AC. The Ld. A.R. submitted that since the order has been passed in violation of instruction of CBDT by the ITO, Ward-6(2), Kolkata and Kolkata being a metro city, therefore the same may kindly be quashed. In defense of his arguments the Ld. A.R relied on the decision namely Hirak Sarkar vs. ACIT, Circle-23(1), Hooghly in ITA No. 850/Kol/2019 for AY 2011-12 dated 12.08.2021 ,Sanat Kumar Sahana vs. ACIT in ITA No. 2202/Kol/2015-16 dated

29.05.2020 and Shri Anil Kumar Vs ACIT ITA No.1136/Kol/2019 A.Y.2015-16. Therefore, the Ld. A.R submitted that the appeal of the assessee may kindly be allowed by quashing the said assessment.

12. The Ld. D.R on the other hand submitted that how this happened has to be ascertained from the office of AO. Besides the Ld. D.R referred to the provisions of Section 292BB of the Act by submitting that this issue was never raised by the assessee either in the assessment proceedings or in the appellate proceedings and therefore the assessee should not be allowed to raise this issue at this stage. Alternatively the issue may be set aside to the file of the AO and since this is a procedural defect that may be cured by the authorities below.

13. We have heard the rival submissions and perused the material on record. Undisputed facts are that the assessee is a corporate assessee and has declared total income of Rs. 48,23,545/- during the year. We observe that the notice u/s 148 and 143(2) of the Act were issued by ITO, Ward-6(2), Kolkata to the assesse and accordingly the assessment was framed by the ITO, Ward-6(2), Kolkata. We have also perused the instruction No. 1/2011 as stated herein above which is extracted below for the sake of convenience and ready reference:

INSTRUCTION NO. 1/2011 NO. 187/12/2010-IT(A-l)],

SECTION 119 OF THE INCOME TAX ACT/1961 - INCOME-TAX AUTHORITIES - INSTRUCTIONS TO SUBORDINATE AUTHORITIES

INSTRUCTION NO. 1/2011 [F. NO. 187/12/2010-IT(A-I)], DATED 31-1-2011

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

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

decided to increase the monetary limits as under:

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

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

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

In terms of the above instruction in the case of corporate assessee in metro cities, the ITR filed above Rs. 30lacs, then it has to be assessed by DC/AC and therefore in the instant case the assessment is framed in violation of above instruction as issued by the Board. The case of the assessee is squarely covered by the decision of Co-ordinate Bench of Kolkata benches in the case of Hirak Sarkar (supra). The operative part is reproduced as under:

> *5. I have considered the rival contentions of both the ld. representatives of the parties. Before proceeding further, it will be appropriate to refer to section 120 of the Act which, for the sake of ready reference, is reproduced as under:*
>
> > *"**Jurisdiction of income- tax authorities***
> > *(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*
> > *.....*
>
> *6. A perusal of the aforesaid statutory provisions would reveal that the jurisdiction of Income Tax Authorities may be fixed not only in respect of territorial area but also having regard to a person or classes of persons and income or classes of income also. Therefore, the*

CBDT having regard to the income as per return has fixed the jurisdiction of the Assessing Officers.

7. Now, in this case, the reasons for forming belief of escapement of income by the assessee were recorded by the ITO, Ward-23(3), Hooghly and thereafter, notice u/s 148 of the Act was also issued by the by the ITO, Ward-23(3), Hooghly. However, the assessment has been framed by the ACIT, Circle-23(1), Hooghly. At this stage, it will be appropriate to refer to the provisions of section 127 of the Act as under:

> ***Power to transfer cases***
> *(1) The [Principal Director General or] Director General or [Principal Chief 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.*

8. A perusal of the above statutory provisions would reveal that jurisdiction to transfer case from one Assessing Officer to other Officer lies with the Officers as mentioned in section 127(1) who are of the rank of Commissioner or above. No document has been produced on the file by the Department to show that the case was transferred by the competent authority from ITO, Ward-23(3), Hooghly to ACIT, Circle-23(1), Hooghly. Even, there is no document on the file that the ACIT, Circle-23(1), Hooghly had ever recorded any reasons to form belief that the income of the assessee has escaped assessment nor did he issue any notice u/s 147 of the Act. On the other hand, the ITO, Ward-23(3), Hooghly had recorded the reasons for reopening of the assessment and had issued notice u/s 148 of the Act, but did not proceed further with the framing of assessment. Under the circumstances, the assessment framed by ACIT, Circle-23(1), Hooghly, is bad in law on two counts, firstly he did not have any pecuniary jurisdiction to frame the assessment and secondly he himself did not form any belief that the income of the assessee has escaped assessment nor did he issue notice u/s 148 of the Act which was sine qua non to assume jurisdiction to frame to assessment. The issue relating to the pecuniary jurisdiction also came into consideration before the Coordinate Bench of the Tribunal in ITA No.2517/Kol/2019 and Others vide order dated 03.02.2021, wherein the Tribunal further relying upon various other decisions of the Coordinate Benches of the Tribunal has decided the issue in favour of the assessee and held that the assessment framed by Assessing Officer who was not having pecuniary jurisdiction to frame such assessment was bad in law. The relevant part of the order dated 03.02.2021 passed in ITA No.2517/Kol/2019 and Others 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:*
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> > *"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. 8th 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:-*
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> *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.*
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> *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:-*
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> > *"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 qoarum non judice after the limitation prescribed by the statute was crossed by him. Therefore, the issuance of notice by the ACIT, Circle-27, Haldia after the limitation period for issuance of statutory notice u/s. 143(2) of the Act has set in, goes to the root of the case and makes the notice bad in the eyes of law and consequential assessment order passed u/s. 143(3) of the Act is not valid in the eyes of law and, therefore, is null and void in the eyes of law. Therefore, the legal issue raised by the assessee is allowed. Since we have quashed the assessment and the appeal of assessee is allowed on the legal issue, the

other grounds raised by the assessee need not to be adjudicated because it is only academic. Therefore, the additional ground raised by the assessee is allowed.

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, yesWhether 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.TheHon'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.AnkitVijaywargia, 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 comes 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-issual 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 assessees are allowed."*

9. In view of the discussion made above and respectfully following the decision cited above, it is held that the reassessment framed u/s 147 of the Act being without jurisdiction is bad in law and the same is accordingly set aside.

10. In the result, the appeal of the assessee stands allowed.

We have also perused the other decisions cited before us and find the facts are materially similar to ones as decided by the Co-ordinate Benches of the tribunal supra.

We, therefore, respectfully the decision of the coordinate benches ,quash the assessment order passed on the ground of lack of jurisdiction. Accordingly the appeal of the assessee is allowed.

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

Order is pronounced in the open court on 16th June, 2022

Sd/-	Sd/-
(Sonjoy Sarma /संजय शर्मा)	(Rajesh Kumar/राजेश कुमार)
Judicial Member/न्यायिक सदस्य	Accountant Member/लेखा सदस्य

Dated: 16th June, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Girik Estate Pvt. Ltd., C/o, S.N. Ghosh & Associates, Advocates, "Sagar Mansion", 2, Garstin Place, 2nd Floor, Suite No. 203, Hare Street, Kolkata-700001.
2. Respondent – ITO, Ward-6(2), Kolkata
3. Ld. CIT(A)-7, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata