

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.422/Kol/2023
Assessment Year: 2017-18**

Shivam Finance Maitrabagan, P.O. Basirhat College, Basirhat, North 24 Parganas, West Bengal- 743412. (PAN: ABBFS 2353 L)	Vs.	Assistant Commissioner of Income Tax, Circle-49(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Sunil Surana, AR
Respondent by : Shri Vijay Kumar, Addl. CIT

Date of Hearing : 14.06.2023
Date of Pronouncement : 21.06.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Appeal No. ITBA/NFAC/S/250/2022-23/1051453951(1) dated 28.03.2023 passed against the assessment order by Asstt. Commissioner of Income Tax, Circle-49(1), Kolkata u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 11.12.2019 for AY 2017-18.

2, Grounds of appeal raised by the assessee are reproduced as under:

“1. For that the Ld. CIT(A) erred in passing the order ex-parte without allowing the appellant any proper and reasonable opportunity of being heard since the assessee did not even receive any mail or SMS alert from the department.

2. For that the Ld. C.I.T(A) erred in passing the order when it was incumbent on him to deal with and decide each of the grounds raised in the appeal on its merits.

3. For that on the facts and circumstances of the case the order of the CIT(A) be modified and the assessee be given relief prayed for.

4. For that the Ld. CIT(A) erred in confirming the assessment initiated and completed by AO since the notice u/ s. 143(2) issued by ITO Ward 49(1) was without jurisdiction and invalid since the declared income of the assessee for the relevant year was more than Rs 30 Lakhs and only the DCIT / ACIT had the jurisdiction over the case of the assessee.

5. For that on the facts and circumstances of the case the Ld. CIT(A) erred in confirming the addition made by AO of Rs. 6,20,000/ - u/s 69A to the total income which was not justified.

6. For that on the facts and circumstances of the case the Ld. CIT(A) erred in confirming the addition made by AO of Rs.6,20,000/ - u/ s 69A to the total income and charged tax u/s 115BBE which was unjustified and not in accordance of law since the amendment to section 115BBE cannot be applied retrospectively as because the amount was deposited before its amendment and further section 115BBE being charging section cannot be given retrospective operation.

7. For that on the facts and in the circumstances of the case the Ld. CIT(A) erred in confirming the action of AO in charging the tax at the amended rates u/s 115BBE when the Income was duly declared in the income tax return, section 69A was not applicable and as such the tax should have been computed at normal rates as per the slabs provided under the Finance Act for the relevant year.

8. For that even otherwise the income of the assessee can be taxed only under the various heads prescribed under the law and the income even if taxable could be charged u/s. 56 as income from other sources and normal tax was to be calculated under the provisions of law.”

3. Brief facts of the case are that assessee filed its return of income on 27.10.2017 reporting total income of Rs.43,53,620/-. Case of the assessee was selected for scrutiny through CASS. In the present appeal, assessee has challenged the issue of notice u/s. 143(2) of the Act vide ground no. 4 by stating that notice issued by Income Tax Officer, Ward-49(1) was without jurisdiction and invalid since the declared income of the assessee for the relevant year is more than Rs. 30 lakhs and only the DCIT/ACIT had the jurisdiction over the case of the assessee who could have issued the notice u/s. 143(2) of the Act.

In the course of assessment, Ld. AO called for details and explanations in respect of deposit of cash in the bank account during the demonetization period and completed the assessment by making an addition of Rs.6.20 lakhs u/s. 69A by holding it as unexplained money. In the first appeal before the Ld. CIT(A), it was dismissed for non-appearance by the assessee. Aggrieved, assessee is in appeal before the Tribunal.

4. At the outset, Ld. Counsel for the assessee emphasized on the legal issue relating to jurisdiction assumed by Ld. ITO, ward-49(1), Kolkata for issuing the notice u/s. 143(2) dated 17.08.2018 for initiating the assessment proceedings. Copy of the said notice is placed on record in the paper book at pages 1 and 2. Ld. Counsel submitted that the issue is squarely covered by the recent judgment of Hon'ble jurisdictional High Court of Calcutta in the case of PCIT Vs. Shree Shoppers Ltd. in ITAT/39/2023 in IA No.GA/1/2023, dated 15.03.2023, wherein substantial questions of law before the Hon'ble Court were as under:

“(i) whether on the facts and circumstances of the case the Tribunal was justified in law to quash the Assessing Order passed under section 143(3) of the said Act on the ground that the valid Notice under Section 143(2) was not issued in accordance with law despite the fact that said Notice was already issued by the jurisdictional Assessing Officer before the process of Restructuring Departmental Cadre ?

ii) Whether on the facts and circumstances of the case the Tribunal was justified in law in not appreciating the fact that the Notice under Section 143(2) of the said Act is issued only once at the time of initiating of the scrutiny assessment, thereafter mere change of jurisdictional Assessing Officer within the same Range and/or Pr.CIT cannot affect the assessment proceedings?”

5. On the above substantial questions of law, the Hon'ble Court held that Tribunal rightly allowed the assessee's appeal and quashed the scrutiny proceedings as effect of non-issuance of notice is incurable since it goes to the root of the matter. The Hon'ble Court noted that *“we find no ground to differ with the findings recorded by the Ld.*

Tribunal. In the result, the appeal filed by the revenue is dismissed and the substantial question of law are answered against the revenue.”

5.1. While giving this judgment, the Hon'ble Court noted the factual findings of the Tribunal which is reproduced as under:

“The short issue which falls for consideration in the instant case is whether there is valid notice issued under Section 143 (2) of the Act for commencing the Scrutiny assessment. The Tribunal has noted the facts and rendered a finding that on the date when the case was selected for scrutiny, the authority who issued the notice namely, the Income Tax Officer, Ward No.9 (4), Kolkala did not have jurisdiction and the jurisdiction was with the Deputy Commissioner of Income Tax. The following factual finding has been recorded by the Tribunal :

“Therefore, the legal ground stands to be admitted and the same relates to invalid notice issued u/ 143(2) of the Act. It is a settled position of law that for carrying out the assessment proceedings u/s. 143(3) of the Act, the statutory requirement of serving of valid notice u/s. 143(2) of the Act is must and in absence thereof the subsequent proceedings become invalid. In the case of assessee, the facts are that the assessee has declared income of Rs.48,47,180/- in the e-return filed on 26.09.2012. For selecting the case for scrutiny notice u/s. 143(2) of the Act as issued by ITA, Ward-9(4), Kolkata dated 23.09.2013. The Central Board of Direct Taxes (CBDT vide Instruction No.1 /2011 supra) revised the monetary limit for issuing notice by ITO/DCs/ACs. Through this instruction it stated that in case of metro cities in case of corporate declare income above Rs.30 lakh the jurisdiction of such corporate assessee will lie with the DCs/ACs. It is not in dispute chat as on the date of selecting the case for scrutiny, the very basis for having jurisdiction over the assessee is the returned income which was more than Rs.30 lakhs and the same was lying with the DCs/Acs but the notice u/s. 143(2) of the Act has been issued by ITO, Ward-9(4), Kolkata. It is true that subsequently the assessment has been framed by DCIT, Circle-9(2), Kolkata but the point in dispute is that on date of issuing a notice u/s. 143(2) of the At, whether the ITO, ward-9(4), Kolkata was having a valid jurisdiction to issue such notice u/s. 143(2) of the Act.”

6. Ld. Counsel also placed on record the order of the Coordinate Bench of ITAT, Kolkata in the case of Shree Shoppers Ltd. Vs. DCIT in ITA No. 865/Kol/2018 dated 08.09.2022 findings of which have been affirmed by the Hon'ble jurisdictional High Court of Calcutta as stated above.

7. Per contra, Ld. Sr. DR placed reliance on the order of Ld. AO.

8. We have heard the rival contentions and perused the material available on record and find that the issue raised by the Ld. Counsel on the jurisdictional aspect in respect of notice issued u/s. 143(2) is no longer *res integra*. It is a settled position of law that for carrying out an assessment proceedings u/s. 143(3) of the Act, statutory requirement of serving a valid notice u/s. 143(2) of the Act is a must and in absence of which the subsequent proceedings become invalid. In the present case before us, it is a fact that assessee has reported total income of Rs.43,53,620/- which exceeds the threshold prescribed in the CBDT Instruction no. 1/2011 read with revised monetary limit for issuing notice by ITO/DCs/ACs. Through this instruction, it stated that in case of metro cities, in case of corporate declared income above Rs. 30 lakh, the jurisdiction of such corporate assessee will lie with the DCs/ ACs. It is not in dispute that as on the date of selecting the case for scrutiny, the very basis for having jurisdiction over the assessee is the returned income which was more than Rs. 30 lakhs and the same was lying with the DCs/ACs but the notice u/s. 143(2) of the Act has been issued by ITO, Ward 49(1), Kolkata. It is true that subsequently the assessment has been framed by ACIT, Circle-49, Kolkata but the point in dispute is that on the date of issuing a notice u/s. 143(2) of the Act, whether the ITO, Ward-49(1), Kolkata was having a valid jurisdiction to issue such notice u/s. 143(2) of the Act. We find that Hon'ble jurisdictional High Court in the recent judgment in the case of PCIT Vs. Shree Shoppers Ltd. (supra) has decided identical issue in favour of the assessee.

9. Thus, from the perusal of the findings given by Hon'ble jurisdictional High Court and from the examination of facts of the present case, we find that the aforesaid judgment of

the Hon'ble High Court is squarely applicable on the facts of the present case. We thus, unhesitatingly hold that ITO, Ward-49(1), Kolkata had no valid jurisdiction over the assessee on the date of issuing notice u/s. 143(2) of the Act. Revenue has not controverted this fact by placing any other contrary material on record to indicate otherwise. Since a valid notice u/s. 143(2) has not been issued, the assessment proceedings carried thereafter deserves to be quashed. We, therefore, respectfully following the ratio laid down by Hon'ble jurisdictional High Court in the case of PCIT Vs. Shree Shoppers Ltd. (supra), allow ground no. 4 raised by the assessee and quash the assessment proceedings completed u/s. 143(3) of the Act. Since we have quashed the assessment proceedings, the grounds relating to the merits of the case are rendered mere academic in nature and are, therefore, not adjudicated upon. Accordingly, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 21st June, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 21st June, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A), NFAC, Delhi
 4. CIT,
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata