

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

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

**Before  
SRI SANJAY GARG, JUDICIAL MEMBER  
&  
SRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**I.T.A. No.: 364/KOL/2022  
Assessment Year: 2014-15**

***Ashika Stock Broking Limited.....Appellant  
[PAN: AACCA 7156 Q]***

***Vs.***

***DCIT, Central Circle-2(1), Kolkata.....Respondent***

**Appearances by:**

*Sh. Somnath Ghosh, Adv., appeared on behalf of the Assessee.*

*Sh. Vijay Kumar, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.*

Date of concluding the hearing : May 18<sup>th</sup>, 2023

Date of pronouncing the order : June 28<sup>th</sup>, 2023

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-20, Kolkata, dated 12.05.2022 passed under section 250 of the Income Tax Act, 1961 for A.Y. 2014-15.

2. First of all, we would like to decide the legal issue raised by the assessee in ground no. 2 which is extracted below:

*“2. For that the statutory Notice u/s 143(2) of the Income Tax Act, 1961 was issued by an Assessing Officer who did not have jurisdiction over the case of the Appellant, hence, the notice is bad in law and the Assessment Order passed on the basis of a defective Statutory Notice is also bad in law and should be quashed.”*

3. Brief facts of the case are that the assessee filed the return on 19.11.2014 declaring total income of Rs. 32,94,950/-. The case of the assessee was selected for scrutiny under CASS and notice u/s 143(2) & 142(1) of the Act were duly issued and served upon the assessee. However, the notice u/s 143(2) of the Act was issued by ITO, Ward-12(3), Kolkata, No. WBG-W-112(3) on 31.08.2015 whereas the assessment was framed by ACIT, Central Circle-2(1), Kolkata. The assessee challenged the issuance of notice u/s 143(2) of the Act dated 31.05.2015 on the ground that the said notice was not issued by the jurisdictional Assessing Officer. Ld. A/R submitted that in terms of CBDT Circular No. 1/2011 [F.No. 187/12/2010-IT(A-1)] the monetary limit has been provided for issuance of notice u/s 143(2) of the Act. The said circular provides that in case of corporate assessee in metro cities where the income exceeds Rs. 30 lakhs, the notice has to be issued by DCs/ACs and in case of income up to 30 lakhs by the ITO whereas in the present case, the notice has been issued by the ITO, Ward-12(3), Kolkata which is invalid and consequently the assessment framed is also invalid and may be quashed as the same has been framed in violation of the CBDT Circular as referred to above.

4. Ld. A/R in support of this argument relied upon various decisions including the judgment of Hon'ble Jurisdictional High Court in the case of *PCIT vs Shree Shoppers* in *ITAT/39/2023* in *IA No. GA/1/2023* wherein the issue has been decided in favour of the assessee. Ld. A/R also pointed out that the Coordinate Bench of Kolkata in the case of *Shivam Finance vs. ACIT* in *ITA No. 422/KOL/2023* order dated 21.06.2023 for AY 2017-18 followed the said order of the Hon'ble High Court and thus decided in favour of the assessee. Ld. A/R submitted that the appeal of the assessee may kindly be allowed by quashing the assessment framed as being without jurisdiction.

5. On the other hand, ld. D/R relied on the orders of the authorities below.

6. 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) of the Act by the ITO, Ward-12(3), Kolkata whereas the assessment was framed by ACIT, Central Circle-2(1), Kolkata. 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.32,94,950/- which exceeds the threshold prescribed in the *CBDT Instruction no. 1/2011* read with revised monetary limit for issuing notices by ITO/DCs/ACs. Through this instruction, it stated that in case of metro cities, in case of

corporate assesseees who declared income above Rs. 30 lakh, the jurisdiction of such corporate assesseees will vest 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-12(3), Kolkata. It is true that subsequently the assessment has been framed by ACIT, Central Circle-2(1), 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--12(3), 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 *Shree Shoppers Ltd. (supra)* has decided identical issue in favour of the assessee.

7. 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 accordingly hold that ITO, Ward-12(3), 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. Since a valid notice u/s. 143(2) has not been issued, the assessment proceedings as well as the assessment framed thereafter deserve to be quashed. We, therefore, respectfully following the ratio laid down by Hon'ble jurisdictional High Court in the case of *Shree Shoppers Ltd. (supra)*, allow ground no. 2 raised by the assessee and quash the assessment framed 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. Accordingly, the appeal of the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

**Kolkata, the 28<sup>th</sup> June, 2023**

Sd/-  
[Sanjay Garg]  
Judicial Member

Sd/-  
[Rajesh Kumar]  
Accountant Member

Dated: 28.06.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Ashika Stock Broking Limited, Trinity, 7<sup>th</sup> Floor, 226/1, AJC Bose Road, Kolkata-700 020.**
- 2. DCIT, Central Circle-2(1), Kolkata.**
3. CIT(A)-20, Kolkata.
4. CIT-
5. CIT(D/R), Kolkata Benches, Kolkata.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata