

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

श्री राजेश कुमार, लेखा सदस्य  
एवं

श्री संजय शर्मा, न्यायिक सदस्य  
के समक्ष

**Before**

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER  
&  
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 1396/KOL/2019  
Assessment Year: 2012-13**

***Bell Flower Dealcom Pvt. Ltd.....Appellant  
[PAN: AADCB 3598 E]***

***Vs.***

***ITO, Ward-1(4), Kolkata.....Respondent***

**Appearances by:**

*Sh. S.K. Pransukha, A/R, appeared on behalf of the Assessee.*

*Sh. P.P. Barman, Addl. CIT, Sr. DR, appeared on behalf of the Revenue.*

Date of concluding the hearing : August 4<sup>th</sup>, 2023

Date of pronouncing the order : August 22<sup>nd</sup>, 2023

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

This appeal preferred by the assessee is against the order passed by Learned Commissioner of Income-tax (Appeals)-11, Kolkata [hereinafter referred to as Ld. 'CIT(A)'] for the Assessment Year (in short 'AY') 2012-13.

2. The assessee has also challenged the order of Assessing Officer (in short ld. 'AO') as invalid and having passed without any valid jurisdiction by raising additional grounds vide letter which are reproduced as under:

*“1. For that Assessing officer issuing notice u/s 143(2) of the IT Act, 1961 did not have jurisdiction over the case of the assessee hence, notice is bad in law and the assessment order passed on the basis of such notice is bad in law and should be quashed.*

*2. For that the assessment order was passed without service of any valid notice u/s 143(2) of the IT Act 1961 and therefore the assessment order is bad in law and should be quashed.*

*3. That in the facts and circumstances of the case, the assessment order u/s 143(3) of the I.T Act 1961 was without jurisdiction and bad in law and thus the entire assessment order be quashed and or cancelled.”*

3. The only issue raised by the assessee in the additional grounds is against the notice issued u/s 143(2) of the Act by Ld. AO who was not having jurisdiction over the case of the assessee and, therefore, the assessment framed u/s 143(3) of the Act dated 23.03.2015 is invalid and nullity in the eyes of law.

4. The facts in brief are that the return of income was filed on 19.02.2013 showing loss of Rs. 20,331/-. Thereafter the case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. The notice u/s 143(2) of the Act dated 08.08.2013 was issued by ITO, Ward-7(4), Kolkata whereas the jurisdiction of the case was with ITO, Ward-1(4), Kolkata. The assessment was finally framed by ITO, Ward-1(4), Kolkata. Ld. A/R prayed that all the facts for the additional

grounds raised by the assessee are on record and thus does not require any further verification of facts at the end of Ld. AO. Ld. A/R, therefore, prayed that the additional ground may be admitted and in support of his contentions, a strong reliance was placed on *National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC)*.

5. Ld. D/R, on the other hand, strongly opposed the contentions and arguments of the assessee by praying that the issue was never raised before Ld. AO or before the first appellate authority and is being raised for the first time and therefore may kindly be dismissed.

6. After hearing rival contentions and perusing the material on record, we find that the issue raised by the assessee in respect of jurisdiction of Ld. AO to frame assessment without issuing notice u/s 143(2) of the Act is a legal issue and goes to the root of the matter. We also find that all the facts are available before us and no further verification of facts are required at the level of Ld. AO. Accordingly, by following the decision of Hon'ble Apex Court in the case of *National Thermal Power Co. Ltd. (supra)*, we are inclined to admit the same for adjudication.

7. Ld. A/R vehemently submitted before the Bench that in this case, the notice has been issued by ITO, Ward-7(4), Kolkata on 08.08.2013 whereas the jurisdiction was with ITO, Ward-1(4), Kolkata who has not issued notice u/s 143(2) of the Act and thus without issuing notice framed the assessment. Ld. A/R, therefore, submitted that assessment framed is invalid and nullity in the eyes of law as ITO, Ward-1(4), Kolkata has not issued any notice u/s

143(2) of the Act. Ld. A/R also submitted that ITO, Ward-7(4), Kolkata falls under the administrative control of CIT-3, Kolkata who was not having the territorial jurisdiction in terms of Section 120 & 124 of the Act whereas at that time, the jurisdiction was, in fact, with ITO, Ward-1(4), Kolkata which falls under the administrative control of CIT-1, Kolkata. Ld. A/R submitted that the office of the assessee is situated at 1/1A, Biplabi Anukul Chandra Street, Kolkata-700 072 at the time of issue of notice u/s 143(2) of the Act dated 08.08.2013 by ITO, Ward-7(4), Kolkata and the assessment was completed by ITO, Ward-1(4), Kolkata. According to Ld. A/R, the jurisdiction was with ITO, Ward-1(4), Kolkata was also confirmed by the notification by CBDT, S.O.810(E) dated 30.07.2002. Later vide letter dated 04.12.2014 ITO, Ward-7(4), Kolkata transferred the case to ITO, Ward-1(4), Kolkata and ITO, Ward-1(4), Kolkata completed the assessment by issuing notice u/s 142(1) of the Act which may kindly be quashed.

8. In defence of his arguments, Ld. A/R relied on the decision of in the cases of *ACIT vs. S.K. Industries* reported in [2022] 141 *taxmann.com* 569 (SC), *PCIT vs. Cosmat Traders (P.) Ltd.* reported in [2023] 146 *taxmann.com* 207 (Calcutta), *Cosmat Traders (P.) Ltd. vs. ITO* reported in [2021] 128 *taxmann.com* 174 (Kolkata-Trib.), *Balaji Enterprise vs. ACIT* reported in [2021] 124 *taxmann.com* 78 (Guwahati-Trib.). Ld. A/R, therefore, prayed that the assessment framed may kindly be quashed on the jurisdictional issue as Ld. AO who has passed the order i.e. ITO, Ward-1(4), Kolkata has not issued any notice u/s 143(2) of the Act who is under the

administrative control of CIT-1, Kolkata whereas the notice has been issued by ITO, Ward-7(4), Kolkata who is under the administrative control of CIT-3, Kolkata.

9. Ld. D/R on the other hand, relied on the orders passed by the authorities below by submitting that the assessment framed by Ld. AO would not be rendered as invalid and void merely by the fact that notice is issued by different ITO whereas the assessment was framed by another ITO. Ld. D/R submitted that this is an internal hierarchy of the Department wherein the case is transferred depending upon the internal management of the Department from one ITO to another and, therefore, the additional issue raised by the assessee may kindly be dismissed.

10. After hearing rival contentions and perusing the material on record, the undisputed facts are that the notice u/s 143(1) of the Act was issued by ITO, Ward-7(4), Kolkata who falls under the administrative control of CIT-3, Kolkata on 08.08.2013 whereas the jurisdiction of the assessee is with ITO, Ward-1(4), Kolkata under the administrative control of CIT-1, Kolkata. We note that jurisdiction with ITO, Ward-1(4), Kolkata is also confirmed vide the notification S.O.810(E) dated 30.07.2012. This is also not in dispute that vide letter dated 04.12.2014, ITO, Ward-7(4), Kolkata under his signature transferred the assessment records to ITO, Ward-1(4), Kolkata who completed the assessment by merely issuing notice u/s 142(1) of the Act meaning thereby that assessment was framed without issuing notice u/s 143(2) of the Act which is a mandatory requirement and is not a curable defect.

Under these circumstances, we find merit in the contentions of the assessee, the assessment so framed is invalid and bad in law. In reaching to this conclusion, we are supported by the decision of Hon'ble Apex Court in the case of *S.K. Industries (supra)* wherein Hon'ble Court has upheld the order of Hon'ble High Court wherein the Hon'ble High Court has held that Ld. AO who has jurisdiction over the assessee has passed the impugned assessment without issuing notice u/s 143(2) of the Act within the time prescribed and, therefore, the order was liable to be set aside. Hon'ble Supreme Court dismissed the SLP filed by the Department. Hon'ble High Court in this issue reported [2022] 141 taxmann.com 568 (Delhi) has held that the order passed by Ld. AO without issuing notice u/s 143(2) of the Act is within the prescribed time is bad in law and has quashed the assessment. Similarly, Kolkata High Court in the case of *Cosmat Traders (P.) Ltd. (supra)* has held that where the Assessing Officer passed the assessment order u/s 143(3) of the Act without issuing notice u/s 143(2) of the Act and the authority which has issued notice u/s 143(2) of the Act who has no jurisdiction over the assessee at the relevant point of time, the assessment order was rightly set aside by the Tribunal. Considering the facts and circumstances of the case in the light of the aforesaid decisions, we are inclined to quash the assessment framed by Ld. AO as without any jurisdiction as Ld. AO has not issued notice u/s 143(2) of the Act. The issue raised in the additional ground is, therefore, allowed.

11. Since we have allowed the appeal of the assessee on jurisdictional issue, the other grounds raised in the memorandum of appeals need no adjudication.

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

***Kolkata, the 22<sup>nd</sup> August, 2023.***

*Sd/-*

[Sonjoy Sarma]  
Judicial Member

*Sd/-*

[Rajesh Kumar]  
Accountant Member

Dated: 22.08.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Bell Flower Dealcom Pvt. Ltd., 33, C.R. Avenue, 2<sup>nd</sup> Floor, Room No. 17, Kolkata-700 072.**
- 2. ITO, Ward-1(4), Kolkata.**
3. CIT(A)-11, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata