

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकर अपील सं./ITA No.204/SRT/2019**

**Assessment Year: (2013-14)**

**(Physical Hearing)**

The ITO, Ward-2(3)(7), Surat.	<b>Vs.</b>	Balmukund M. Vaishnav, 5B/1054, Ramnanth Mahadev Ni Sheri, Haripura, Surat – 395009.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AOKPV5065Q</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**आयकर अपील सं./ITA No.205/SRT/2019**

**Assessment Year: (2013-14)**

Balmukund M. Vaishnav, 5B/1054, Ramnanth Mahadev Ni Sheri, Haripura, Surat – 395009.	<b>Vs.</b>	The ITO, Ward-2(3)(7), Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AOKPV5065Q</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Ritesh Mishra-CIT-DR
<b>Respondent by</b>	Shri P. M. Jagasheth, CA with Shri Pritesh Shah, CA
<b>Date of Hearing</b>	08/09/2023
<b>Date of Pronouncement</b>	25/09/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned cross appeals filed by the Revenue and Assessee, pertaining to Assessment Year (AY) 2013-14, are directed against the common order passed by the Learned Commissioner of Income Tax (Appeals)-1, [in short “the ld. CIT(A)”], in Appeal No. CIT(A),-1/11711/2018-19, dated 30.01.2019, which in turn arise out of common assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 23.03.2016.

2. Since, the issue involved in these cross appeals are common and identical; therefore, these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. Grounds of appeal raised by the Revenue, in ITA No. 204/SRT/2019, are as follows:

*“(i) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in restricted the addition made by the AO of Rs.27,37,40,175/- on account of bogus purchases to 5%.*

*(ii) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has failed to appreciate the fact that the entire purchase from alleged concerns were bogus and was only to suppress the profit of the beneficiaries which is substantiated by the statement on oath given by the entry provider.*

*(iii) On the facts and circumstances of the case and in Law, the Ld. CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld. CIT(A)-I Surat may be set-aside and that of the Assessing Officer's order may be restored.”*

4. Grounds of appeal raised by the Assessee, in ITA No. 205/SRT/2019, are as follows:

*“1) On the facts and the circumstances of the learned Commissioner of Income Tax (Appeal) erred in confirming certain purchases as in-genuine on the basis of certain documents and statements recorded by DIT without the knowledge of Assessee and without granting the copies of those documents or opportunity to cross examine them and therefore the same could have not been considered as evidence and therefore the same is bad in law.*

*2) On the facts and the circumstances of the learned Commissioner of Income Tax (Appeal) erred in confirming certain purchases as in-genuine after acknowledging that assessing officer has not brought out any material on record or made any efforts to establish de-jure connection between the supplier entity and so called Gautam Jain group.*

*3) On the facts and the circumstances of the learned Commissioner of Income Tax (Appeal) erred in confirming certain purchases as in-genuine without appreciating that the appellant was able to produce the director of supplier company, who confirmed the transaction with the appellant.*

*4) On the facts and the circumstance of the case the Commissioner of Income Tax (Appeal) erred in confirming addition u/s 69C treating the certain purchases made as ingenuine without appreciating that the said purchases were duly*

*recorded in the books of accounts and the payments were made through account payee cheques out of the funds generated from the regular business of the appellant and therefore there could be no addition u/s 69C which applies only when the source of the payment is not explained.*

*5) The learned Commissioner of Income Tax (Appeal) erred in sustaining disallowance of Rs.1,44,07,377/- being 5% of the Purchases from certain Parties purported to be part of Gautam Jain Group without appreciating that the said Purchases were fully evidenced by the Invoices, Challans, Stock Records and further the suppliers Confirmation and their Return of Income were also filed and the material was subsequently sold having Nil closing stock.*

*The Appellant craves the leave to add, amend, alter and/or delete any of the above grounds of appeal at/or before the time of hearing.”*

5. The assessee has raised additional grounds of appeal, which is reproduced below:

*“1. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in issuing notice u/s. 143(2) of the Income Tax Act, 1961 on 02.09.2014 by the ITO, Ward-2(1), Surat without the Jurisdictional Authority, so the notice u/s 143(2) of the Income Tax Act, 1961 is invalid and void ab initio. Hence, the Assessment order u/s. 143(3) of the I.T. Act, 1961 is void ab initio.”*

6. Brief facts, as discernible from the orders of lower authorities are that assessee before us is an individual and filed his return of income for assessment year 2013-14 on 02.10.2013, by showing total income of Rs.1,79,430/-. The assessee's return of income was processed under section 143(1) of the Income Tax Act. Then after, the assessee's case was selected for scrutiny through CASS with the specific remark of reason, “Low net profit or loss showed from large gross receipts”. Accordingly, notice under section 143(2) of the Income Tax Act was issued by Income Tax Officer (ITO), Ward-2(1), Surat on 02.09.2014, which was duly served upon the assessee.

7. Thereafter, the assessee's case was transferred to another Income Tax Officer, viz: ITO, Ward/Circle-6(1), Surat. Then after, the Income Tax Officer, Ward/Circle-6(1), Surat issued a notice u/s 142(1) r.w.s 129 of the

Act alongwith the questionnaire dated 09.07.2015, which was duly served upon the assessee. Thereafter notice u/s 142(1) of the Act was also issued on 12.08.2015, 24.08.2015 and 23.12.2015 by Income Tax Officer Ward/Circle-6(1), Surat.

8. In response to the above notices, the assessee attended and furnished the details called for. The details and other documents filed and furnished during the course of assessment proceedings as well as those submitted along with the return of income have duly been verified by the Income Tax Officer Ward/Circle-6(1), Surat.

9. The Income Tax Officer observed that during the year under consideration, the assessee has shown income from Trading of Diamond in the name & style of “M/s Maruti Trading”. During the year under consideration, the assessee has shown Gross Profit of Rs.6,08,241/- @ 0.15% and Net profit of Rs.1,79,430/-, @ 0.04% on total turnover of Rs.40,17,39,550/-. During the year under consideration assessee has furnished details of parties from whom diamonds have been purchased. On verification of the same it was noted by assessing officer that the following concerns are belongs to Shri Gautam Jain Group and the concerns are found fictitious. The details of which are as under:

<i>Sr. No.</i>	<i>Name of Entry provider</i>	<i>Amount [Rs.]</i>
<i>1</i>	<i>M/s. Marine Gems Pvt. Ltd.</i>	<i>28,81,47,552</i>
<i>Total</i>	<i>Total</i>	<i>28,81,47,552</i>

The assessing officer observed that during the search proceedings, statement on oath were recorded of dummy directors/partners/proprietors of the concerns of Shri Gautam Jain Group, in which Shri Pramod Kumar Ranka, director of M/s Marine Gems Pvt. Ltd. had admitted during the course of search proceedings in the case of Shri Gautam Jain Group and in his statement he stated that:

*“Factually there is no actual business of trading in diamond that is being carried out by me in the above stated concerns namely M/s Marine Gems Pvt. Ltd. that why during the course of search and seizure action u/s 132 of the IT Act on 03.10.2013, the business premises were found vacant and not being in use. Those address have been kept only for the purpose of registration of company address, receiving any mails including Income Tax notices if any, bank verification etc. I hereby on my own declare that I am running these paper based companies with no real business activities at all.”*

10. Also Shri Pramodkumar Ranka, is the director of M/s Marine Gems, who explained the *modus oparendi* which is reproduced as under:

*“Various brokers of the diamond market approach me regularly and they give direction from time to time to import diamonds in my books of A/c. Once the diamonds are received they are taken away by these brokers at whose direction these imports were made. For doing these activities. I get a commission. As a result of above, stock of diamonds are reflected in my books without any physical stock being there. Thereafter, at a certain commission I issue bogus sale bills of such diamonds which are appealing in my books as sock in the names of other interested parties/concerns, which is again arranged by these brokers. For this, I get commission. I also give bogus sale bills when there is no stock available in my books, by arranging bogus purchase bills from the local market from various concerns through various brokers. For this type of transaction, I get profit of differential commission received and paid by me. Also, in case some person required entry for unsecured loan, I give the entry by giving them cheque and in return I receive cash for the same. But most of the times it so happens that I have to pay this cash back to some parties to get cheque entry in my books again so as to maintain the balance in bank accounts. Normally, there no surplus cash which remains available with me at any point of time. All the local purchases, local sales and loan entries appearing in my books of accounts of the above 2 concerns controlled by me are totally bogus entries which were done against cash taken/given against such entries. None of these entries reflect any genuine transaction at all.”*

11. After considering the submission of the assessee, the assessing officer held that bogus purchases were made by the assessee with the intention to inflate the purchases and to understate profit/ income. These bogus purchases are not directly relatable to sale. In the view of the above observation, when the books of account do not reflect correct and complete account and statement of affairs, the rejection of the books of accounts is necessary. Therefore, assessing officer rejected the books of accounts under provision of section 145(2) of the Act and the assessment was completed under section 143(3) r.w.s. 145(2) of the Income Tax Act, and since the

assessee failed to explain that the purchases worth Rs.28,81,47,552/- are genuine purchases therefore appropriate addition on account of bogus purchase of Rs.28,81,47,552/- u/s 69C of the Act was made by the assessing officer.

12. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has partly allowed the appeal of the assessee, observing as follows:

*“10.4.4 It is further seen that the Honorable Gujarat High Court in the cases \* decided subsequent to N K Proteins ltd (supra) has not followed it, viz in the cases of Jagdish H Patel, TA No. 411 of 2017 dtd 01/08/2017 (8% disallowance) and TEJUA ROHITKUMAR KAPADIA, Surat in TA No. 691/2017 dated 18-09-2017 (0% disallowance). It is further seen that the Hon., Supreme Court has confirmed the decision of Hon Guj HC in Tejua R. Kapadia in SLP (C) Diary No(s). 12670/2018 dated 04.05.2018. This goes to show that the decision of Gujarat High Court in the case of N K Proteins (Industries) Ltd (supra) is specific to the facts of that case.*

*10.5 In the instant appeal, there is no such adverse finding as in the case of N K Proteins (supra). The facts in instant appeal are identical to Gangani Impex (supra) and the cases decided by the jurisdictional ITAT (supra). In view of this, respectfully following jurisdictional ITAT, the disallowance is restricted to 5%. The AR has furnished orders Hon'ble ITAT Mumbai , Delhi and Kolkata wherein, an identical circumstances & factual matrix involving the same accommodation entry providers the entire disallowance made by Ld. AO was deleted (Sanghvi Export International Ltd. ITA No. 3305, 3375/Mum/2017 dated 21.08.2018, Karamchandra Rubber Industries ITA No.6599/Del/2014 12.02.2018 M/s Vaman International Pvt., ITA. 1040 & 1041 /M/2017 dtd 27.09.2017, Fancy wear ITA No. 1596/M/2016 dtd. 20.09.2017, Surat Jewells Co. ITA No. 1581/KO/2016 dtd 05.05.2017). The AR also furnished copies of order of CIT(A) Valsad in the case of (1) Sahjanand Export IT(A)/vls/236/2016-17 dtd. 24.08.2017, (2) Rushabh International No. CIT(A)/vls/ 102/2016-17 dt. 14.02.2018, which in the disallowances is restricted to 2% of impugned purchases. However, since I have already taken a view of disallowing 5% of purchases and since it is confirmed by Hon'ble jurisdictional ITAT, Surat Bench as discussed in para no. above; the above decisions of ITAT Mumbai/ Kolkata are not followed.*

*10.6 In view of above discussion the disallowance is restricted to 5% of the impugned purchases as under:*

<i>A.Y.</i>	<i>Unverified purchases</i>	<i>Disallowance confirmed</i>
<i>2013-14</i>	<i>Rs.28,81,47,552/-</i>	<i>Rs.1,44,07,377/-</i>

**11. In the result the appeal is partly allowed.”**

13. Aggrieved by the order of the Ld. CIT(A), the Assessee as well as Revenue are in appeal before us.

14. In these cross appeals, the contention of the Revenue is that addition made by the Assessing Officer on account of bogus purchase at the rate of 100% should be sustained, whereas the contention of the assessee is that the addition at the rate of 5%, which is restricted by the Ld. CIT(A), on account of bogus purchases, should also be deleted.

15. We note that assessee has raised additional ground of appeal on jurisdictional issue, which is reproduced below for ready reference:

*“1. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in issuing notice u/s. 143(2) of the Income Tax Act, 1961 on 02.09.2014 by the ITO, Ward-2(1), Surat without the Jurisdictional Authority, so the notice u/s 143(2) of the Income Tax Act, 1961 is invalid and void ab initio. Hence, the Assessment order u/s. 143(3) of the I.T. Act, 1961 is void ab initio.*

16. At the outset, ld Counsel for the assessee begins by pointing out that additional ground raised by the assessee, pertains to legal issue which may be adjudicated first by the Tribunal, as it goes to the root of the matter. However, the Ld. DR for the Revenue stated that since the assessee did not raise this ground before the lower authorities, therefore at this stage, the assessee cannot raise such legal ground relating to jurisdictional issue.

17. We have heard both the parties. We note that the additional ground raised by the assessee, is purely a legal issue and facts relating to such additional ground were already on the record. We note that Tribunal has jurisdiction to examine a question of law which arises from facts narrated by the authorities below, and having barring on tax liability of assessee, even though such question was not raised before such lower authorities. We have considered the request of the assessee for admission of additional

ground, which is purely of legal nature. On the basis of material available on record it is certain that additional ground raised by the assessee challenging the very jurisdiction of the assessing officer to pass assessment order is no longer res-Integra and it is well settled that an assessee can raise a legal ground at any stage of proceedings as held by the Apex Court in the case of **CIT v/s. Varas Internation** reported in **284 ITR 80(SC)** and **National Thermal Power Co Ltd. v/s CIT** reported in **229 ITR 383 (SC)** and Special Bench decision in the case of **DHL Operators** reported in **108 TTJ 152(SB)**. Keeping in view the facts and circumstances of the present case, we are of the view that the issue raised in 'additional ground' goes to the root of the matter which needs to be admitted. Hence, we hereby allow the assessee to raise additional ground of appeal. Since this ground raises question about the assumption of jurisdiction and validity of assessment order itself, therefore we thought it appropriate to take up and decide this additional ground first.

18. Shri P. M. Jagasheth, Learned Counsel for the assessee, vehemently argued about the additional ground raised by the assessee stating that notice under section 143(2) of the Income Tax Act, was issued by ITO, Ward-2(1), Surat on 02.09.2014, which is without jurisdictional authority, so the notice under section 143(2) of the Act, issued by Income Tax officer, is invalid and *void ab initio*. The Ld. Counsel for the assessee took us through paper book page no.1 wherein the notice issued by Assessing Officer, under section 143(2), dated 02.09.2014 is placed, which is issued by the ITO, Ward-2(1), Surat for assessment year 2013-14. However, assessment order was framed by another assessing officer viz: ITO, Ward/Circle-6(1), Surat (page no.2 of the paper book). Therefore, ld Counsel argued that notice under section 143(3) was issued by the ITO, Ward-2(1), Surat, whereas assessment order was framed by another assessing officer, viz: ITO,

Ward/Circle-6(1), Surat, which is not acceptable. If the ITO, Ward/Circle-6(1), Surat, wants to frame the assessment then in that situation he has to issue notice under section 143(2) of the Act, since he has failed to do so, therefore, it would be deemed that no notice under section 143(2) of the Act, has been issued on the assessee under consideration. The Id Counsel further stated the assessment was framed by the ITO, Ward/Circle-6(1), Surat and not the ITO, Ward-2(1), Surat, therefore notice under section 143(2) was issued by the non-jurisdictional assessing officer. To prove his stand, the Id Counsel also relied on several judgments. Hence Id Counsel contended that since the assessment order was passed by the non-jurisdictional Assessing Officer, therefore assessment order itself bad in law, hence such assessment order should be quashed.

19. The Id Counsel also distinguished the order of Coordinate Bench of ITAT, Surat in the case of Base Industries Ltd, ITA No. 3424/Ahd/2015 for assessment year 2011-12, order dated 08.06.2022. The Id Counsel stated that in the case of Base Industries Ltd (supra) it was mentioned in the order of CCIT- Surat under section 127 of Act, that the case was transferred considering the monetary limit of less than Rs. 20.00 lacs as per Board's Instruction No.01/2011 [F No. 187/12/2010-IT(A-I)] dated 31/01/2011. The Id. Sr. DR furnished copy of letter for transferring the case of assessee from Assistant Commissioner of Income Tax (ACIT), Circle-Vapi to Income Tax Officer (ITO), Ward-1, Vapi. Thus due to monetary limit and as per CBDT instruction the case was transferred, which is not applicable to the assessee under consideration. Based on these facts and circumstances, the Ld. Counsel, prays the Bench that order passed by the Assessing Officer may be quashed.

20. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue submitted that notice under section 143(2) of the Act was

issued by the ITO, Ward-2(1), Surat, which will continue in force even if the assessment was framed by the ITO, Ward/Circle-6(1), Surat. Therefore, Id DR contended that the assessment order passed by the ITO, Ward/circle-6(1) is a valid assessment order, because the jurisdiction was already exercised by the ITO, Ward-2(1), Surat. To prove his stand, Id DR also relied on the order of Coordinate Bench of ITAT, Surat in the case of Base Industries Ltd, ITA No. 3424/Ahd/2015 for assessment year 2011-12, order dated 08.06.2022.

21. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that the case of the assessee has been transferred from ITO, Ward-2(1), Surat to ITO, Ward-6(1), Surat, and the impugned assessment order was passed under section 143(3) of the Act, by the ITO, Ward/Circle-6(1), Surat, which is bad in law. That is, the assessment was framed in pursuance of notice issued u/s 143(2) of the Act by the ITO, Ward-2(1), Surat, who had not jurisdiction over assessee, at relevant time. Therefore the said impugned assessment order should be null and void. For that, reliance may be placed on the judgment of the Hon'ble Calcutta High Court, in the case of PCIT vs Nopany & Sons, (2002) 136 taxmann.com 414 (Calcutta), wherein it was held where case of assessee was transferred from ITO Ward-3, to ITO Ward-4 and impugned order under section 143(3) of the Act, was passed by ITO Ward-4, without issuing notice under section 143(2) of the Act, and only in pursuance with notice issued by ITO Ward-3, who had no jurisdiction over assessee at relevant time, said impugned assessment order would be null and void. The detailed findings of the Hon`ble Court is reproduced below:

“6. The short issue which falls for consideration is whether the assessing officer, who had jurisdiction over the assessee at the relevant time had issued notice under section 143(2) of the Act before taking up the scrutiny assessment under section 143(3). Before we go into the facts, we take note of the legal position as laid down by the Hon'ble Supreme Court in *Asstt. CIT v. Hotel Blue Moon* [2010] 188 Taxman 113/321 ITR 362, wherein the Hon'ble Supreme Court held that omission on the part of the assessing officer to issue notice under section 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice under section 143(2) cannot be dispensed with. Further, we also take note of the decision in the case of *CIT v. Gitsons Engineering Co.* [2015] 53 taxmann.com 108/231 Taxman 506/370 ITR 87 (Mad.), wherein it was held that the word 'shall' employed in section 143(2) of the Act, contemplates that the assessing officer should issue notice to the assessee so as to ensure that the assessee has not understated income or has not computed excessive loss or has not under paid the tax in any manner. It was further held that when the assessing officer considers it necessary and expedient to ensure that tax is paid in accordance with law, he should call upon the assessee to produce evidence before him to ensure that the tax is paid in accordance with law. The section makes it clear that service of notice under section 143(2) of the Act within the time limit prescribed is mandatory and it is not a mere procedural requirement. At this juncture, it would be relevant to take note of the definition of assessing officer as defined in section 2(7A) of the Act. The said provision defines 'assessing officer' to mean the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer, who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of the Act, and the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, who is directed under clause (b) of sub-section (4) of section 120 to exercise or perform all or any of the powers and functions conferred on, or assigned to, an assessing officer under this Act. In the instant case, the order of assessment was challenged on several grounds and, particularly, on the ground that no notice under section 143(2) of the Act was issued within the time prescribed by the assessing officer, who had jurisdiction over the assessment file of the assessee at the relevant time. The Commissioner of Income-tax (Appeals)-XXXVII, Kolkata, (CIT(A)) did not agree with the contentions raised by the assessee that there is failure to comply with the mandatory statutory requirement. The CIT(A) opined that the assessing officer, who originally dealt with the e-return filed by the assessee had issued notice under section 143(2) of the Act. With regard to the merits of the matter, the CIT(A) held it in favour of the assessee. Therefore, the revenue was on appeal before the Tribunal and cross-objection was filed by the assessee questioning that portion of the order of the CIT(A) which held that there is no procedural irregularity committed by the assessing officer. The Tribunal considered the correctness of the finding of the CIT(A) and, on facts, found that both the assessing officers, namely, the assessing officer, who had jurisdiction over the assessee till 6-4-2009 and the assessing officer, who had jurisdiction post the said date had not issued notice under section 143(2) of the Act within the prescribed period of six months from the end of the financial year in which the return was filed. This factual position could not be controverted by the revenue before us. As pointed out by the Hon'ble Supreme Court in the case of

*Hotel Blue Moon (supra), non-issuance of notice under section 143(2) is not a procedural irregularity and, therefore, it is not curable. Thus, on facts, it having been established that no notice was issued under section 143(2) of the Act, the order passed by the Tribunal was perfectly legal and valid. The revenue also sought to rely upon section 292BB of the Act to justify their stand that notice is deemed to be valid and sought to bring the assessee's case under the circumstances mentioned in section 292BB. This question was considered by the Tribunal and it was pointed out that section 292BB provides that where an assessee has appeared in any proceedings or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any of the provision of the Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under the Act that the notice was not served upon him or not served upon him in time or served upon him in an improper manner. This amendment to the Act was introduced with effect from 1-4-2008 and the assessment year under consideration is AY 2007-08. In any event, the Tribunal examined as to whether at all the revenue can rely upon section 292BB of the Act and noted that the assessee has filed an objection vide letter dated 16-11-2009 objecting to the issuance of notice under section 142(1) of the Act without valid service of notice under section 143(2) of the Act. Taking note of the said letter the Tribunal, in our view, rightly held that the proviso to section 292BB would not stand attracted and the said section cannot be made applicable to the assessee's case. The Tribunal, thereafter, analysed as to the correctness of the submission of the revenue seeking to sustain their stand by referring to a notice issued by the assessing officer, who at the relevant point had no jurisdiction over the assessee and, on facts, found that there is no valid compliance of section 143(2) of the Act as the notice issued under section 143(2) of the Act by the assessing officer/Income Tax Officer, Ward-3(1) had no jurisdiction over the assessee at the relevant time. The Tribunal to support its conclusion placed reliance in the case of CIT v. Mukesh Kumar Agrawal [2012] 25 taxmann.com 112/345 ITR 29 (Allahabad), wherein it was held that the assessing officer did not have jurisdiction to proceed further and make assessment since notice under section 143(2) of the Act was admittedly not issued. As in the case on hand, the revenue sought to take coverage under section 292BB of the Act which was rejected on the ground that the very foundation of the jurisdiction of the assessing officer was on the issuance of notice under section 143(2) of the Act and the same having been complied with, the revenue cannot take shelter under the provisions of section 292BB of the Act.*

*7. Thus, we are of the clear view that the Tribunal was right in rejecting the revenue's appeal."*

22. We note that issue is also covered in favour of assessee by the judgment of the Coordinate Bench of ITAT Kolkata in the case of Eversafe Securities (P) Ltd [2021] 128 taxmann.com 347 ( Kol-Trib) wherein it was held that where case of assessee was transferred by ITO Ward- 4 to ITO

Ward-5, impugned order under section 143(3) passed by ITO Ward-5 without issuing notice under section 143(2) and only in pursuance with notice issued by ITO Ward- 4, who did not enjoy jurisdiction over assessee, was null and void. The detailed findings of the Coordinate Bench are reproduced below:

*“8. We first take up the issue of jurisdiction. ITO, Ward-4(3), Kolkata issued notice u/s 143(2) of the Act on 12-8-2013 to the assessee. The assessee on 4-9-2013 replied as follows:*

*"Kindly refer to the above. A notice U/s 143(2) of the Income-tax Act, 1961 dated 12/08/2013 was served on for Asst year 2012-13.*

*In this regard and as per our information you do not hold the charge and jurisdiction over our case. As per our understanding I.T.O. Ward 5(3) holds jurisdiction over this case.*

*In view of the above, we submit that notice issued and proceeding undertaken by you in our case is not valid as per law and you are requested to kindly do the needful in this regards.*

*Kindly note that compliance to your notice is without prejudice to our right to challenge the validity of the proceeding including the issue of jurisdiction or limitation.*

*Accordingly, the provisions of section 292BB or any other provisions will not validate the proceeding."*

*(Emphasis supplied)*

**8.1** *Admittedly, no notice u/s 143(2) of the Act was issued to the assessee by ITO, Ward-5(3), Kolkata. This fact is admitted by the ITO, Ward-5(1), Kolkata in his letter addressed to the Pr. CIT-2, Kolkata in F. No. I.T.O./W-5(1)/KOL/2020-21/165 dated 17-3-2021. We extract part of this for ready reference:*

*"However from the Notice U/s. 143(2) dated 12/08/2013 attached with your above letter, it is observed that the said notice was issued by the then ITO, Ward 4(3), Kolkata as PAN was lying with him. Address of assessee Eversafe Securities, (P.)Ltd. was 41, N.S. Road, Kolkata 700001. Jurisdiction of 41 ,N.S. Road, Kolkata 700001 were lying with ITO, Ward 5(3), Kolkata, and for this file was transferred to ITO, Ward 5(3), Kolkata.*

*For notice issued by ITO, Ward 5(3), Kolkata, since file is not traceable, attempt was made to locate from the system. No such Notice was found in system."*

**8.2** *The issue is whether the assessment order passed u/s 143(3) of the Act dated 14-3-2015 by the ITO, Ward-5(3), Kolkata is bad in law when a notice u/s 143(2) of the Act was not issued by the jurisdictional assessing officer.*

**8.3** *This Bench of the Tribunal in the case of Hillman Hosiery Mills (P.) 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 v. 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:—

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 v. ACIT in ITA No. 2073/Kol/2016 order dt. 27-9-2017, 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 6-9-2013 and the same was served on the assessee on 19-9-2013 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 24-9-2014 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 6-9-2013.
(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 24-9-2014.
(iii)	On 24-9-2014 statutory notices for scrutiny were issued by ACIT, Circle-27, Haldia.

6. We note that the CBDT Instruction is dated 31-1-2011 and the assessee has filed the return of income on 29-3-2013 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 6-9-2013 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 *quarum 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 v. ITO [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 v. 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 v. 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."*

*11. Respectfully following the same, we have to hold that the assessment order passed by the DCIT, Circle-11(1), Kolkata, without issuance of notice u/s 143(2) of the Act, is bad in law. If it is held that the ITO Ward-3(3), Kolkata, has jurisdiction over the assessee, then the assessment order passed by the DCIT, Circle-11(1), Kolkata, would become bad in law as it would be an order passed by an officer who has no jurisdiction. Looking at it either way, we find that the assessment is bad in law."*

*(Emphasis supplied)*

**8.4** This Bench of the Tribunal in the case of *K.A.Wires Ltd.* (*supra*) held as follows:

"6. We 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, we hold as follows:—

7. The address of the assessee as given in the return of income and as given in the PAN Card, has not undergone any change for the previous assessment years, this year and for the subsequent assessment years. A perusal of the copy of return of income filed by the assessee for the Assessment Year 2010-11, 2011-12, 2012-13 & 2013-14, demonstrate that it was filed with the same address, before the ITO, Ward-8(3), Kolkata.

There is no dispute that it was only the ITO, Ward-8(3), Kolkata, who had and continued to have the jurisdiction over the assessee company. The PAN card also has the same address for all these years. There is no change in address of the assessee company.

7.1 It is also not in dispute that the notice u/s 143(2) of the Act dt. 06/08/2013 was issued by the ITO Ward-33(1), Kolkata. The assessee does not fall under the jurisdiction of this officer. A perusal of the order sheet entries demonstrate that, after issuance of notice u/s 143(2) of the Act on 06/08/2013, the ITO, Ward- 33(1), Kolkata, transferred the file to ITO, Ward-8(3), Kolkata on 03/02/2014. Thereafter, ITO, Ward-8(3), Kolkata, issued notice u/s 143(1) on 10/10/2014 and completed the assessment u/s 143(3) of the Act on 30/03/2015. The ITO Ward-8(3), Kolkata, who had the jurisdiction over the assessee, did not issue notice u/s 143(2) of the Act to the assessee. The issue before us is whether the non-issuance of notice u/s 143(2) of the Act, by the Assessing Officer having jurisdiction over the assessee makes the assessment bad in law.

8. We 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, we hold as follows:—

8.1 Jurisdiction of the Income-tax Authorities is conferred by the Board (Central Board of Direct Tax) u/s. 120(1) & (2) of the LT. Act, 1961. The Section reads as follows:

120. (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 anyone 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.

(4) Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein, -

(a)		authorise any 1[Principal Director General or] Director General or 14[Principal Director or] Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;
(b)		empower the 1 [Principal Director General or] Director General or 14[Principal Chief Commissioner or] Chief Commissioner or 14[Principal Commissioner or] Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to

		<p>such Additional Commissioner or Additional Director or Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.</p>
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(5) *The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.*

(6) *Notwithstanding anything contained in any direction or order issued under this section, or in section 124, the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification.*

8.2 *From a plain reading of the above, it is clear that u/s 120(1) of the Act, the Income-tax Authorities will have to exercise Acts only in accordance with the jurisdiction conferred by the Board. U/s 120(3) of the Act, such powers can be conferred by the Board having regard to the territorial area, class of person, income or class of the cases. The CBDT under sec. 120(5) of the Act, can also confer jurisdiction on two or more Assessing Officers (concurrent jurisdiction). The CBDT can also by notification confer powers on the authorities for the purpose of assessment as may be notified in the notification. This shows that concurrent jurisdiction can be exercised only when CBDT confers such jurisdiction u/s 120(4) and 120(5) of the Act.*

8.3 *In accordance with the powers conferred u/s. 120 (1) and 120(2) of the Act, the CBDT issued notification on no. 191/2002(F.No.187/9/2002-ITA-1 dated 30-7-2002) whereby the CBDT conferred the jurisdiction by specifying the Designation of the specific Income-tax Authorities, its Head Quarters, Territorial Area, Persons or classes of persons and cases or class of cases.*

8.4 As per the above referred notification, the assessee's being a company, the case fell under the jurisdiction of Commissioner of Income Tax, Kolkata-III, Kolkata vide serial no. 205 of the notification. The jurisdiction of the assessee fell with the Assessing Officer being ITO ward 8(3), Kolkata, who was under the charge of Commissioner of Income-tax -Kolkata III.

8.5 The Authorities under the Income Tax, after the jurisdiction is conferred in them by virtue of notification u/s 120(1) and 120(2) of the Act, have to perform their functions as per sec. 124 of the Act. Section 124 of the Act, reads as under:

124. (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction-

(a)		in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and
(b)		in respect of any other person residing within the area.

(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Principal Director General or Director General or the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner; or where the question is one relating to areas within the jurisdiction of different Principal Director General or Directors General or Principal Chief Commissioners or] Chief Commissioners or Principal Commissioners or Commissioners, by the Principal Director General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or] Commissioners concerned or, if they are not in agreement, by the Board or by such Principal Director General or] Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—

(a)		where he has made a return under sub-section (1) of section 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section
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		<i>115WE or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;</i>
(b)		<i>where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.</i>
(c)		<i>where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.</i>

*(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.*

*(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120.*

*8.6 The clear and unambiguous words used in section 124(1) of the Act, are that the Assessing Officer should be vested with the Jurisdiction by virtue of an order, notification or directions issued u/s. 120(1) or u/s. 120(2) of the Act. Therefore, only the Officer who has been vested with the jurisdiction conferred u/s 120(1) and 120(2) of the Act can act as Assessing Officer and issue notice under sec. 143(2) of the Act, since "he shall have jurisdiction" are the words as has been used in sec. 124(1) of the Act.*

*8.7 Even though the Assessing Officer have been vested with the Jurisdiction u/s. 124(1) of the Act, by the Board, yet the assessee may dispute such jurisdiction vested u/s 124(1) of the Act, in the Assessing Officer. Such dispute can be raised u/s. 124(3) of the Act, within one month of the issue of notice u/s. 143(2) of the Act. This sub section, therefore, clearly stipulates that the assessee can dispute the jurisdiction of the Assessing Officer to issue notice even though such jurisdiction was vested in him by the direction or order issued u/s. 120(1) or 120(2) of the Act, for some reasons.*

8.8 In this case, the jurisdiction of the assessee was never vested with the Assessing Officer, Ward 33(1), (non corporate assessee ward) who issued notice u/s. 143(2) of the Act. In fact, the assessee also filed return before ITO, Ward-8(3), Kolkata who was having jurisdiction over the assessee as per the Boards Notification, which fact is evident from the copy of acknowledgements of return of income for the last few years. The notice under sec. 143(2), however, was issued in this case by ITO, Ward 33(1), Kol who has not been vested with the jurisdiction over the assessee company by CBDT.

8.9 Under the scheme of "e" filing of return, the assessee has to fill PAN on the return. It has to also fill its address and some of the details are picked-up by the assessee. If the Department's system fails to correctly transfer the return to the jurisdictional Assessing Officer and transfer the same to a Assessing Officer though who has no jurisdiction as per the CBDT's notification, such mistake cannot confer the jurisdiction on such an Assessing Officer. Jurisdiction can be conferred only by notification u/s 120(1) and 120(2) of the Act only.

8.10 The Ld DR submitted that there was transfer order of the assessee's case for the assessment year in question, from ITO Ward 33(1) to ITO Ward 8(3). There can be a valid transfer order from ITO Ward 33(1) only if he was vested with the jurisdiction over the assessee. As he was never vested with the jurisdiction either by the notification of the CBDT or by any order of the Commissioner of Income-tax earlier to the issue of notice u/s 143(2) of the Act, he could not have validly transferred the case to ITO, Ward-8(3), Kolkata. The file/case was restored to its jurisdictional area. When the said ITO Ward 33(1) was not having valid jurisdiction at the time of issue of notice u/s 143(2) of the Act, then the notice is bad in law. The transfer of the folder from ITO Ward 33(1) to ITO Ward 8(3) in fact establishes that the revenue realised that the ITO Ward 33(1) had no jurisdiction.

8.11 The Ld DR also raised the issue that u/s 120(4) and 124(5) of the Act, there can be concurrent jurisdiction. There is no dispute over that. However there is no direction or order or notification u/s 120(1) or 120(2) of the Act, conferring concurrent jurisdiction to the ITO Ward 33(1) along with ITO Ward 8(3) u/s 120(1) or u/s 120(2) of the Act, which is the condition mentioned in section 120(4) and 120(5) of the Act.

8.12 The Ld DR for the purpose of his submission also read out para 19 of the decision of ITAT in the case of Rungata Irrigation in ITA No 1224/K/2019 dated 6-9-2019. The said decisions is in favour of the assessee. The Ld CIT(DR) has relied on para 19 which is in fact in favour the assessee. The Tribunal has fully analyzed the entire provisions of section 120, 124 and 127 of the Act, in para 13, 14,15,17, 18, 21 of the order with regard to the issue of vesting of jurisdiction and transfer etc and held that the issue of notice by non-jurisdictional AO was bad in law and without jurisdiction.

8.13 The Ld DR argued that the assessee did not dispute the jurisdiction u/s 124(3) of the Act and hence by not disputing the same, the right to challenge the jurisdiction is lost forever. This would have been so, had the ITO, Ward-33(1), Kolkata, had original jurisdiction over the assessee. This is not the case.

*When an authority does not have jurisdiction, then the act done by such authority is bad in law and is void ab-initio*

8.14 This issue came up for consideration in the following cases:

(i)		<i>Rungta Irrigation Ltd. referred to above with relevant paragraphs and paragraph 36.</i>
(ii)		<i>Smriti Kedia Calcutta High Court 339ITR page 37</i>
(iii)		<i>Indorama Software Solutions Ltd. Mumbai Bench ITA No. 5211 and 5290(Mum) of 2011 dated 7-9-2012</i>

8.15 *In the case of Mahalchand Motilal Kothari & Co (ITA No. 1851/1852/Kolj2002, ITAT, D- Bench, Kol dated 28-7-2006 wherein the Tribunal considered the notification dated 30-7-2002 and held that after issue of the notification the Assessing Officer who was earlier vested the jurisdiction lost the jurisdiction and even though the order of the CIT(A) was received by him at the time when he was having jurisdiction, yet the Assessing Officer who has been divested of the jurisdiction on 30-7-2002 cannot file the appeal after the said date. In that case even the authorization was also granted for filing the appeal by the CIT-XIII, Kolkata who lost the jurisdiction after the notification. In that case after the dismissal of the appeal of the Department by the Tribunal on the aforesaid ground of jurisdiction, the Revenue filed an appeal before the Hon'ble High Court but the same was dismissed. The Revenue thereafter came up with condonation petition and a filed fresh appeal before the ITAT but the same was also dismissed in ITA No. 1768 and 1769/Kol/2006, B-Bench on 15-9-2014. The Revenue filed an appeal before the Hon'ble High Court which was dismissed with the following observations:*

*"The appeal carried by the ACIT-39 to the Appellate Tribunal was dismissed as not competent. The order of the Appellate Tribunal was challenged by the Revenue in this Court. This Court did not interfere with the order of the Tribunal and the matter rested there without this Court's order being challenged by the Revenue before the Supreme Court. In the present case, the matter pertains to the same assessment year when the ITO-44 has preferred an appeal where the initial assessment was not done by the ITO-44 but such assessment 'was conducted by the ACIT-39 at a point of time when ACIT-39 lost jurisdiction over the assessee pursuant to the said CBOT Notification 2002*

*Since there was a fundamental error, the Appellate Tribunal dismissed the appeal as incompetent since the order of the Assessing Officer who had no jurisdiction to undertake the assessment qua the assessee could never have been found to be legal or resurrected. "*

8.16 *While deciding the issue in the case of Mahalchand Motilal Kothari & Co. (supra) the ITAT relied on the Judgement of Calcutta High Court in the case of "West Bengal State Electricity Board" 278ITR 218. In that case the Hon'ble Calcutta High Court held that jurisdiction cannot be conferred by default or by agreement and the decision without jurisdiction is a nullity. The*

Hon'ble High Court also relied on a number of Judgements while arriving at such a conclusion.

8.17 The Hon'ble Allahabad High Court in the case of V.P. Electronics Corporation Ltd in ITA No. 79 of 2015 dated 1-3-2017 has also taken similar view wherein the provisions of sec. 124(3) were also referred to. It was held that when the notice was not issued by the competent authority, i.e., an Assessing Officer having jurisdiction, then the assessment is a nullity.

8.18 In the case of Deepchand Kothari reported in 171 ITR 381(Raj) it was held that the Assessing Officer who was having no jurisdiction to initiate the proceedings then such proceedings are ab-intio- void. Further the Hon'ble High Court relying on the Judgement of the Hon'ble Supreme Court in the case of Kiran Singh v. Chaman Paswan, it was held that the Jurisdictional issue can be taken up at any stage of the proceedings, even at the time of execution of decree.

8.19 The ITAT, Kolkata in the case of Ganesh Reality and Mall in ITA No. 581/Kol/2017 held that if no jurisdiction was conferred on a particular authority the issue of notice or completion of assessment by such authority is illegal.

8.20 In the case of P.V. Doshi v. CIT the Gujarat High Court held that the jurisdictional issue can be taken up at any stage of the proceedings.

8.21 In the case of Rajmandir Estates (386 ITR 162) the Hon'ble Calcutta High Court held that if the Commissioner Income-tax issuing notice u/s. 263 has lost the Jurisdiction then the notice and order issued by him is a nullity.

8.22 The Lucknow Bench of the ITAT in ITA No. 89 and 90/LKW/2015 dated 16-4-2015 in the case of Md Rizwan held that notice u/s 143(2) issued by non-jurisdictional Assessing Officer is a nullity.

8.23 Same view have been taken a number of other cases some of which are under:—

	1. A.L. Ahuja v. DCIT SOT (2003) page 475 at page 480	If at the time of issue of notice u/s. 158BC the Assessing Officer had no jurisdiction the assessment is illegal.
	2. Income-tax Officer v. Sarkar & Co. 1954 AIR 613 Calcutta.	If at the time of filing, of the appeal the ITO had no seisin over he assessee's case and case is transferred by the Commissioner of Income-tax from ITO Ward-III(2) to some other Officer, on the date of filing of the Appeal, the ITO Ward III(2) cannot

		<i>file the Appeal and the appeal of the department rightly dismissed by the ITAT</i>
	<i>3. Ram Krishna Ramnath v. Commissioner of Income-tax AIR 1932 Page 65 Nagpur</i>	<i>When by notification dated 28th March, 1923 the powers conferred on the ITO should be exercised by the ACIT the Notice issued by the ITO was illegal</i>
	<i>4. CIT West Bengal and another v. Anil Kumar Roy Choudhury and Another reported in 66 ITR page 367</i>	<i>The decision of the Calcutta High Court in Sarkar &amp; Co. 1954 AIR 613 Calcutta was approved and held that if the case is transferred by the commissioner or The board then the income tax officer from whom the file is transferred shall have no concern with the appeal.</i>
	<i>5. Commercial Enterprises v. State of Oriss</i>	<i>Annulment of assessment is permissible where the taxing authority had no jurisdiction to assessee.</i>
	<i>6. Sain Baba Mohansing 90 ITR page 197</i>	<i>Proceedings taken by an authority who lacked jurisdiction is ab initio void.</i>
	<i>7. Rajeevkumar Donerria v. Asst. Commissioner of Income Tax 94 ITD page 344</i>	<i>Only the assessing officer who at the relevant time of filing of the appeal has the jurisdiction can file the appeal. An appeal filed by an officer who has no jurisdiction to file the appeal is non est.</i>

8.24 *The Hon'ble Gujarat High Court in the case of Jolly Fantasy World Ltd., Tax appeal no. 1254 of 2014, judgement dated 9-3-2015 held that there cannot be waiver of Jurisdiction, even if the assessee has participated in the proceedings.*

8.25 *Consent cannot confer jurisdiction and if the notice issued is without jurisdiction it is invalid as was held in Resham Petrotech Ltd. ITA O. 2777/Ahd/2011 dated 10-2-2012.*

8.26 *The Hon'ble Bombay High Court in ITA No. 127 OF 2006 in the case of The Commissioner of Income Tax-I, Lalit Kumar Bardia, judgment dt. 11-7-2017, held that the transfer of jurisdiction subsequently cannot validate the action already taken.*

8.27 *The Ld. DR cited the judgement of the Hon'ble Supreme Court in the case of I-Ven Interactive Limited (Civil Appeal No. 8132 of 2019 dated 18-10-*

2019). This judgement is not on the issue of jurisdiction of the Assessing Officer. In that case, there is no dispute that the assessing officer issuing notice had jurisdiction over the assessee. In that case the selection of the return for scrutiny was generated under automated system of the Income-tax Department which picks up the address of the assessee from the PAN database. The notice u/s 143(2) was sent at the assessee's address available as per the PAN database. Intimation for further hearing and three more notices were sent at the same address as available in the PAN. Finally, the assessee appeared before the tax authority but challenged the notices saying that these notices were not served upon him and that he never received notice u/s 143(2) of the Act and that further subsequent notices served and received by the assessee were beyond the period of limitation prescribed under the law. The assessee submitted that he changed his address and the new address was mentioned in the return of income filed for subsequent years. The assessee also submitted that he filed Form No. 18 with Registrar of Companies, regarding change of address. No separate intimation was given to the Assessing Officer by the assessee regarding change of address. The Court held that mere mentioning of the new address on subsequent return without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed, is not enough and sufficient. The court found that the assessee claimed to have filed a letter for change of address but such letter was never produced before any of the authorities. It was held that on the facts of the case, the notice issued on the address available on the PAN data base was proper and valid service of notice u/s 143(2) of the Act. The court held that the change of address in the database of PAN is must, in case of change of the name of the company and/or any change in the registered office of the corporate office of the assessee and the same has to be intimated to the Registrar of Companies in the prescribed format i.e., Form 18 and after completing the said requirement, the assessee is required to approach the Department with the copy of the said document and then the assessee is required to make an application for change of address in the departmental database of the PAN. In the present case the assessee has failed to do so. This judgment is on the issue of service of notice. It is not an issue as to whether the Assessing Officer has jurisdiction over the assessee. As already stated, it is not a case of notice being issued by a non-jurisdictional Assessing Officer.

It is therefore clear that the issue in the case before the Hon'ble Supreme Court was not with regard to the jurisdiction of the officer in issuing the notice but was with regard to the service of notice on the proper address. The said judgement therefore does not help the department on this issue of jurisdiction

now before us. Jurisdiction has to be conferred u/s 120 of the Act. Any act by an authority without jurisdiction is ab-initio void.

8.28 In view of the above discussion, as the Assessing Officer who had jurisdiction over the assessee i.e., ITO Ward - 8(3), Kolkata had not issued the notice to the assessee u/s 143(2) of the Act as mandatorily required under the Act, the assessment framed u/s 143(3) of the Act, is bad in law as held by the Hon'ble Supreme Court in the case of ACIT & Anr. v. Hotel Blue Moon: [321 ITR 362 \(SC\)](#). Hence we quash the same.

9. As we have held that the assessment is bad in law, in view of the non-issuance of the statutory notice u/s 143(2) of the Act by the Assessing Officer, having jurisdiction over the assessee, we would not go into the merits of the case as it would be an academic exercise.

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

9. Respectfully following the propositions of law laid down in these case laws to the facts of the case we hold that the notice issued by the ITO, Ward-4(3), Kolkata u/s 143(2) of the Act on 12-8-2013 is without jurisdiction and hence non-est in law. It is ab-initio void.

10. The assessment order passed by the AO, ITO, Ward-5(3), Kolkata u/s 143(3) of the Act on 14-3-2015 was without issuance of mandatory notice u/s 143(2) of the Act, by the AO having jurisdiction over the assessee. Thus the assessment order passed u/s 143(3) of the Act, without issuance of valid notice u/s 143(2) of the Act is bad in law as held by the Hon'ble Supreme Court in the case of Hotel Blue Moon (supra). Thus we allow the ground nos. 1-4 in favour of the assessee and quash the assessment order passed u/s 143(3) of the Act dated 14-3-2015. As we have quashed the assessment order on the ground of above discussion, we do not adjudicate the other grounds raised by the assessee as it would be an academic issue.

11. In the result, the appeal filed by the assessee is allowed."

23. In conclusion we are of the view that in assessee's case under consideration, the notice under section 143(3) was issued by the ITO, Ward-2(1), Surat, whereas assessment order was framed by another assessing officer, viz: ITO, Ward/Circle-6(1), Surat, which is not acceptable, as assessment was framed by ITO, Ward/Circle-6(1), Surat, without issuing notice under section 143(2) of the Act, who did not enjoy jurisdiction over assessee, therefore assessment framed by the ITO, Ward/Circle-6(1), Surat, is null and void and hence we quash the assessment order.

24. As the assessment order itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous therefore, we do not adjudicate them.

25. In the results, appeal filed by the Revenue is dismissed, whereas the appeal filed by the Assessee is allowed, as indicated above.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced on 25/09/2023 in the open court.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

सूरत /Surat

दिनांक/ Date: 25/09/2023

*SAMANTA*

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat