IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 273/Kol/2022

Assessment Year: 2010-11

Madhuban Dealers Pvt. Ltd. (presently known as Madhuban Dealers LLP) 113B, Manohar Das Katra, Shop No. 118, Durga Gate, Ground Floor, Kolkata-700007. (PAN: ABCFM1259J)	Vs.	Pr. Commissioner of Income-tax, Kolkata-13, 3, Govt. Place, Kolkata-700001.
Appellant		Respondent

Date of Hearing	03.08.2023
Date of Pronouncement	07.11.2023
For the Appellant	Shri Akkal Dudhewala, AR
For the Respondent	Shri Sunil Kr. Agarwala, CIT, DR

ORDER

Per Shri Rajesh Kumar, AM

This is an appeal preferred by the assessee against the revision order of Ld. Pr. CIT-13, Kolkata u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as the "Act")dated 23.03.2022 for AY 2010-11.

2. The only issue raised by the assessee in the various grounds of appeal is against invalid exercise of jurisdiction u/s. 263 of the Act by Ld. Pr. CIT with the consequence that order passed u/s. 263 of the Act is also invalid.

3. Facts in brief are that assessee filed its return of income for the relevant assessment year on 11.09.2010 declaring total loss of Rs.6,04,635/-. The return was originally processed u/s. 143(1) of the Act. Thereafter, the case of the assessee was reopened u/s. 147 of the Act on the basis of information received from Investigation Wing that assessee is beneficiary of Rs.4,95,00,000/- received from four entities and accordingly, the income has escaped assessment. The assessment was framed u/s. 144/147 of the Act vide order dated 27.12.2017 assessing the total income at nil. The AO examined the issue and came to the conclusion that the information pertained to FY 2010-11 relevant to AY 2011-12 and not to the instant assessment for AY 2010-11 and, therefore, no disallowance was made. Thereafter, the AO reopened the assessment for AY 2011-12 u/s. 147 of the Act by issuing notice u/s. 148 of the Act dated 29.03.2018 and after looking into the matter, AO noted that

transactions were duly recorded in the books of account and there was no undisclosed income and accordingly assessed them at nilvide order dated 20.11.2018. Thereafter, the assessee received a notice u/s. 154 of the Act dated 14.01.2019 in which the AO pointed out the mistake in applying provisions of section 68 of the Act which was replied on 18.03.2019 in which it was pointed out that the information did not pertain to AY 2010-11 but to AY 11-12. It was also stated before the AO that AY 2011-12 was reopened and after necessary verification, the assessment was framed u/s. 143(3)/147 of the Act for AY 2011-12 making no addition by the AO as these were duly found recorded in the books of accounts. Besides, it was pointed out that impugned issue did not qualify as mistake apparent from record and, therefore, jurisdiction sought to be invoked u/s. 154 of the Act was invalid and unreasonable. The AO did not pass any order u/s. 154 but a proposal was sent to the Ld. Pr. CIT for invoking the revisionary jurisdiction u/s. 263 of the Act on 03.04.2019. In the meanwhile, the assessee was converted into LLP w.e.f. 13.04.2015 and the same has been intimated to the AO on 12.02.2018 by registered post and copy of which is placed as annexure in the paper book. Consequently, M/s. Madhuban Dealers Pvt. Ltd. stood wound up and dissolved with a new entity coming into existence as M/s. Madhuban LLP. Thereafter, the ld. Pr. CIT issued notice u/s. 263 of the Act on 07.01.2020 in the name of M/s. Dadhuban Dealer Pvt. Ltd. a non-existent entity by observing that assessment framed u/s. 144/147 of the Act dated 27.12.2017 is erroneous and prejudicial to the interest of revenue as the AO has failed to make proper enquiries/verification in terms of clause (a) to explanation (2) of section 263 of the Act in respect of receipt of money amounting to Rs.4,95,00,000/- from four entities.The assessee sought an adjournment to reply the said show cause notice,however, the Ld. Pr. CIT proceeded with the framing of revisionary order u/s. 263 of the Act dated 13.03.2020 as ex parte order in the name of Madhuban Dealers Pvt. Ltd., a non-existent entity.

4. Aggrieved assessee, filed an appeal before the Hon'ble ITAT, Kolkata in ITA No. 393/Kol/2020 and the coordinate Bench has set aside the matter back to the file of Ld. Pr CIT vide order dated 25.08.2021 to consider the matter afresh. However the assessee challenged the order passed by Pr. CIT before the tribunal on the ground that a fair hearing was not allowed to the assessee and consequently restored the matter the Pr. CIT to pass fresh order u/s 263 of the Act after allowing fair hearing to the assessee.

5. In the second round of revisionary proceeding, the notice u/s. 263 of the Act dated 15.03.2023 was issued by Ld. Pr CIT, Kolkata again in the name of a non-existence entity Madhuban Dealers Pvt. Ltd. and in response the appellant filed detailed objections/explanation vide letter dated 07.03.20222 submitting therein as under:

> *"Notice u/s 148 of the Act dated 29.03.2017 was never validly served upon the assessee and therefore the impugned reopening of assessment and consequent order dated 27.12.2017 was ab initio void. As a consequence, the revisionary action u/s 263 of the Act stands rendered non-est in the eyes of law as well.*
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> *Notice u/s 148 of the Act dated 29.03.2017 was issued by the AO without the approval of Jt./Addl. CIT and therefore the reassessment proceedings stood vitiated in law. Hence, as the reassessment order was rendered void, the consequent action u/s. 263 of the Act also deserves to be quashed as being bad in law.*
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> *The reasons recorded for reopening of assessment was done in a mechanical manner without application of mind in as much asthe concerned information also did not pertain to the relevant year. Hence, since the recorded reasons were invalid, the consequent order dated 27.12.2017 was ab initio void. As a consequence, the revisionary action u/s.263 of the Act stands rendered non-est in the eyes of law as well.*
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> *The records available in the ITBA portal suggests that the AO had passed a rectification order u/s 154 of the Act dated 10.04.2019 (although the same is neither served upon the assessee nor is available on the IT portal). If that be so, then the assessment order u/s 144/147 of the Act dated 27.12.2017 stood merged with the order u/s 154 of the Act dated 10.04.2019. In that view of the matter the revisionary jurisdiction u/s. 263 of the Act could not have been validly exercised in relation an original assessment order which had already been rectified u/s 154 of the Act."*

6. The Ld. Pr. CIT rejected all the contentions raised by the assessee and set aside the assessment order dated 27.12.2017 passed u/s. 147 read with section 144 of the Act by directing the AO to conduct proper enquiry and verification of the information received from the Investigation Wing.

7. The Ld. AR vehemently submitted before us that the notice issued u/s. 263 of the Act and consequent order passed u/s. 263 dated 23.03.2022 is invalid and void ab initio on the ground that the original notice 263 of the Act and revisionary dated 13.03.2020 were in the name of non-existent entity. The Ld. AR submitted that M/s. Madhuban Dealers Pvt. Ltd. stood converted into Madhuban Dealer LLP w.e.f. 13.04.2015 and thus ceased to exist. Thereafter, the Ld. AR stated that it was also intimated to the AO on 02.04.2018 much prior to the exercise of revisionary jurisdiction by the Ld. Pr. CIT through registered post. The Ld. AR submitted that it is evident that the notice u/s. 263 of the Act dated 07.01.2020 and also from the first revisionary order passed u/s. 263 of the Act dated 13.03.2020 that it was passed in the name of non-existent entity and is non-est in the eyes of law. The Ld. AR

submitted that original revisionary order u/s. 263 of the Act was itself void ab initio then the consequent notice issued u/s. 263 of the Act dated 15.03.2022 in the set aside proceedings before Pr. CIT as well as the impugned order dated 23.03.2022 is also bad in law and may be quashed. Ld. AR in defense of his arguments relied on the decision of coordinate bench in the case of M/s. Durga Vinimay Pvt. Ltd. & Ors. In ITA No. 1408-1412/Kol/2019 dated 22.11.2009. The Ld. AR further submitted that if the original revisionary order itself was illegal, without jurisdiction, the same cannot give rise to any valid collateral proceeding in the second round as well. The Ld. AR, therefore, prayed that the impugned order u/s. 263 of the Act dated 23.03.2022 pursuant to the said illegal and invalid original revisionary or u/s. 263 dated 13.03.2020 deserved to be quashed by relying on the decision of Hon'ble Gujarat High Court in the case of P B. Doshi Vs. CIT 11 ITR 22 (Guj).

8. The Ld. AR on his second limb of argument submitted that reassessment order u/s. 144 read with section 147 of the Act dated 27.12.1970 itself suffered from the fundamental infirmity and jurisdiction defect thereby rendering all the consequential action and proceeding including revisionary order u/s. 263 as nonest in the eyes of law. The Ld. AR submitted that in an appeal against the order of 263 of the Act which ceased to revise the order u/s. 147 of the Act, the assessee has a legal right legitimately conferred by the law to challenge the validity of the order so passed u/s. 147 of the Act as well as initiation of proceeding u/s. 147 of the Act. The Ld. AR contended that the original proceeding u/s. 147 were null and void for want of proper jurisdiction and as such the validity can be challenged in the collateral proceeding u/s. 263 of the Act. The ld. AR submitted that if the order passed u/s. 147 of the Act is found to be bad in law then the consequent action u/s. 263 of the Act is also null and void. In defense of his argument, the Ld AR relied on the decision of Hon'ble Apex Court in the case of Kiran Singh Vs. Chaman Paswan AIR 954 SC 340. The Ld. AR stated that following the above decision of the Hon'ble Apex Court, several judicial forums have held that any revisionary action taken u/s. 263 of the Act against the non est or invalid assessment order would also be a nullity. The Ld. AR cited the following decisions:

i) Concord Infra Project Pvt. Ltd. Vs. Pr. CIT (ITA No.174/Kol/2021 dated 13.10.2021 (ITAT, Kol)

ii) Westlife Development Pvt. Ltd. Vs. Pr. CIT (88 taxmann.com 349) (ITAT Mum.)

iii) Krishna Kumar Saraf Vs. CIT (83 taxmann.com 331) (ITAT Del)

iv) Indian Farmers Fertilizers Coop. Ltd. Vs. JCIT (105 ITD 33) (ITAT Del.)

9. The Ld. AR stated that notice u/s. 148 of the Act was issued without obtaining prior approval from JCIT/Addl. CIT in terms of section 151 of the Act and, therefore, the order passed u/s. 147 of the Act is null and void. In defense of his argument, he relied on the following decisions:

i) CIT Vs. SPL Siddhartha Ltd. 345 ITR 223 (Del HC)

ii) CIT Vs. Soyuz Industrial Resources Ltd. (232 Taxman 414) (Del) HC)

iii) Sidhmicro Equities (P) Ltd. Vs. DCIT (150 taxmann.com 460) (Bom HC)

10. The Ld. AR further stated that in AY 2010-11 notice u/s. 148 was issued by ITO, Ward-4(1), Kolkata on 28.03.2017 after a period of four years but before six year from the end of relevant assessment years and in terms of provision of section 151 of the Act (as it stood then), the ITO was required to obtain prior approval of Addl./Joint CIT, Range-4, Kolkata before issuance of the said notice u/s. 148 of the Act. The Ld. AR stated that the assessee had requested through RTI application dated 26.04.2021, a copy of which is placed at page 31 of the paper book, to provide the copies of reasons recorded by the AO before initiation of reassessment proceeding u/s. 147 of the Act. In response, the office of the ITO, Ward-4(1), Kolkata had provided the same under the covered letter dated 14.07.2021. The Ld. AR submitted that on perusal of the sanctioned/approved proforma a copy of which is filed at pages 34 and 35 of the paper book filed by the AO in terms of section 150(1) of the Act. It is noted that no approval was accorded nor reasons were recorded or signed by Addl./Joint CIT, Range-4, Kolkata and consequently, the notice dated 28.03.2017 issued u/s. 148 as well as the order dated 27.12.2017 passed u/s. 144/147 of the Act were rendered null and void. The Ld. AR stated that consequent thereto the present proceeding also stand initiated by the said non-obtaining of approval from a competent authority.

11. On the third limb of argument, the Ld. AR stated that reasons were recorded by the AO on complete non-application of mind and in a mechanical manner by simply following

the dictate of Investigation Wing and for realizing that the information supplied by the Investigation Wing did not pertain to relevant AY 2010-11 but AY 2011-12. The Ld. AR further stated that the AO has recorded the reasons that income chargeable to tax has escaped assessment after independent application of mind to the material and information which comes in his possession. Accordingly, reopening at the dictate of higher authority or on borrowed satisfaction or based on information forwarded by the Investigation Wing of the Department or any other agency is bad in law and so far as the assessment framed u/s. 147 read with 144 of the Act, the Ld. AR stated that before forming reason to believe on the basis of such information there has to be application of mind in an objective manner by the AO and only thereafter, there should be formation of belief. In the last of his argument, the Ld. AR relied on the following the decisions:

i) Pr. CIT Vs. Meenakshi Overseas (P) Ltd. (82 taxmann.com 300) (Del. HC);

ii) CIT Vs. Paramjit Kaur (168 Taxmann.com 39);

iii) Pr. CIT Vs. RMG Polyvinyl (I) Ltd. (83 taxmann.com 348) (Del. HC)

iv) Cygnus Inv & Fin. Ltd. Vs. ACIT (ITA No. 117/Kol/2018)(ITAT Kol)

v) ACIT Vs. Adhunik Cement Ltd. (ITA No. 1375/Kol/17 (ITAT Kol).

12. The ld DR , per contra, vehemently opposed the arguments presented by the ld counsel for the assessee. The ld. AR contended that the agruments made by the ld AR cannot be entertained at this stage when the issue is restored to Pr. CIT by the tribunal and the pleas which are being raised were never raised before the Pr. CIT in the original proceedings. On the issue of revisionary order being passed in the name of non entity , the ld DR argued that the said argument is wrong as the order is passed in the name of new entity beside mentioning the name of the former entity which can not be taken to mean that the order is passed in the name of old non existent entity. Therefore the said arguments of the ld AR is wrong and may be rejected. On the other arguments of the ld AR that the assessment was not validly re-opened and thus order passed was also invalid and the issue can be taken in the collateral proceedings , the ld. DR contended that the argument was neither taken at the time of re-assessment proceedings nor in the original revisionary

proceeding and therefore it can not be entertained at this stage. Besides. If the assessee have any novice arguments can be taken before the AO as the assessee would be afforded sufficient opportunity. The ld DR finally prayed that the appeal of the assessee may be dismissed for these reasons as argued.

13. After hearing the rival contentions and perusing the relevant records placed before us, we note that undisputedly the assessee, i.e. M/s. Madhuban Dealers Pvt. Limited has been converted into M/s. Madhuban Dealers LLP with effect from 13th April, 2015 meaning thereby that the assessee-company stood wound up and is no more in existence. We note that the assessee has intimated the said fact to the ld. Assessing Officer vide letter dated 02.04.2018 through Registered Post. We note that the revisionary proceedings under section 263 of the Act were initiated by the ld. Pr. CIT, Kolkata vide order-sheet entry dated 03.04.2019 and notice under section 263 was issued on 07.01.2020 and the revisionary order was framed on 13.03.2020which were in the name of non-existent entity despite the fact having been brought to the knowledge of the ld. Assessing Officer as stated hereinabove and the fact was very much available in the assessment records. Therefore, the original revisionary order passed under section 263 of the Act was itself void *ab initio* and invalid and consequently notice issued under section 263 of the Act dated 15.02.2022 in the set aside proceedings as well as the impugned order dated 23.03.2022 were also rendered invalid and void regardless of the fact that revisionary order dated 13.03.2020 was restored to the Pr. CIT by the tribunal. The case of the assessee finds support from the decision of the Coordinate Bench of this Tribunal in the case of M/s. Durga Vinimay Pvt. Limited & Others in ITA No. 1408-1412/KOL/2019 dated 22.11.2019, in which the Coordinate Bench has held on the similar facts and circumstances that the revisionary order passed under section 263 on the non-existent company, to be bad-in-law since the said entity was amalgamated/dissolved. The operative part of the said decision reads as under:-

> *"13. We have heard both the parties and perused the records. We note that M/s. Durja Vinimay Pvt. Ltd. filed the return of income for the year under consideration (AY 2012-13) on 17.09.2012 declaring an income of Rs.560/-. Later, the case of assessee was scrutinized by the AO who was pleased to frame an assessment order dated 25.03.2015 under section 143(3) of the Act determining total income of Rs. 22,36,50,560/-. Thereafter, on 27.07.2016, the Ld. Pr. CIT issued show cause notice dated 27.07.2016 intimating his desire to exercise his revisional jurisdiction u/s. 263 of the Act and thereafter by order dated 27.09.2016 Ld. Pr. CIT was pleased to set aside the order of the AO dated 25.03.2015 and directed de novo assessment as well as directing him to carry out proper examination of books of account and bank accounts of assessee as well as investors.*

14. Thereafter, the AO records in the reassessment order dated 28.10.2016 [in the second round of re-assessment ordered by Ld. Pr. CIT] that the Ld. Pr. CIT -4 has also directed that the proceedings should be initiated at the earliest and the same should be completed without waiting for the time barring date. The AO also observes that the Ld. Pr. CIT, Kol-4, Kolkata has also directed him to follow the direction of Ld. Pr. CCIT, Kolkata dated 17.03.2015 in connection with Boards Circular, and office memorandum dated 07.11.2014 of CBDT in respect of steps towards a non adversarial tax regime. Then the AO records the fact that notice u/s. 142(1) dated 07.10.2016 was issued and served upon the assessee through speed post and fixing date of hearing on 17.10.2016 and in response to the notice u/s. 142(1) dated 17.10.2016, Shri Mukesh Kr. Jhyawar, FCA, the authorised representative (hereinafter referred to as AR) of the assessee appeared and filed power of attorney, the details of directors name and address along with PAN, Date of appointment and produced the books of accounts for the AY 2012-13 relevant to FY 2011-12; and the AO acknowledges that the details of 2nd source of fund and also produced the details of bank statement of the assessee company which is maintained from 01.04.2011 to 31.03.2012 and the AO finds that all the transactions were duly reflected in the bank statement and that all the relevant documents were verified by him on test check basis and that there was no adverse inference need to be drawn against the assessee.

15. Thereafter, the AO records that summons u/s. 131 of the Act was issued on 24.10.2016 to the director of the assessee company fixing the date of hearing on 27.07.2016. And pursuant to the summons, the Director Shri Rajeev Kumar appeared with photo identity proof, and his statement was recorded by the AO and placed in the records. According to AO (which he records in the reassessment order dated 28.10.2016), that during the course of assessment proceedings u/s 143(3)/263 the following features he noted which are as stated below:- [Reproduced from reassessment order dated 28.10.2016]

A. Discharge of onus of liability by M/s. Durja Vinimay Pvt. Ltd., as under:

i) Assessee Company furnished all documents as requisitioned earlier.
ii) Information provided by assessee Company later on, turned to be correct one.
iii) Attendance of one of the Present Director of company against Summon issued u/s.131 and recording his statement is sufficient.

B. Responses of Investors Companies:-

(i) Subscribing companies has sufficient capital for investments.
(ii) Subscribing companies also invested in equity shares related to other companies.
(iii) Reference of cash deposits is not found in the statement of Bank Accounts filed by Investor Companies.
(iv) Financial transactions made during financial year 2011-12 between M/s. Durja Vinimay Pvt. Ltd., and Investors Companies found reported to Revenue.
(v) Notice u/s. 133(6) issued by the predecessor to all the share holder before the assessment proceeding /s. 143(3) and all the share holders reply was received and available in the records.

C. On examination and re-examination of records conclusion as stated above has been made: [by AO]
(i) Subscribing companies had sufficient capital as on 31.03.2012 and investments made was not confined to Assessee Company.
[ii] Books of accounts maintained by those companies were duly audited.
(iii) Investing companies are PAN holders and filed their returns.
(iv) Information as furnished against notices were cross verified and matched.
(vi) Financial transitions were done through bank accounts.

Thereafter the AO concludes and records his finding "in view of facts as stated above financial transactions related to relevant previous year as claimed by Assessee Company appears legally in

order. Reports of transactions and parties involved in itare already in the notice of Revenue. All share holder files their returns regularly. In view of the facts as stated above it appears that Assessee Company discharged the burden of proof. All transactions are already in the notice of Revenue. During the course of re-examination of case and inquiry, in consideration of aforesaid facts, no adverse inference could be drawn. Total income, on verification of accounts, inquiries and after providing sufficient opportunity to assessee Company, is considered as under."

And thereafter, the AO computed the total income on 28.10.2016 at Rs.14,960/-.

17. After the AO has given effect on 28.10.2016 (supra) and framed the reassessment order in the light of the Ld Pr. CIT order dated 27.07.2016, the assessee company got amalgamated with M/s. Nihon Impex Private Ltd. We note that it was the result of the scheme of amalgamation filed before the Hon'ble NCLT which was duly sanctioned vide order dated 21.12.2018. With this amalgamation made effective from 01.04.2017, the assessee company [M/s. Durja Vinimay Pvt. Ltd.] ceased to exist. That is the plain and simple effect in law as held by the Hon'ble Delhi High Court in M/s. Spice Infotainment Lt.ds Vs. CIT (supra). It is noted that the scheme of amalgamation itself provided for this consequences, in as much as simultaneous with the sanctioning of the scheme, the assessee M/s. Durja Vinimay Pvt. Ltd. stood dissolved by specific order of Hon'ble NCLT. With the dissolution of M/s. Durja Vinimay its name was struck off from the rolls of the companies maintained by the ROC. The Hon'ble Delhi High court in M/s. Spice Infotainment has explained the effect of dissolution of a company "A company incorporated under the Indian companies Act is a juristic person. It takes its birth and gets life with the incorporation. It dies with the dissolution as per the provisions of the Companies Act. It is trite law that on amalgamation the amalgamating company ceases to exist in the eyes of law." Therefore, the impugned order passed by the Ld. Pr. CIT in the name of M/s. Durja vinimay Pvt. Ltd. i.e, in the name of assessee's which ceased to exist after the sanction of scheme on 21.12.2018 with effect from 01.04.2017, by the impugned order dated 12.03.209 is void. Since the assessee's before us was not an existing entity when the impugned order was passed by the Ld. Pr. CIT and the fact was that theassessee's had informed their AO's about the order of dissolution and sanctioning of scheme by Hon'ble NCLT w.e.f. 01.04.2017 on the following dates:

Sl. No.	*Name of companies*	*Date of Amalgamation*	*Date of intimation to AO*	*Date of 263 order*
1.	*M/s. Durja Vinimay Pvt. Ltd. (merged with M/s. Nihon Impex P. Ltd.*	*21.12.2018*	*31.01.2019*	*12.03.2019*
2.	*M/s. Gyan Mandir Tradecom P. Ltd. (merged with M/s. Nihon Impex P. Ltd.)*	*21.12.2018*	*09.02.2019*	*12.03.2019*
3.	*M/s. Paramatma Vinimay P. Ltd. (merged with M/s. Warner Dealcom P. Ltd.)*	*25.10.2018*	*15.01.2019*	*12.03.2019*
4.	*M/s. Aditi Vintrade P. Ltd. (merged with M/s. Utkarsh Deler P. Ltd.)*	*23.10.2018*	*15.01.2019*	*14.03.2019*
5.	*M/s. Light House Merchants P. Ltd. (merged with M/. HIpoline Commerce P. Ltd.)*	*17.12.2018*	*08.03.2019*	*12.03.2019*

So, when the department was aware of the dissolution of assessee's companies, it was incumbent upon the Ld. Pr. CIT to take notice of this fact and substitute the successor company while passing

the impugned order, after giving opportunity of hearing to amalgamated company as envisaged under section 263 of the Act. And since the aforesaid action has not been admittedly done by the Ld. Pr. CIT, the impugned order passed against the non-existing entities, which ceased to exist on the date of the impugned order is void.

18. Coming to the Ld. CIT, DR reliance on the order of M/s Sky Light LLP (supra), we note that it was a case of conversion of a private Limited Company to Limited Liability Partnership [LLP] and not a case of dissolution & amalgamation with another corporate entity as in this case. Therefore, the case M/s. Sky Light LLP is clearly distinguishable and therefore, the ratio is not applicable to this case. We note that in this present cases/appeals, the ratio of Hon'ble Delhi High Court in M/s. Spice Infotainment is applicable, which order of Hon'ble Delhi High Court has been upheld by the Hon'ble Supreme Court by order dated 02.11.2017 reported in 247 CTR 500 (SC) wherein we note that the Hon'ble Supreme Court has distinguished the case of M/s. Sky Light Hospitality LLP (supra) in PCIT V. Maruti Suzuki India Ltd. [Civil Appeal No. 5409 of 2019] order dated 25.07.2019.

19. On behalf of the revenue, reliance has been placed on the decision of Hon'ble Supreme Court in the case of Gita Devi Aggarwal Vs. CIT (1970) 76 ITR 496 (SC). That was a case wherein the assessee had challenged that she did not receive the notice issued by the Commissioner while exercising his revisionary power u/s. 33B of 1922 Act (as per 1961 Act it is Sec. 263) and had filed a Writ Petition before the Hon'ble Calcutta High court which has been dismissed by the Hon'ble High court. And the same was challenged before the Hon'ble Supreme Court wherein their Lordship confirmed the order of the Hon'ble Calcutta High Court by observing that section 33B of 1922 Act does not in express terms require a notice to be served. And it was also observed that section 33B only requires the commissioner to give an opportunity to the assessee of being heard and that no notice is contemplated by section 33B of the 1922 Act. The same view has been reiterated in the order of the Hon'ble Supreme court in the case of CIT Vs. M/s. Electro House (Supra). We also have no quarrel that notice to assessee is not a condition precedent for invoking jurisdiction u/s. 263 of the Act, so the SCN forwarded in the present case by Ld. Pr. CIT in the name of erstwhile ceased amalgamating assessee companies does not dent the jurisdiction of Ld. Pr. CIT. However, it has to be kept in mind that u/s. 263 giving an opportunity to assessee before passing order u/s. 263 of the Act is a necessity and failure to give opportunity to assessee before passing the order u/s. 263 of the Act will make the order passed under section 263 fragile for violation of natural justice and thus illegal. Moreover, according to us the action of the Pr CIT to have passed the impugned order under section 263 in the name of non-existent/amalgamating companies is bad in law and therefore, these two decisions cited by the Ld. CIT, DR do not come to the aid of the department and since we have already taken note that the ratio decidendi of the Hon'ble Delhi High court in M/s. Skylight Hospitality LLP Vs. ACIT is distinguishable on the facts of these cases and the Hon'ble supreme Court has distinguished the order of the Hon'ble Delhi High court in M/s. Skylight Hospitality LLP vis-a-vis that of the Hon'ble Delhi High court'' decision in Spice Infotainment Ltd. We note that the facts of cases decided in M/s Maruti Suzuki and M/s Spice Infotainment are squarely applicable to the facts of the present cases before us. We note that in both Maruti Suzuki and Spice Infotainment, the assessment order was passed in the name of the non-existent amalgamating companies and the said orders passed were held to be a nullity by the Hon'ble Apex Court. And in the present case of the assessee also, the impugned order u/s 263 of the Act dated 12-03-2019 was passed in the name of the amalgamating company, M/s Durja Vinimay Pvt Ltd which was undisputedly not in existence at the time when the section 263 order was passed and as such, the impugned order passed u/s 263 of the Act is a nullity in law We note that the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd. was adjudicating a judgment of the Division Bench of the Hon'ble Delhi High Court which upheld the decision of the Income Tax Appellate Tribunal. The Tribunal held that the assessment made in the name of M/s. Suzuki Powertrain India Ltd. for the AY 2012-13 is a nullity since the entity has been amalgamated with M/s. Maruti Suzuki India Ltd. under an approved scheme of amalgamation and was not in existence. The Hon'ble Supreme Court noted the facts of the case as under: "5.The assessee was a joint venture between M/s. Suzuki Motor Corporation and Maruti Suzuki India Ltd. The shareholding of the two companies in the assessee was 70% and 30%. The assessee was known upon incorporation as Suzuki Metal India Limited. Subsequently, with effect from 8 June 2005, its name was changed to SPIL. 6. On 28 November 2012, the assessee filed its

return of income declaring an income of Rs. 212,51,51,156/-. The return of income was filed in the name of SPIL (no amalgamation having taken place on the relevant date). 7. On 29 January 2013, a scheme for amalgamation of SPIL and MSIL was approved by the High Court with effect from 1 April 2012. The terms of the approved scheme provided that all liabilities and duties of the transferor company shall stand transferred to the transferee company without any further act or deed. On the scheme coming into effect, the transferor was to stand dissolved without winding up. The scheme stipulated that the order of amalgamation will not be construed as an order granting exemptions from the payment of stamp duty or taxes or any other charges, if payable, in accordance with law. 8 On 2 April 2013, MSIL intimated the assessing officer of the amalgamation. The case was selected for scrutiny by the issuance of a notice under Section 143(2) on 26 September 2013, followed by a notice under Section 142(1) to the amalgamating company. 9 On 22 January 2016, the Transfer Pricing Officer8 passed an order under Section 92CA (3) determining the Arm's Length Price of royalty at 3 per cent and making an adjustment of Rs. 78.97 crores in respect of royalty paid by the assessee for the relevant previous year. 10 On 11 March 2016, a draft assessment order was passed in the name of Suzuki Powertrain India Limited" (amalgamated with Maruti Suzuki India Limited). The draft assessment order sought to increase the total income of the assessee by Rs. 78.97 crores in accordance with the order of the TPO in order to ensure that the international transactions with regard to the payment of royalty to the Associated Enterprises is at Arm's Length.

11 MSIL participated in the assessment proceedings of the erstwhile amalgamating entity, SPIL, through its authorized representatives and officers. This is evident from the copies of the order sheets of the assessment proceedings before the assessing officer for AY 2012-13. Post amalgamation, on 30 September 2013, the Chartered Accountants addressed a communication to the Commissioner of Income Tax, Circle 9(1), pursuant to the notice under Section 143(2) for an adjournment of the assessment proceedings for AY 2012-13 until the assessment proceedings for AY 2010-11 and AY 2011-12 were completed. On 27 October 2014, the Deputy Commissioner of Income Tax Circle 9 (1) addressed a communication to the Principal Officer, SPIL seeking a response to a detailed questionnaire. Thereafter, on 4 September 2015, the Deputy Commissioner of Income Tax Circle 16(1) called for disclosure of information in the course of the assessment for AY 2012-13. The communication was addressed to: "The Principal Officer M/s Suzuki Power Train India Limited (Now known as M/s Maruti Suzuki India Limited)." 12 On 8 October 2015, a communication was addressed by the DGM (Finance) for MSIL in response to the notice under Section 142 (1) adverting to the case of SPIL for AY 2012-13. 13. On 12 April 2016, MSIL filed its appeal before the Dispute Resolution Panel9 as successor in interest of the erstwhile SPIL, since amalgamated. Form 35A was verified by Mr Kenichi Ayukawa, Managing Director & CEO of MSIL. The grounds of appeal before the DRP did not allude to the objection that the draft assessment order was passed in the name of SPIL (amalgamated with MSIL) or that this defect would render the assessment proceedings invalid. 14 On 14 October 2016, the DRP issued its order in the name of MSIL (as successor in interest of erstwhile SPIL since amalgamated). 15 The final assessment order was passed on 31 October 2016 in the name of SPIL (amalgamated with MSIL) making an addition of Rs. 78.97 crores to the total income of the assessee. While preferring an appeal before the Tribunal, the assessee raised the objection that the assessment proceedings were continued in the name of the non-existent or merged entity SPIL and that the final assessment order which was also issued in the name of a non-existent entity, would be invalid. 16 By its decision dated 6 April 2017, the Tribunal set aside the final assessment order on the ground that it was void ab initio, having been passed in the name of a non-existent entity by the assessing officer. The decision of the Tribunal was affirmed in an appeal under Section 260A by the Delhi High Court on 9 January 2018 following its earlier decision in the case of the assessee for AY 2011-12. That has given rise to the present appeal."

20. The revenue's contention has been noted by the Hon'ble Supreme court in para 17 of the order which is as under:

(i) The High Court was not justified in quashing the final assessment order under Section 143 (3) only on the ground that the assessment was framed in the name of the amalgamating company, which was not in existence, ignoring the fact that the names of both the amalgamated company and the amalgamating company were mentioned in the assessment order; (ii) Even on the hypothesis that the assessment order was framed incorrectly in the name of the amalgamating company, it would amount to a "mistake, defect or omission" which is curable under Section 292B when the

assessment is, "in substance and effect, in conformity with or according to the intent and purpose" of the Act; (iii) During the assessment proceedings and the subsequent proceedings in appeal, the amalgamating company was duly represented by the amalgamated company. No prejudice was caused to any of the parties by the assessment order and hence rendering the assessment order invalid on a 'mere technicality' would be incorrect in law. There was effective participation of the assessee in the assessment proceedings and there was no doubt in the minds of those who participated about the entity in relation to which the assessment proceedings took place; (iv) In Spice Entertainment Ltd. v Commissioner of Service Tax10 ("Spice Entertainment")11, the final assessment order only referred to the name of the erstwhile entity which was non-existent and there was no reference to the resulting company. In distinction, in the present case, in both the draft and the final assessment orders, the names of both the amalgamating and amalgamated companies were mentioned; (v) In paragraph 11 of the decision of the Delhi High Court in Spice Entertainment, it was held that: "11. After the sanction of the scheme on 11th April, 2004, the Spice ceases to exist w.e.f. 1st July, 2003. Even if Spice had filed the returns, it became incumbent upon the Income tax authorities to substitute the successor in place of the said 'dead person'. When notice under Section 143(2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s Spice which was non existing entity on that day. In such proceedings and assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law." From the above extract, it would emerge that if an assessment order had been passed on the resulting company, it would not be void. Hence, in the present case, the issuance of a notice under Section 143 (2) to SPIL cannot be considered to be a jurisdictional effect when the assessment order categorically mentions the names of the amalgamated and amalgamating companies; (vi) The decision of the Delhi High Court in Skylight Hospitality LLP v Assistant Commissioner of Income Tax, Circle-28(1), New Delhi12 ("Skylight Hospitality LLP"), which was confirmed by this Court on 6 April 201813 dealt with a situation where a notice under Section 148 was issued in the name of a non-existent private limited company. The Court held that the defect in recording the name of a non-existent company in a notice under Section 148 was a procedural defect or mistake curable under Section 292B, since no prejudice was caused to the assessee. The Delhi High Court distinguished the decision in Spice Entertainment on the ground that in that case even the final assessment order was in the name of a non-existent company; (vii) In the present case, both the draft assessment order and the final assessment order contained the names of the amalgamated and amalgamating companies and hence it cannot be held that the final order is in the name of a non-existent company. The order of the TPO is not the subject of a challenge by the assessee before any forum. The directions of the TPO were implemented by the assessing officer in the draft assessment order in accordance with Section 144C(1) which was then challenged by the assessee before the DRP under Section 144C(2). Since the names of both the amalgamated and amalgamating companies were mentioned in the draft assessment order and final assessment order, there is no jurisdictional defect; (viii) In view the decision of this Court in Kunhayammed v State of Kerala14 ("Kunhayammed"), though the doctrine of merger does not apply when a Special Leave Petition is dismissed before the grant of leave to appeal, where an order rejecting a Special Leave Petition is a speaking order and reasons have been assigned for rejecting the petition, the law stated or declared in such an order will attract Article 141; and (ix) Consequently, in the alternative, in view of the order passed by this Court on 6 April 2018 in Skylight Hospitality LLP on the one hand and the order dated 16 July 2018 in the case of the present assessee for AY 2011-12 and the earlier order dated 2 November 2017 in CIT, New Delhi v Spice Enfotainment Ltd.15 ("Spice Enfotainment Ltd"), there appears to be a direct conflict of views on the principle whether a notice issued to a non-existent company would suffer from a jurisdictional error or whether it is a mere defect or mistake which would be governed by Section 292B." 21. After hearing the Ld. Counsel for the assessee, the Hon'ble Supreme Court has adverted to certain significant facets of the present case (Maruti suzuki's case) (i) Firstly, the income which is sought to be subjected to the charge of tax for AY 2012-13 is the income of the erstwhile entity (SPIL) prior to amalgamation. This is on account of a transfer pricing addition of Rs. 78.97 crores; (ii) Secondly, under the approved scheme of amalgamation, the transferee has assumed the liabilities of the transferor company, including tax liabilities; (iii) Thirdly, the consequence of the scheme of

amalgamation approved under Section 394 of the Companies Act 1956 is that the amalgamating company ceased to exist. In Saraswati Industrial Syndicate Ltd., the principle has been formulated by this Court in the following observations: "5. Generally, where only one company is involved in change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganisation of scheme of arrangement. In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See: Halsbury's Laws of England (4th edition volume 7 para 1539). Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity." (iv) Fourthly, upon the amalgamating company ceasing to exist, it cannot be regarded as a person under Section 2(31) of the Act 1961 against whom assessment proceedings can be initiated or an order of assessment passed; (v) Fifthly, a notice under Section 143 (2) was issued on 26 September 2013 to the amalgamating company, SPIL, which was followed by a notice to it under Section 142(1); (vi) Sixthly, prior to the date on which the jurisdictional notice under Section 143 (2) was issued, the scheme of amalgamation had been approved on 29 January 2013 by the High Court of Delhi under the Companies Act 1956 with effect from 1 April 2012; (vii)Seventhly, the assessing officer assumed jurisdiction to make an assessment in pursuance of the notice under Section 143 (2). The notice was issued in the name of the amalgamating company in spite of the fact that on 2 April 2013, the amalgamated company MSIL had addressed a communication to the assessing officer intimating the fact of amalgamation. In the above conspectus of the facts, the initiation of assessment proceedings against an entity which had ceased to exist was void ab initio." 22. Thereafter, the Hon'ble Supreme court has distinguished the Hon'ble Delhi High Court decision in skylight Hospitality LLP which was affirmed by the Hon'ble supreme court on 6th April, 2018 by observing as under: "The submission however which has been urged on behalf of the Revenue is that a contrary position emerges from the decision of the Delhi High Court in Skylight Hospitality LLP which was affirmed on 6 April 2018 by a two judge Bench of this Court consisting of Hon'ble Mr Justice A K Sikri and Hon'ble Mr Justice Ashok Bhushan33. In assessing the merits of the above submission, it is necessary to extract the order dated 6 April 2018 of this Court: "In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292B of the Income Tax Act. The special leave petition is dismissed. Pending applications stand disposed of." Now, it is evident from the above extract that it was in the peculiar facts of the case that this Court indicated its agreement that the wrong name given in the notice was merely a clerical error, capable of being corrected under Section 292B. The "peculiar facts" of Skylight Hospitality emerge from the decision of the Delhi High Court34. Skylight Hospitality, an LLP, had taken over on 13 May 2016 and acquired the rights and liabilities of Skylight Hospitality Pvt. Ltd upon conversion under the Limited Liability Partnership Act 200835. It instituted writ proceedings for challenging a notice under Sections 147/148 of the Act 1961 dated 30 March 2017 for AY 2010-2011. The "reasons to believe" made a reference to a tax evasion report received from the investigation unit of the income tax department. The facts were ascertained by the investigation unit. The reasons to believe referred to the assessment order for AY 2013-2014 and the findings recorded in it. Though the notice under Sections 147/148 was issued in the name of Skylight Hospitality Pvt. Ltd. (which had ceased to exist upon conversion into an LLP), there was, as the Delhi High Court held "substantial and affirmative material and evidence on record" to show that the issuance of the notice in the name of the dissolved company was a mistake. The tax evasion report adverted to the conversion of the private limited company into an LLP. Moreover, the reasons to believe recorded by the assessing officer adverted to the approval of the Principal Commissioner. The PAN number of the LLP was also mentioned in some of the documents. The notice under Sections 147/148 was not in conformity with the reasons to believe and the approval of the Principal

Commissioner. It was in this background that the Delhi High Court held that the case fell within the purview of Section 292B for the following reasons: "18…There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11.04.2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s. Skylight Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused." 28 The decision in Spice Entertainment was distinguished with the following observations: "19. Petitioner relies on Spice Infotainment Ltd. v. Commissioner of Service Tax, (2012) 247 CTR 500.Spice Corp. Ltd., the company that had filed the return, had amalgamated with another company. After notice under Section 147/148 of the Act was issued and received in the name of Spice Corp. Ltd., the Assessing Officer was informed about amalgamation but the Assessment Order was passed in the name of the amalgamated company and not in the name of amalgamating company. In the said situation, the amalgamating company had filed an appeal and issue of validity of Assessment Order was raised and examined. It was held that the assessment order was invalid. This was not a case wherein notice under Section 147/148 of the Act was declared to be void and invalid but a case in which assessment order was passed in the name of and against a juristic person which had ceased to exist and stood dissolved as per provisions of the Companies Act. Order was in the name of non-existing person and hence void and illegal." From a reading of the order of this Court dated 6 April 2018 in the Special Leave Petition filed by Skylight Hospitality LLP against the judgment of the Delhi High Court rejecting its challenge, it is evident that the peculiar facts of the case weighed with this Court in coming to this conclusion that there was only a clerical mistake within the meaning of Section 292B." 23. The Hon'ble Supreme court in this case after taking note of the provisions of section 292B of the Act in para 31 held that "In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B." Thereafter, the Hon'ble Supreme Court concluded the order by holding as under: "In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a coordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment on 2 November 2017. The decision in Spice Enfotainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment. We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable."

24. In the light of the aforesaid discussions and relying on the decision of the Hon'ble Apex court in Maruti Suzuki (Supra) and Spice Infotainment Ltd.(supra), we note that the impugned order passed under section 263 0f the Act by the Ld. Pr. CIT against the amalgamating companies which were not in existence on the date of the impugned order is a nullity and, therefore, we are inclined to quash all the impugned orders as shown in the captioned appeals."

13.1. When the original revisionary order was itself illegal and without jurisdiction, the same cannot be give rise any valid collateral proceedings in the second round as well. Therefore, the impugned order passed under section 263 dated 23.03.2022 pursuant to such illegal and invalid original revisionary order dated 13.03.2020 deserves to be quashed. The case of the assessee finds support from the decision of the Hon'ble Gujarat High Court in the case of P.V. Doshi –vs.- CIT reported in 113 ITR 22 wherein it was held as under:

> *The provision of section 147 being for reopening the finally concluded assessment this special provision has been considered as properly hedged in by these various statutory safeguards, because the income has escaped the original assessment even when the procedure of original assessment contemplated such wide powers of appeal, revision and even rectification under the various provisions of the Act. That is why the conditions laid down for the reasonable belief to be reached by the ITO under sub-clause (a) or under sub-clause (b), and his recording of the reasons under section 148(2), and for the sanction before issuing the said notice under section 148 by the higher authorities under section 151 have been considered as mandatory conditions. The reasons which are now in terms under section 148(2) required to be recorded by the ITO have not to be communicated to the assessee but they are to be available for the authorities who have to give the sanction. The legal position about waiver of such a mandatory provision created in the wider public interest to operate as fetter on the jurisdiction of the authority is well settled that there could never be waiver, for the simple reason that in such cases jurisdiction could not be conferred on the authority by mere consent, but only on conditions precedent for the exercise of jurisdiction being fulfilled. If the jurisdiction cannot be conferred by consent, there would be no question of waiver, acquiescence or estoppel or the bar of res judicata being attracted because the order in such cases would lack inherent jurisdiction unless the conditions precedent are fulfilled and it would be a void order or a nullity. Besides, the question of waiver could never be raised if the person had no knowledge of his legal rights so that he could make any such conscious waiver. In the instant case, the AAC in his order had pointed out that it was when he perused the order sheet that he found that there were no reasons recorded by the ITO for issuing notice under section 148. The entry on the order sheet simply contained the direction: "Issue notice under section 148", and no reasons were recorded by the ITO before reopening the assessment. Even the relevant sub-section of section 147 under which the assessment was sought to be reopened was not mentioned. These facts, prima facie, disclosed that the reasons came to the notice of the assessee for the first time when the AAC perused this order sheet and brought this fact to the notice of the assessee. Even on that ground, therefore, there could be no question of any waiver on the facts of the instant case. Even the alternative ground of finality of this order of the Tribunal suffered from the same infirmity, as the Tribunal had failed to notice this material distinction between a mere procedural provision which could be waived and such jurisdictional provision or a mandatory provision enacted in public interest which could not be waived, because by consent no jurisdiction could be conferred on the authority unless the conditions precedent were first fulfilled. The Tribunal's view was clearly erroneous that the matter became final when the Tribunal passed the earlier remand order so that this point of jurisdiction got finally settled, which could not be agitated unless the assessee had come in the reference to the High Court at this stage. The Tribunal's view was also incorrect that in restoring the case to the file of the ITO by the earlier order, the only point left open was in respect of addition on merits and that the legal or jurisdictional aspect whether the re-assessment proceedings were legally initiated was not kept open. Even the Tribual's view was erroneous that even though this point went to the root of the jurisdiction and was a pure question of law, merely because the point was initially raised and not pressed when the matter was taken up before the AAC, it could be waived and it could not be reagitated.*

13.2. We also find that the re-assessment notice was issued under section 148 of the Act by the ld. Assessing Officer without obtaining prior approval from ld. JCIT/Addl. CIT, Range-4, Kolkata in terms of section 151 of the Act and, therefore, the order passed under section 147 is rendered null and void. The facts of the case are that notice under section 148 of the Act was issued by the ld. ITO, Ward-4(1), Kolkata on 28.03.2017 i.e. after the expiry of four years and within six years from the end of the relevant assessment year. In terms of section 151 of the Act as it stood then, at the relevant point of time, the ld. ITO was required to obtain prior approval of ld. Addl./Jt. CIT, Range-4, Kolkata before issuance of the notice under section 148 of the Act. However, we note that the sanction/approval proforma prepared by the ld. Assessing Officer in terms of section 151 of the Act was not approved, as the ld. JCIT/Addl. CIT, Range-4, Kolkata has not signed the same and consequently the reopening is held to be invalid and null and void in absence of any approval of the competent authority. The above fact came to light or notice through RTI application dated 26.04.2021 in which the assessee requested the ld. Assessing Officer to provide the copy of the reasons recorded by the ld. Assessing Officer before initiation of reassessment proceedings under section 147 of the Act. In response to which, the Office of the ITO, Ward-4(1), Kolkata provided the said information vide letter dated 14.07.2021, copy of which is placed at pages no. 32 & 33 of the paper book which was not signed by the competent and thus the mandatory approval u/s 151 was not obtained. In our opinion, where the re-assessment order passed under section 144/147 of the Act dated 27.12.2017 itself suffered from fundamental infirmity and jurisdictional defect, which is not curable and is invalid and void. Then all consequent actions including the revisionary order under section 263 of the Act is also invalid ,*non-est* and bad in the eyes of law. The case of the assessee is squarely covered by the decision of the Hon'ble Apex Court in the case of Kiran Singh –vs.- Chaman Paswan AIR 954 SC 340, wherein Hon'ble Court has held as under:-

> *"It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties".*

13.3. We also observe that the coordinate benches have decided in a series of cases in favour of the assessee by following the above decision of the Hon'ble Apex court namely i Concord Infra Project Pvt. Ltd. Vs. Pr. CIT (supra) ii) Westlife Development Pvt. Ltd. Vs. Pr. CIT (supra) ,iii) Krishna Kumar Saraf Vs. CIT (supra) and iv)Indian Farmers Fertilizers Coop. Ltd. Vs. JCIT (supra).

14. Considering the facts and circumstances as stated above and the decision of the Hon'ble Courts as discussed above, we are inclined to hold that the revisionary jurisdiction as well as the order passed under section 263 is invalid and accordingly quashed.

15. In the result, the appeal of assessee allowed.

Order is pronounced in the open court on 7th November, 2023

Sd/-	Sd/-
(Sonjoy Sarma)	(Rajesh Kumar)
Judicial Member	Accountant Member

Dated: 7th November, 2023

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. Pr.CIT(A)-13, Kolkata
4. ITO, Ward-4(2), Kolkata.
5. DR, ITAT, Kolkata, (sent through e-mail).

True Copy By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata