# आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**

श्री रविश सूद, न्यायिक सदस्य **एवं** श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

(**ITA No. 47/RPR/2022**)

(Assessment Year: 2012-13)

| | | |
|---|---|---|
| Anil Nachrani<br>House No. 53, Anand Nagar,<br>Near Marine Drive,<br>Raipur (Chhattisgarh) | V<br>s | The Principal Commissioner of Income Tax, (Central), Aayakar Bhawan,<br>48, Arera Hills,<br>Bhopal- (M.P.) 492011 |
| **PAN: ABIPN5928M** | | |
| (**अपीलार्थी/Appellant**) | : | (**प्रत्यर्थी / Respondent**) |
| **निर्धारिती की ओर से** /Assessee by | : | Shri Veekaas S Sharma, CA |
| **राजस्व की ओर से** /Revenue by | : | Shri Debashish Lahiri, CIT-DR |
| सुनवाई की तारीख/ **Date of Hearing** | : | 26.09.2023 |
| **घोषणा की तारीख/Date of Pronouncement** | : | 22.11.2023 |

## आदेश / O R D E R

***Per Arun Khodpia, AM***:

The present appeal of the assessee is directed against the order of Ld. Principal Commissioner of Income Tax (Central), Bhopal at Jaba for the assessment year 2012-13 dated 18.02.2022, arose from the order of Income Tax Officer-3(2), Raipur under section 147 r.w.s. 143(3) of the Income Tax Act, 1961, dated 30.12.2019.

2. The assessee has raised total 11 grounds of appeal pertaining to different aspects of the same controversy, challenging the jurisdiction u/s 263 assumed by the Ld. PCIT. The grounds raised are culled out are as under:

1. On the facts and in the circumstances of the case and in law, the impugned order dated 18.02.2022 passed u/s 263 of the Income Tax Act, 1961 by the Learned Principal Commissioner of Income Tax (Central), Bhopal (hereinafter referred to as "PCIT (Central), Bhopal") setting aside the assessment order passed u/s 147 r.w.s 143(3) dated 30.12.2019, is without jurisdiction, illegal, bad-in-law and void ab initio on account of several reasons, more particularly, owing to the reason that the jurisdiction u/s 263 has been assumed in respect of non-Est proceedings which is vitiated by non-issuance of notice u/s 143(2) of the Income Tax Act, 1961.

2. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Learned PCIT (Central), Bhopal has erred in holding that the order dated 30.12.2019 passed by the Learned A.O. u/s 147 r.w.s 143(3) of the Income Tax Act, 1961 was erroneous and prejudicial to the interests of revenue and thereby setting aside the same.

3. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Appellant submits that the order passed by the Learned A.O. was neither erroneous nor prejudicial to the Interest of the Revenue and hence the revision of the same by the Learned PCIT (Central), Bhopal u/s 263 of the Income Tax Act, 1961 is erroneous and bad-in-law.

4. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the learned A.O had not made only adequate inquires, but had also undertaken necessary verification based on the details/documents sought from the appellant during the course of assessment proceedings, hence, the assessment order dated 30.12.2019 passed by learned AO is neither 'erroneous' nor 'prejudicial' to the Interest of the Revenue.

5. Without prejudice to the above, on the facts and in the circumstance of the case and in law, the Learned PCIT (Central), Bhopal has erred in concluding that the order passed by the learned AO, accepting the submissions of the assessee, is erroneous as well as prejudicial to the interest of the Revenue stating that the Learned AO should have applied his proper mind and analytical ability.

6. Without prejudice to the above, on the facts and in circumstances of the case and in law, the Learned PCIT (Central), Bhopal has failed to appreciate the fact that the assessment had been framed after due application of mind and thorough Investigation of the issues, on which the PCIT (Central), Bhopal has set aside the assessment inasmuch as the same have been enquired into and dealt in by the Learned AO.

7. Without prejudice to the above, on the facts and in the circumstances of the case and in law, notwithstanding the above grounds of appeal the order passed by the Learned PCIT (Central), Bhopal u/s 263 is bad-in-law as the action u/s 263 has been taken on the basis of audit objection which is contrary to the decision of the Hon'ble Punjab and Haryana High Court in the case of CIT vs. Sohana Woollen Mills (2007) 207 CTR (P&H) 178: (2008) 296 ITR 238 (P&H).

8. Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Learned PCIT (Central), Bhopal has grossly erred in invoking the Explanation 2 to Section 263, since the Learned AO has applied his mind fully to the issues taken by the Learned PCIT (Central), Bhopal u/s 263(1).

9. Without prejudice to the above, on the facts and in the circumstance of the case and in law, the order passed by the PCIT (Central), Bhopal directing the Learned A.O to reframe the assessment *de-novo* needs to be struck down.

10. Without prejudice to the above, on the facts and in the circumstances of the case and in law, for these and other grounds that may be adduced at the time of hearing, the order of the Ld. PCIT

(Central), Bhopal may kindly be quashed, and the appeal may kindly be allowed.

11. The appellant craves leaves to add or amend/ alter/ withdraw any or all above grounds of appeal. All the grounds of appeal are without prejudice to each other.

3. Briefly stated, the facts of the case are that the assessee is an individual, who had filed its return of income u/s 139 on 30/03/2013. The case of the assessee was reopened by issuing a notice u/s 148 on 30.03.2019. In response to the notice u/s 148 of assessee has filed his return of income on 01.06.2019 i.e., after 30 days from the date of notice u/s 148, declaring total income of Rs. 8,71,310/- shown in the return of income, which as it was accepted by the Ld AO.

4. The case of the assessee was subsequently perused by the Ld. PCIT (Central), Bhopal. On examination of assessment records Ld. PCIT has considered it appropriate to show cause the assessee u/s 263(1) of the I.T. Act, accordingly, a notice was issued on 14.01.2022, the contents of the notice issued u/s 163 are extracted as under:

***Notice u/s 263 of the Income Tax Axt, 1961- Show Cause- reg.***

*Please refer to the above.*

*Assessment order u/s 147 r.w.s 143 (3) of the Income Tax Act for A.Y. 201213 was passed by the Assessing Officer vide order dated 30.12.2019. Assessment records were called from the Assessing Officer & examined. Certain issues emerged from the examination of the assessment records which are discussed herein:*

*Examination of the records revealed that credible information about advance of cash loan and interest earned thereon by Shri Anil Nachrani to various persons was found in the search of Nachrani Group of cases conducted on 11.09.2018. This information was passed on by the DDIT (Inv.)-I, Raipur to the Assessing Officer vide letter DDIT /Inv-1/RPR/2018-19/363 dated 04.03.2019. The case of the assessee was reopened u/s 148 of IT Act on the basis of information so received after obtaining prior approval of Pr. CIT, Raipur.*

*An examination of assessment record also revealed that the Assessing Officer has not made any addition on account of this information and has accepted your submission made in this regard without appreciating the information passed on the basis of the seized material and other evidence on record, neither he made any further verification nor made enquiry to ascertain the true facts. In your reply, you have simply stated that, in the seized records, the name of the assessee has not been mentioned and also that the loose papers are dummy account statements and that the amounts mentioned in "thousands cannot be read to be in Lakhs"'. You have also attached the affidavit of your accountant Mr Sekh Mojahidul Islam which was accepted by the AO without making any enquiry or independent verification. In accepting your explanation, the AO was entirely misled by your representation made in this regard. He did not note that these documents were found and seized from your assessee premises during search and seizure operation. The documents contained detailed account of cash loan given on particular dates, Interest earned thereon as well as Interest received. The account also showed whether it is journal entry received as well as closing balance. Further the promissory notes were also found and seized, duly signed by the person who has taken the loan. Further, the fact that loan was given in lakhs was also ascertainable from the promissory notes when the same was compared with account statements. The AO has not at all analysed and made due verification/enquiry of these documents and simply accepted your self-cited recitals in the form of your submission. As regards, the affidavit submitted by your accountant, the same was also accepted by the AO without realising that affidavit is only a self-citing recital carrying no evidentiary value Unless it is cross examined as held by the Hon'ble Supreme Court in the case of Ayaaub Khan Noor Khan Pathan Vs State of Maharashtra & Other civil appeal no. 7728 of 2012 (reported in AIR 2013 SC/58/(2013)/SCC/465.*

*In view of the above discussion, it becomes prima facie clear that the AO has passed the assessment order dated 30.12.2019 without making any enquiry or verification which he should have been made during the assessment proceedings making the assessment order prima facie erroneous in so far as it is prejudicial to the Interest of revenue within meaning of explanation 2(a) of section 263(1) of IT Act.*

*Accordingly, you are hereby given an opportunity of being heard as per section 263(1) of the Income Tax Act, 1961 to present yourself in person or through an authorized representative or file submission through online*

*mode on 24.01.2022 at 11:30 A.M. to explain your case before the Pr. Commissioner of Income Tax (Central), Bhopal. In case, no reply is received by stipulated date, it will be presumed that you have nothing to say in the matter and a decision will be taken on the basis of records available in this office.*

5. In response to aforesaid notice u/s 263(1), the authorized representative of the assessee appeared on 03.02.2002 before the Ld. PCIT, has submitted a response on behalf of the assessee. Assessee's submissions were considered by the Ld. PCIT, however, have not accepted the contentions of the assessee observing that the notice u/s 148 was issued on 30.03.2019, therefore, the return which was required to be filed on or before 30.04.2019, was filed belatedly on 01.06.2019, there is no provision in the Act to allow belated filing of return u/s 148. Thus, the return filed on 01.06.2019 is held as non-Est. Accordingly, it was the perception of Ld PCIT that, there is no requirement of issuing u/s 143(2) in non-Est return. It is also mentioned that the AO did not declare the return as non-Est in so many words, yet by not issuing a notice u/s 143(2), he impliedly held the return as non-Est, further, it was recorded that the assessment should have been framed u/s 144 of the I.T. Act. With such observations, Ld. PCIT has concluded that the Assessing Officer did not conducted any enquiry or verification with proper application of mind which he should have made before completing assessment as required from him, after recording satisfaction the order of Ld AO was erroneous so far as prejudicial to the interest of revenue, Ld. PCIT set aside the order of Assessing Officer with the directions to frame

the assessment *de-novo* after conducting proper enquiries in the light of his directions/ discussions, after providing reasonable opportunities of being heard to the assessee.

6. Aggrieved by the initiation of proceedings u/s 263 and order therein by the Ld. PCIT, the assessee has preferred an appeal before the ITAT, which is under consideration in the present appeal.

7. At the very interception of the hearing Ld. AR on behalf of the assessee has submitted a written synopsis in support of contentions of the assessee the same as extracted as under:

***SYNOPSIS OF THE CASE***

| | | |
|---|---|---|
| ***Appellant*** | *:* | ***Shri Anil Nachrani*** |
| *Respondent* | *:* | *The Principal Commissioner of Income Tax (Central), Bhopal* |
| *ITA No.* | *:* | ***47/RPR/2022*** |
| *A.Y.* | *:* | ***2012-13*** |
| *Fixed on* | *:* | *21.09.23* |

(1) *The return of income u/s 139 was filed on **30.03.2013**, copy of ROI along with Computation of Total Income is **placed on Page No 1 to 4 of the Paper Book.***

(2) *The Learned A.O issued notice u/s 148 on 30.03.2019, copy of notice u/s 148 is placed on **Page No 5 of the Paper Book.** The assessee duly filed the return of income in response to the notice u/s 148 electronically on 01.06.2019, copy of ITR acknowledgement along with Computation of Total Income filed in response to the notice u/s 148 is placed on Page No 6 to 9 of the Paper Book. The Learned A.O did not issue any notice u/s 143(2) of the Income Tax Act, 1961 as mandated u/s 143.*

(3) *The Learned A.O passed the assessment order u/s 143(3) r.w.s. 147 vide order dated 30.12.2019, copy of the assessment order passed by the Learned A.O is placed on* ***Page No 10 to 15 of the Paper Book****.*

(4) *Assessment was completed u/s 143(3) r.w.s. 147 only which is self-evident from the following: -*

| ***Sl. No.*** | ***Particulars*** | ***Following Page No. of Paper Book-2*** |
|---|---|---|
| *1.* | *Copy of order u/s 7(1) of the Right to Information Act, 2005 dated 09.08.2023 bearing F.N0. DCIT(Central1)/RPR/RT1/2023-24 passed by the Learned DCIT, Central Circle-I, Raipur* | *178- 179* |
| *2.* | *Copy of Income Tax Computation Form dated 30.12.2019 u/s 143(3)* | *180 - 181* |
| *3.* | *Copy of Income Tax Computation Form dated 28.03.23 u/s 143(3) r.w.s. 263.* | *182* |
| *4.* | *Copy of order u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 dated 28.03.23* | *183-206* |

(5) *Kind attention is invited to following also: -*

(a) *Page No. 1 of impugned order u/s 263.*
(b) *Page No.2 of impugned order u/s 263.*
(c) *Page No.14 of impugned order u/s 263 — The Learned PCIT admits that the assessment order was passed u/s 143(3) and not u/s 144.*
(d) *Page No.45 of impugned order u/s 263*
(e) *Page No.80 and 81 of Paper Book-I filed for the hearing on 08.06223 which is the copy of letter dated 21.06.2019 issued by the Learned ITO-3(2), Raipur vide which the reason to believe was communicated to the assessee after the assessee filed return of income on 01.06.2019.*

***First Argument:***

(6) *The assessee is assailing the assumption of jurisdiction u/s 263 by the Learned PCIT (Central), Bhopal inasmuch as the assessment order passed u/s 143(3) r.w.s. 147 was bad-in-law and non-Est order which does not exist in the eyes of law due to following reasons: -*

6.*1* *(a) The assessment completed u/s 143(3) r.w.s. 147 without issuance of notice u/s 143(2) renders the assessment order as non-Est. The assessee*

*places reliance on following judicial pronouncements wherein it has been held that the assessment order passed u/s 143(3) r.w.s. 147 without issuing notice u/s 143(2) is bad in law and is a nullity.*

| ***S. N0.*** | ***TITLE*** | ***CITATION*** | ***AUTHORITY*** | ***Following Page No. of the CLC*** |
|---|---|---|---|---|
| *1.* | *Shri Dev Narayan Sahu vs. ITO* | *ITA No. 32/ RPR/2018 dated 29.04.2022* | *The Hon'ble ITAT, Raipur Bench* | *121 - 132 of LPB-3* |
| *2.* | *Gulab Badgujar HU vs. ITO* | *(2019) 179 ITD 807 Pune* | *Hon'ble ITAT, Pune 'B' Bench* | *1 -7 of LPB-3* |
| *3.* | *PCIT vs. Silver Line* | *(2016) 383 ITR 455 (Del)* | *Hon'ble High Court of Delhi* | *1 -7 of LPB 1* |
| *4.* | *PCIT-08 vs. Shri Jai Shiv Shankar Traders Pvt. Ltd.* | *ITA 519/2015 No.* | *Hon'ble High Court of Delhi* | *8-16 of LPB-I* |
| *5.* | *JCIT vs. U.S. Roofs Ltd.* | *(2023) 37 NYPTTJ 741 Mumbai* | *Hon'ble ITAT, Mumbai Bench* | *8-13 of LPB-3* |
| *6.* | *PCIT vs. National Informatics Centre Services Inc.* | *(2018) 400 ITR 387 (Del)* | *The Hon'ble High Court of Delhi* | *20-24 of LPB-3* |
| *7* | *ACIT vs. SG Portfolio P Ltd.* | *(2021) 211 TTJ (Del) 970* | *Hon'ble ITAT, Delhi 'G' Bench* | *14- 19 of LPB-3* |

*6.1 (b) The Learned PCIT (Central), Bhopal issued notice u/s 263, copy of the notice dated 14.01.2022 is placed on Page No 16 to 18 of the Paper Book. The Learned PCIT could not have assumed jurisdiction u/s 263 in respect of non-Est proceedings which was vitiated by the vice of non-issuance of mandatory notice u/s 143(2).*

*The assessee places reliance on following judicial pronouncements wherein it has been held that if the assessment order passed by the Learned A.O is bad-in-law and non-Est then the Learned PCIT cannot assume jurisdiction over such assessment order which does not exist in the eyes of law.*

| S. N0. | TITLE | CITATION | AUTHORITY | Following age No. of the CLC |
|---|---|---|---|---|
| 1. | PCIT vs. Badal Prakash Jindal, HUF, Bargarh | I.T.A. Nos. 8, 7, 9 & 10 of 2023 dated 02.03223 | The Hon'ble High Court of Orissa at Cuttack | 52 - 62 of LPB-3 |
| 2. | Maruti Clean Coal and Power Ltd. vs. PCIT-I, Raipur | ITA No. 55/ RPR/2021 dated 31.10.2022 | The Hon'ble ITAT, Raipur Bench | 63 - 120 of LPB-3 |
| 3. | Minimax Commerce (P.) Ltd. vs. ACIT, Raipur | (2021) 133 taxmann.com 188 | Hon'ble ITAT, Raipur Bench | 17-21 of LPB-I |
| 4. | Keshab Narayan Banerjee vs. CIT | (1998) 66 CCH 0874 | Hon'ble High Court of Calcutta | 22 - 29 of LPB-I |
| 5. | Parveen Kumar Mittal vs. PCIT | (2021) 63 CCH 0256 | Hon'ble ITAT, Chandigarh | 30-40 of LPB-I |
| 6. | Supersonic Technologies (P) Ltd. vs. PCIT | (2019) 175 DTR 30 | Hon'ble ITAT, Delhi Bench | 41-60 of LPB-I |
| 7. | Concord Infra Projects Pvt. Ltd. vs. PCIT | (2021) 63 CCH 0117 | Hon'ble ITAT, Kolkata Bench | 61 -71 of LPB-I |
| 8. | Pioneer Distilleries Limited vs. PCIT-I, Aurangabad | ITA No. 479/PUN/2017 | Hon'ble ITAT, Pune Bench | 72 - 79 of LPB-I |

*6.1 (c) The Learned PCIT (Central), Bhopal contended that the return filed by the assessee in response to the notice u/s 148 was non-Est return as the same was filed after the expiry of time limit stipulated in the notice u/s 148, there is no merit in the said contention of the Learned PCIT inasmuch as the return filed in response to the notice u/s 148 is very much a return filed u/s 139 and Section 139(4) permits belated filing of the return and therefore, the Learned A.O is not absolved from his duty to issue notice u/s 143(2) merely because the return was filed by the assessee in response to the notice u/s 148 after the expiry of time limit stipulated therein, in this regard, the assessee also relies on the decision of the Hon'ble Mumbai Bench of the Tribunal in the case of* ***Smt. Amina Ismil Rangari vs. ITO reported in (2017) 167 ITD 199 (Mumbai) copy whereof is placed on Page No. 80 to 86 of the CLC****.*

*6.1 (d) The assessee places reliance on following judicial pronouncements where the assessee had filed the return of income in response to the notice u/s 148 after the expiry of the time stipulated therein and no notice u/s 143(2) was issued and yet it was held that the assessment order is bad-in-law, thus, mere delay in filing of return of income in response to the notice*

*under section 148 does not absolve the Learned A.O from his duty to issue notice u/s 143(2).*

| ***Sl. No.*** | ***TITLE*** | ***CITATION*** | ***AUTHORITY*** | ***Following Page No. of the CLC*** |
|---|---|---|---|---|
| *1.* | *Smt. Gayatri Sharma vs. ITO* | *ITA No. 461/JP/2018* | *Hon'ble ITAT, Jaipur Bench* | *87 - 105 of LPB-I* |
| *2.* | *PCIT-III vs. Kamia Devi Sharma* | *ITA No. 197/2018* | *Hon'ble High Court of Rajasthan* | *106 - 118 of LPB-I* |

*6.1 (e) Mere delay in e-verification does not make the return invalid, assessee places reliance on following judicial pronouncement: -*

| ***Sl. No.*** | ***TITLE*** | ***CITATION*** | ***AUTHORITY*** | ***Following Page No. of the CLC*** |
|---|---|---|---|---|
| *1.* | *PCIT & Anr. vs. Electronics & Controls Power Systems Ltd.* | *(2022) 326 CTR (Kar) 233* | *The Hon'ble High Court of Karnataka* | *25 -29 of LPB-3* |

*6.1(f) Upon removal of defect, the date of filing of Return of Income is date of uploading of data electronically, assessee places reliance on following judicial pronouncements: -*

| ***Sl. No*** | ***TITLE*** | ***CITATION*** | ***AUTHORITY*** | ***Following Page No. of the CLC*** |
|---|---|---|---|---|
| *1.* | *Atul Projects India (P) Ltd. vs. Union of India & Anr.* | *(2019) 309 CTR (Bom) 392* | *The Hon'ble High Court of Bombay* | *30 - 32 of LPB-3* |
| *2.* | *Travel Designer India (P) Ltd. vs. DCIT* | *(2020) 315 CTR (Guj) 800* | *The Hon'ble High Court of Gujarat* | *33 - 41 of LPB-3* |

*6.1(g) Assessing officer having not intimated any defect in the Return to the assessee and acted upon the return, he was not justified in treating the return as invalid on the ground of belated E-verification. Assessee places reliance on following judicial pronouncement: -*

| Sl. No | TITLE | CITATION | AUTHORITY | Following Page No. of the CLC |
|---|---|---|---|---|
| 1. | Fibers & Fabrics International (P) Ltd. vs. DCIT | (2016) 182 TTJ (Bang) 374 | The Hon'ble ITAT, Bangalore 'C' Bench | 42 - 51 of LPB-3 |

***Second Argument:***

**(7)** ***Information received from Investigation Wing formed the basis for reason to believe:***

*The Learned A.O initiated the reassessment proceedings in the light of information received from the Investigation Wing which is evident from the bare reading of contents of Reason to Believe, copy whereof is placed on Page No. 80 to 81 of the Paper Book, thus, the Learned A.O was conscious about the information and documents received from the Investigation Wing.*

**7.2** ***Specific queries raised vide notice u/s 142(1) dated 01.07.2019, 23.08.2019, 21.10.2019 16.12.2019 and show cause notice dated 27.11.2019:***

*During the course of the reassessment proceedings the Learned A.O had raised specific queries vide statutory notices u/s 142(1) dated 01.07.2019, copy whereof is placed on Page No. 82 to 83 of the Paper Book and the Learned A.O had even issued show cause notice for addition of Rs.1,75,00,000/- on account of alleged principal amount of loans given in cash by the assessee and amount of Rs.29,02,008/- on account of alleged Interest income earned by the assessee, copy whereof is placed on Page No. 86 to 87 of the Paper Book. The assessee submitted specific replies in response to the notices u/s 142(1) and show cause notice, copies whereof are placed on Page No. 84 to 85 and Page No. 88 to 97 of the Paper Book respectively.*

**7.3** ***There was a conscious application of mind by the Learned A.O and the Learned A.O has taken one possible and plausible view; therefore, the assessment order cannot be said to be erroneous:***

*It's a trite law that where two views are possible and if the A.O. has drawn one of the possible views, then such an order cannot be said to be erroneous and therefore, jurisdiction u/s 263 cannot be assumed, reliance is placed on following judicial pronouncements: -*

| S. No. | Title | Citation | Authority | Following Page No. of LPB - 2 |
|---|---|---|---|---|
| 1. | M/S. Sun Developers & Builders Pvt. Ltd. vs. Pr. CIT-I, Bilaspur (CG). | ITA No 112/RPR/2018 | Hon'ble ITAT, Raipur Bench | 1-26 |

| | | | | |
|---|---|---|---|---|
| 2. | Garud Credit & Holding Pvt. Limited vs. ITO Ward 9(2), Kolkata | ITA No. 1270/ KOL/2013 | Hon'ble ITAT, Kolkata Bench | 27 - 60 |
| 3. | M/s. B.K. Rolling Mills Private Limited Vs. Pr. CIT-I, Raipur (CG) . | ITA No.40/ RPR/2018 | Hon'ble ITAT, Raipur Bench | 61 - 69 |
| 4. | Malabar Industrial Co. Ltd. vs. CIT | (2000) 243 ITR 83 | The Hon'ble Supreme Court | 70-75 |
| 5. | CIT vs. J.L. Morrison India Limited | (2014) 366 ITR 593 Cal | The Hon'ble High Court of Calcutta | 76 - 103 |
| 6. | Commissioner of Income Tax Vs. Max India Ltd. | 2007 213 | The Hon'ble | 104 - 105 |
| 7. | Commissioner of Income Tax vs. Nirav Modi | (2017) 390 ITR 0292 | The Hon'ble High Court of Bombay | 106 - 112 |
| 8. | Hill Queen Investment (P) Ltd. vs. PCIT | (2021) 189 ITV) 139 (1<01) | The Hon'ble High Court of Kolkata | 113 - 130 |

***Third Argument:***

**(8)** *The assessment order passed u/s 147 r.w.s. 143(3) is bad-in-law also due to the following reasons: -*

**8.2** *The proceedings were initiated based on borrowed satisfaction, in this regard, the assessee relies on following judicial pronouncements: -*

| S. NO. | TITLE | CITATION | AUTHORITY | Following age No. of the CLC |
|---|---|---|---|---|
| 1. | PCIT vs. Meenakshi Overseas Ltd. | (2017) 395 ITR 677 (Del) | Hon'ble Hig Court of Delhi | 119 - 127 of LPB-I |
| 2. | ACIT vs. Dhariya Construction Com van | (2010) 328 ITR 515 (SC | Hon'ble Supreme Court of India | 128 - 128 of LPB-I |
| 3. | CIT vs. Kamdhenu Steel & Alloys Ltd. & Ors. | (2012) 248 CTR (Del) 33 | Hon'ble Hig Court of Delhi | 129 - 152 of LPB-I |
| 4. | Sarthak Securities Co. Ltd. vs. ITO | (2010) 329 ITR 110 (Del) | Hon'ble Hig Court of Delhi | 153 - 160 of LPB-I |

*The Learned A.O did not carry out any independent enquiry or Investigation or analysis of the information received by the Learned A.O from the Investigation Wing.*

**8.3** *The reason to believe recorded by the Learned A.O is vitiated by the vice of borrowed satisfaction and non-application of mind, hence, the proceedings-initiated u/s 148 is bad-in-law and therefore, the order passed u/s 263 is also bad-in-law and liable to be quashed.*

***Prayer:***

*It is humbly prayed that the order u/s 263 passed by PCIT (Central), Bhopal may kindly be quashed.*

8. In continuation of the aforesaid written submissions, Ld. AR further submitted that the decision of the Ld. PCIT based on the fact that the return filed by the assessee in response to notice u/s 148 after 30 days of the notice i.e., on 01.06.2019 is without the mandate of any specific provision under the Act, thus, the same is non-Est, is an erroneous interpretation /application of law, as per Ld. AR the delay in filing of return in response to notice u/s 148 cannot construe the return as non-Est as per the settled principle of law. Ld. AR placed his reliance in this respect, on the judgment in the case of Smt. Amina Ismile Rangari vs. Income Tax Officer, wherein I.T.A.T. , Mumbai in ITA No. 6261/MUM/2013 for the AY 2003-04 vide order dated 15.09.2017, wherein ITAT Mumbai has held that:

> *"Though a statutory obligation is cast upon the assessee to comply with the notice issued under s. 148 and file the 'return of income' in compliance thereto within the stipulated time period of 30 days, however, in case the same is filed by the assessee beyond the stipulated time period, then merely for the reason that some delay is involved in filing of the said 'return of income' would not render the same as invalid and non-Est. A 'return of income' filed by an assessee beyond the specified time period contemplated in the notice issued under s. 148, would though lead to characterizing the same as a 'return of income' filed beyond the stipulated time period, but however, the same would not cease to be a 'return of income' filed pursuant to the notice issued under s. 148, though involving some delay. This view is supported from the very fact that as per s. 234A (3), where the 'return of income' in compliance to a notice under s. 148 is filed beyond the stipulated time period, then Interest under the said statutory provision is imposed on the assessee date of furnishing of the same. of s. 234A (3) clearly contemplates that a 'return of income' filed after the expiry of the stipulated time period shall still continue to be a 'return of income' filed by the assessee pursuant to the notice under s. 148. This view also stands fortified from the very fact that after the*

> *assessee had filed the 'return of income' pursuant to the notice under u/s 148 on 10th Aug., 2010, the same was acted upon by the AO and a Notice under s. 143(2) was issued to the assessee, followed by culmination of the same into an assessment under s. 143(3) r/w s 147 when issuance of a notice under s. 143(2) pre supposes the availability of a 'return of income' of the assessee on record, therefore, now when in the present case e AO acted upon the 'return of income' filed*
> *by the assessee, and issued a notice under s. 143(2), which thereafter had culminated into an assessment under s. 147 r/w s. 143(3), therefore, it would not be permissible on the part of the Revenue to turn around claim that no valid 'return of income' was filed by the assessee."*

9. Ld. AR advanced another argument that the issue pertaining to invalid return was never confronted to the assessee by the Ld. AO, during the assessment proceedings.

10. Afterwards, Ld. AR drew our attention to the decision in ITA No. 32/RPR/2018, in the case of Shri Dev Narayan Sahu vide order dated 24/04/2002 referring to the issue that, in case no notice u/s 143(2) has been issued to the assessee, the order passed u/s 143 (3) r.w.s. 147 is liable to be held as *void ab initio,* illegal and non-est. The relevant observations of the coordinate bench of I.T.A.T., Raipur in the said case, were as under:

> *6. We have heard the Ld. Departmental Representative (for short 'DR') and considered the orders of the lower authorities. On a perusal of the order of the CIT(Appeals), we find that the assessee had assailed the validity of the assessment framed by the Assessing Officer u/s.143(3)/148 of the Act, dated 21.11.2016, inter alia, for the reason that now when he had not filed any return of income i.e. either u/s.139 of the Act QC in response to the notice issued u/s.148 of the Act then, no assessment u/s.143(3) of the Act could have been framed in his case. We find that the CIT(Appeals) after considering the aforesaid claim of the assessee, had observed, that though admittedly no notice u/s.143(2) of the Act was issued by the Assessing Officer, however, the latter had duly issued a notice u/s.142(1) of the Act dated 16.09.2016 and called for requisite*

*details/documents vide Sl. No.(s) (i) to (ix) of the said notice. Further, it was observed by the CIT(Appeals) that the Assessing Officer had, thereafter, issued another notice u/s.142(1) of the Act, dated 04.10.2016 wherein he had directed the assessee to attend his office personally or through duly authorized representative on 14.10.2016 at 3.30pm a/w. required information /documentary evidence, bank account etc. Observing, that as all the ingredients of the notice u/s.143(2) of the Act could safely be traced/gathered from the aforesaid notice u/s.142(1) of the Act, dated 14.10.2016, the CIT(Appeals) was of the view that said notice could be viewed as a notice u/s.143(2) of the Act. Accordingly, on the basis of his aforesaid observations the CIT(Appeals) upheld the order passed by the Assessing Officer u/s.143(3)/148 of the Act, dated 21.11.2016. For the sake of clarity and in order to dispel any doubt the observations of the CIT(Appeals) are reproduced as under:*

> *"2.3. First, taking the addition ground taken by the appellant challenging the validity of order passed u/s.143(3)/148 as not return of income was filed by him either u/s.139 or u/s.147. As per the assessee in case of no return, the assessment cannot be made u/s.143(3)/147. On going through the assessment order, I find that AO has du/y issued notice u/s.142(1) on 16/09/2016 calling details/documents vide S/. No. (i) to (ix) of the notice. As per sub section 2 of Section 143 " whereas return has been furnished u/s.139 or in response to a notice in under sub section (1) of Section 142, the AO sha// serve on the assessee a notice requiring him either to attend the office of the AO or to produce or cause to be produce before the AO any evidence on which the assessee may re/y in support of the return". After the notice u/s.143(2) is issued, order is passed u/s.143(3). In the present case after issue of notice u/s.143(1) as discussed above, the AO has issued another notice dated 04/10/2016 requiring the assessee to attend the office persona//y or through any authorized representative along with the required information, documentary evidence, bank account etc. on 14/10/2016 at 3.30pm. As can be seen this notice has a// the ingredients of a notice u/s.143(2) a/though the section has not been specifically mentioned. Obviously, this notice has to be viewed as a notice u/s.143(2). Therefore, passing of assessment order u/s.143(3)/147 has been as per Act and appellant's allegation being without basis is hereby dismissed."*

7. *After having given a thoughtful consideration to the issue involved in the present appeal, we are unable to persuade ourselves to concur with the view taken by the CIT(Appeals). Admittedly, it is a matter of fact borne from record that the assessee had neither filed any return of income u/s.139 of the Act or in response to the notice issued u/s. 148. Also, no notice u/s.143(2) of the Act was ever issued by the Assessing Officer. In our considered view, the issuance of notice u/s.143(2) of the Act presupposes the existence of a valid return of income filed by the assessee which we are afraid was never so filed in the case of the assessee before us. Backed by our aforesaid observations, we are of the considered view that now when the assessee had not filed any return of income either u/s.139 of the Act, or in compliance to the notice u/s.148 of the Act, therefore, there was no justification on the part of the Assessing Officer to have framed the impugned*

*assessment u/s.143(3)/148 of the Act, dated 21.11.2016. As is discernible from the order of the CIT(Appeals), we find that the claim of the assessee before him that in absence of any return of income having been filed by him either u/s.139 or in response to the notice issued u/s.148 of the Act, no assessment u/s.143(3) of the Act could have been validly framed in his hands, was rebutted by the CIT(Appeals) on the ground that the notice(s) u/s.142(1) of the Act, Dated 16.09.2016 and 04.10.2016 could be viewed as a notice u/s. view, the aforesaid observation of the CIT (Appeal) is not only misconceived in the context of the issue, which was raised by the assessee before him, but in fact is absolutely devoid and bereft of any force of law. As observed by us herein above, it was claimed by the assessee that now when he had not filed any return of income with the Assessing Officer then how could an assessment be framed u/s.143(3) of the Act in his case. However, the CIT(Appeals) losing sight of the issue raised by the assessee before him, had upheld the order passed by the Assessing Officer u/s.143(3)/148 of the Act dated 21.11.2016 on the ground that notice u/s.142(1) of the Act, (supra) could safely be viewed/construed as a notice u/s.143(2) of the Act. In our considered view, the aforesaid observation of the CIT(Appeals) was absolutely out of context of the claim that was raised by the assessee before him.*

8. *Be that as it may, in our considered view, as stated by the assessee before the CIT(Appeals), and rightly so, in the absence of any return of income having been filed by him, no assessment u/s.143(3)/148 of the Act could have been framed in his hands. Adverting to the observation of the CIT(Appeals) that notice(s) issued u/s.142(1) of the Act, dated 16.09.2016 and 04.10.2016 could be viewed as a notice u/s.143(2) of the Act, though, is not germane to the claim of the assessee, but we may herein clarify that the same is even otherwise absolutely misconceived and misplaced. In our considered view, the framing of an assessment u/s.143(3) of the Act presupposes the issuance of a notice u/s.143(2), the existence of which by no means or stretch of imagination can be substituted by a notice issued u/s.142(1) of the Act. Our aforesaid conviction that issuance of notice u/s.143(2) of the Act is a sine-qua-non for framing of an assessment u/s.143(3) of the Act can safely be gathered from the judgment of the Hon'ble Supreme Court in the case of Assistant Commissioner of Income Tax Vs. M/S. Hotel Blue Moon, (2010) 321 ITR 362 (SC). It has been held by the Hon'ble Apex Court that the issue of notice u/s.143(2) of the Act is mandatory and not procedural and if the notice is not served within the prescribed period, then, the assessment order would be invalid.*

9. *We, thus, in terms of our aforesaid observations are unable to concur with the view taken by the CIT(Appeals) who had upheld the assessment framed by the Assessing Officer u/s.143(3)/148 of the Act, dated 21.11.2016 and accordingly, set aside his order. Thus, the assessment framed by the Assessing Officer u/s.143(3)/148 of the Act, dated 21.11.2016 being devoid and bereft of any force of law is hereby quashed.*

11. To support the aforesaid contention by the Ld AR in the facts and circumstances of the present case that an assessment is framed u/s 143(3) r.w.s. 147, *dehors* issuing of the prerequisite notice u/s 143(2) which is mandatory, such assessment order shall be treated as non-Est, he placed reliance on the following judgments:

| | | |
|---|---|---|
| *Gulab Badgujar HU vs. ITO* | *(2019) 179 ITD 807 Pune* | *Hon'ble ITAT, Pune 'B' Bench* |
| *PCIT vs. Silver Line* | *(2016) 383 ITR 455 (Del)* | *Hon'ble High Court of Delhi* |
| *PCIT-08 vs. Shri Jai Shiv Shankar Traders Pvt. Ltd.* | *ITA No. 519/2015* | *Hon'ble High Court of Delhi* |
| *JCIT vs. U.S. Roofs Ltd.* | *(2023) 37 NYPTTJ 741 Mumbai* | *Hon'ble ITAT, Mumbai Bench* |
| *PCIT vs. National Informatics Centre Services Inc.* | *(2018) 400 ITR 387 (Del)* | *The Hon'ble High Court of Delhi* |
| *ACIT vs. SG Portfolio P Ltd.* | *(2021) 211 TTJ (Del) 970* | *Hon'ble ITAT, Delhi 'G' Bench* |

12. Ld. AR further submitted that the action of Ld PCIT was beyond his jurisdiction in invoking the revisionary provisions of section 263 on the basis of a non-Est assessment on account of non-issuance of compulsory notice u/s 143(2). Such a peculiar situation on issue under deliberation has been discussed and decided in the following judgments, upon which the Ld. AR of the assessee has placed reliance:

| | | | |
|---|---|---|---|
| *1.* | *PCIT vs. Badal Prakash Jindal, HUF, Bargarh* | *I.T.A. Nos. 8, 7, 9 & 10 of 2023 dated 02.03223* | *The Hon'ble High Court of Orissa at Cuttack* |
| *2.* | *Maruti Clean Coal and Power Ltd. vs. PCIT-I, Raipur* | *ITA No. 55/ RPR/2021 dated 31.10.2022* | *The Hon'ble ITAT, Raipur Bench* |
| *3.* | *Minimax Commerce (P.) Ltd. vs. ACIT, Raipur* | *(2021) 133 taxmann.com 188* | *Hon'ble ITAT, Raipur Bench* |
| *4.* | *Keshab Narayan Banerjee vs. CIT* | *(1998) 66 CCH 0874* | *Hon'ble High Court of Calcutta* |
| *5.* | *Parveen Kumar Mittal vs. PCIT* | *(2021) 63 CCH 0256* | *Hon'ble ITAT, Chandigarh* |
| *6.* | *Supersonic Technologies (P) Ltd. vs. PCIT* | *(2019) 175 DTR 30* | *Hon'ble ITAT, Delhi Bench* |
| *7.* | *Concord Infra Projects Pvt. Ltd. vs. PCIT* | *(2021) 63 CCH 0117* | *Hon'ble ITAT, Kolkata Bench* |
| *8.* | *Pioneer Distilleries Limited vs. PCIT-I, Aurangabad* | *ITA No. 479/PUN/2017* | *Hon'ble ITAT, Pune Bench* |

13. From the aforesaid list of case laws, identical issue, as the matter in the present case raised has been delt with by the coordinate bench of ITAT, Raipur, in the case of Maruti Clean Coal and Power Ltd. vs. PCIT-I, Raipur in ITA No. 55/RPR/2021 dated 31.10.2022, That, "***Whether the assessee can challenge the validity of an assessment order during the appellate proceedings pertaining to examination of validity of order passed u/s 263"*** and ***"If the impugned assessment order passed u/ s 143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/ s 263 to revise the non-Est assessment order?",*** where in coordinate bench of the Tribunal has held that *that the CIT cannot revise an order which is non-Est in the eyes of law,* relevant extract from the order is as under:

***28***. *In our considered view there is substance in the claim of the Id. AR that as the proceedings before the Pr. CIT u/s 263 of the Act, dated 27.03.2021 are in the nature of collateral proceedings, therefore, the assessee could in the course of appellate proceedings which in turn originates from the order passed u/ s 263 of the Act, dated 27.03,2021 challenge the validity of the impugned assessment order passed by the A.O u/s. 143(3) r.w.s. 147, dated 30.12.2018. The aforesaid contention of the ld. A.R that the illegality/ invalidity of an order passed in the primary proceedings can be challenged in the course of the collateral proceedings finds support from the order of a coordinate bench of the Tribunal i.e ITAT, Mumbai in the case of Westlife Development Ltd. Vs. Pr. CIT-5, Mumbai (2017) 88 taxmann.com 439 (Mumbai). It was, inter alia, observed by the tribunal that an assessee can challenge the validity of an order passed u/s.263 of the Act on the ground that the impugned assessment order was non-Est. Indulgence of the tribunal in the said case was sought by the assessee for adjudicating the following issues (as culled out from the order):*

> *"1.* ***Whether the assessee can challenge the validity of an assessment order during the appellate proceedings pertaining to examination of validity of order passed u/s 263?***
>
> *2. Whether the impugned assessment order passed u/ s 143(3) dated 24-10-2013 was valid in the eyes of law or a nullity as has been claimed by the assessee?*
>
> *3.* ***If the impugned assessment order passed u/ s 143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/ s 263 to revise the non-Est assessment order?"***

*(A). Answering the first issue, i.e., whether the assessee remains within his right to challenge the validity of an assessment order during the appellate proceedings pertaining to examination of validity of order passed u/ s 263 of the Act, the tribunal had on the basis of its exhaustive deliberations and drawing support from a host of judicial pronouncements answered the said issue in the affirmative. For the sake of clarity, the relevant observations of the tribunal in context of the aforesaid issue are culled out as under:*

***"8. Challenging the jurisdictional defects of assessment order for assailing the jurisdictional validity of the revision order passed u/ s 263:***

*The first issue that arises for our consideration is whether the assessee can challenge the jurisdictional validity of order passed u/ s 143(3) in the appellate proceedings taken up for challenging the order passed u/ s 263? If we analyse the nature of both of these proceedings, which are under consideration before us, we find that the original assessment proceedings can be classified in a way as 'primary proceedings'. These are, in effect, basic foundational proceedings and akin to a platform upon which any subsequent proceedings connected therewith can Rest upon. The proceedings-initiated u/s 263 seeking to revise the original assessment order is off shoot of the primary proceedings and therefore, these may be termed as 'collateral proceedings' in the legal framework. The issue that arises here is whether any illegality/invalidity in the order passed in the 'primary proceedings' can be set up in the 'collateral proceedings' and if yes, then of what nature?*

*8.1. We have analysed this issue carefully. There is no doubt that after passing of the original assessment order, the primary (i.e. original proceedings) had come to an end and attained finality and, therefore, outcome of the same cannot be disturbed, and therefore, the original assessment order framed to conclude the primary proceedings had also attained finality and it also cannot be disturbed at the instance of the assessee, except as permitted under the law and by following the due process of law. Under these circumstances, it can be said that effect of the original assessment order cannot be erased or modified subsequently. In other words, whatever tax liability had been determined in the original assessment order that had already become final and that cannot be sought to be disturbed by the assessee. But the issue that arises here is that if the original assessment order is illegal in terms of its jurisdiction or if the same is null & void in the eyes of law on any jurisdictional grounds, then, whether it can give rise to initiation of further proceedings and whether such subsequent proceedings would be valid under the law as contained in Income Tax Act? It has been vehemently argued before us that the subsequent proceedings (i.e. collateral proceedings) derive strength only from the order passed in the original proceedings (i.e. primary proceedings). Thus, if order passed in the original proceedings is itself illegal, then that cannot give rise to valid revision proceedings. Therefore, as per law, the validity of the order passed in the primary (original) proceedings should be allowed to be examined even at the subsequent stages, only for the limited purpose of examining whether the collateral (subsequent) proceedings have been initiated on a valid legal platform or not and for examining the validity of assumption of jurisdiction to initiate the collateral proceedings. If it is not so allowed, then, it may so happen*

*that though order passed in the original proceedings was illegal and thus order passed in the subsequent proceedings in turn would also be illegal, but in absence of a remedy to Contest the same, it may give rise to an 'enforceable' tax liability without authority of law. Therefore, the Courts have taken this view that jurisdictional aspects of the order passed in the primary proceedings can be examined in the collateral proceedings also. This issue is not res integra. This issue has been decided in many judgments by various courts, and some of them have been discussed by us in followings paragraphs.*

*8.2. In a matter that came up before Hon'ble Supreme Court in the case of Kiran Singh & Ors. v. Chaman Paswan & Ors., [1955] 1 SCR 117 the facts were that the appellant in that case had undervalued the suit at Rs.2,950 and laid it in the court of the Subordinate Judge, Monghyr for recovery of possession of the suit lands and mesne profits. The suit was dismissed and on appeal it was confirmed. In the second appeal in the High Court the Registry raised the objection as to valuation under Section 11. The value of the appeal was fixed at Rs.9,980. A contention then was raised by the plaintiff in the High Court that on account of the valuation fixed by the High Court the appeal against the decree of the court of the Subordinate Judge did not lie to the District Court, but to the High Court and on that account the decree of the District Court was a nullity. Alternatively, it was contended that it caused prejudice to the appellant. In considering that contention at page 121, a four Judge Bench of Hon'ble Supreme Court speaking through Vankatarama Ayyar, J. held that:*

> *"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."*

*8.3. This judgment was subsequently followed by Hon'ble Supreme Court in the landmark case of Sushil Kumar Mehta vs Gobind Ram Bohra, (1990) 1 SCC 193, wherein an issue arose whether a decree can be challenged at the stage of execution and whether a decree which remained Uncontested operates as res-judicata qua the parties affected by it. Hon'ble apex court, taking support from aforesaid judgment, observed as under:*

> *"In the light of this position in law the Question for determination is whether the impugned decree of the Civil Court can be assailed by the appellant in execution. It is already held that it is the Controller under the Act that has exclusive jurisdiction to order ejectment of a tenant from a building in the urban area leased out by the landlord. Thereby the Civil Court inherently lacks jurisdiction to entertain the suit and pass a decree of ejectment. Therefore, though the decree was passed, and the jurisdiction of the Court was gone into in issue Nos. 4 and 5 at the ex-parte trial, the decree there-under is a nullity, and does not bind the appellant. Therefore, it does not operate as a res judicata. The Courts below have committed grave error of law in holding that the decree in the suit operated as res judicata and the appellant cannot raise the same point once again at the execution."*

*8.4. Similar view has been taken by Hon'ble Supreme Court by following aforesaid judgments recently in the case of Indian Bank vs Manilal Govind ji khona reported in 2015 (3) SCC 712. Further, similar view was emphasized by Hon'ble Bombay High Court (GOA Bench) in the case of Mavany Brothers vs CIT (Tax Appeal No 8 of 2007) in its order dt 17th April 2()15 wherein it was held that an issue of jurisdiction can be raised at any time even in appeal or execution.*

*8.5. The aforesaid principles, enunciated by the Apex Court in the case of Kiran Singh & Ors. v. Charnan Paswan & Ors, supra were reiterated by the Apex Court in the cases of Superintendent of Taxes vs Onkarmal Nathmal Trust (AIR 1975 SC 2065) and Dasa Muni Reddy v. Appa Rao (AIR 1974 SC 2089). In the first of these decisions, it was pointed out that revenue statutes protect the public on the one hand and confer power upon the State on the other, and the fetter on the jurisdiction is one meant to protect the public on the broader ground of public policy and, therefore, jurisdiction to assess or reassess a person can never be waived or created by consent. This decision shows that the basic principle recognized in Kiran Singh (supra) is applicable even to revenue statutes such as the Income Tax Act. Dasa Muni Reddy (supra) is a judgment where the principle of 'coram non judice' was applied to rent control law. It was held that neither the rule of Estoppel nor the principle of res judicata can confer the Court jurisdiction where none exists. Here also the principle that was put into operation was that jurisdiction cannot be conferred by consent or agreement where it did not exist, nor can the lack of jurisdiction be waived.*

*8.6. These judgments were subsequently noticed by Hon'ble Gujarat High Court in the case of P. V. Doshi 113 ITR 22(Gujrat). This case*

*arose under the Income Tax Act with reference to the provisions of Section 147 dealing with re-assessment. The facts were that the assessment was sought to be reopened under Section 147 and notice under section 148 was issued. Validity of reopening was not challenged up to Tribunal and additions were challenged on merits only. The Tribunal Restored the matter to the Assessing Officer with some directions to reexamine the issue on merits. When the matter came back to the assessing officer the assessee specifically raised the point of jurisdiction to reopen the assessment, contending that the notice of reopening was prompted by a mere change of opinion. The AO rejected plea of the assessee, but the AAC accepted this ground and also held the re-assessment to be bad in law on jurisdictional ground. Against the order of the AAC the Revenue went in appeal before the Tribunal and specifically raised the plea that the Question of jurisdiction to reopen the assessment shaving been expressly given up by the assessee in the appeal against the reassessment order in the first round, the assessee was debarred from raising that point again before the AAC and the AAC was equally wrong in permitting the assessee to raise that point which had become final in the first round and in adjudicating upon the same. The plea of the Revenue impressed the Tribunal which took the view that after its earlier order in the first round of proceedings the matter attained finality with regard to the point of jurisdiction which was given up before the AAC and not agitated further and that in the remand proceedings what was open before the Assessing Officer was only the question whether the addition was justified on merits and the point regarding the jurisdictional aspect was not open before the Assessing Officer. According to the Tribunal, the assessee having raised the point in the first round and having given it up could not revive it in the second round of proceedings where the issue was limited to the merits of the additions. In this view, the Tribunal accepted the Revenues plea. The assessee thereafter carried order of the Tribunal in reference before the Gujarat High Court. The High Court after considering various judgments of the Supreme Court on the point of jurisdiction to reopen the assessment and also after specifically discussing the judgment of the Supreme Court in Onkarma1Nathmal Trust (supra) and Dasa Muni Reddy (supra) held that the Tribunal was in error in holding that the Question of jurisdiction became final when it passed the earlier remand order. It was held that neither the Question of res judicata nor the rule of Estoppel could be invoked where the jurisdiction of an authority was under challenge. According to Hon'ble Gujarat High Court, the rule of res judicata cannot be invoked where the Question involved is the competence of the Court to assume jurisdiction, either pecuniary or territorial or over the subject matter of the dispute. Hon'ble High Court further held that since neither consent nor waiver can confer jurisdiction upon the Assessing Officer where it did not exist, no importance could be attached to the fact that the*

*assessee, in the first round of proceedings, expressly gave up the plea against the erroneous assumption of jurisdiction by the assessing authority. According to the Hon'ble Court, the "finality or conclusiveness could only arise in respect of orders which are competent orders with jurisdiction and if the proceedings of reassessment are not validly initiated at all, the order would be a void order as per the settled legal position which could never have any finality or conclusiveness. If the original order is without jurisdiction, it would be only a nullity confirmed in further appeals". In this view of the matter, Hon'ble High Court finally answered the reference in favour of the assessee.*

*8.7. It is further noted that many of these judgments were discussed and followed by the co-ordinate bench of the Tribunal in the case of Indian Farmers Fertilizers Co-operative Ltd vs JCIT 105 ITD 33 (Del), wherein a similar issue had arisen. In this case, the issue raised before the bench was whether it is open to the assessee, not having appealed against the reassessment order, to set up or canvass its correctness in collateral proceedings taken for rectification thereof u/ s 154. The bench minutely analyzed law in this regard and applying the principle of 'coram non judice' and following aforesaid judgments of the supreme court, it was held that if an assessee seeks to challenge the reassessment proceedings as being without jurisdiction, when action for rectification is sought to be taken on the assumption of the validity of the reassessment order, then the assessee has to step in and protect its Interests and the liberty to Question even the validity of the reassessment proceedings ought to be given to it.... ..." (emphasis supplied).*

*8.8 Similar view was taken in another decision of the Tribunal in the case of Dhiraj Suri vs ACIT 98 ITD 87 (Del). In the said case, appeal was filed by the assessee before the Tribunal against the levy of penalty. In the appeal challenging the penalty order, the assessee challenged the validity of block assessment order which had determined the tax liability of the assessee on the basis of which penalty was levied subsequently. The revenue objected with respect to the ground of the assessee raising jurisdictional issues of assessment proceedings in the appeal against the penalty order. After analyzing the legal position, as clarified by Hon'ble Gujrat High Court in the case of P.V. Doshi, supra and Hon'ble Bombay High Court in the case of Jainarayan Babulal vs CIT, 170 ITR 399, the bench held as that if the block assessment itself is without jurisdiction then there is no Question of levy of any penalty u/s. 158BFA(2) and therefore it is open to the assessee to set up the Question of validity of the assessment in the appeal against the levy of penalty.*

*8.9. We also derive support from another judgement of Hon'ble Bombay High Court in the case of Inventors Industrial Corporation Ltd vs CIT*

*194 ITR 548 (Bombay) wherein it was held that assessee was entitled to challenge the jurisdiction of the AO to initiate re-assessment proceedings before the CIT(A) in the second round of proceedings, even though he had not raised it in earlier proceedings before the Assessing Officer or in the earlier appeal.*

*8.10. Thus, on the basis of aforesaid discussion we can safely hold that as per law, the assessee should be permitted to challenge the validity of order passed u/ s 263 on the ground that the impugned assessment order was non-Est, and we hold accordingly."*

***(B). <u>Answering the second issue</u>,*** *i.e., if the order passed u/ s 143(3) was illegal or nullity, then, whether the CIT had a valid jurisdiction to pass the impugned order u/s 263 to revise the non-Est assessment order, the tribunal answered in the negative. For the sake of clarity, the relevant observations of the tribunal in context of the aforesaid issue are culled out as under:*

10. *If the impugned assessment order passed u/ s 143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/ s 263 to revise the non-Est assessment order: Having decided the aforesaid two issues, the next issue that is to be decided by us is about the validity of order passed u/ s 263 by the Ld. CIT seeking to revise the assessment order which was nullity in the eyes of law.*

*10.1. We have discussed in detail in earlier part of our order that an invalid order cannot give birth to legally valid proceedings. It is further noticed by us that some of the judgments relied upon by the Ld. Counsel have already addressed this issue. This issue has also been decided by the co-ordinate bench (Delhi Bench of Tribunal) in the case of Krishna Kumar Saraf vs CIT (supra). The relevant part of the order is reproduced below:*

*"17. There is no quarrel with the proposition advanced by Id. DR that the proceedings u/ s 263 are for the benefit of revenue and not for assessee.*

18. *However, u/ s 263 the Id. Commissioner cannot revise a non-Est order in the eye of law. Since the assessment order was passed in pursuance to the notice U/S 143(2), which was beyond time, therefore, the assessment order passed in pursuance to the barred notice had no legs to stand as the same was non-Est in the eyes of law. All proceedings subsequent to the said notice are of no consequence. Further, the decision of Hon'ble Madras High*

*Court in the case of CIT Vs. Gitsons Engineering Co. 370 ITR 87 (Mad) clearly holds that the objection in relation to non service of notice could be raised for the first time before the Tribunal as the same was legal, which went to the root of the matter.*

19. *While exercising powers u/ s 263 Id. Commissioner cannot revise an assessment order which is non-Est in the eye of law because it would prejudice the right of assessee which has accrued in favour of assessee on account of its income being determined. If Id. Commissioner revises such an assessment order, then it would imply extending/ granting fresh limitation for passing fresh assessment order. It is settled law that by the action of the authorities the limitation cannot be extended, because the provisions of limitation are provided in the same.*

20. *In view of above discussion, ground no.3 is allowed and revision order passed u/ s 263 is quashed."*

*10.2. It is further noticed by us that similar view has been taken by Chandigarh Bench of the Tribunal in the case of Steel Strips Ltd (supra).*

*11. Thus, after taking into account all the facts and circumstances of the case, we find that in this case, the original assessment order passed u/s 143(3) dt 24-10-2013 was null & void in the eyes of law as the same was passed upon a non-existing entity and, therefore, the Ld. CIT could not have assumed jurisdiction under the law to make revision of a non-Est order and, therefore, the impugned order passed u/ s 263 by the Ld. CIT is also nullity in the eyes of law and therefore the same is hereby quashed."*

*It may at this stage be relevant and pertinent to point out that while for the aforesaid order of the tribunal had thereafter been approved by the Hon'ble High Court of Bombay vide its order passed in ITA No.1168/2017 dated 28.09.2021, but as the aforesaid view of the tribunal on the issues in Question before us was not carried by the revenue any further in appeal before the Hon'ble High Court, therefore, the same having been accepted by the department had already attained finality. Our aforesaid view that when the assessment order is in itself null and void, then, the Commissioner of Income-Tax cannot exercise his revisionary jurisdiction u/s.263 of the Act is also supported by the order of the ITAT, Allahabad in the case of Hari Mohan Das Tandon (HUF) vs. Pr. CIT (2018) 91 taxmann.com.199 (Allahabad). It was observed by*

*the tribunal by relying on the order of the ITAT, Mumbai in the case of Westlife Development Ltd. (supra) that as the assessment order was in itself null and void as it was based on a non-Est return, therefore, the Commissioner could not have exercised his jurisdiction under section 263 of the Act. Observations of the tribunal for the sake of clarity are culled out as under:*

> *"10.4 The Learned Counsel for the Assessee also argued that since the assessment is framed on the basis of the revised return filed on 1stJuly, 2013 and according to Ld. CIT it was a non-Est return, if assessment is framed on non-Est return, the assessment itself would be mill and void and could not be subject matter of jurisdiction under section 263 of the I.T. Act. In support of his contention, he relied upon the decision of the ITAT, Mumbai Bench in the case of Westlife Development Ltd. (supra) in which original assessment order was held to be null and void in the eye of Law as same was passed upon non-existing entity. Therefore, it was held that Ld. CIT could not have assumed jurisdiction under the Law to make revision of a non-Est order. Therefore, impugned order passed under section 263 by the CIT was also held invalid in the eye of Law and therefore, the same was quashed. The A.O in this case has framed the assessment on the basis of revised return filed on 1st July 2013 and taken the income from the same for computing the total income of assessee. It is also case of the Revenue that even the A.O. did not mention original return of income in the assessment order, therefore, even if it is considered that revised return dated 1st July 2013 which is basis for completing the assessment in Question was non-Est, then the entire assessment would vitiated and would also be non-Est under the eye of Law. Therefore, decision of the Mumbai Bench would apply to the facts of the case. When assessment order itself is null and void based on non-Est revised return, the Ld. CIT could not have exercise jurisdiction under section 263 of the I T Act."*

*We further find that the ITAT, Delhi in the case of Krishan Kumar Saraf Vs. Commissioner of Income Tax, Hissar, ITA No.4562/De1/2011, dated 24.09.2015 had also taken a similar view. It was observed by the tribunal that the CIT cannot revise an order which is non-Est in the eyes of law. In the said case the assessee in the course of the appellate proceedings which had originated from the order passed by the CIT under Sec. 263 of the Act had assailed the validity of the order passed u/ s 263, for the reason that the notice u/ s 143(2) was issued beyond the stipulated time period. The department objected to the aforesaid*

*challenge thrown by the assessee to the validity of the assessment order on the ground that as the assessee had not challenged the assessment order, therefore, the same had attained finality. However, the said contention of the revenue was turned down by the tribunal by relying on the order of the Hon'ble High Court of Delhi in the case of CIT Central-I Vs. Escorts Farms Pvt. Ltd., 180 ITR 280(De1) on the ground that the CIT could not have revised a non-Est order, The relevant observations of the tribunal are for the sake of clarity culled out as under:*

> 16. *Admittedly the notice u/ s 143(2) was issued beyond time and, therefore, the assessment order was bad in law. Ld. CIT(DR)'s submission is that assessee has not challenged the assessment order. However, since the assessee was not aggrieved with the assessment order, therefore, he did not challenge. However, nothing turns on this when we consider the issue in the backdrop of proceedings-initiated u/ s 263 by Id. Commissioner. The moot point for consideration is as to whether this objection can be entertained at this stage of proceeding or not. In this regard we find that the decision of Hon'ble Delhi High Court in the case of Escorts Farms Pvt. Ltd. (supra), which we have extensively reproduced earlier, clearly supports the Assessee's plea.*
>
> 17. *There is no quarrel with the proposition advanced by Id. DR that the proceedings u/ s 263 are for the benefit of revenue and not for assessee.*
>
> 18. *However, u/s 263 the Id. Commissioner cannot revise a non-Est order in the eye of law. Since the assessment order was passed in pursuance to the notice u/ s 143(2), which was beyond time, therefore, the assessment order passed in pursuance to the barred notice had no legs to stand as the same was non-Est in the eyes of law. All proceedings subsequent to the said notice are of no consequence. Further, the decision of Hon'ble Madras High Court in the case of CIT Vs. Gitsons Engineering Co. 370 ITR 87 (Mad) clearly holds that the objection in relation to non-service of notice could be raised for the first time before the Tribunal as the same was legal, which went to the root of the matter.*
>
> 19. *While exercising powers u/s 263 Id. Commissioner cannot revise an assessment order which is non-Est in the eye of law because it would prejudice the right of assessee which has accrued in favour of assessee on account of its income being determined. If Id. Commissioner revises such an assessment order, then it would imply*

> *extending/ granting fresh limitation for passing fresh assessment order. It is settled law that by the action of the authorities the limitation cannot be extended, because the provisions of limitation are provided in the statute.*
>
> 20. *In view of above discussion, ground no. 3 is allowed and the revisional order passed u/ s 263 is quashed."*

*We, thus, on the basis of our aforesaid deliberations read along with the aforesaid settled position of law concur with the Id. AR that now when the impugned order of reassessment under Sec. 143(3) r.w.s 147, dated 30.12.2018 in itself had been passed on the basis of invalid assumption of jurisdiction by the AO, and thus, is invalid and bereft of any force of law; or in fact non-Est in the eyes of law, therefore, the same could not have been revised by the Pr. CIT under Sec. 263 of the Act.*

14. Taking shelter of the aforesaid decision in the case of Maruti Clean Coal and Power Ltd. (supra) of the ITAT, Raipur, Ld. AR submitted that the assessee has filed a valid return may be after the date as prescribed in the notice u/s 148 but the same cannot be considered as non-Est, as held in the case of Smt. Amina Ismile Rangari (supra), Therefore, the order passed u/s 143(3) r.w.s. 147 by the Ld AO in the present case should be branded as a non-Est assessment order on account of non-issuing of a notice u/s 143(2), which is mandatory under the provisions of law, thus, the same is liable to be treated as without jurisdiction, Illegal, bad in law and accordingly, the revisionary proceedings initiated and order passed on the foundation of such non-Est order are liable to be set aside by quashing the order u/s 263.

15. Ld. CIT DR on the other hand vehemently supported the order of Ld. PCIT wherein all the objections of the assessee were duly responded by the Ld. PCIT, and therefore, has argued that the requirement of statutory notice u/s 143 was not mandatory in the present case. Since the return filed by the assessee was delayed which is against the provisions of the law, thus, has been categorized as a non-Est return which does not required issuance of any notice u/s 143(2), therefore, the order passed u/s 147 r.w.s. 143(3) was a valid order and the order passed by the Ld. PCIT u/s 263 was eligible to be upheld. Ld. CIT DR further placed his reliance on the order by Hon'ble Apex Court in the case of Jai Prakash Singh (1996) 219 ITR -737 (SC), wherein Hon'ble Apex Court has held as under:

> *The principle that emerges from the above decision is that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where such liability is created by distinct substantive provisions [charging sections]. Any such omission or defect may render the order made irregular-depending upon the nature of the provision not complied with -but certainly not void or illegal.*

16. Ld. CIT DR further placed before us the order of Hon'ble High Court of Kerala in the case of Padinjarekara Agencies (P.) Ltd, reported in [2017] 398 ITR 381, wherein Hon'ble High court has held as under:

> ***11.*** *However, in so far as this case concerned, Question to be considered is whether the omission to mention Section 143(2) literally in any one of the notices issued to the assessee would invalidate the assessment order. While in this context, it is relevant to take note of the Division Bench judgment of this court in K J. Thomas v. CIT [20081 301 ITR 301, where a Division Bench of this court has held thus:*

*The appellant himself had produced annexure A-I which the reply filed by him pursuant to the details called for the Assessing Officer. It seen from annexure A-I that the entire Questions raised and considered in the reassessment was answered by the assessee. However, the assessee has written in paragraph 7 of the said reply that he was not issued any notice u/s 143(2) of the Act. In the normal course, a detailed reply in the nature is furnished only after issuing a notice under section 143(2) of the Act. In any case, we find that after the assessee filed annexure A 1 reply, no further notice is required, because reply was already filed by the appellant. The procedure under section 143(2) of the Act is to ensure that an adverse order is issued only after proper opportunity is given to the assessee. In this case, it is conceded that the assessee got opportunity to file reply and detailed reply was in fact filed and the reassessment notice, and the final order were also issued within the time limit prescribed under the Act.*

**12.** *From the above, it is obvious that the procedure under Section 143(2) is intended to ensure that an adverse order is passed against the assessee only after affording the assessee a proper opportunity. Therefore, the Question to be considered is whether the assessee in case had such an opportunity. It is in this context, the notices that were issued to the assessee assumes importance. Reading of the reasons recorded and communicated to the assessee, Annexure E notice posting the ease, and Annexure I notice, show that the assessee was put on notice the inadmissibility of the reduction from the total income made by it and the assessee by its Annexure C objections, F reply, and the reply filed by to Annexure I notice had justified the deduction made by it. Further before Annexure K assessment order was passed, the assessee was afforded an opportunity of hearing also. Evidently, therefore, the assessee had ample notice of the case it had to answer, and the assessee availed of those opportunities by answering the case against it. In such a situation, we are not prepared to think that there was absence of notice under Section 143(2) or that any prejudice was caused to the assessee in defending the case against it. We are not, therefore, prepared to think that the assessment order is invalid on the ground contended by the assessee.*

**13.** *In such circumstances, answering the aforesaid Question of law in favour of the Revenue and against the assessee this appeal is dismissed.*

17. Ld. CIT DR also submitted before us a letter from the DCIT (Central) Circle-1, report dated 28.06.2023 w.r.t. production of case records and clarifications in the case of assessee qua the validity of return, the same has extracted as under:

**Government of India**
**Ministry of Finance: Department of Revenue**
**Office of the Deputy Commissioner of Income-tax, Central Circle-1,**
**08th Floor, Tower-A, CBD Complex, Nava Raipur, Atal Nagar**
**Ph. & Fax: - 0771-2331059 Email. raipur.dcit.cen1@incometax.gov.in**

F. No. DCIT(Central)-1)/RPR/ITAT-Anil Nachrani/2023-24/ Dated: 28.06.2023

To,

The Commissioner of Income Tax, ITAT-DR,
Raipur (C.G.)

Sir,

**Sub: Production of case records and clarification in the case of Anil Nachrani (PAN: ABIPN5928M) A.Y. 2012-13 -Regarding**

Kindly refer to the above subject.

2. In this case notice u/s 148 of the Act was issued on 30.03.2019 after taking necessary approval from Pr. Commissioner of income tax-1, Raipur, for initiating remedial action u/s 147 of the Act. Notice u/s 148 was served on 16.04.2019 vide which the assessee was required to file ITR within 30 days.

3. However, assessee did not file any return within the stipulated time of 30 days. Therefore, letter was issued on 22.05.2019 to the assessee requiring him to file return in response to notice u/s 148 of the Act. In response to this letter and notice issued, the assessee filed return on 01.06.2019 vide E-filling acknowledgement number 487757030010619. **However, this return is an invalid return as the assessee had not e-verified the return within due date (Annexure 1).** As per legal provision, assessee was required to e-verify the return within 120 days of filing return i.e., on or before 28.09.2019. However, assessee failed to do so.

4. The assessee E-verified the return after due date of 120 days and had filed online request for condonation on 30.12.2019 **(Annexure 2).** It is important to highlight here that assessment order in this case was passed on 30.12.2019 and limitation in this case was 31.12. 2019.**As there was no valid return filed by the assessee, hence there was no requirement of issue of notice u/s 143(2) of the Act.**

Encl: 1. Case records

Yours faithfully,

18. Ld. CIT DR, in view of aforesaid submissions has argued that the since the assessee had not filed a valid return, even the same was not e-verified by the assessee within stipulated time, requirements of issuing notice u/s 143(2) was dispensed with and the same cannot rescue the contention of the assessee, thus the proceedings initiated u/s 263 are valid, well within the powers of Ld PCIT, deserves to be sustained.

19. In response to the aforesaid submissions of the Ld. CIT. DR, Ld. AR of the assessee, in rejoinder has submitted before us the copy of the acknowledgement of return filed in response to notice u/s 148 on 01.06.2019, which was E-Verify on 30.12.2019 and accepted by the revenue, copy of the same is extracted as under:

**INDIAN INCOME TAX RETURN ACKNOWLEDGEMENT**

[Where the data of the Return of Income in Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR-4, ITR-4S (SUGAM), ITR-5, ITR-6 transmitted and verified electronically ]

DO NOT SEND THIS ACKNOWLEDGEMENT TO CPC, BENGALURU

Assessment Year 2012-13

**PERSONAL INFORMATION AND THE DATE OF ELECTRONIC TRANSMISSION**

| | | | |
|---|---|---|---|
| Name: ANIL NACHRANI | | PAN: ABIPN5928M | |
| Flat/Door/Block No: PSM-4 | Name Of Premises/Building/Village: PREM KUNJ | Form No. which has been electronically transmitted | ITR-3 |
| Road/Street/Post Office: CIVIL LINES | Area/Locality: PANCHSHEEL NAGAR | | |
| Town/City/District: RAIPUR | State: Chhattisgarh / Pin: 492001 | Status | Individual |
| Designation of AO(Ward/Circle): WARD 3(2) RAIPUR | | Original or Revised | ORIGINAL |
| E-filing Acknowledgement Number: 487757030010619 | | Date(DD/MM/YYYY) | 01-06-2019 |

**COMPUTATION OF INCOME AND TAX THEREON**

| | | | | | |
|---|---|---|---|---|---|
| 1 | Gross total income | | | 1 | 971307 |
| 2 | Deductions under Chapter-VI-A | | | 2 | 100000 |
| 3 | Total Income | | | 3 | 871310 |
| 3a | Current Year loss, if any | | | 3a | 0 |
| 4 | Net tax payable | | | 4 | 116794 |
| 5 | Interest payable | | | 5 | 18501 |
| 6 | Total tax and interest payable | | | 6 | 135300 |
| 7 | Taxes Paid | a Advance Tax | 7a: 0 | | |
| | | b TDS | 7b: 35226 | | |
| | | c TCS | 7c: 0 | | |
| | | d Self Assessment Tax | 7e: 100074 | | |
| | | e Total Taxes Paid (7a+7b+7c +7d) | | 7e | 135300 |
| 8 | Tax Payable (6-7e) | | | 8 | 0 |
| 9 | Refund (7e-6) | | | 9 | 0 |

The return has been electronically uploaded on 01-06-2019 12:48:53 from IP address 182.70.185.246 and has been electronically verified by ANIL NACH in the capacity of _____ having PAN ABIPN5928M on 30-12-2019 from IP Address 171.61.16.4 at RAIPUR using Electronic Verification Code P4KT1AJU8I generated through Aadhaar OTP mode

20. It was the submission of the Ld. AR that, according to the aforesaid ITR acknowledgment showing that it has been duly E-Verified by the assessee and accepted by the department, the ITR filed by the assessee cannot be treated as an invalid return on account of non-E-verification of the same.

21. Referring to aforesaid submissions, contentions, and evidence it was the argument of Ld. AR that the reopening assessment u/s 147 r.w.s. 143(3) was a non-Est assessment, illegal for the reason that the same was completed without issuing the mandatory notice u/s 143(2). It is further submitted that the Ld. PCIT has acted beyond the available jurisdictional rights with him to assume the powers to invoke revisionary proceedings u/s 263, wherein the assessment order which has been chosen to be revised itself was an assessment void ab initio and at nullity in the eyes of law. It was, therefore, the prayer of the assessee that the order u/s 263 is liable to be quashed.

22. We have considered the rival submissions, perused the material available on record and judicial pronouncements relied upon by the assessee as well as by the revenue. In the present case the admitted facts are that the assessee's case was reopened u/s 147/148 on 30.03.2019 by issuing of notice as per the provisions of the Act. The assessee was required to furnish a return in response to the said notice

u/s 148 by 30.04.2019, however, the assessee has filed the requisite return beyond the stipulated date, on 01.06.2019. However, Ld. AO has acted upon the said return and completed the assessment u/s 147 r.w.s. 143(3). Assessee's case was subsequently selected for revisionary proceedings u/s 263, wherein assessee has objected to the said proceedings stating that the assessment which was taken-up for revisionary proceedings was completed u/s 143(3) r.w.s. 147 but without issuance of statutory notice u/s 143(2), therefore, the assessment was bad in law, invalid and void ab initio. It was the contention of assessee that jurisdiction u/s 263 cannot be assumed on the foundation of a non-Est assessment, which itself is bad in law and void ab initio. Assessee also stated that there is no express bar on filing of a return in response to notice u/s 148 belatedly, even if, it is delayed, the AO has inherent powers to condone the delay, since Ld. AO has completed the assessment consciously u/s 143(2) r.w.s. 147, the return filed belatedly in response to notice u/s 148 cannot be termed as an invalid return. Such contentions of the assessee were not found favour before the Ld. PCIT, he had treated the return filed as non-Est therefore, has concluded that there was no requirement of issuance of a notice u/s 143(2) in case of a non-Est return, Ld. PCIT also observed that the assessment should have been framed u/s 144 of the IT Act. The questions raised before us to be adjudicated are:

(i) Whether a return filed beyond the prescribed time limit under the notice u/s 148, should be treated as non-Est return or not?

(ii) Whether an assessment completed u/s 143(3) r.w.s. 147 can be treated as invalid or non-Est, merely when a notice u/s 143(2) has not been issued?

(iii) Whether the assessee can challenge the validity of assessment order passed u/s 147 r.w.s. 143(3), during the Appellate proceedings pertaining to examination of validity of assumption of jurisdiction and the order passed u/s 263?

(iv) If the impugned assessment order passed u/s 143(3) was found to be illegal or at nullity in the eyes of law, then, whether the Ld. PCIT had a valid jurisdiction to pass the impugned order u/s 263 to revise the non-Est assessment order?

23. The first question regarding validity of a return filed belatedly in response to notice u/s 148, we are of the considered opinion that when a return is filed by the assessee beyond the stipulated time period, the same would not render as invalid or non-Est in the eyes of law merely because it was filed with delay. Analogy in this respect has been duly discussed and decided by the coordinate bench of ITAT, Mumbai in the case of Smt. Amani Ismile Rangari (Supra) which in our opinion was the right approach to be adopted, accordingly, in the present case the return filed by the assessee though belatedly, which has been recognised by issuing a valid acknowledgement, subsequently the same was E-verified by the assessee and has been duly accepted by the e-portal of the

department. The Assessing officer has acted upon such return therefore the same cannot be treated as a non-Est return.

24. The second question is regarding issuance of notice u/s 143(2) in completing the assessment u/s 147 r.w.s. 143(3), respectfully following the principle of law laid down by Hon'ble Apex Court in various cases based on which coordinate bench of ITAT, Raipur has taken a view in the case of Shri Dev Narayan Sahu (supra) wherein it has been decided that, issuance of notice u/s 143(2) is a *sine-qua-non* for framing of an assessment u/s 143(3) of the Act, this view is well supported by the judgment of Hon'ble Apex Court in the case of ACIT vs M/s Hotel Blue Moon (2010) 321 ITR 362 (SC), wherein Hon'ble Apex Court has held that issuing of notice u/s 143(2) of the Act is mandatory and not a procedural mistake, if the notice is not served within the prescribed period then assessment order would be invalid. In view of such observations, we are of the considered opinion that the order passed u/s 147 r.w.s. 143(3) in the present case was invalid on account of non-issuance of notice u/s 143(2) by the Ld. AO which is an accepted fact discernible from the order of Ld. PCIT, wherein it has been impliedly observed that no notice u/s 143(2) was issued, stating that the issuance of notice u/s 143(2) is not required.

25. The third question regarding challenging the validity of an assessment order during the Appellate Proceedings has been duly

answered by the coordinate bench of ITAT, Raipur in the case of M/s Maruti Clean Coal Power Ltd. (supra). Accordingly, we hold that as per law the assessee is permitted to challenge the validity of order passed u/s 263 on the ground that the impugned assessment order selected for revisionary proceedings, was a non-Est order.

26. Apropos, Question No. (4) that, if an assessment order passed u/s 143(3) was illegal or at nullity in the eyes of law then whether the Ld. PCIT holds a valid jurisdiction to initiate the revisionary proceedings and to pass an order u/s 263 on the basis of a non-Est assessment order, the answer is in negative. Our view is further fortified, from the view taken by ITAT, Raipur, in the case of Maruti Clean Coal Power Ltd. (supra), therefore, respectfully following the same, we are of the view that the order passed u/s 263, challenged by the assessee in the present case based on the settled position of law, since the impugned assessment order u/s 143(3) r.w.s. 147 which was selected for revisionary proceedings, itself had been held as invalid/ at nullity in the eye of law, therefore, the same could not have been revised by the Ld. PCIT u/s 263 of the Act.

27. With regard to the case laws relied upon by the Ld. CIT DR, we do not find any corelation with the issue involved in the present case to adopt the principle of law laid down in the referred decisions. In the case of Jai Prakash Singh (supra), Hon’ble Apex Court has rendered the decision

pertaining to omission to serve the notice and has held that any defect in the service of notice provided by procedural provision does not efface or erase the liability to pay tax. In the present case the mandatory notice was not issued to the assessee, therefore, the question of procedural defect on account of service of notice does not arise. In another case by Hon'ble High Court of Kerala in the case of Padinjarekara Agencies Pvt. Ltd. (supra), it has been held that the procedure u/s 143(2) is intended to ensure that an adverse order is passed against the assessee only after affording the assessee a proper opportunity. The assessee in the present case had submitted return of income and necessary information like ledger account, bank statement, balance sheet, form 26AS, summary of capital account, computation of income and audit report etc. which were examined by AO, such facts shows that the opportunity was duly offered to the assessee, therefore, the judgment in the case of Pandinjarekara Agencies Pvt. Ltd. (supra), may be somehow relevant on the facts and circumstances of the present case, but following the hierarchy and judicial discipline we are inclined to follow the law laid down by the Hon'ble Apex Court over the decisions of Hon'ble High Courts, therefore, the present case which is squarely covered by the decision of the Hon'ble Apex Court in the case of CIT vs Hotel Blue Moon (supra), thus an assessment order u/s 143(3), *dehors* issuing a notice u/s 143(2) has to be held as non-Est.

28. On the basis of aforesaid observations, we coincide and convinced with the contentions raised by the Ld. AR of the assessee, that the order

framed u/s 147 r.w.s. 143(3), which was passed *dehors* issuance of a notice u/s 143(2) is liable to be treated as non-Est, and therefore, the revisionary proceedings initiated u/s 263 are without appropriate jurisdiction with the Ld. PCIT, since, the same cannot be invoked on the foundation of an invalid/ void ab initio assessment order. Consequently, the revisionary order passed u/s 263 is not sustainable for want of valid assumption of jurisdiction, accordingly, the same is directed to be set aside. The grounds raised in the present appeal by the assessee are therefore, allowed.

Resultantly, the appeal of the assessee is allowed, in terms of our aforesaid observations.

Order pronounced in the open court on 22/11/2023.

| **Sd/-** | **Sd/-** |
|---|---|
| **(RAVISH SOOD)** | **(ARUN KHODPIA)** |
| **न्यायिक सदस्य / JUDICIAL MEMBER** | **लेखा सदस्य / ACCOUNTANT MEMBER** |

**रायपुर/Raipur**; दिनांक Dated 22/11/2023

*Vaibhav Shrivastav*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

**आदेशानुसार/** BY ORDER,

**// सत्यापित प्रति True Copy //**

**(Assistant Registrar)**
**आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur**