

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA**

श्री राजेश कुमार, लेखा सदस्यके समक्ष  
[Before Shri Rajesh Kumar, Accountant Member]

**I.T.A. No. 464/Kol/2022**  
**Assessment Year: 2016-17**

Smita Biswas (PAN: AOKPB 1035 Q)	Vs.	ACIT, Circle-1(1), Jalpaiguri
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.12.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	05.01.2024
For the Appellant/ निर्धारिती की ओर से	Shri Somnath Ghosh, Advocate
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-Jalpaiguri (hereinafter referred to as the Ld. CIT(A)"] dated 20.06.2019 for the AY 2016-17.

2. At the outset, I observe that there is a delay of 1075 days in filing the appeal by the assessee. The assessee filed an application for condonation of delay vide petition dated 17.08.2022 and explained that the reasons attributable to late filing of appeal which are apparently beyond the control of the assessee and therefore the delay deserves to be condoned. The Ld. A.R submitted that the previous A.R Shri Mihir Kumar Bandopadhyaya was handed over the documents for taking necessary steps for

preparation and filing of the appeal Later on it was found that the said advocate has not filed the appeal and has expired due to Corona in 4.2.2022 after suffering from covid ailment in November, 2021 and thereafter remaining hospitalized for multiple health issues. And it is only after his death the documents are collected in the month of July, 2022 from the son by the assessee and handed over to present Counsel Shri Somnath Ghosh who prepared the appeal and filed accordingly. The Ld. A.R therefore prayed that in the interest of justice and fair play the delay which is for the reasons beyond the control of the assessee may kindly be condoned. The Ld. A.R relied in defense of arguments on the decision of Hon'ble Supreme Court in the case of Mst. Katiji & Ors. reported in (1987) 2 SCC 107 (SC) by laying emphasis that substantial justice should prevail over the technicalities and the assessee should not be denied justice for technical things.

3. The ld. D.R on the other hand strongly opposed the arguments of the Ld. A.R that the delay may be condoned as the assessee has failed to explain the each and every day delay for filing the appeal. The Ld. D.R submitted that though the COVID period was there however even the beyond that there was a huge delay in filing the appeal.

4. After hearing the rival contentions and perusing the material on record and reasons cited before us, we find that the reasons explained by the assessee for late filing the appeal of delay seem to be cogent and satisfactory. Accordingly by relying on the decision of Hon'ble Supreme Court in the case of Mst. Katiji & Ors. (supra), I am inclined to condone the delay.

5. The assessee has raised legal issue before us that the assessment was framed by ACIT, Circle-1(1), Jalpaiguri instead of jurisdiction with ITO, Ward-1(4), Jalpaiguri who issued the notice u/s 143(2) of the Act and has the pecuniary jurisdiction in terms of Instruction No. 1/2011 {F.No.187/12/2010-IT(A-I)}.

6. Facts in brief are that the assessee filed return of income of 6.1.2017 declaring total income of Rs. 14,48,700/- with ITO , Ward-1(4), Jalpaiguri. The notice was

issued u/s 143(2) of the Act dated 18.09.2017 by the ITO, Ward-1(4), Jalpaiguri. However, the assessment was framed by ACIT, Circle-1(1), Jalpaiguri without there being any invalid transfer of jurisdiction in terms of provisions of Section 127(1), (2) and 127(3) of the Act.

7. The Ld. Counsel at the outset vehemently submitted before the Bench that the assessment framed by ACIT, Circle-1(1), Jalpaiguri is without jurisdiction and is invalid and void ab-initio. The Ld. A.R in defense of arguments relied on the decision of the Jurisdictional High Court in the case of *Kusum Goyal vs. ITO & ors in GA No. 81 of 2010 WP No. 1229 of 2009* wherein the Hon'ble Court has decided the similar issue in favour of the assessee. The Ld AR also submitted that even on pecuniary jurisdiction was not with the ACIT, Circle-1(1), Jalpaiguri as the income return was only Rs. 14,48,700/- and accordingly the return of income was filed with ITO, Ward-1(4), Jalpaiguri. The Ld AR argued that the order passed by the ACIT Circle-1(1), Jalpaiguri is invalid on this count also. The Ld. A.R also submitted that Co-ordinate Bench of Kolkata in the case of *Amiya Gopal Dutta vs. DCIT in ITA No. 126/Kol/2022 for AY 2016-17 dated 16.11.2022* has decided the identical issue in favour of the assessee. The Ld. Counsel therefore prayed that the assessment may kindly be quashed.

8. The Ld. D.R on the other hand relied on the order of authorities below. The Ld DR contended that the transfer of case was within the jurisdiction of concerned CIT and therefore the assessee had no locus standie to question the jurisdiction of the ACIT, Circle-1 Jalpaiguri.

9. After hearing the rival contentions and perusing the material on record, I find that though the notice u/s 143(2) was issued by ITO, Ward-1(4), Jalpaiguri who is the jurisdictional AO however the assessment in this case was framed by ACIT, Circle-1(1), Jalpaiguri . We note that there is no valid order of transfer of jurisdiction from ITO to ACIT and therefore the transfer of jurisdiction is in contravention of provisions of Section 127(1), (2) and (3) of the Act. The case of the assessee is squarely covered

by the decision of Jurisdictional High Court in the case of Kusum Goyal (supra) the relevant extracts of the High Court are extracted below:

*“It is evident that the respondent no. 2 had sought to justify his action by stating that the jurisdiction automatically gets vested with the jurisdictional officer and no order under Section 127 is required to be passed. In my view, the letter/notice dated 21<sup>st</sup> October, 2009 is patently illegal since it has been held in this judgment that in case of transfer within the same city, locality or place although the opportunity of hearing as postulated in Section 127(1) and (2) has been dispensed with, other statutory formalities which includes issuing an order are required to be complied with. Similarly transfer of files for the assessment years 2007-2008, 2008-2009 and the earlier years letter/notice dated 30th July, 2009 issued by the respondent no.1 is also bad in law. The argument of the respondents that in case of intra city transfer no order is required to be passed, cannot be accepted in view of the settled position of law in Kashiram Aggarwalla (supra) and in S.L.Singhania (supra) wherein the validity of the orders were under challenge, meaning thereby an order recording transfer has to be on the records. The judgment in Subhas Chandra Bhaniramka (supra) where it has been held that in case of transfer of file under section 158BD resorthas to be made to section 127 also applies in the instant case. The judgement in M.A.E.K.K. Verma (supra) relied on by the Revenue is not applicable as it dealt with the question whether in case of intra city transfer notice is required to be served and whether separate orders of transfer are required under Wealth Tax Act, 1957 and Gift Tax Act, 1956. Therefore, since it has been held in this judgement that it is imperative on part of the respondents to issue order under section 127(3), the letters/notices under challenge are set aside and quashed. The writ petition is allowed. Consequential proceedings are also set aside and quashed. Accordingly, the notice dated 6th January, 2010 regarding the penalty proceedings under section 271(1)(c) for the assessment year 2006-07 is also set aside and quashed. The application being G.A.No. 81 of 2010 is also allowed.*

The case of the assessee is also covered by the decision of Co-ordinate Bench decision in the case of Amiya Gopal Dutta (supra). For the sake of ready reference, the operative part is extracted below:

“5. At the outset, the Ld. Counsel for the assessee submitted that the assessment passed u/s 144 of the Act dated 17.12.2018 is void, ultra vires and nullity in the eyes of law as the same was passed by the Assistant Commissioner of Income Tax, Circle-1(1), Jalpaiguri whereas as per the CBDT circular 1/2011 [F. No. 187/12/2010-IT(A-I)] dated 31.01.2011 the Board has issued instruction in exercise of power u/s 119 of the Act that in case of non-corporate assessee where the income is declared up to Rs. 15 Lacs, the assessment would be framed by ITO and above Rs. 15 Lacs AC/DCs whereas the said limit was set at Rs. 20 Lacs and above Rs. 20 Lacs ITO/ and AC/DCs respectively. The Ld. A.R. submitted that since the order has been passed in violation of instruction of CBDT by the Assistant Commissioner of Income Tax, Circle-1(1), Jalpaiguri which is not a metro city and therefore the same may kindly be quashed. In defense of his arguments the Ld. A.R relied on the decision namely HIRAK SARKAR vs. ACIT, Circle-23(1), Hooghly in ITA No. 850/Kol/2019 for AY 2011-12 dated 12.08.2021 and Sanat Kumar Sahana vs. ACIT in ITA No. 2202/Kol/2015-16 dated 29.05.2020. Therefore, the Ld. A.R submitted that the appeal of the assessee may kindly be allowed by quashing the said assessment.

6. The Ld. D.R on the other hand submitted that how this happened has to be ascertained from the office of AO. Besides the Ld. D.R referred to the provisions of Section

292BB of the Act by submitting that this issue was never raised by the assessee either in the assessment proceedings or in the appellate proceedings and therefore the assessee should not be allowed to raise this issue at this stage. Alternatively the issue may be set aside to the file of the AO and since this is a procedural defect that may be cured by the authorities below.

7. We have heard the rival submissions and perused the material on record. Undisputed facts are that the assessee is a non corporate assessee and has declared total income of Rs. 10.02,340/- during the year. We observe that the notice u/s 143(2) of the Act was issued by ITO, Ward-1(1), Jalpaiguri to the assessee whereas the assessment was framed by the Assistant Commissioner of Income Tax, circle-1(1), Jalpaiguri. We have also perused the instruction No. 1/2011 as stated herein above which is extracted below for the sake of convenience and ready reference:

INSTRUCTION NO. 1/2011 NO. 187/12/2010-IT(A-1),

SECTION 119 OF THE INCOME TAX ACT/1961 - INCOME-TAX AUTHORITIES - INSTRUCTIONS TO SUBORDINATE AUTHORITIES

INSTRUCTION NO. 1/2011 [F. NO. 187/12/2010-IT(A-1)], DATED 31-1-2011

References have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship.

An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:

	Income Declared (Mofussil areas)		Income Declared (Metro cities)	
	ITOs	ACs/DCs	ITOs	DCs/ACs
Corporate returns	Upto Rs. 20 lacs	Above Rs. 20 lacs	Upto Rs. 30 lacs	Above Rs. 30 lacs
Non-corporate returns	Upto Rs. 15 lacs	Above Rs. 15 lacs	Upto Rs. 20 lacs	Above Rs. 20 lacs

Metro charges for the purpose of above instructions shall be Ahmadabad, Bangalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune.

The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from 1-4-2011.

In terms of the above instruction in the case of non-corporate assessee in non-metro cities, the ITR filed upto Rs. 15 lacs has to be assessed by ITO and therefore in the instant case the assessment is framed in violation of above instruction by the Board. The case of the assessee is squarely covered by the decision of Co-ordinate Bench of Kolkata benches in the case of HIRAK SARKAR (supra). The operative part is reproduced as under:

5. I have considered the rival contentions of both the ld. representatives of the parties. Before proceeding further, it will be appropriate to refer to section 120 of the Act which, for the sake of ready reference, is reproduced as under:

**“Jurisdiction of income- tax authorities**

(1) Income- tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.

[Explanation.- For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions

of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1)].

(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely:-

(a) territorial area;

(b) persons or classes of persons;

(c) incomes or classes of income; and

(d) cases or classes of cases

.....

6. A perusal of the aforesaid statutory provisions would reveal that the jurisdiction of Income Tax Authorities may be fixed not only in respect of territorial area but also having regard to a person or classes of persons and income or classes of income also. Therefore, the CBDT having regard to the income as per return has fixed the jurisdiction of the Assessing Officers.

7. Now, in this case, the reasons for forming belief of escapement of income by the assessee were recorded by the ITO, Ward-23(3), Hooghly and thereafter, notice u/s 148 of the Act was also issued by the ITO, Ward-23(3), Hooghly. However, the assessment has been framed by the ACIT, Circle-23(1), Hooghly. At this stage, it will be appropriate to refer to the provisions of section 127 of the Act as under:

**Power to transfer cases**

(1) The [Principal Director General or] Director General or [Principal Chief Commissioner or] Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

8. A perusal of the above statutory provisions would reveal that jurisdiction to transfer case from one Assessing Officer to other Officer lies with the Officers as mentioned in section 127(1) who are of the rank of Commissioner or above. No document has been produced on the file by the Department to show that the case was transferred by the competent authority from ITO, Ward-23(3), Hooghly to ACIT, Circle-23(1), Hooghly. Even, there is no document on the file that the ACIT, Circle-23(1), Hooghly had ever recorded any reasons to form belief that the income of the assessee has escaped assessment nor did he issue any notice u/s 147 of the Act. On the other hand, the ITO, Ward-23(3), Hooghly had recorded the reasons for reopening of the assessment and had issued notice u/s 148 of the Act, but did not proceed further with the framing of assessment. Under the circumstances, the assessment framed by ACIT, Circle-23(1), Hooghly, is bad in law on two counts, firstly he did not have any pecuniary jurisdiction to frame the assessment and secondly he himself did not form any belief that the income of the assessee has escaped assessment nor did he issue notice u/s 148 of the Act which was sine qua non to assume jurisdiction to frame to assessment. The issue relating to the pecuniary jurisdiction also came into consideration before the Coordinate Bench of the Tribunal in ITA No.2517/Kol/2019 and Others vide order dated 03.02.2021, wherein the Tribunal further relying upon various other decisions of the Coordinate Benches of the Tribunal has decided the issue in favour of the assessee and held that the assessment framed by Assessing Officer who was not having pecuniary jurisdiction to frame such assessment was bad in law. The relevant part of the order dated 03.02.2021 passed in ITA No.2517/Kol/2019 and Others is reproduced as under:

“5.2. The assessee relied on the recent decision of this Tribunal in the case of Hillman Hosiery Mills Pvt. Ltd. vs. DCIT, in ITA No. 2634/Kol/2019, order dated 12.01.2021. We find that the issues that arise in this appeal are clearly covered in favour of the assessee. This order followed the principles of law laid down in a number of other decisions of the ITAT, Kolkata Bench on this issue.

5.3. Kolkata “B” Bench of the Tribunal in the case of Hillman Hosiery Mills Pvt. Ltd.(supra) held as follows:

“10.In this case, the ITO Ward-3(3), Kolkata, issued notice u/s 143(2) of the Act on 04/09/2014. In reply, on 22/09/2014, the assessee wrote to the ITO, Ward-3(3), Kolkata, stating that he has no jurisdiction over the assessee. Thereafter on 31/07/2015, the DCIT, Circle-11(1), Kolkata, had issued notice u/s 142(1) of the Act to the assessee. The DCIT, Circle-11(1), Kolkata, completed assessment u/s 143(3) of the Act on 14/03/2016. The issue is whether an assessment order passed by DCIT, Circle-11(1), Kolkata, is valid as admittedly, he did not issue a notice u/s 143(2) of the Act, to the assessee. This issue is no more res-integra. This Bench of the Tribunal in the case of Soma Roy vs. ACIT in ITA No. 462/Kol/2019; Assessment Year 2015-16, order dt. 8<sup>th</sup> January, 2020, under identical circumstances, held as under:-

“5.After hearing rival contentions, I admit this additional ground as it is a legal ground, raising a jurisdictional issue and does not require any investigation into the facts. The ld. Counsel for the assessee submitted that as

per Board Instruction No. 1/2011 [F. No. 187/12/2010-IT(A-1)], dt. 31/01/2011, the jurisdiction of the assessee is with the Assistant Commissioner of Income Tax, Circle-1, Durgapur, as the assessee is a non-corporate assessee and the income returned is above Rs.15,00,000/- and whereas, the statutory notice u/s 143(2) of the Act, was issued on 29/09/2016, by the Income Tax Officer, ward-1(1), Durgapur, who had no jurisdiction of the case. He submitted that the assessment order was passed by the ACIT, Circle-1(1), Durgapur, who had the jurisdiction over the assessee, but he had not issued the notice u/s 143(2) of the Act, within the statutory period prescribed under the Act. Thus, he submits that the assessment is bad in law.

5.1. On merits, he rebutted the findings of the lower authorities. The ld. Counsel for the assessee relied on certain case-law, which I would be referring to as and when necessary.

6. The ld. D/R, on the other hand, submitted that the concurrent jurisdiction vests with the ITO as well as the ACIT and hence the assessment cannot be annulled simply because the statutory notice u/s 143(2) of the Act, was issued by the ITO and the assessment was completed by the ACIT. He further submitted that the assessee did not object to the issue of notice before the jurisdictional Assessing Officer and even otherwise, Section 292BB of the Act, comes into play and the assessment cannot be annulled. On merits, he relied on the orders of the lower authorities.

7. I have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, I hold as follows:-

8. I find that there is no dispute in the fact that the notice u/s 143(2) of the Act dt. 29/09/2016 has been issued by the ITO, Wd-1(1), Durgapur. Later, the case was transferred to the jurisdiction of the ACIT on 11/08/2017. Thereafter, no notice u/s 143(2) of the Act was issued by the Assessing Officer having jurisdiction of this case and who had completed the assessment on 26/12/2017 i.e., ACIT, Circle-1(1), Durgapur. Under these circumstances, the question is whether the assessment is bad in law for want of issue of notice u/s 143(2) of the Act.

9. This Bench of the Tribunal in the case of Shri Sukumar Ch. Sahoo vs. ACIT in ITA No. 2073/Kol/2016 order dt. 27.09.2017, held as follows:-

“5. From a perusal of the above Instruction of the CBDT it is evident that the pecuniary jurisdiction conferred by the CBDT on ITOs is in respect to the 'non corporate returns' filed where income declared is only upto Rs.15 lacs ; and the ITO doesn't have the jurisdiction to conduct assessment if it is above Rs 15 lakhs. Above Rs. 15 lacs income declared by a non- corporate person i.e. like assessee, the pecuniary jurisdiction lies before AC/DC. In this case, admittedly, the assessee an individual (non corporate person) who undisputedly declared income of Rs.50,28,040/- in his return of income cannot be assessed by the ITO as per the CBDT circular (supra). From a perusal of the assessment order, it reveals that the statutory notice u/s. 143(2) of the Act was issued by the then ITO, Ward-1, Haldia on 06.09.2013 and the same was served on the assessee on 19.09.2013 as noted by the AO. The AO noted that since the returned income is more than Rs. 15 lacs the case was transferred from the ITO, Ward-1, Haldia to ACIT, Circle-27 and the same was received by the office of the ACIT, Circle-27, Haldia on 24.09.2014 and immediately ACIT issued notice u/s. 142(1) of the Act on the same day. From the aforesaid facts the following facts emerged:

i) The assessee had filed return of income declaring Rs.50,28,040/- . The ITO issued notice under section 143(2) of the Act on 06.09.2013.

ii) The ITO, Ward-1, Haldia taking note that the income returned was above Rs. 15 lacs transferred the case to ACIT, Circle-27, Haldia on 24.09.2014.

iii) On 24.09.2014 statutory notices for scrutiny were issued by ACIT, Circle-27, Haldia.

6. We note that the CBDT Instruction is dated 31.01.2011 and the assessee has filed the return of income on 29.03.2013 declaring total income of Rs.50,28,040/-. As per the CBDT Instruction the monetary limits in respect to an assessee who is an individual which falls under the category of 'non corporate returns' the ITO's increased monetary limit was upto Rs.15 lacs; and if the returned income is above Rs. 15 lacs it was the AC/DC. So, since the returned income by assessee an individual is above Rs.15 lakh, then the jurisdiction to assess the assessee lies only by AC/DC and not ITO. So, therefore, only the AC/DC had the jurisdiction to assess the assessee. It is settled law that serving of notice u/s. 143(2) of the Act is a sine qua non for an assessment to be made u/s. 143(3) of the Act. In this case, notice u/s. 143(2) of the Act was issued on 06.09.2013 by ITO, Ward-1, Haldia when he did not have the pecuniary jurisdiction to assume jurisdiction and issue notice. Admittedly, when the ITO realized that he did not had the pecuniary jurisdiction to issue notice he duly transferred the file to the ACIT, Circle-27, Haldia on 24.09. 2014 when the ACIT issued statutory notice which was beyond the time limit prescribed for issuance of notice u/s. 143(2) of the Act. We note that the ACIT by assuming the jurisdiction after the time prescribed for issuance of notice u/s. 143(2) of the Act notice became goarum non judice after the limitation prescribed by the statute was crossed by him. Therefore, the issuance of notice by the ACIT, Circle-27, Haldia after the limitation period for issuance of statutory notice u/s. 143(2) of the Act has set in, goes to the root of the case and makes the notice bad in the eyes of law and consequential assessment order passed u/s. 143(3) of the Act is not valid in the eyes of law and, therefore, is null and void in the eyes of law. Therefore, the legal issue raised by the assessee is allowed. Since we have quashed the assessment and the appeal of assessee is allowed on the legal issue, the other grounds raised by the assessee need not to be adjudicated because it is only academic. Therefore, the additional ground raised by the assessee is allowed.

7. In the result, appeal of assessee is allowed.

9.1.This Bench of the Tribunal in the case of Krishnendu Chowdhury vs. ITO reported in [2017] 78 taxmann.com 89 (Kolkata-Trib.) held as follows:-

**“Return of income of assessee was Rs. 12 lakhs - As per CBDT instruction, jurisdiction for scrutiny assessment vested in Income-tax Officer and notice under section 143(2) must be issued by Income-tax Officer, Ward-I, Haldia and none other - But, notice was issued by Asstt. Commissioner, Circle Haldia much after CBDT's instruction and knowing fully well that he had no jurisdiction over assessee - Whether, therefore, notice issued by Asstt. Commissioner was invalid and consequently assessment framed by Income-tax Officers becomes void since issue of notice under section 143(2) was not done by Income-tax Officers as specified in CBDT instruction No. 1/2011.”**

9.2.The Hon'ble High Court of Calcutta in the case of West Bengal State Electricity Board vs. Deputy Commissioner of Income Tax, Special Range – I, reported in [2005] 278 ITR 218 (Cal.) has held as follows:-

**“Section 254 of the Income-tax Act, 1961 - Appellate Tribunal - Powers of - Assessment years 1983-84 to 1987-88 - Whether a question of law arising out of facts found by authorities and which went to root of jurisdiction can be raised for first time before Tribunal - Held, yes Whether jurisdiction of Assessing Authority is not dependent on date of accrual of cause of action but on date when it is initiated - Held, yes - Whether once a particular jurisdiction is created, same must be prospective and cannot be retrospective and it has to be interpreted having regard to manner in which it has been sought to be created - Held, yes – Assessee”**

9.3.The Hon'ble Supreme Court in the case of CIT vs. Laxman Das Khandelwal [2019] 108 taxmann.com 183 (SC), held as follows:-

“7. A closer look at Section 292BB shows that if the assessee has participated in the proceedings it shall be deemed that any notice which is required to be served upon was duly served and the assessee would be precluded from taking any objections that the notice was (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner. According to Mr. Mahabir Singh, learned Senior Advocate, since the Respondent had participated in the proceedings, the provisions of Section 292BB would be a complete answer.

On the other hand, Mr. Ankit Vijaywargia, learned Advocate, appearing for the Respondent submitted that the notice under Section 143(2) of the Act was never issued which was evident from the orders passed on record as well as the stand taken by the Appellant in the memo of appeal. It was further submitted that issuance of notice under Section 143(2) of the Act being prerequisite, in the absence of such notice, the entire proceedings would be invalid.

8. The law on the point as regards applicability of the requirement of notice under Section 143(2) of the Act is quite clear from the decision in *Hotel Blue Moon's case* (supra). The issue that however needs to be considered is the impact of Section 292BB of the Act.

9. According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself.”

10. Respectfully following the propositions of law laid down in all these case-law and applying the same to the facts of the case, we hold that the assessment order is bad in law for the reason that the Assessing Officer having jurisdiction over the assessee, has not issued a notice u/s 143(2) of the Act as required by the statute. Notice issue by the officer having no jurisdiction of the assessee is null and void. When a notice is issued by an officer having no jurisdiction, Section 292BB of the Act, does not come into play. Coming to the argument of the ld. D/R that objection u/s 124(3) of the Act has to be taken by the assessee on rectifying notice u/s 143(2) of the Act from a non-jurisdictional assessing officer, I am of the view that I need not adjudicate this issue, as I have held that non-issuance of statutory notice/s 143(2) of the Act by the jurisdictional Assessing Officer makes the assessment bad in law. Under these circumstances, we allow this appeal of the assessee.”

6. Respectfully following the propositions of law laid down in these orders stated above, we hold that the orders are bad in law for the reason that the assessing authority passed the order u/s 143(3) of the Act i.e. DCIT-13(1), Kolkata has not issued a notice u/s 143(2) of the Act and also for the reason that the jurisdiction of these cases lies with the ITO and not the DCIT. Hence all the orders passed by the ld. CIT(A) in these four cases are hereby quashed and the appeals of the assesseees are allowed.”

9. In view of the discussion made above and respectfully following the decision cited above, it is held that the reassessment framed u/s 147 of the Act being without jurisdiction is bad in law and the same is accordingly set aside.

10. In the result, the appeal of the assessee stands allowed.

Since the facts before us are materially similar to ones as decided by the Co-ordinate Bench of the tribunal, we, respectfully the decision of the coordinate bench, quash the assessment order passed on the ground of lack of jurisdiction. Accordingly the appeal of the assessee is allowed.”

It is pertinent to note that in the Co-ordinate Bench decision the issue of pecuniary jurisdiction has been decided whereas in the above High Court order issue of transfer of jurisdiction in terms of Section 127(1), (2) and (3) has been discussed and decided. I also note that the Co-ordinate Bench in the case of M/s Rupasi Bangla Agro Industries Pvt. Ltd. vs. ITO in ITA No. 909/Kol/2023 for AY 2013-14 dated 14.12.2023 has decided the issue u/s 143(2) in favour of the assessee after distinguishing the decision of Hon'ble Apex Court in the case of DCIT(Exemption) & Another vs. Kalinga Institute of Industrial Technology; Special Leave to Appeal (C ) No(s). 29304/2019 and WP(C ) No. 898/2017 which was relied by the Ld. D.R. to defend his arguments that the notice u/s 143(2) of the Act if issued by wrong AO then the assessee is at liberty to take objection to raise the issue within one month of the issuance of the notice in the assessment proceedings. The Co-ordinate Bench held that the facts of the case of Kalinga Institute of Industrial Technology (supra) are distinguishable and not applicable. In view of the above facts and circumstances and ratio laid down, I am inclined to quash the assessment framed and the appeal of the assessee is allowed.

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

Order is pronounced in the open court on 5<sup>th</sup> January, 2024

Sd/-

(Rajesh Kumar/राजेश कुमार)

Accountant Member/लेखा सदस्य

Dated: 5<sup>th</sup> January, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Smita Biswas, C/o S.N. Ghosh & Associates, Advocates, “Sagar Mansion”, 2, Garstin Place, 2<sup>nd</sup> Floor, Suite NOs. 202 & 203, Hare Street, Kolkata-700001.
2. Respondent – ACIT, Circle-1(1), Jalpaiguri
3. Ld. CIT(A)-Jalpaiguri
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata