

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA 'B' BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos.1099 & 1100/Kol/2023
Assessment Year: 2012-13 & 2013-14**

Subhash Sharma 322, Flat-3E, Tirupati Building, G.T. Road, Block-I, Belurmath-711202. PAN: ALTPS 5888 E (Appellant)	vs	ACIT, Circle-47, Kolkata (Respondent)
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Present for:

Assessee by : Shri S.L. Kochar & Shri A. Kochar, AR

Revenue by : Shri Partha Pratim Barman, Addl. CIT, Sr. DR

Date of Hearing : 04.03.2024

Date of Pronouncement : 03.05.2024

ORDER

PER SONJOY SARMA:

The captioned appeals are preferred by the assessee against the two separate orders of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] both dated 20.09.2023 for the AY 2012-13 & 2013-14 respectively.

2. First we take up ITA No. 1099/Kol/2023 verdict of it will apply mutantis mutandis in ITA No. 1100/Kol/2023. The assessee has challenged the appellate order on legal issues as well as on merit. The legal issue raised by the assessee is that the Ld. CIT(A) has erred in upholding the order passed by the AO by ignoring the fact that the notice u/s 148, 143(2) & 142(1) of the Act as well as the assessment has been framed by non-jurisdictional AO and therefore the assessment order is invalid in the eyes of law.

3. Facts in brief are that the assessee filed return of income on 26.03.2013 declaring total income of Rs. 2,70,140/-. The case of the assessee was selected for scrutiny under CASS and accordingly notice u/s 143(2) was issued by ACIT, Circle-47, Kolkata which was duly served upon the assessee. Thereafter the assessment proceedings were attended from time to time and the details as called for were also furnished before the AO. Finally the assessment was framed by ACIT, Circle-47, Kolkata by passing an order u/s 148, 144 & 147 of the Act dated 22.10.2019 by making some additions to the income of the assessee.

4. At the outset the ld. Counsel for the assessee stated that the notice u/s 143(2) has been issued by ACIT, Circle-47, Kolkata in violation of Instruction No. 1/2011 [F. No. 187/12/2010-IT(A-I)], dated 31.01.2011 which provides for issuance of notice in metro cities by ITO if the returned income is up to Rs. 20.00 lacs and beyond that the jurisdiction is with ACIT/DCIT. The Ld. A.R submitted that in the present case the returned income of the assessee is Rs. 2,70,140/- and therefore the notice u/s 143(2) & 142(1) of the Act should have been issued by ITO and not by ACIT as has been done in the instant case. The Ld. A.R submitted that not only this, even the assessment has been framed by the ACIT and therefore the same is invalid and in violation of above circular. The Ld. A.R contended that the assessment framed in violation of the above condition is bad in law and has to be quashed. In defense of arguments, the Ld. A.R relied on the series of decisions:

a) M/s Rupasi Bangla Agro Industries Pvt. Ltd. vs. ITO in ITA No. 909/Kol/2023 for AY 2013-14 dated 14.12.2023.

b) *Jigna Chetan Mehta Vs ACIT in ITA No.616/Kol/2023 dated 20.06.2023.*

c) *Ambereen Islam vs ACIT, Circle-40, Kol in ITA No. 1222/Kol/2023 for A.Y. 2014-15.*

The ld. AR therefore prayed before the bench the assessment may quashed as invalid for the want of jurisdiction.

5. 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 standi to question the jurisdiction of the ACIT. The ld DR contended that the assessee has questioned the issuance of notice by ACIT within one month of its issuance and therefore the assessee cannot be allowed to raise this issue at this stage. The ld DR relied on 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 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.

6. We have heard the rival contentions and perused the materials on records. Undisputedly the income returned by the assessee during the year was Rs. 2,70,140/- and the assessee is in metro city of Kolkata. Therefore the notice u/s 143(2) & 142(1) of the Act was to be issued by ITO concerned and ACIT, Circle-47, Kolkata as has been done in this case. We note that even the assessment was framed by ACIT, Circle-40, Kolkata which is in

clear contravention of in violation of Instruction No. 1/2011 [F. No. 187/12/2010-IT(A-I)], dated 31.01.2011 and therefore the assessment has been framed without jurisdiction. We have perused the decision of 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 and observe that the coordinate bench has decided the issue of notice u/s 143(2) of the Act 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. The operative part of the decision in the case of M/s Rupasi Bangla Agro Industries Pvt. Ltd. vs. ITO (supra)is extracted below:

“8. We have heard rival contentions and carefully gone through the decisions relied upon by both the sides.

9. Through the additional grounds, assessee has challenged the validity of the assessment order in question framed on 26/03/2016 on the ground that the same has been framed by the Assessing Officer not having jurisdiction over the assessee and is, therefore, a nullity.

10. The claim of the assessee is that in the light of the CBDT Instruction No. 1/2011 (supra), the mandatory limit was revised for the purpose of pecuniary jurisdiction based on the income declared by the corporate/non-corporate assessee. The assessee being a corporate assessee and located

in a mofussil area and the income of the assessee being less than Rs.20 Lakhs, the jurisdiction for assessing the income of the assessee vested with the Income-tax Officer. However, the assessment order in the case of assessee has been framed by the ACIT, Circle-38, Midnapore. In absence of any specific order u/s 127 of the Act, further giving powers to the prescriber authorities for transferring of the case, prima facie it indicates that the assessment in the case of the assessee ought to have been framed by the Income-tax Officer and not by the ACIT as the income declared in the Income-tax return is less than Rs.20 Lakhs. Now, whether under such given facts and circumstances, the assessment order in question is a nullity, needs to be examined in the light of judicial precedents. Though, the ld. Counsel for the assessee has referred and relied on the decisions of this Tribunal in the case of Alpha National Trading Co. (supra), we were able to lay our hands on the decision of this Tribunal in the case of Deepak Kedia vs. ACIT in ITA No. 881/Kol/2023; Assessment Year 2014-15; order dt. 03/11/2023 wherein also the issue regarding the validity of service of notice u/s 143(2) of the Act has been adjudicated and relevant finding of the Tribunal reads as follows:-

“4. According to Ld. Counsel for the assessee since the income tax return filed by the assessee is less than Rs. 30 Lakh therefore, the jurisdiction to issue notice u/s 143(2) of the Act to frame the assessment was with the ITO and not with the ACIT. Ld. Counsel for the assessee submitted that the case of the assessee is squarely covered by the decision of the Hon'ble Jurisdictional High Court in the case of PCIT vs. Shree Shoppers Ltd. in ITAT/39/2023 in IA No.GA/1/2023 dated 15.03.2023. Ld. Counsel for the assessee also relied on the decision of the Coordinate Bench in the case of Alpha National Trading Co. vs. ACIT in ITA No. 686/KOL/2023 order dated 27.09.2023 wherein the coordinate bench has decided the issue in favour of the assessee after following the above decision of the Hon'ble Jurisdictional High Court. The operative part of the decision is extracted as under:

“5. The ld. Counsel for the assessee in this respect has invited our attention to the opening paras of the assessment framed to submit that the returned income of the assessee was 17,51,940/-, which was less than Rs.30,00,000/- and that the jurisdiction to issue notice u/s 143(2) of the Act and to frame the assessment u/s 143(3) of the Act in case of an assessee, wherein, the returned income is Rs.30,00,000/- or less, was lying with the ITO. He has further submitted that however the assessment in this case has been framed by Assistant Commissioner of Income Tax, Circle-29, Kolkata (ACIT) who did not have jurisdiction to frame the assessment in question. The ld. Counsel has submitted that the issue is squarely covered by the recent decision of the jurisdictional Calcutta High Court in the case of PCIT vs. Shree Shoppers Ltd. in ITAT/39/2023 in IA

No.GA/1/2023 dated 15.03.2023. The ld. Counsel for the assessee has further relied on the decision of the Coordinate 'C' Bench of the Tribunal in the case of M/s J R Roadlines Pvt. Ltd. vs. DCIT in ITA No.2534/Kol/2019 order dated 27.05.2022. The relevant part of the order of the Tribunal is reproduced as under:

"4. At the outset, the ld. counsel for the assessee has invited our attention to the impugned assessment order to show that in the opening lines of the assessment order itself, it has been mentioned that the assessee had shown a total income of Rs.2,07,18,275/- in the return of income filed on 11.09.2012 for the assessment year under consideration. The ld. Counsel has further submitted that as per the relevant statutory provisions not only the territorial jurisdiction but also the pecuniary jurisdiction of the Income Tax Officers/Assessing Officer has been fixed by the CBDT and that if the returned income is less than Rs.30 lacs in case of corporate assessee in metro cities, the jurisdiction to frame the assessment lies to the Income Tax Officer whereas if the returned income is more than Rs.30 lacs, the jurisdiction lies with the concerned ACIT/JCIT.

The ld. counsel has submitted that the jurisdiction to pass the assessment order in this case laid with the ACIT/DCIT as the income declared by the assessee was more than Rs.30 lacs. The ld. counsel has further invited our attention to the impugned assessment order to show that the assessment order in this case has been passed by DCIT, Circle-1(1), Kolkata. He has further invited our attention to the first para of the assessment order wherein, it has been mentioned that notice u/s 143(2) dated 09.08.2013 was issued and duly served upon the assessee. The ld. counsel has further invited our attention to the copy of the aforesaid notice u/s 143(2) dated 09.08.2013 which has been placed at page 27 of paper-book. A perusal of the aforesaid notice u/s 143(2) dated 09.08.2013 reveals that the same has been issued by the Office of the Income Tax Officer (ITO), Ward-1(1), Kolkata. The ld. counsel in this respect has submitted that in this case, the jurisdiction to issue notice u/s 143(2) of the Act vested with the DCIT and not with the ITO on account of pecuniary jurisdiction, the returned income being more than Rs.30 lacs of the assessee. He has further submitted as per the settled proposition of law, the issue of notice u/s 143(2) by the concerned Assessing Officer of competent jurisdiction was sine qua non to assume jurisdiction to frame assessment u/s 143(3) of the Act. He, in this respect, has relied upon the decision of the Hon'ble Supreme Court in the case of ACIT vs. M/s Hotel Blue Moon (supra). The ld. counsel, therefore, has submitted that in this case the concerned DCIT did not issue any notice u/s 143(2) of the Act before proceeding to frame assessment u/s 143(3) of the Act. He has

submitted that since the concerned ITO, Ward-1(1) did not have jurisdiction to issue notice u/s 143(2) of the Act as such the said notice issued by him did not have any legal sanctity. He, therefore, has submitted that the assessment framed by the DCIT, in this case, was bad in law for want of issue of notice u/s 143(2) of the Act.

The ld. DR could not rebut the aforesaid legal position based on aforesaid factual aspect put by the ld. counsel for the assessee. However, she has relied upon the findings given by the Assessing Officer in the assessment order.

5. We have considered the rival contentions of ld. representatives of both the parties and gone through the records. 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.

(2) [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)].

(3) 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.

(4) 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. The ld. Counsel in this respect has relied upon the CBDT Instruction No.1/2011 [F.No.187/12/2010-IT(A-I)], for the sake of convenience is reproduced as under:

“Instruction No.1/2011 [F.No.187/12/2010-IT(A-I), 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 Ahmedabad, 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.”

7. A perusal of the above provisions of law along with the CBDT Instructions would show, in this case, the competent officer to proceed with the assessment by way of issue of notice u/s 143(2) of the Act was DCIT/ACIT, whereas, the notice u/s 143(2) has been issued by the ITO, Ward-1(1), Kolkata who did not have any jurisdiction to issue the aforesaid notice. As has been held by the various courts of the country including the Apex Court, the issuance of notice u/s 143(2) by the concerned Assessing Officer of a competent jurisdiction is mandatory to assume jurisdiction to proceed to frame assessment u/s 143(3) of the Act. The identical issue also came into consideration before the Coordinate Bench of the Tribunal in the case of *Bhagyalaxmi Conclave (P) Ltd. v. DCIT* [IT Appeal No.2517/Kol/2019, dated 3-2-2021] wherein the Tribunal further relying upon various other decisions of the Co-ordinate Benches of the Tribunal has decided the issue in favour of the assessee and held that when the notice u/s 143(2) was issued by an officer who did not have jurisdiction to proceed with the assessment and the assessment was framed by the other officer who did not issue the notice u/s 143(2) before proceeding to frame the assessment, then such an assessment order was bad in law. The relevant part of the order passed in *Bhagyalaxmi Conclave (P) Ltd.* (supra) 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. 8th January, 2020, under identical circumstances, held as under:-

“5. After hearing rival contentions, I admit this additional ground as it is a legal ground, raising a jurisdictional issue and does not require any investigation into the facts. The ld. Counsel for the assessee submitted that as per Board Instruction No. 1/2011 [F. No. 187/12/2010-IT(A-I)], dt. 31/01/2011, the jurisdiction of the assessee is with the Assistant Commissioner of Income Tax, Circle-1, Durgapur, as the assessee is a non-corporate assessee and the income returned is above Rs.15,00,000/- and whereas, the statutory notice u/s 143(2) of the Act, was issued on

29/09/2016, by the Income Tax Officer, ward-1(1), Durgapur, who had no jurisdiction of the case. He submitted that the assessment order was passed by the ACIT, Circle-1(1), Durgapur, who had the jurisdiction over the assessee, but he had not issued the notice u/s 143(2) of the Act, within the statutory period prescribed under the Act. Thus, he submits that the assessment is bad in law.

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

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

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

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

8. In view of above discussion made and in the light of the various case laws, the assessment order passed by the Assessing Officer (DCIT) was bad in law for want of issuance of notice u/s 143(2) of the Act."

6. The ld. Counsel for the assessee has further relied on the decision of the Coordinate 'SMC' Bench of the Tribunal in the case of Shivam Finance vs. ACIT in ITA No.422/Kol/2023 vide order dated 21.06.2023, wherein, the Coordinate Bench of the Tribunal relying on the decision of the jurisdictional Calcutta High Court in the case of PCIT vs. Shree Shoppers Ltd. (supra) has decided the identical issue in favour of the assessee. The relevant part of the order of the Coordinate Bench of the Tribunal in the case of Shivam Finance vs. ACIT (supra) is reproduced as under:

"4. At the outset, Ld. Counsel for the assessee emphasized on the legal issue relating to jurisdiction assumed by Ld. ITO, ward-49(1), Kolkata for issuing the notice u/s. 143(2) dated 17.08.2018 for initiating the assessment proceedings. Copy of the said notice is placed on record in the paper book at pages 1 and 2. Ld. Counsel submitted that the issue is squarely covered by the recent judgment of Hon'ble jurisdictional High Court of Calcutta in the case of PCIT Vs. Shree Shoppers Ltd. in ITAT/39/2023 in IA No.GA/1/2023, dated 15.03.2023, wherein substantial questions of law before the Hon'ble Court were as under:

"(i) whether on the facts and circumstances of the case the Tribunal was justified in law to quash the Assessing Order passed under section 143(3)

of the said Act on the ground that the valid Notice under Section 143(2) was not issued in accordance with law despite the fact that said Notice was already issued by the jurisdictional Assessing Officer before the process of Restructuring Departmental Cadre?

ii) Whether on the facts and circumstances of the case the Tribunal was justified in law in not appreciating the fact that the Notice under Section 143(2) of the said Act is issued only once at the time of initiating of the scrutiny assessment, thereafter mere change of jurisdictional Assessing Officer within the same Range and/or Pr.CIT cannot affect the assessment proceedings?"

5. On the above substantial questions of law, the Hon'ble Court held that Tribunal rightly allowed the assessee's appeal and quashed the scrutiny proceedings as effect of non-issuance of notice is incurable since it goes to the root of the matter. The Hon'ble Court noted that "we find no ground to differ with the findings recorded by the Ld. Tribunal. In the result, the appeal filed by the revenue is dismissed and the substantial question of law are answered against the revenue."

5.1. While giving this judgment, the Hon'ble Court noted the factual findings of the Tribunal which is reproduced as under:

"The short issue which falls for consideration in the instant case is whether there is valid notice issued under Section 143 (2) of the Act for commencing the Scrutiny assessment. The Tribunal has noted the facts and rendered a finding that on the date when the case was selected for scrutiny, the authority who issued the notice namely, the Income Tax Officer, Ward No.9 (4), Kolkata did not have jurisdiction and the jurisdiction was with the Deputy Commissioner of Income Tax. The following factual finding has been recorded by the Tribunal:

"Therefore, the legal ground stands to be admitted and the same relates to invalid notice issued u/ 143(2) of the Act. It is a settled position of law that for carrying out the assessment proceedings u/s. 143(3) of the Act, the statutory requirement of serving of valid notice u/s. 143(2) of the Act is must and in absence thereof the subsequent proceedings become invalid. In the case of assessee, the facts are that the assessee has declared income of Rs.48,47,180/- in the e-return filed on 26.09.2012. For selecting the case for scrutiny notice u/s. 143(2) of the Act as issued by ITA, Ward-9(4), Kolkata dated 23.09.2013. The Central Board of Direct Taxes (CBDT vide Instruction No.1 /2011 supra) revised the monetary limit for issuing notice by ITO/DCs/ACs. Through this instruction it stated that in case of metro cities in case of corporate declare income above Rs.30 lakh the jurisdiction of such corporate assessee will lie with the DCs/ACs. It is not in dispute that as on the date of selecting the case for scrutiny, the very basis for having jurisdiction over the assessee is the returned income which was more than Rs.30 lakhs and the same was lying with the DCs/ACs but the notice u/s. 143(2) of the Act has been issued by ITO, Ward-9(4), Kolkata. It is true that subsequently the assessment has been framed by DCIT, Circle-9(2), Kolkata but the point in dispute is that on date of issuing a notice u/s. 143(2) of the Act, whether the ITO, ward-9(4), Kolkata was having a valid jurisdiction to issue such notice u/s. 143(2) of the Act."

6. *Ld. Counsel also placed on record the order of the Coordinate Bench of ITAT, Kolkata in the case of Shree Shoppers Ltd. Vs. DCIT in ITA No. 865/Kol/2018 dated 08.09.2022 findings of which have been affirmed by the Hon'ble jurisdictional High Court of Calcutta as stated above.*

7. *Per contra, Ld. Sr. DR placed reliance on the order of Ld. AO.*

8. *We have heard the rival contentions and perused the material available on record and find that the issue raised by the Ld. Counsel on the jurisdictional aspect in respect of notice issued u/s. 143(2) is no longer res integra. It is a settled position of law that for carrying out an assessment proceedings u/s. 143(3) of the Act, statutory requirement of serving a valid notice u/s. 143(2) of the Act is a must and in absence of which the subsequent proceedings become invalid. In the present case before us, it is a fact that assessee has reported total income of Rs.43,53,620/- which exceeds the threshold prescribed in the CBDT Instruction no. 1/2011 read with revised monetary limit for issuing notice by ITO/DCs/ACs. Through this instruction, it stated that in case of metro cities, in case of corporate declared income above Rs. 30 lakh, the jurisdiction of such corporate assessee will lie with the DCs/ ACs. It is not in dispute that as on the date of selecting the case for scrutiny, the very basis for having jurisdiction over the assessee is the returned income which was more than Rs. 30 lakhs and the same was lying with the DCs/ACs but the notice u/s. 143(2) of the Act has been issued by ITO, Ward 49(1), Kolkata. It is true that subsequently the assessment has been framed by ACIT, Circ1e-49, Kolkata but the point in dispute is that on the date of issuing a notice u/s. 143(2) of the Act, whether the ITO, Ward-49(1), Kolkata was having a valid jurisdiction to issue such notice u/s. 143(2) of the Act. We find that Hon'ble jurisdictional High Court in the recent judgment in the case of PCIT Vs. Shree Shoppers Ltd. (supra) has decided identical issue in favour of the assessee.*

9. *Thus, from the perusal of the findings given by Hon'ble jurisdictional High Court and from the examination of facts of the present case, we find that the aforesaid judgment of the Hon'ble High Court is squarely applicable on the facts of the present case. We thus, unhesitatingly hold that ITO, Ward-49(1), Kolkata had no valid jurisdiction over the assessee on the date of issuing notice u/s. 143(2) of the Act. Revenue has not controverted this fact by placing any other contrary material on record to indicate otherwise. Since a valid notice u/s. 143(2) has not been issued, the assessment proceedings carried thereafter deserves to be quashed. We, therefore, respectfully following the ratio laid down by Hon'ble jurisdictional High Court in the case of PCIT Vs. Shree Shoppers Ltd. (supra), allow ground no. 4 raised by the assessee and quash the assessment proceedings completed u/s. 143(3) of the Act. Since we have quashed the assessment proceedings, the grounds relating to the merits of the case are rendered mere academic in nature and are, therefore, not adjudicated upon. Accordingly, the appeal of the assessee is allowed.*

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

7. *The ld. DR has not pointed out any contrary decision to the above proposition relied to the pecuniary jurisdiction of the concerned Assessing Officer to frame the assessment.*

8. In this case, since the concerned ACIT who had pecuniary jurisdiction to frame the assessment did not issue notice u/s 143(2) of the Act, therefore, the assessment framed was bad in law in view of the case laws as cited above. The impugned assessment order framed by the Assessing Officer, therefore, is bad in law and the same is hereby quashed.

9. In the result, the appeal of the assessee stands allowed."

5. Considering the facts of the case, we are of the view that ACIT, Circle-43, Kolkata has no jurisdiction to frame the assessment order and to issue notice u/s 143(2) of the Act. Therefore, the assessment framed is bad in law in view of the ratio laid down by the above referred decisions. Accordingly, the assessment order framed by the AO is hereby quashed."

10. Perusal of the above decision indicates that issuance of notice u/s 143(2) of the Act by the Assessing Officer not having jurisdiction over the assessee renders the assessment proceedings as a nullity. However, the case of the assessee before us is on a much stronger footing because leaving aside the issuance of notice u/s 143(2) of the Act, even the final assessment order has been framed by the Assessing Officer not having jurisdiction over the assessee. Though the ld. D/R has referred to the judgment of the Hon'ble Apex Court in the case of Kalinga Institute of Industrial Technology (supra), we notice that the facts before the Hon'ble Supreme Court were that the assessee participated in the assessment proceedings in response to the notice u/s 143(2) of the Act and the assessee did not challenge the jurisdiction within 30 days of issuance of notice and, therefore, in light of the provisions of Section 124(3) of the Act since the assessee did not object within 30 days of the receipt of notice u/s 143(2) of the Act, the assessee could not question the jurisdiction of the AO. But since the issue before us relates to the jurisdiction of the AO framing the assessment order, the ratio laid down by the Hon'ble Apex Court will not be applicable on the facts of the instant case. Thus, to conclude, we allow the additional ground raised by the assessee and hold that the assessment order framed in the case of the assessee for AY 2013-14 dt. 26/03/2016 is without jurisdiction and is a nullity and is hereby quashed as the AO framing the said assessment did not have jurisdiction over the assessee as mandated in the CBDT Instruction No. 1/2011 (supra).

11. Since we have allowed the additional ground and quashed the assessment order, dealing with the grounds on quantum addition will be merely academic in nature."

In view of the above facts and circumstances and ratio laid down, we are inclined to quash the assessment framed by the AO and the appeal of the assessee is allowed.

7. Since we have allowed the appeal of the assessee on legal issue, the issue raised on merit is not being adjudicated and left open to be decided at later stage if need arises for the same.

8. Since we allowed the appeal of the assessee in ITA No. 1099/Kol/2023. Our decision will apply mutatis mutandis in ITA No. 1100/Kol/2023. Accordingly, appeal of the assessee in ITA No. 1100/Kol/2023 is also allowed.

9. In the result both the appeals of the assessee are allowed.

Order pronounced in the open court on 03.05.2024.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata, Dated: 03.05.2024.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Subhash Sharma.
2. The Respondent: ACIT, Circle-47, Kolkata.
3. The CIT, Concerned,
4. The CIT (A) Concerned,
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata