

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

डॉ. मनीष बोर्ड, लेखा सदस्य
के समक्ष

Before
DR. MANISH BORAD, ACCOUNTANT MEMBER

**I.T.A. No.: 58/KOL/2024
Assessment Year: 2013-14**

***Krishna Chandra Mondal.....Appellant
[PAN: AFCPM 4341 K]***

Vs.

ACIT, Cir.-23(1), Hooghly.....Respondent

Appearances:

Assessee represented by: Sunil Surana, FCA.

Department represented by: L.N. Dash, Sr. DR.

Date of concluding the hearing : May 6th, 2024

Date of pronouncing the order : May 22nd, 2024

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi, [in short Id. 'CIT(A)'] dated 08.12.2023 arising out of the Assessment Order framed u/s 147 read with Section 144B of the Act dated 27.09.2021.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. For that the Ld. CIT(A) erred in confirming the action of the AO when the notice u/s 148 issued by the ACIT Circle 24(2), Hooghly was without jurisdiction, duly so admitted which was evident from the communication of the AO and transfer of the file to ACIT completing the reassessment and hence the entire reassessment is liable to be quashed.

2. For that the Ld. CIT(A) erred in confirming the action of the AO when the AO issuing notice had no jurisdiction to issue notice in view of the CBDT's notification with regard to the monetary limit of jurisdiction.

3. For that the Ld. CIT (A) erred in justifying the notice u/s 143(2) bringing in the procedure of NF AC when the notice u/s 143(2) was never issued by NF AC

4. For that the Ld. CIT(A) erred in confirming the action of the AO even though he did not dispose off the objections raised with regard to issue of Jurisdiction and therefore the entire reassessment is liable to be quashed.

5. For that the reassessment completed without forwarding the complete copy of sanction received from the PCIT u/s 151 is bad in law and liable to be quashed more so since the sanction accorded was only mechanical in nature.

6. For that the Ld. CIT erred in confirming the action of the AO in making addition on issues other than the issue on which the reopening was done on which no addition was made and therefore the entire addition is liable to be deleted.

7. For that the Ld. CIT erred in confirming the action of the AO in making addition of Rs. 37,20,000/- as investment in property from alleged undisclosed sources as unexplained investment u/s 69 when the actual investments being 50% share of the assessee was duly recorded in the balance sheet and no evidence has been brought on record by the AO that the assessee has made more investments than that recorded in the books of account.

8. For that the statutory notice u/s 143(2) dated 20.10.2020 was not issued within time allowed as per law and therefore the entire reassessment proceedings is bad in law.

9. For that the matter should have been referred to DVO for determining the fair market value of the purchase of land whose stamp value was considered at 7,20,000/-

10. For that on the facts and circumstances of the case, the addition of Rs. 37,20,000/- was unjustified and uncalled for.”

3. From perusal of the grounds, we notice that the assessee has raised a legal issue challenging the validity of the assessment order framed u/s 147 read with Section 144B of the Act on the ground that no valid notice u/s 148 of the Act was issued by the jurisdictional assessing officer. The assessee has also raised grounds on merits.

4. First, we take up the legal issue challenging the legality of the assessment order framed u/s 147 read with Section 144B of the Act. At the outset, ld. Counsel for the assessee submitted that the legal issue raised is squarely covered by the decision of this Coordinate Bench in the case of *Manish Jain vs. ITO* in *ITA Nos. 638 & 639/KOL/2022* order dated 03.05.2024 as the facts are identical so much so that in the case of assessee also no valid notice u/s 148 of the Act has been issued by the jurisdictional assessing officer. In support, reference has been made to various details filed in the paperbook containing 34 pages. It was further, submitted that the reopening is also bad in law for the reason that ld. AO did not make the addition for the reason on which reopening proceedings have been carried out and therefore, is covered by the decision of Hon'ble Jurisdictional High Court in the case of *CIT vs. M/s. Infinity Infotech Parks Ltd.* in *ITAT No. 60/2014, G.A. No. 1736 of 2014* and this Tribunal in the case of *Artex Property Consultants (P) Ltd. vs. ITO* in *ITA No. 798/KOL/2023* order dated 16.10.2023.

5. On the other hand, ld. D/R vehemently argued supporting the orders of both the lower authorities and stated that the legal issue has been elaborately decided by ld. CIT(A) and that notice u/s 148 of the Act was issued by ACIT, Circle-24(2), Hooghly.

6. We have heard rival contentions and perused the records placed before us. The validity of the assessment order u/s 147 of the Act has been challenged on the ground of non-issuance of notice u/s 148 of the Act by the jurisdictional assessing officer. We observe that the assessee is an individual. He filed his regular return of income on 21.03.2014 for AY 2013-14 declaring total income at Rs. 11,67,448/-. The return was duly processed u/s 143(1) of the Act. Thereafter, based on information in possession of the Department that the assessee had purchased various properties in his personal name below the stamp duty value, notice u/s 148 of the Act issued by ACIT, Circle-24(2), Hooghly on 03.01.2020. Thereafter, reasons for reopening were supplied vide letter dated 16.01.2020 by ACIT, Circle-24(2), Hooghly. Copies are placed at page 1 to 3 of the paperbook. Further, we observe that on 24.01.2020 ACIT, Circle-24(2), Hooghly issued a letter to the assessee stating that since the assessee is director of Mondal Brothers Enterprises Pvt. Ltd., and since the jurisdiction of the company lies with ACIT, Circle-23(1), Hooghly, the assessee being director will also fall under the jurisdiction of ACIT, Circle-23(1), Hooghly. Accordingly, it was proposed to transfer the records from ACIT, Circle-24(2), Hooghly to ACIT, Circle-23(1), Hooghly. Thereafter, on 20.10.2020 notice 143(2) read with Section 147 of the Act was issued by ACIT, Circle-23(1), Hooghly.

7. Now, the contention of the ld. Counsel for the assessee is that once ACIT, Circle-24(2), Hooghly had admitted that he did not have jurisdiction over the assessee, and the correct jurisdiction lies with ACIT, Circle-23(1), Hooghly, then a fresh notice u/s 148 of the Act ought to have been issued by ACIT, Circle-23(1), Hooghly for carrying of the re-assessment proceedings. Since no such notice was issued, the same is of fatal nature and makes the impugned assessment proceedings as illegal, bad in law and *void ab initio*.

8. Ld. D/R failed to controvert this fact that no fresh notice u/s 148 of the Act was issued by the jurisdictional assessing officer.

9. We note that similar set of facts and circumstances and issues were raised in the case of *Manish Jain (supra)* wherein this Tribunal after elaborately examining the facts and also taking support of the judicial precedence, quashed the re-assessment proceedings for not issuing notice u/s 148 of the Act observing as follows:

“7. After hearing the rival contentions and perusing the material on record, we find that the assessee has filed the return of income with AC, Range-24, Kolkata whereas the notice u/s 148 of the Act dated 31.03.2017 and 143(2) of the Act dated 6.7.2017 were issued by ITO, Ward-61(4), Kolkata. We note that the assessee objected to the jurisdiction of the AO who issued the said notices vide letter dated 1.4.2017 and considering the assessee’s request, the case was transferred to ITO, Ward-6(1), Kolkata and the assessment was framed accordingly. Now the question before us whether the assessment so framed by ITO, Ward-6(1), Kolkata is invalid. In view of the fact that notice u/s 148 as well as 143(2) of the Act were issued by ITO, Ward-61(4), Kolkata. We have perused the various decisions of Hon’ble Calcutta High Court as cited before us and same are discussed as under:

a) In the case of PCIT vs. Mohan Chand Motilal (supra), the Hon'ble Jurisdictional High Court has upheld the tribunal order. In this case the Tribunal dismissed the appeal filed by the revenue on the ground that the same was filed by ACIT-39, Kolkata while the jurisdiction was with ITO-44 which was upheld by the Hon'ble Court by holding that there was a fundamental error on which the appellate tribunal dismissed as incompetent since the order of AO who had no jurisdiction to undertake the assessment qua the assessee could have been found to be legal or resurrected and Court held that the order which was sought to be revived by carrying an appeal to the Appellate Tribunal in this case was itself an order without jurisdiction and there was no question of the Appellate Tribunal going into the merits of the matter or seeking to give legal support to an order that was inherently lacking in jurisdiction. The appeal of the revenue is dismissed.

b) In the case of PCIT vs. Nopani & Sons (supra) the Hon'ble High Court has under:

“This factual position could not be controverted by the revenue before us. As pointed out by the Hon'ble Supreme Court in the case of Asst. CIT vs. Hotel Blue Moon (supra), non-issuance of notice under Section 143(2) is not a procedural irregularity and, therefore, it is not curable. Thus, on facts, it having been established that no notice was issued under Section 143(2) of the Act, the order passed by the Tribunal was perfectly legal and valid. The revenue also sought to rely upon Section 292BB of the Act to justify their stand that notice is deemed to be valid and sought to bring the assessee's case under the circumstances mentioned in Section 292BB. This question was considered by the Tribunal and it was pointed out that Section 292BB provides that where an assessee has appeared in any proceedings or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any of the provision of the Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under the Act that the notice was not served upon him or not served upon him in time or served upon him in an improper manner. This amendment to the Act was introduced with effect from 01.04.2008 and the assessment year under consideration is AY 2007-08. In any event, the Tribunal examined as to whether at all the revenue can rely upon Section 292BB of the Act and noted that the assessee has filed an objection vide letter dated 16.11.2009 objecting to the issuance of notice under Section 142(1) of the Act without valid

service of notice under Section 143(2) of the Act. Taking note of the said letter the Tribunal, in our view, rightly held that the proviso to Section 292BB would not stand attracted and the said Section cannot be made applicable to the assessee's case. The Tribunal, thereafter, analysed as to the correctness of the submission of the revenue seeking to sustain their stand by referring to a notice issued by the assessing officer, who at the relevant point had no jurisdiction over the assessee and, on facts, found that there is no valid compliance of Section 143(2) of the Act as the notice issued under Section 143(2) of the Act by the assessing officer/ Income Tax Officer, Ward-3(1) had no jurisdiction over the assessee at the relevant time. The Tribunal to support its conclusion placed reliance in the case of CIT & Another Ys. Mukesh Kumar Agarwal [2012] 345 ITR 29 (Allahabad), wherein it was held that the assessing officer did not have jurisdiction to proceed further and make assessment since notice under Section 143(2) of the Act was admittedly not issued. As in the case on hand, the revenue sought to take coverage under Section 292BB of the Act which was rejected on the ground that the very foundation of the jurisdiction of the AO was on the issuance of notice u/s 143(2) of the Act and the same having been complied with, the revenue cannot take shelter under the provisions of Section 292BB of the Act.

Thus, we are of the clear view that the Tribunal was right in rejecting the revenue's appeal. In the result, this appeal is dismissed and the substantial question of law is answered against the revenue."

c) In the case of PCIT vs. Cosmat Traders Pvt. Ltd. (supra), the Hon'ble Court has held as under:

"We have heard Mr. Soumen Bhattacharjee, Learned standing counsel appearing for the appellant/ revenue and Mr. Abhratosh Majumdar, learned senior counsel assisted by Mr. Avara Majumder, learned Advocate for the respondent/ assessee.

After elaborately hearing the learned Advocates for the parties and carefully perusing the order passed by the Tribunal, we find that the Tribunal was fully justified in allowing the assessee's appeal by taking note of the decision of this Court in the case of Principal Commissioner of Income Tax vs. Oberoi Hotels Pvt. Ltd. reported in [2018] 409 ITR 132 (Cal). In the said decision it was held that the notice under Section 143(2) of the Act was required to be mandatorily issued and Section 292BB had no manner of operation. The earliest of the decision is that of the Hon'ble Supreme Court in the case of

Assistant Commissioner of Income Tax & Anr. vs. Hotel Blue Moon reported in [2010] 321 ITR 362 (SC), wherein it was held that if an assessment is to be completed under Section 143(3) read with Section 158BC, notice under Section 143(2) should be issued within one year from the date of filing of the block return. Omission on the part of the assessing authority to issue notice under Section 143(2) cannot be a procedure irregularity and is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with.

This Court in the case of Principal Commissioner of Income Tax-11, Kolkata vs. Nopany & Sons reported in 2022(2) TMI 399- Calcutta High Court held that the proviso to Section 292BB could not stand attracted and the said section cannot be made applicable to the assessee's case. Very recently, the Hon'ble Supreme Court in the case of Assistant Commissioner of Income Tax vs. S.K. Industries reported-in [2022] 141 taxmann.com 569(SC) dismissed the Special Leave Petition filed by the revenue against the order of the High ' Court holding that where the assessing officer of a particular Circle passed an assessment order under Section 143(3) without issuing notice under Section 143(2) and only in pursuance with the notice issued under Section 143(2), he had no jurisdiction over the assessee at the relevant time and such assessment order was liable to be set aside.

It is the submission of the learned standing counsel for the Department..-that the assessee had not raised the question of jurisdiction before the assessing officer but participated in the assessment proceedings and, therefore, could not have raised the said issue before the Tribunal.

This argument cannot be acceded to for more than one reasons, firstly, there cannot be any estoppel against the statute. It is not the case of the revenue that the assessee consciously waived his right to raise such a jurisdictional issue. Secondly, the assessee had filed an application before the learned Tribunal seeking leave to raise additional grounds and this application was held and after contest the application was allowed. The learned Tribunal, in fact, recorded that the Department could not controvert any of the submissions of the assessee on the additional grounds which have been raised and, therefore, the application was allowed taking note of the matter that the issue goes to the root of the entire proceedings.

Thus, we are of the considered view that the learned Tribunal was fully justified in allowing the assessee's appeal. For the above

reasons, the appeal filed by the revenue (ITAT/78/2022) is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the connected application for stay (IA No.GA/2/2022) also stands dismissed.”

d) In the case of PCIT vs. Bhagyalaxmi Conclave Pvt. Ltd. (supra) it has been held as under by the Hon’ble High Court:

“We have heard Mr. Prithu Dudheira, learned standing counsel for the appellant/revenue and Mr. Jawed Ahmed Khan, learned counsel assisted by Mr. Talha Ahmed and Mr. Bhaskar Sengupta, learned Advocates for the respondent/assessee. The short question involved in the instant case is

whether the notice required to be issued under Section 143(2) was issued. The Tribunal has referred to a remand report submitted by the Assessing Officer wherein the Department could not controvert the contention made by the assessee that no notice under Section 143(2) of the Act was issued by the Deputy Commissioner of Income Tax, Circle-13(1), Kolkata who completed the assessment. Further, the Tribunal has also noted the relevant decisions and rightly held that the assessment order is bad in law for the reason that the Assessing Officer passed the order under Section 143(2) of the Act without issuing any notice 143(2). We find that there is no substantial question of law arising for consideration in this appeal.

Accordingly, the appeal [ITAT/221/2022] fails and is dismissed.

Consequently, the connected application [GA/2/2022] stands closed.”

7.1. Considering the above facts of the assessee in the light of the aforesaid decisions of Hon’ble Calcutta High Court, we are inclined to hold that the order framed by ITO, Ward-6(1), Kolkata without issuing any notices u/s 148 of the Act as well as u/s 143(2) of the Act when the officers have sufficient time to issue the notices when the assessee raised objections of jurisdiction is apparently without jurisdiction and is accordingly quashed.

8. The other issue raised on merits by the assessee are not adjudicated as the appeal of the assessee has been allowed on legal issue however the merit is left open to be adjudicated at later stage if need arises for the same.”

10. On perusal of the above decision and the ratio laid down by the Hon'ble Courts referred in the decisions of Hon'ble Tribunal in the case of *Manish Jain (Supra)*, we find that the same is squarely applicable on the legal issue raised before us in the instant appeal and therefore, respectfully following the same, we are inclined to hold that since no valid notice u/s 148 of the Act was issued by the jurisdictional assessing officer for reopening of the assessment proceedings, the alleged re-assessment proceedings are bad, illegal and *void ab initio* and deserves to be quashed. Accordingly, additions made in the said re-assessment proceedings stands deleted on this legal ground itself.

11. As far as other legal issues and merits of the case are concerned, since we already quashed the re-assessment proceedings carried out dated 29.07.2021, dealing with the remaining grounds will be merely academic in nature and therefore, we refrain from dealing with the same as they have become infructuous.

12. In the result, the appeal filed by the assessee is allowed in the terms indicated herein above.

Order pronounced in the open Court on 22nd May, 2024.

Sd/-

[Manish Borad]
Accountant Member

Dated: 22.05.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Krishna Chandra Mondal, Rammandir Chinsurah Station Road, Chinsurah, Hooghly, West Bengal, 712 702.**
- 2. ACIT, Cir.-23(1), Hooghly.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata