

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.500/Kol/2024
Assessment Year: 2012-13

M/s Indovision Commodities Ltd.Appellant
Block-B, Suit No.1A Mangalam,
24 & 26 Hemanta Basu Sarani,
Dalhousie, Kol-1.
[PAN: AABCM8943Q]

vs.

ITO, Ward-6(2), Kolkata..... Respondent

Appearances by:

Shri Sunil Surana, AR, appeared on behalf of the appellant.

Shri Abhijit Kundu, CIT- DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 30, 2024

Date of pronouncing the order : August 06, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 23.02.2024 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that the notice u/s 148 and the reassessment completed by ITO Wd 6(4) was without jurisdiction, invalid and bad in law and therefore the entire reassessment is liable to be quashed.

2. For that the proceedings initiated u/s 147 on vague reasons without any tangible material or independent application of mind simply on borrowed satisfaction, suspicion and surmises were bad in law and therefore the entire reassessment is liable to be quashed.

3. For that the proceedings initiated u/s 147 were bad in law since no copy of approval /s 151 by sanctioning authority was provided during the assessment proceedings.

4. For that the notice u/s 143(2) issued prior to supply of the reasons recorded for reopening the assessment was bad in law and therefore the entire reassessment is liable to be quashed.

5. For that the reassessment order without mentioning the bar coded DIN or mentioning the fact the same would be issued separately was invalid and bad in law and therefore the entire reassessment is liable to be quashed.

6. For that the Ld. CIT(A) erred in confirming the action of the AO in adding back Rs. 26,18,726/- received from M/s Abhiman Distributors to the total income of the assessee u/s 68 when no enquiry worth name was made from the party or any verification done from the assessment record of the party when complete details were available with the A.O.

7. For that the Ld. CIT(A) erred in confirming the action of the AO in adding back Rs. 75,00,000/- received from his broker A N Commuti Broking Pvt. Ltd. to the total income of the assessee u/s 68 when no enquiry worth name was made from the party or any verification done from the assessment record of the party when complete details were available with the A.O.

8. For that on the facts and circumstances of the case, the addition of Rs.26,18,726/- and Rs.75,00,000/- are liable to be deleted.”

3. Though the assessee through its grounds of appeal has agitated the confirmation of the impugned additions made by the Assessing Officer both on legal grounds as well as factual merit, however, the ld. counsel has firstly raised the legal issue relating to the pecuniary jurisdiction of the concerned Assessing Officer to pass the assessment order in question. He in this respect has invited our attention to the impugned assessment order to submit that the impugned assessment order has been passed by ITO, Ward-6(4), Kolkata. He has further invited our attention to the copy of the ITR acknowledgement for assessment year 2012-13 to show that the assessee had returned current year loss of Rs.8027527/-. The ld. counsel has submitted that as per the settled law, the income can be positive and negative and that

in this case, the returned income of the assessee was negative income (loss of Rs.8027527/-). The ld. counsel has further referred to the provisions of section 120 of the Act r.w. CBDT Instruction No.1/2011 [F.No.187/12/2010-IT(A-I), Dated 31.01.2011 to submit 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 lakhs for corporate assesseees, the jurisdiction to frame to assessment lies to the Income Tax Officer whereas if the returned is more than Rs.30 lakhs, the jurisdiction lies with the concerned ACIT/DCIT. The ld. counsel has submitted that the jurisdiction to pass assessment order in this case lied with concerned ACIT/DCIT. He has submitted that in this case, not only the notice u/s 148 but also notice u/s 143(2) of the Act has been issued by ITO, Ward-6(4), Kolkata and further the assessment order was also passed by the ITO, Ward-6(4), Kolkata, whereas, the jurisdiction to pass the assessment order lied with concerned ACIT/DCIT. He has further submitted to assume jurisdiction to reopen the assessment u/s 147 of the Act, a valid notice u/s 148 of the Act was required to be issued by the competent authority/Assessing Officer having jurisdiction over the assessee. The ld. counsel has submitted that neither notice u/s 143(2) of the Act nor the notice u/s 148 of the Act has been issued to the assessee by the Assessing Officer having pecuniary jurisdiction over the assessee. He, therefore, has submitted that the impugned assessment passed by non-jurisdictional officer was bad in law. The ld. Counsel has submitted that the issue is squarely covered by the recent decision of the jurisdictional Hon'ble 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.

[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. The Id. 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
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 issuance 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 assesseees 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."

4. The Id. 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, Circle-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.”

5. The ld. DR, however, has relied upon the decision of Hon'ble High Court of Madras in the case of 'C. Krishnan vs. ITO' reported in [2014] 52 taxmann.com 30 (Madras), wherein, the Hon'ble High Court of

Madras has held that a circular or a direction or an order issued by CBDT under section 119 cannot mitigate powers of Director General or Chief Commissioner or Commissioner under section 127.

6. We note that the aforesaid case law relied upon by the Id. DR is not applicable to the facts and circumstances of the case, as neither there is any reference nor any copy of the order has been brought on record showing that any order transferring the case from the concerned ACIT/DCIT to the ITO, Ward-6(4), Kolkata has ever been passed by the competent authority u/s 127 of the Act. Therefore, the case law cited is not applicable to the facts and circumstances of the case.

6.1 Moreover, as held by the Hon'ble Supreme Court in the case of 'ACIT vs. Hotel Blue Moon' reported in 321 ITR 362 (SC) that the issue of notice u/s 143(2) is sine qua non to assume jurisdiction to proceed with the assessment in a case. Similarly, in our view, in the case of the reopening of the assessment u/s 147 of the Act, the issue of notice u/s 148 of the Act by the Assessing Officer having jurisdiction is also sine qua non. If the said notices had been issued by the Assessing Officer who did not have the jurisdiction over the assessee, then such notices are to be treated as non-est. The assessment carried out in such cases will be bad in law. Reliance in this respect can be placed on the decision of Jurisdictional Calcutta High Court in the case of 'PCIT vs. Nopany & Sons' reported in [2022] 136 taxmann.com 414 (Calcutta) and in the case of 'PCIT vs. Cosmat Traders (P) Ltd.' reported in [2023] 146 taxmann.com 207 (Calcutta). Therefore, respectfully following the proposition of law laid down by the jurisdictional Hon'ble Calcutta High Court in the cases of 'PCIT vs. Shree Shoppers Ltd.' (supra), 'PCIT vs. Nopany & Sons' (supra) & 'PCIT vs. Cosmat Traders (P) Ltd.' (supra) and by the various Benches of the Tribunal as discussed above, the issue is

accordingly decided in favour of the assessee and the assessment framed u/s 143(3) r.w.s. 147 of the Act by ITO, Ward-6(4), Kolkata is bad law for want of jurisdiction and the same is accordingly quashed.

7. Since the assessment order has been quashed on the ground of jurisdiction, the other issues raised on merit have been rendered academic in nature.

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

Kolkata, the 6th August, 2024.

Sd/-

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 06.08.2024.

RS

Copy of the order forwarded to:

1. M/s Indovision Commodities Ltd
2. ITO, Ward-6(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches