IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, VARANASI

BEFORE SHRI KUL BHARAT, VICE PRESIDENT
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

I.T.A. No.135/VNS/2020
Assessment Year: 2017-18

Income Tax Officer, Ward-2(1), Varanasi.	Vs.	Prominent Datamatics Marketing Pvt. Ltd., D-35/178, Jangambadi, Bangali Tola, Varanasi-221001 PAN:AAECP6265D
(Appellant)		(Respondent)

C.O.No.04/VNS/2021
(in I.T.A. No.135/VNS/2020)
Assessment Year: 2017-18

Prominent Datamatics Marketing Pvt. Ltd., D-35/178, Jangambadi, Bangali Tola, Varanasi-221001 PAN:AAECP6265D	Vs.	Income Tax Officer, Ward-2(1), Varanasi.
(Appellant)		(Respondent)

Revenue by	Shri Amalendu Nath Mishra, CIT (D.R.)
Assessee by	None

Order u/s 255(4) of the I.T. Act

PER ANADEE NATH MISSHRA:A.M.

(A) In this case, there was difference of opinion between Hon'ble Judicial Member and Hon'ble Accountant Member. The Hon'ble Judicial Member referred the question of difference to Hon'ble Third Member, as under:

"1. *Whether in the facts and circumstances of the case, the Varanasi, Circuit Bench of the Tribunal having no jurisdiction to hear and determine the appeal and CO arising from the impugned assessment order passed by ITO, Ward 5(2), Kolkata can go into the question of validity of the impugned orders i.e. assessment order and order of Ld. CIT(A) on the ground of the jurisdiction of the AO and Ld. CIT(A) or not ?*

2. *Whether in the facts and circumstances of the case, the assessee can question the jurisdiction of the AO, in view of the provisions of section 124(3)(a) of the Income Tax Act or not ?*

3. *Whether in the facts and circumstances of the case, ITO ward 5(2), Kolkata was having jurisdiction to pass the impugned assessment order or the issue is required to be set aside to the record of the Ld. CIT(A) as the same has not been adjudicated by the ld. CIT(A) ?*

4. *Whether in the facts and circumstances of the case, the Ld. CIT(A) is justified in deleting the addition made by the AO u/s 69A of the Act or not ?*

5. *Whether in the facts and circumstances of the case, the Ld. CIT(A) is justified in deleting the addition made by the AO on account of other payable s or not ?*

(A.1) The Hon'ble Accountant Member referred the question of difference to the Hon'ble Third Member as under:

"1. *Whether on facts and circumstances of the case, the correct jurisdiction of the assessee in the instant case, lies with Assessing Officer situated at Kolkatta or with the Assessing Officer situated at Varanasi ?*

2. *Whether on the facts and circumstances of the case, the appellate order passed by Id. CIT(A), Varanasi , is liable to be quashed being without jurisdiction , with liberty to assessee to file first appeal with jurisdictional Id. CIT(A) located at Kolkatta, or not?*

3. *Whether on the facts and circumstances of the case , Can the assessee in the instant case raise the jurisdictional issue of the AO, beyond the time stipulated u/s 124(3)(a) of the Act, or not?*
4. *Whether on the facts and circumstances of the case, Can merely filing change of address in PAN data form with department, will entail change of jurisdiction from one State to another State, or it will require meeting the requirements of Section 124(1)(a) read with Section 124(2) of the Act, for which separate application is required to be filed and an enquiry is to be conducted by the Relevant Officers of the department of both the States as is contemplated u/s 124(2), or not?*

5. *Whether on the facts and circumstances of the case, who was the jurisdictional AO of the assessee on the date of filing return of income and also while concluding assessment?*

6. *Whether on the facts and circumstances of the case, , whether the appellate order passed by ld. CIT(A), Varanasi is sustainable in the eyes of law, keeping in view that the said appellate order was passed in violation of Section 250(1) and 250(2) of the 1961 Act as well in violation of Rule 46A of the Income-tax Rules, 1962?*

7. *Whether on facts and circumstances of the case, is it fair and appropriate on the part of ITAT, Circuit Bench, Varanasi, to give any findings on the merits of the issues involved in this appeal more so when the appellate order passed by ld. CIT(A) is suffering from incurable defect of being in violation of Section 250(1) and 250(2) of the 1961 Act as well in violation of Rule 46A of the Income-tax Rules, 1962, or not ?*

(A.1.1) The Hon'ble Third Member has passed order dated 09/10/2025; which is reproduced below for the ease of reference:

"The Revenue is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals) [in short 'the CIT (A)'] dated 23.09.2020 passed for assessment year 2017-18.

2. The brief facts of the case are that assessee has filed its return of income for assessment year 2017-18 on 30.10.2017 declaring total income at Rs.23,42,610/-

. According to the AO, ITO, Ward 5(2), Kolkata, the case was selected for scrutiny assessment and a notice u/s 143(2) was issued on 14.08.2018. The ld. AO has passed an ex-parte assessment order u/s 144 of the Income Tax Act on 26.11.2019. In other words, it was an order passed according to the best of judgement of Assessing Officer. Dissatisfied with the assessment order, assessee carried the matter in appeal before the ld.CIT (Appeals) in Varanasi. The ld.CIT (Appeals) decided the appeal in Varanasi vide order dated 23.09.2020.

3. Dissatisfied with the order of ld.CIT (Appeals), Revenue filed an appeal before ITAT bearing ITA No. 135/VNS/2020. On receipt of notice, in the Revenue's appeal, assessee has filed Cross Objections bearing No.04/VNS/2021. The appeal and Cross Objections were heard by the Division Bench on 08.02.2023, however, there was a difference of opinion amongst the Hon'ble Members constituting the Division Bench, hence both the Hon'ble Members have independently framed the questions on difference of opinion. The Hon'ble President has appointed me as a Third Member to resolve the questions. The questions referred by the ld. Judicial Member read as under :

> *1. Whether in the facts and circumstances of the case, the Varanasi, Circuit Bench of the Tribunal having no jurisdiction to hear and determine the appeal and CO arising from the impugned assessment order passed by ITO, Ward 5(2), Kolkata can go into the question of validity of the impugned orders i.e. assessment order and order of Ld. CIT(A) on the ground of the jurisdiction of the AO and Ld. CIT(A)* ***or****not ?*
>
> *2. Whether in the facts and circumstances of the case, the assessee can question the jurisdiction of the AO, in view of the provisions of section 124(3)(a) of the Income Tax Act* ***or****not?*
>
> *3. Whether in the facts and circumstances of the case, ITO ward 5(2), Kolkata was having jurisdiction to pass the impugned assessment order or the issue is required to be set aside to the record of the Ld. CIT(A) as the same has not been adjudicated by the ld. CIT(A)?*
>
> *4. Whether in the facts and circumstances of the case, the Ld. CIT(A) is justified in deleting the addition made by the AO u/s 69A of the Act* ***or****not?*
>
> *5. Whether in the facts and circumstances of the case, the Ld. CIT(A) is justified in deleting the addition made by the AO on account of other payables* ***or****not ?*

3.1 The questions referred by the ld. Accountant Member read as under :

1. *Whether on facts and circumstances of the case, the correct jurisdiction of the assessee in the instant case, lies with Assessing Officer situated at Kolkatta or with the Assessing Officer situated at Varanasi?*
2. *Whether on the facts and circumstances of the case, the appellate order passed by Id. CIT(A), Varanasi , is liable to be quashed being without jurisdiction , with liberty to assessee to file first appeal with jurisdictional Id. CIT(A) located at Kolkatta, or not?*
3. *Whether on the facts and circumstances of the case , Can the assessee in the instant case raise the jurisdictional issue of the AO, beyond the time stipulated u/s 124(3)(a) of the Act, or not?*
4. *Whether on the facts and circumstances of the case, Can merely filing change of address in PAN data form with department, will entail change of jurisdiction from one State to another State , or it will require meeting the requirements of Section 124(l)(a) read with Section 124(2) of the Act, for which separate application is required to be filed and an enquiry is to be conducted by the Relevant Officers of the department of both the States as is contemplated u/s 124(2), or not?*
5. *Whether on the facts and circumstances of the case, who was the jurisdictional AO of the assessee on the date of filing return of income and also while concluding assessment?*
6. *Whether on the facts and circumstances of the case, whether the appellate order passed by Id. CIT(A), Varanasi is sustainable in the eyes*

   of law, keeping in view that the said appellate order was passed in violation of Section 250(1) and 250(2) of the 1961 Act as well in violation ofRule 46A of the Income-tax Rules, 1962?
7. *Whether on facts and circumstances of the case, is it fair and appropriate on the part of ITAT, Circuit Bench, Varanasi, to give any findings on the merits of the issues involved in this appeal more so when the appellate order passed by Id. CIT(A) is suffering from incurable defect of being in violation of Section 250(1) and 250(2) of the 1961 Act as well in violation of Rule 46A of the Income-tax Rules, 1962 , or not ?*

4. The ld. counsel for the assessee has filed detailed written submissions. He has also relied upon a large number of decisions which are placed in a Paper Book running into 74 pages.

5. With the assistance of the ld. Representative, I have gone through the record carefully. The first question framed by the Hon'ble Judicial Member is that

assessment order was framed by ITO, Ward 5(2), Kolkata and therefore, territorial jurisdiction of appellate authority over such an assessment would be in Kolkata. The Hon'ble Judicial Member had put reliance upon latest decision of Hon'ble Supreme Court in the case of PCIT Vs ABC Papers Ltd. reported in 141 taxmann.com 332. I deem it appropriate to take note of the finding recorded by the ld. JM on this issue, which reads as under :

2. I have gone through the order authored by Ld. Brother (AM) and given my deep thought to the reasoning, view and finding of my Ld. Brother but I could not able to agree and concur with the reasoning, view and finding of Ld. AM.

3. At the outset, it is pertinent to note that the impugned assessment order was passed by ITO, ward 5(2), Kolkata therefore, territorial jurisdiction of the appellate authorities including the Income Tax Appellate Tribunal is vested with the Kolkata, Benches under whose jurisdiction the Ld. AO who has passed the assessment order located. The jurisdiction of appellate authorities including tribunal as well as the Hon'ble High Court is determined based on the location of the Ld. AO who has passed the assessment order and therefore, irrespective of the validity of the assessment order the jurisdiction to entertain the appeal against the assessment order lies with the Income Tax Appellate Tribunal having tutorial jurisdiction over the Ld. AO who has passed the impugned order.

4. The Hon'ble Supreme Court in the case of ***Pr. CIT vs. ABC, Papers Ltd. 447 ITR1*** *has analysed the relevant provision of Income Tax in detail and ruled that the appeal against decision of ITAT shall lie before the High Court under whose jurisdiction the Ld. AO who passed the assessment order is situated. The relevant finding of Hon'ble Supreme court in para 25 to 34 is as under:*

"25. The reasoning adopted by the High Court of Delhi in Sahara is based only on the meaning that it attributed to the expression 'cases' in the Explanation to Section 127(4) of the Act. The High Court of Delhi was of the view that 'cases' must include within its sweep, not only the cases pending before the Authorities enlisted under Section 116 of the Act, but also the proceedings before the ITAT as well as a High Court. We are of the opinion that the High Court of Delhi has misread the scope and ambit of Section 127.

26. We will explain this in detail. Section 127 occurs in Chapter XIII ofthe Act which relates to Income Tax Authorities. In the same chapter, Section 116 enlists the Income Tax Authorities and Section 120 specifies the jurisdiction of such Authorities. While Section 124 specifically speaks of the jurisdiction of Assessing Officers, Section 127 enables a higher authority to transfer a 'case' from one Assessing Officer to another Assessing Officer. All these provisions in Chapter XIII only relate to the executive or administrative powers of Income Tax

Authorities. We have no hesitation in our mind that the vesting of appellate jurisdiction has no bearing on judicial remedies provided in Chapter XX of the Act before the ITAT and the High Court. The mistake committed by the High Court was in assuming that the expression "case" in the Explanation to Sub- Section 4 of Section 127 has an overarching effect and would include the proceedings pending before the ITAT as well as a High Court. This fundamental error has led the Division Bench of the High Court of Delhi to come to a conclusion that anorder of transfer made under Section 127 would have the effect of transferring the case "lock, stock and barrel" not only from the jurisdiction of the ITAT, but also from that of the High Court in which the Assessing Officer was located, and vest it in the High Court having jurisdiction over the transferee Assessing Officer. This erroneous interpretation was in fact advanced before other High Courts as well, but they were rejected straightaway. One instant example is the case of CIT v. Parke Davis (India) Ltd.22, where the Andhra Pradesh High Court held: -

"...The interpretation sought to be placed on the Explanation to section 127 leads to incongruous results quite contrary to the scheme of the Act and has the effect of investing the prescribed authorities with the power to virtually interfere with the territorial jurisdiction of the concerned High Court. ..."

27. With a slight digression from the main issue, we may note that the Assessee as well as the Revenue are on the same page in these appeals, taking the view that the decision of the High Court of Delhi in Sahara is not correctly decided. They may be right. However, as there was no serious contest at the bar, the principle suggested by the Assessee as accepted by the Revenue did not suffer strict scrutiny as is always the case in any contested case, and therefore, the Court is left toimagine the contrary proposition in support of the view taken in Sahara. We had no difficulty in conceptualising that, since every judge had once been a lawyer. We have raised and dealt with them in the following paragraphs.

28. Returning to the analyses in the decision in Sahara, we have noticedthat the Division Bench of the High Court of Delhi sought to distinguishthe two decisions of the very same High Court in Suresh Desai andDigvijay Chemicals on the ground that those cases did not involve thetransfer of cases of the very same assessment year. We will reformulatethis as a proposition of law. If it is the accepted principle to determinethe jurisdiction of a High Court under Section 260A of the Act on thebasis of the location of the Assessing Officer who assessed the case, then, by the strength of the very same logic, upon transfer of a case to another Assessing Officer under Section 127, the jurisdiction under Section 260A must be with the High Court in whose jurisdiction the new Assessing Officer is located. A logical extension of this argument is that, once the case is transferred to an Assessing Officer situated outside the jurisdiction of the existing High Court, the entire files relating to the case should now be in the possession and custody of the new Assessing Officer. It could be argued that the Assessing Officer who exercised the jurisdiction before its transfer will not be in a position to assist the High Court, further, he cannot implement the decision of

that High Court, after it decides the question of law as he is no more the Assessing Officer. We will now proceed to deal with these arguments.

29. The binding nature of decisions of an appellate court established under a statute on subordinate courts and tribunals within the territorial jurisdiction of the State, is a larger principle involving consistency, certainty and judicial discipline, and it has a direct bearing on the rule of law. This 'need for order' and consistency in decision making must inform our interpretation of judicial remedies. An important reason adopted in the case of Seth Banarasi Dass Gupta, further highlighted by Justice Lahoti in Suresh Desai, is that a decision of a High Court is binding on subordinate courts as well as tribunals operating within its territorial jurisdiction. It is for this very reason that the Assessing Officer, Commissioner of Appeals and the ITAT operate under the concerned High Court as one unit, for consistency and systematic development of the law. It is also important to note that the decisions of the High Court in whose jurisdiction the transferee Assessing Officer is situated do not bind the Authorities or the ITAT which had passed orders before the transfer of the case has taken place. This creates an anomalous situation, as the erroneous principle adopted by theauthority or the ITAT, even if corrected by the High Court outside its jurisdiction, would not be binding on them.

30. The legal structure under the Income Tax Act commencing with Assessing Officer, the Commissioner of Appeals, ITAT and finally the High Court under Section 260A must be seen as a lineal progression of judicial remedies. Culmination of all these proceedings in question of law jurisdiction of the High Court under Section 260A of the Act is of special significance as it depicts the overarching judicial superintendence of the High Court over Tribunals and other Authorities operating within its territorial jurisdiction.

31. ***The power of transfer exercisable under Section 127 is relatable only to the jurisdiction of the Income Tax Authorities. It has no bearing on the ITAT, much less on a High Court. If we accept the submission, it will have the effect of the executive having the power to determine the jurisdiction of a High Court. This can never be the intention of the Parliament. The jurisdiction of a High Court stands on its own footing by virtue of Section 260A read with Section 269 of the Act. While interpreting a judicial remedy, a Constitutional Court should not adopt an approach where the identity of the appellate forum would be contingent upon or vacillates subject to the exercise of some other power. Such an interpretation will clearly be against the interest of justice. Under Section 127, the authorities have the power to transfer a case either upon the request of an assessee or for their own reasons. Though the decision under Section 127 is subject to judicial review or even an appellate scrutiny, this Court for larger reasons would avoid an interpretation that would render the appellate jurisdiction of a High Court dependent upon the executive power. As a matter of principle, transfer of a case from one judicial forum to another judicial forum, without the intervention of a Court of law is against the independence of judiciary. This is true, particularly, when such a transfer***

can occur in exercise of pure executive power. This is a yet another reason for rejecting the interpretation adopted in the case of Sahara.

32. ***For the reasons stated above, we hold that the decision of the High Court of Delhi in Sahara and Aar Bee do not lay down the correct law and therefore, we overrule these judgments.***

33. ***In conclusion, we hold that appeals against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the Assessing Officer who passed the assessment order is situated. Even if the case or cases of an assessee are transferred in exercise of power under Section 127 of the Act, the High Court within whose jurisdiction the Assessing Officer has passed the order, shall continue to exercise the jurisdiction of appeal. This principle is applicable even if the transfer is under Section 127 for the same assessment year(s).***

34. We will now deal with the decisions of certain High Court which have taken a view that the jurisdiction of the High Court must be based on the location of the ITAT. These judgments are CIT v. Parke Davis (India) Ltd.23, CIT v. A.B.C. India Ltd.24, CIT v. J.L. Marrison (India) Ltd.25, CIT v. Akzo Nobel India Ltd.26, Pr. CIT v. Sungard Solutions (I) Pvt. Ltd.27 and CIT v. Shree Ganapati Rolling Mills (P) Ltd.28 We have examined these cases in detail and found that the Assessing Officers in each of these cases were in fact not located within the territorial jurisdiction of these High Courts. For this reason, the aforesaid decisions are correct to the extent of these High Courts not exercising jurisdiction. However, while returning the files to be represented in the appropriate court, certain observations were made stating that the appeals could be filed in the High Court which exercises territorial jurisdiction over the concerned ITAT. These observations are only obiter. In any event they did not preclude the party from filing the appeal before the appropriate High Court where the Assessing Officers exercised jurisdiction. However, we are reiterating for clarity and certainty that the jurisdiction of a High Court is not dependent on the location of the ITAT, as sometimes a Bench of the ITAT exercises jurisdiction over plurality of states.

5. Thus, the territorial jurisdiction of the appellate authority including the High Court shall be determined on the basis of the location of the Ld. AO who passed the assessment order. Thus what is relevant and important is the impugned assessment order and the situs /location of the Ld. AO who passed the impugned assessment order for exercising jurisdiction by appellate authority including the Hon'ble High Court to entertain the appeal arising from the assessment order. Even in the case where after the impugned assessment order is passed the jurisdiction is transferred to other AO at a new location the jurisdiction of the appellate authority would not get changed but will remain with the appellant authority including the Tribunal and Hon'ble High Court who has the territorial jurisdiction over the Ld. AO who has passed the impugned order. Therefore, the subsequent change of the jurisdiction of the Ld. AO would not change the jurisdiction of appellate authority to entertain and decide the appeals arising from the order passed by the Ld. AO prior to the change of jurisdiction. Rule 4(1) of the ITAT, Rules 1963 contemplates that the power of the Benches of the Tribunal to

hear and determine such appeal and application made under the Act, are as per the standing order amended from time to time till date. It has been directed vide standing order that subject to any special order all appeals and applications from the District, States, Union Territory specified thereunder shall with effect from 1st October 1997, be heard and determined by the benches specified in column no.2 of the table. At serial no.6 of the said table the Kolkata Benches of the ITAT has powers and jurisdiction to hear and determine the appeals from state of West Bangal, Sikkim and Union Territory of Andaman and Nicobar Islands. There is no dispute that ITO, Ward 5(2) Kolkata falls under the territorial jurisdiction of ITAT, Kolkata Benches and therefore, the ITAT, Kolkata Benches have the jurisdiction to hear and determine the appeal arising from the impugned assessment order. In absence of any special order the ITAT, circuit Bench Varanasi has no jurisdiction to hear and determine the appeal arising from impugned assessment order passed by ITO, Ward 5(2), Kolkata. Once, it is found and held that the jurisdiction to hear and determine the appeal arising from the impugned assessment order lies with ITAT, Kolkata Benches, the Varanasi Circuit Bench has no jurisdiction to go beyond the question of its own jurisdiction. Therefore, having no jurisdiction to hear and determine the appeal arising from the impugned assessment order, the Varanasi Circuit Bench cannot decide any other issue arising from the assessment order passed by the ITO, Ward 5(2), Kolkata or the impugned order passed by the Ld. CIT(A). When the ITAT, circuit Bench Varanasi has no jurisdiction to hear and determine the appeal then the question of giving any finding on the validity of the order passed by the Ld. AO or order passed by the Ld. CIT(A) does not arise. Even otherwise the jurisdiction of CIT(A) has not been questioned by either of the parties before us and therefore, no such issue of jurisdiction of CIT(A) is subjected matter of the appeal of the revenue or CO of the assessee. Accordingly, the appeal filed by the department with Varanasi Circuit Bench of the Tribunal is not maintainable for want of jurisdiction and the same is liable to be dismissed. Consequently, the CO filed by the assessee is also not maintainable and liable to be dismissed. The parties have the liberty to avail the appropriate remedies as per law.

6. A perusal of the ld. AM's order would reveal that in principle, he was also concurring with the ld. JM. I would like to make a reference to the relevant para wherein this issue has been dealt with by the ld. AM, which reads as under :

*".....Now, since we have upheld the jurisdiction of ITO, Ward 5(2), Kolkatta to frame assessment in the case of the assessee, then first appeal arising from the assessment order dated 26.11.2019 passed by ITO, Ward 5(2), Kolkatta, shall lie with jurisdictional CIT(A) located at Kolkatta. The assessee has filed an appeal with Id. CIT(A), Varanasi, and in our considered view, the Id. CIT(A), Varanasi had no jurisdiction to pass an appellate order dated 23.09.2020 , and this appellate order passed by Id. CIT(A) is non-est as Id. CIT(A) lacks inherent and territorial jurisdiction over the assessment order passed by the ITO,Ward 5(2), Kolkatta. Under these circumstances, we set aside the appellate order dated 23.09.2020 passed by Id. CIT(A), Varanasi. However, we are inclined to give liberty to **assessee** to file an first appeal with jurisdictional Id. CIT(A), Kolkatta, if so advised, and delay for filing the first appeal by assessee before Id. CIT(A) shall be condoned by jurisdictional Id. CIT(A), Kolkatta, as in our considered view the **assessee** had under bonafide belief*

filed and pursuing first appeal with Id. CIT(A), Varanasi, owing to change in the Registered Office from State of West Bengal to State of Uttar Pradesh. Filing of legal proceedings at the correct forum having jurisdiction is the fundamental and cardinal principle and back bone of robust ***judicial*** *delivery system. Reference is drawn to the decision of Hon'ble! Supreme Court in the case of PCIT v. ABC Papers Limited , reported in (2022) 141 taxmann.com****332(SC).****The second appeal from the appellate order passed by jurisdictional CIT(A), Kolkatta* ***shall*** *lie with ITAT, Kolkatta Benches, Kolkatta, and an appeal u/s* ***260A****from the appellate order to be passed by* ***ITAT,*** *Kolkatta Benches, Kolkatta* ***shall*** *lie with Hon'ble* ***High*** *Court of Calcutta. So far as merit of the additions are concerned, for the sake of completeness, we have observed that the* ***assessee did*** *not file any reply before the AO during assessment proceedings to* ***various queries*** *raised by the ITO, Ward 5(2), Kolkatta, as the* ***assessee*** *never participated in assessment proceedings . The ITO, Ward 5(2), Kolkatta issued several notices and SCNs to the assessee, but none* ***stood replied*** *by the assessee. An ex-parte assessment order was passed by the AO u/s 144 of the 1961 Act, on 26.11.2019. The* ***digital*** *signatures were affixed by the AO on 29.11.2019 at 7.26 PM. The assessee has claimed that it filed reply on 29.11.2019 which was not considered by the AO. Be that it may be, the said reply mainly challenges the jurisdiction of the AO to frame assessment, and there is no replies on the* ***issues*** *raised on merit by the AO in his notices as well* ***SCN's.*** *The assessee has for the first time filed replies/evidences with respect of the additions made by the AO on merits, before Id. CIT(A) and the Id.* ***CIT[A] did*** *not sought remand report/comments from the AO as to additional evidences* ***filed*** *by the assessee for the first time before the Id.* ***CIT[A], and additions*** *were deleted by Id. CIT(A). There is* ***clearly breach o f Section****250(1) and* ***250(2) o f the****1961 Act, as well there is a breach of Rule 46A of the 1962 Rules, and hence even on this count the appellate order passed by Id. CIT(A),Varanasi is not sustainable.*

Thus, we are setting aside and quashing the appellate order passed by Id. CIT(A), Varanasi as non-est, and we hold that Id. CIT(A), Varanasi lacked the jurisdiction to pass the appellate order dated 23.09.2020 . However, we are granting liberty to the assessee to file first appeal with jurisdictional CIT(A), Kolkatta, if so advised, immediately on the receipt of this order, and in that event the Id. CIT(A), Kolkatta shall condone the delay in filing the first appeal, and adjudicate the same on merits in accordance with law. With the aforesaid directions both the appeal filed by the Revenue as well CO. filed by the assessee stands disposed off. We order accordingly.

7. The short question before me is that if territorial appellate jurisdiction over the assessment order passed by ITO, Ward-5, Kolkata is at Kolkata, then how the present appeal is maintainable before ITAT, Varanasi and if Varanasi Bench lacks jurisdiction over the issue, then how it can decide that CIT (Appeals), Varanasi has wrongly entertained the appeal. Instead of setting aside the order of the ld.CIT (Appeals), as done by the ld. AM, the appeal of the Revenue ought to have been dismissed on the ground that Varanasi does not have jurisdiction. This plea could only be entertained by ITAT, Kolkata and only ITAT Kolkata could decide

whether impugned order of the CIT (Appeals), Varanasi is valid or without jurisdiction. Once ITAT, Varanasi does not have a jurisdiction to entertain the issue, then nothing could be adjudicated. Similar situation has been faced by ITAT Varanasi on an earlier occasion when ITA No.386/All/2014 has come up for hearing. The Bench found that territorial jurisdiction of the Tribunal over the assessee in the case of ACIT Vs M/s Motiwala Industries Ltd. lies in Delhi, hence the Bench has dismissed the appeal with a liberty to the Revenue to prefer a fresh appeal before Delhi Benches, if advised so. I would like to take note of this order of the Division Bench dated 26.09.2023 wherein identical issue is involved. The relevant part of the discussion in ITA No.386/All/2014 is as under :

3. In the meantime, a technical issue was noticed by the Tribunal, i.e., the co-ordinate bench, vide its interim order dated 12-01-2023, had expressed the view that the correct jurisdiction to deal with this appeal would be with Delhi benches of ITAT, since the assessing officer located in Delhi has passed the order. In support of the above said view, the co-ordinate bench has referred to the decision rendered by Hon'ble Supreme Court in the case of PCIT vs. ABC Papers Limited (Civil Appeal No. 4252 of 2022 dated 18-08-2022). Accordingly, the registry was directed to place the above said interim order passed by the co-ordinate bench before Hon'ble President. We notice that the Hon'ble President, vide his order dated 07-02-2023, has directed the registry to call for the comments of Ld VP(Lucknow Zone). Accordingly, the Hon'ble Vice President has recorded his comments on 08-02-2023 as under:-

> *"In view of the observation of the Bench that the correct jurisdiction to hear the appeal vests with ITAT, Delhi Benches, New Delhi, keeping in view the order of the Hon'ble Supreme Court in 'Pr. CIT-1, Chandigarh Vs. ABC Papers Limited, in Civil Appeal No.4252 of2022, vide order dated 18-08-2022, the Bench may consider disposing of the appeal, on re-fixation thereof, as not competent, having not been filed at the proper place of jurisdiction. "*

4. Accordingly, the appeal came to be fixed before this bench.

5. It is pertinent to note that the assessee herein has gone into voluntary
liquidation and the Hon'ble High Court of Allahabad has fixed the winding up date as 23.11.2006. Accordingly, Shri Rajneesh Kumar Singh, the official liquidator has written a letter dated 16-01-2023 stating that the appeal may be decided on merits.

6. None appeared on behalf of the assessee. We heard Ld D.R on this preliminary issue and perused, the record. As noticed earlier, the assessment order has been passed by the Assessing officer located in Delhi and hence as per the

decision rendered by Hon'ble Supreme Court in the case of ABC Papers Limited(supra), the jurisdiction would lie before Delhi benches of Tribunal. However, the revenue has filed the appeal before Varanasi benches of ITAT on the plea that the jurisdiction of the assessee has been transferred to Varanasi. However, as per the decision rendered by Hon'ble Supreme Court in the above said case, the jurisdiction would continue to be decided on the basis of the jurisdiction of the assessing officer, who passed the order. Accordingly, we are of the view that the revenue should have filed the appeal before the Delhi benches of ITAT.

7. In view of the above, we dismiss the appeal of the revenue on this technical ground. However, the revenue may prefer a fresh appeal before the Delhi benches along with the petition for condoning the delay citing the reasons for the delay in filing before the Delhi benches, if so advised.

8. In the result, the appeal filed by the revenue is dismissed.

9. Order pronounced in the open court on 26.09.2023.

Sd/-	*Sd/-*
(AMIT SHUKLA)	*(B.R.BASKARAN)*
JUDICIAL MEMBER	*ACCOUNTANT MEMBER*

Dated 26th September, 2023.

8. In view of the above discussion, I find that after the judgement of Hon'ble Supreme Court in the case of PCIT Vs ABC Papers Limited in Civil Appeal No.4252 of 2022, the appellate jurisdiction shall be determined on the basis of location of the ld. AO who has passed the assessment order. The ITAT, Varanasi does not have jurisdiction because assessment order was passed by ITAT, Kolkata. Therefore, the present appeal is not maintainable in the present form. It deserves to be dismissed. The parties will be at liberty to avail the appropriate remedies, as per law.

9. It is also important to note that the ld. AM also concur this view but only observed that appeal before CIT (Appeals), Varanasi was not maintainable, hence that impugned order deserves to be set aside with liberty to the assessee to file fresh appeal before CIT (Appeals), Kolkata. I am of the view that if ld.CIT (Appeals), Varanasi does not have jurisdiction, then how ITAT, Varanasi could have jurisdiction to term the impugned order of the CIT (Appeals) as unsustainable. First, ITAT Varanasi should have the jurisdiction to entertain the issue whether impugned order is valid or not. Once the ITAT does not have the jurisdiction, then

it cannot decide the validity of the impugned order. Thus, I concur with the ld. Judicial Member and hold that ITAT, Varanasi does not have jurisdiction to entertain this appeal in view of the Hon'ble Supreme Court decision in the case of PCIT Vs ABC Papers Limited. The appeal is not maintainable in the present form and Revenue would be at liberty to approach the appropriate Forum at appropriate place, if so advised.

10. As far as other questions referred to me are concerned, they are academic in nature and redundant in the present proceedings because once ITAT, Varanasi does not have jurisdiction to adjudicate the issue on merit, then what is the idea to comment on them. It is pertinent to note that once it is held that appeal is not maintainable at ITAT, Varanasi, then how it can comment on the issues on merit. Therefore, all the remaining questions referred by the ld. Judicial Member as well as ld. Accountant Member are academic in nature which are to be considered where a valid appeal is being filed before appropriate appellate authority of ITAT according to the judgement of Hon'ble Supreme Court in the case of PCIT Vs ABC Papers Limited. These questions become redundant."

(A.2) The aforesaid order dated 09/10/2025 of Hon'ble Third Member is to be read conjointly with the orders passed by the Hon'ble Judicial Member and Hon'ble Accountant Member. The order dated 29/03/2023 of Hon'ble Accountant Member, and order dated 17/04/2023 of Hon'ble Judicial Member; are reproduced below for the ease of reference:

"PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by Revenue, being ITA No.135/VNS/2020, is directed against the appellate order dated 26.11.2019 passed by ld. Commissioner of Income Tax (A),Gorakhpur(hereinafter called "theCIT(A)") in Appeal No. CIT(A), Varanasi/10280/2019, for assessment year (ay) 2017-18, the appellate proceedings had arisen before Learned CIT(A) from assessment order dated 23rd September, 2020 passed by learned Assessing Officer (hereinafter called "the AO") under Section 143

r.w.s. 147 of the Income-tax Act, 1961 (hereinafter called "the Act"). We have heard both the parties in Open Court through physical hearing mode.

2. The grounds of appeal raised by Revenue in memo of appeal filed with Income Tax Appellate Tribunal, Varanasi (hereinafter called "the tribunal"), reads as under:

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the facts that the addition of Rs. 2,64,90,092/- made u/s 69A of the I.T. Act, 1961 because assessee was failed to substantiate the "term loan from others" during the course of assessment proceedings after allowing many opportunities.

2. On the facts and circumstances of the case and in law, the Ld, CIT(A) has erred in deleting the addition of Rs. 8.22.70.213/- and also accepting the submission of the assessee because the assessee failed to substantiate "other payables" shown in the return of income even after availing a large number of opportunity as well as long duration of time.

3. On the facts and circumstances of the case and in law, the Ld. CITIA) has erred in accepting the submission of the assessee without calling for any remand report from the AO whereas the assessee has made wrong submission before him.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) is erroneous that the order of the AO as best judgment assessment was not supported by any accounting standard or statutory provisions.
5. Right is reserve to alter, modify and to file any fresh ground of appeal."

3. The grounds of Cross-Objection raised by Assessee in memo of C.O. filed with Income Tax Appellate Tribunal, Varanasi (hereinafter called "the tribunal"), reads as under:

"BECAUSE the order passed by the Income-tax Officer, Ward 5(2), Kolkata, suffers from the vice of lack of jurisdiction as the 'returned income of the 'Cross Objector/ Assessee' was more than Rs 20,00,000/-, owing to which, Income tax jurisdiction stood vested with the Officer above the rank of Income-tax Officer, as per guide lines/instruction laid down in law and accordingly, the assessment order dated 23.09.2020 passed by Income-tax Officer, Ward 5(2), Kolkata, should have been held as void ab-initio

2. BECAUSE initiation of 'regular assessment proceedings, by issuance of notice under section 143(2) dated 14.08.2018, by the 'Income-tax Officer, Ward 5(2), Kolkata and conclusion thereof, vide assessment order dated

26.11.2019 under section 143(3) was void ab-initio, and accordingly, the said assessment order should have been held (by the ld. First Appellate Authority) to be illegal.

3. BECAUSE in any case, 'change of address' having been duly intimated, by the "Cross Objector/Assessee' in the PAN data base and such an information (in this respect) was fully reflected at ITBA system, the very initiation of proceedings by Income-tax Officer, Ward 5(2), Kolkata' by issuance of jurisdictional notice under section 143(2) dated 14.08.2018 was wholly illegal and conclusion of assessment proceedings under section 144, vide order dated 26.11.2019, was liable to be declared as illegal."

5. The brief facts of the case are that the assessee filed return of income for the Assessment Year 2017-18 dated 30th October, 2017 showing returned income of Rs. 23,42,610/-. The case was selected for scrutiny through CASS as far as notice under Section 143(2) on 14th August, 2018 fixing compliance on or before 6th September, 2018 another notice under Section 142(1) was issued on 25th July, 2019, 3rd October, 2019 but there is no compliance of these notices. Thereafter, notice under Section 142(1) dated 25th July, 23019 was issued by the AO asking for the details but again there is no compliance which is as under:

"(1) Please substantiate with credible evidence/s Loan from Others amounting Rs.2,73,59,647/-, Others Payables amounting Rs.30 19 86,328/- as shown by you in the Balance Sheet as on 31.03.2017 of the ITR for the AY - 2017- 18 filed by you.

(2) Details of Work-in-progress amounting Rs 22,65,62,041/- as shown by you in the Balance Sheet as on 31.03.2017 of the ITR for the AY-2017-18.
(3) Complete compliance to the notice u/s 142(1) of the Act dated 26.03.2019."

The AO issued the show cause notice dated 04.11.2019, requesting compliance on or before 11.11.2019 but there is no compliance which is as under:

"Your case is under scrutiny assessment u/s 143(3) of the Income Tax Act, 1961 for the AY-2017-18 In this connection a notice u/s 142(1) of the Act was issued on 26-03-2018 for compliance on or before 03-04-2018 but there was no compliance on your part. Another notice u/s 142(1) of the Act was issued on 25- 07-2019 for compliance on or before 01-08-2019 but, there was no compliance Another notice u/s 142(1) of the Act was issued on 03-10-2019 for compliance on or before 14-10-2019 but there has been no

compliance with notice too. You are aware that the proceedings u/s 143(3) of the Act is time barred by limitation As you have not complied with the notices u/s 142(1) of the Act it appears that you do not wish to explain your case.

You are being provided another opportunity to comply with the notices us 142(1) on or before 11-11-2019 else your case may be disposed of ex-parte u/s 144 of the Act on the basis of materials available on record Your non-compliance to the notices will lead to initiation of penalty proceedings u/s 272A(1)(d) of the Act."

Again show cause notice was issued dated 15th November, 2019 requesting the assessee to compliance on or before 20th November, 2019 as under:

"Your case is under scrutiny assessment u/s 143(3) of the Income Tax Act, 1961 for the A.Y-2017-18. In this connection a notice u/s 142(1) of the Act was issued on 26-03-2018 for compliance on or before 03-04-2018 but, there was no compliance on your part. Another notice u/s 142(1) of the Act was issued on 25- 07-2019 for compliance on or before 01-08-2019 but, there was no compliance Another notice u/s 142(1) of the Act was issued on 03-10-2019 for compliance on or before 14-10-2019 but there has been no compliance with notice too. A show cause notice was issued on 04-11-2019 for compliance on or before 11-11-2019 but, there has been no compliance again. You are aware that the proceedings u/s 143(3) of the Act is time barred by limitation. As you have not complied with the notices u/s 142(1) of the Act/ show cause notice it appears that you do not wish to explain your case.

You were requested to substantiate the term loan from others amounting Rs 2,73 59,647/- through this office notice u/s 142(1) dated 25-07-2019 As you have not complied with the notices the loan amount remains unsubstantiated. As per the ITRS filed by you for the A, Y-2016-17 and 2017-18 it has been observed that you have shown Rs. 8,69,555/- as 'term loans from others' as on 31-03-2016 and Rs. 2,73,59,647/- as term loans from other as on 31-03-2017 Since you have failed to substantiate the term loans from others you are required to explain why the difference amount of Rs 2.64,90,092/- (Rs 2,73,59,647/- minus Rs 8,69,555/-) shall not be treated as unexplained money u/s 69A of the Act and brought to tax u/s 115BBE of IT Act, 1961 which attracts the tax @60% plus surcharge @25% on such tax and cess.

You were requested to substantiate the other payables amounting Rs. 30,19,86,328/ through this office notice u/s 142(1) dated 25-07-2019 As you have not complied with the notices the other payable amount remains unsubstantiated. As per the ITRS filed by you for the A, Y-2016-17 and 2017-18 it has been observed that you have shown Rs 21,97, 16, 115/- as other payables as on 31-03-2016 and Rs 30,19,86,328/ as other payables as on 31-

03-2017 Thus, it means that fresh liability of at least Rs 8,22,70,213/- (Rs.30, 19.86,328/ minus Rs 21.97,16,115) has arose during the FY 2016-17 and at least this amount of Rs. 8.22, 70,213/- has been charged in the P/L Account of FY-2016-17 Since, you have failed to substantiate the other payables even after availing a large number of opportunities as well as long duration of time (which was first brought to your notice on 25-07-2019 to substantiate it) you are required to explain why the difference amount of Rs 8,22,70.213/- (Rs.30 19.86,328/ minus Rs 21,97,16,115/-) shall not be disallowed and added to your total income brought to tax accordingly.

You are being provided another opportunity to comply with the notices u/s 142(1) on or before 19.11.2019 else your case will be disposed of ex-parte u/s 144 of the Act on the basis of materials available on record."

But again there is no compliance to any of the notices as well as show cause notices, the AO provided to ample opportunity of being heard but the undersigned is left with no option but to pass the judgment/ assessment under Section 144 of the Act as under:

"The assessee company was asked to substantiate the term loan from others amounting Rs.2,73,59,647/- through this office notice u/s 142(1) dated 25-07-2019 As the assessee company has not complied with the notices the loan amount remained unsubstantiated. As per the ITRS filed by assessee company for the A.Y- 2016-17 and 2017-18 it was observed that assessee company had shown Rs 8,69,555/- as 'term loans from others' as on 31-03-2016 and Rs 2,73,59,647/- as 'terms loans from others' as on 31-03-2017, Since, assessee company failed to Substantiate the term loans from others' it was required to explain why the difference amount of Rs 2,64,90,092/- (Rs.2,73,59,647/- minus Rs. 8,69,555/-) shall not be treated as unexplained money u/s 69A of the Act and brought to tax u/s 115BBE of I.T. Act. 1961 which attracts the tax @60% plus surcharge @25% an such tax and cess, as mentioned in the show cause notice dated 15-11-2019. As the assessee company totally failed in making compliance to the notices u/s 142(1) of the act/ show cause notices in which it was repeatedly asked to substantiated the term loan from others I have decided to treat the difference amount of Rs 2,64,90,092/- (Rs 2,73,59,6471- minus Rs. 8,69,555/-) as unexplained money u/s 69A of the Act and bring it to tax accordingly. Penalty proceedings u/s 271AAC of the Act is initiated for addition made u/s 69A of the Act.

2. The assessee company was requested to substantiate the other payables amounting Rs.30,19,86,328/- through this office notice u/s 142(1) dated 25-07-2019 As the assessee company has not complied with the notices, the other payable amount remained unsubstantiated. As per the ITRS filed by the assessee company for the A.Y-2016-17 and 2017-18 it was observed that it had shown Rs 21,97,16,115/- as 'other payables' as on 31-03-2016 and Rs.30,19 86,328/ as other payables as on 31-03-2017. Thus it means that fresh liability of at least Rs.8,22,70,213/- (Rs.30,19,86,328/ minus

Rs.21,97,16,115/-) arose during the FY 2016-17 and at least this amount of Rs. 8,22,70.213/- had been charged in the P/L Account of FY-2016-17 Since, the assessee company failed to substantiate the other payables even after availing a large number of opportunities as well as long duration of time (which was first brought to the notice of the assessee company on 25-07-2019 to substantiate it) the assessee company was required to explain why the difference amount of Rs 8,22,70,213/- (Rs.30,19,88,328/- minus Rs.21,97,16,115/-) shall not be disallowed and added to its total income and brought to tax accordingly. As the assessee company did not respond at all hence I have decided to add Rs.8,22,70,213/- to the total income of the assessee companyPenalty proceedings has been initiated u/s 272A(1)(d) for non-compliancewith the notice u/s 142(1) of the Act dated 25-07-2019. Based on the above total income of the Assessee Company and tax thereon is computed as under:-

Rs.

Returned income	*23,42,610/-*
Unexplained money u/s 69A of the Act (As discussed above in point No. 1)	*2,64,90,092/-*
As discussed above in point no. 2	*8,22,70,213/-*
Assessed income	*11,11,02,915/-*

Assessed under section 144 of the IT Act 1961 Computation sheet annexed herewith forms part of this order. Demand Notice & copy of order penalty notices u/s 274 of the Act are being issued to the assessee company."

The assessee being aggrieved, filed first appeal with CIT(A) and raised as many as five grounds of appeals as many as in the order passed by the Ld. CIT(A), the assessee also raised five additional grounds of appeal before the CIT(A). The Ld. CIT(A) was pleased to delete all the additions and the appeal of the assessee stood allowed by Ld. CIT(A) so far as the additional grounds of appeal raised by the assessee before the CIT(A) there were not adjudicated by Ld. CIT(A) as they have become infructuous although the appeal of the assessee was duly allowed.

The assessee submitted before the CIT(A) as under:

During the appellate proceedings the AR has filed written submission as under:- From a bare perusal of the assessment order itself, it would be seen that such an addition had been made within the following premises: -

> *"1. The assessee company was asked to substantiate the 'term loan from others' amounting to Rs.2,73,59,647/- through this office notice u/s 142(1) dated 25.07.2019. As the assessee company has not complied with the notices the loan amount remained unsubstantiated. As per the ITRS*

filed by assessee company for the A.Y. 2016-17 and 2017-18 it was observed that assessee company had shown Rs.8,69,555/- as 'term loans from others' as on 31.03.2016 and Rs.2,73,59,647/- as 'term loans from others as on 31.03.2017. Since, assessee company failed to substantiate the 'term loans from others' it was required to explain why the difference amount of Rs.2,64,90,092/- (Rs.2,73,59,647/- minus Rs.8,69,555/-) shall not be treated TRUE COPY as unexplained money u/s 69A of the Act and brought to tax u/s 115BBE of1.T. Act, 1961 which attracts the tax @ 6% plus surcharge @ 25% on such tax and cess, as mentioned in the show cause notice dated 15.11.2019. As the assessee company totally failed in making compliance to the notices u/s 142(1) of the act/show cause notices in which it was repeatedly asked to substantiated the 'term loan from others' I have decided to treat the difference amount of Rs.2,64,90,092/- (Rs.2,73,59,647/- minus Rs.8,69,555/-) as unexplained money u/s 69A of the Act and bring it to tax accordingly. Penalty proceedings u/s 271AAC of the Act is initiated for addition made u/s 69A of the Act, which is factually wrong.

The aforesaid (para 1 page 4 of the impugned assessment order) itself shows that the Assessing Officer has made the said addition of Rs.2,64,90,092/- owing to difference of two figures i.e. Rs.2,73,59,647 - Rs.8,69,555/- and tax @60% as provided in section 115BBE of I.T. Act 1961) has been levied. However, as per Note no.3 & 4 of the financial Accounts which read as under:-

Note No. 3 *Long Term Borrowings* *Vijaya Bank Term Loan A/c* *BabitaAgarwal (Prop. Shree Balaji Construction Company)*	 *1,48,26,962.00* *2,73,59,647.00*	 *3,17,53,511.00*
	4,21,86,609.00	***3,17,53,511.00***
Note No.4 *Other long term liabilities* *M.M. Gupta* *Umesh Chandra Gupta*	 ***---*** ***---***	 ***7,51,255.00*** ***1,18,300.00***
		8,69,555.00

there was a fresh loan of Rs.2,73,59,647/-, and the figure of Rs.8,69,555/- represented long term liabilities which had been fully square up. Thus, the appellant carried an obligation only to explain the source of Rs. 2,73,59,647/- and in support of said loan, the appellant begs to submit a copy of ledger account as appearing in our books of account duly confirmed by the other party namely Babita Agarwal (Prop. Shree Balaj Construction Company). Copy of ledger account of Babita Agarwal (Prop. Shree Balaji Construction Company) for the Assessment Year 2017-18 along with confirmation marked as Annexure-VI herewith for your kind perusal.

Otherwise also, the figure of Rs.2,73,59,647/- appeared on the credit side of the Balance sheet and provision of section 69A, which reads as under:-

> *"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, Jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."*

could not have been applied. Apart from relying upon express language of section 69A of the Act (as reproduced above) the appellant begs to refer and rely upon a decision of ***Hon'ble Bombay High Court in the case of J.S. Parkar Vs. V.B. Palekar reported in (1973) 94 ITR 616*** *wherein at page 650 the Hon'ble court observed and held as under:-*

> *"Now, it is significant that section 69A speaks of "found to be the owner of .....bullion..... It does not say "found to be in possession, of bullion..... If the legislature had intended that mere possession of gold, etc., would cast an obligation on the possessor to explain its source it could have very well said so without bringing in the concept of ownership and insisting that the assessee must be found to be the owner. Found by whom? Obviously by the Income-tax Officer and it follows that the finding must be on the basis of proper evidence or material proving such ownership.*
>
> *Again, take the case of "investment" under section 69. Could it be validly contended that the department has merely to allege that an assessee has made an investment, say, in house property or in shares or in bands, without proving the factual existence of such an investment? There must be some starting point. It would be all too easy (and oppressive (sic) for an Income-tax Officer to say to an assessee that "your background shows that you have a lot of money. You must have invested it. Now tell us where you have made the Investment and then explain its source. After all this is a matter within your knowledge."*

Disallowance of Rs.8,22,70,213/- (difference in other payables)

> *18.1 Such an addition has been made in the following premise was appearing on pages 4 and 5 of the impugned assessment order:*

"2. The assessee company was requested to substantiate the other payables amounting Rs.30,19,86,328/- through this office notice u/s 142(1) dated 25.07.2019. As the assessee company has not complied with the notices, the other payable amount remained unsubstantiated. As per the ITRS filed by the assessee company for the A.Y. 2016-17 and 2017-18 it was observed that it had shown Rs.21,97,16,115/- as other payables as on 31.03.2016 and Rs.30,19,86,328/- as other payables as on 31.03.2017, Thus,it means that fresh liability of at least Rs.8,22,70,213/- (Rs.30,19,86,328/- minus Rs.21,97,16,115/-) arose during the F.Y. 2016-17 and at least this amount of Rs.8,.22,70,213/- had been charged in the P/L Account of F.Y. 2016-17. Since, the assessee company failed to substantiate the other payables even after availing a large number of opportunities as well as long duration of time (which was first brought to the notice of the assessee company on 25.07.2019 to substantiate it) the assessee company was required to explain why the difference amount of Rs.8,22,70,213/- (Rs.30,19,86,328/- minus Rs.21,97,15,115/-) shall not be disallowed and added to its total income and brought to tax accordingly. As the assessee company did not respond at all hence, I have decided to add Rs.8,22,70,213/- to the total income of the assessee company."

From the said para itself, it would be seen that the Assessing Officer has drawn adverse inference on the grounds of (i) increase in closing balances under the head 'other payables' and (ii) the sum in question has been charged to Profit and loss Account, as worked out hereunder:

Closing balance under the head 'other payables' as on 31.3.2017	*30,19,86,328/-*
Deduct:	
Opening balance under the head 'other payables' as on 1.4.2016(as brought forward from earlier year)	*21,97,16,115/-*
Difference	*8,22,70,213/-*

It is seen that there is a conflict between the narrations that has been referred to in the assessment order itself, for making the said addition of Rs.8,22,70,213/-. It has been mentioned in the assessment order itself that the sum in question had been charged to profit and loss account, whereas it is no so, from a perusal of the profit and loss account (figure submitted along with return itself), it would be seen that there is no such figure "charged to profit and loss account. It is a law well settled that even where the books of account had not been produced (which is equivalent to "could not be produced") the audited accounts could very well be taken as base, keeping in view the decision of Hon'ble Delhi High Court in the case

of Addi. CIT Vs. Jai Engineering reported in (1978) 113 ITR 389 (Delhi High Court), wherein their lordships have observed and held as under:-

The Income-tax authorities could, therefore, come to the conclusion that since the auditors were required by the statute to find out if the deductions claimed by the assessee in their balance-sheets and profit and loss accounts were supported by the relevant entries in their account books, the auditors must have done so and must have found that the account books supported the claims for deductions, when the deductions were disallowed, by the Income-tax Officer on the ground that detailed information regarding them was not available, justice was not done to the assessee."

**** **** **** ****

"While the word "evidence" may recall the oral and documentary evidence as may be admissible under the Indian Evidence Act, the use of the word "material" shows that the Income-tax Officer not being a court can rely upon material which may not be strictly evidence admissible under the Indian Evidence Act for the purposes of making an order of assessment. Court often take judicial notice of certain facts which need not be proved, while administrative and quasi-judicial authorities can take "official notice" of wider varieties of facts which need not be proved before him. Thus, not only in respect of the relevancy but also in respect of proof the material which can be taken into consideration by the Income-tax Officer and other authorities under the Act is for wider than the evidence which is strictly relevant and admissible under the Evidence Act."(Page-389).

**** **** **** ****

The question arises, therefore, whether the reports of the auditors could be said to be 'material on which reliance could be placed by the Income-tax authorities. Unlike the proof required of such reports as also of the account books under the Indian Evidence Act, it is quite competent for the income-tax authorities not only to accept the auditors' report, but also to draw the proper inference from the same. The income-tax authorities could, therefore, come to the conclusion that since the auditors were required by the statue to find out if the deductions claimed by the assessee's in their balance sheets and profit and loss accounts were supported by the relevant entries in their account books, the auditors must have done so and must have found that the account books supported the claims for deductions, when the deductions were disallowed, by the Income-tax Officer on the ground that detailed information regarding them was not available. Justice was not done to the assessee. It was not possible for the assessee's to produce the original account books, which were destroyed in fire. There was, however, other material mainly consisting of the auditors' reports were material. But the question of law

is well settled and is not capable of being disputed and does not, therefore, call for reference.

The Tribunal has stated that, though, ordinarily, the adjustments relating to expenses should have been made by the assessee in the accounts of the year to which the adjustments relates and noting a subsequent year, it is often inevitable that such adjustments relating to earlier years have to be made in subsequent years. This is specifically so, when the business, as of the assessee, is of giant proportions and the branches are far flung. The Tribunal has also very properly relied upon the auditor's report to draw the proper inference from the same" (Page-392).

Therefore, on this ground itself, the appeal deserves to be allowed.

NO JUSTIFICATION FOR MAKING BEST JUDGMENT ASSESSMENT

From a perusal of the discussion appearing in para 14 onwards (as appearing herein for), it is apparent that the Id. Assessing Officer has violated the settled rules and principles governing best judgment assessment by invoking of provisions of section 144 of the Act.

Express provisions of law as contained in section 144, does not permit such an arbitrary additions/disallowances as stand incorporated in ex-parte order under section 144 dated 29.11.2019 for this purpose, it is relevant to reproduce the said section itself:-

Best judgment assessment.
144. (1) *If any person-*

- *fails to make the return required under sub-section (1) of section 139 and has not made a return or a revised return under sub-section (4) or sub-section (5) of that section, or*
- *fails to comply with all the terms of a notice issued under sub-section (1) of section 142 or fails to comply with a direction issued under sub-section (2A) of that section, or*
- *having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,*

the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment:

Provided *that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment:*

Provided *further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section.*

The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.

As per the said provision, it was expressly expected from a quasi-judicial authority, as per the status granted to the Assessing Officer by the Act itself, that he should proceed in a reasonable manner and should not proceed arbitrarily, even if he is driven to make 'best judgment assessment' (to make ex-parte assessment). In the present case, he has simply referred to the notices issued from his end which remained uncomplied with (according to him), although there was justification for such a non-compliance at the end of the appellant, the foremost leading being that all such notices were not at all compliance-worthy as the same had not been meant to be served/ made known to the appellant at its Varanasi address.

In this respect, kind attention of your honour is invited to the celebrated decision of Hon'ble Supreme Court in the case of ***Dhakeswari Cotton Mills Ltd. vs. CIT reported in (1954) 26 ITR 775*** *wherein their lordships have observed and held as under:-*

> *"The ITO is not barred by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted as evidence in a Court of law, but in making the assessment under sub-s. (3) of s.23 the ITO is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under Section 23(3)."*
>
> **** **** **** ****
>
> *"In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company to rebut the material furnished to it by him, and lastly, it declined to take all the material that the assessee want to produce in support of its case. The result is that the assessee had not had a fair hearing. The*

estimate of the gross rate of profit on sales, both by the Income-tax Officer and the Tribunal, seems to be based on surmises, suspicions and conjectures. It is somewhat surprising that the Tribunal took from the representative of the department a Statement of gross profit rates of other cotton mills without showing that statement to the assessee and without giving him an opportunity to show that statement had no relevancy whatsoever to the case of the mill in question. Itis not known whether the mills which had disclosed these rates were situate in Bengal or elsewhere, and whether these mills were similarly situated and circumstances. Not only did the Tribunal not show the information given by the representative of the department to the appellant, but it refused even to look at the trunk load of books and papers which Mr. Banerjee produced before the Accountant Member in his chamber. No harm would have been done if after notice to the department the trunk had been opened and some time devoted to see what it contained. The assessment in this case and in the connected appeal, we are told, was above the figure of Rs.55 lakhs and it was meet and proper when dealing with a matter of this magnitude not to employ unnecessary haste and show impatience, particularly when it was known to the department that the books of the assessee were in the custody of the Sub Divisional Officer, Narayanganj. We think that both the Income tax Officer and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure guess and suspicion. It is thus a fit case for the exercise of our power under Article 136. (Page- 782 & 783).

In any case, the appellant begs to submit hereinafter comparative details of other payables, vis-à-vis earlier year:-

Sl. No.	*Particulars of other payables*	*As on 31.03.2016 (to the immediately preceding Year) (Rs.)*	*As on 31.03.2016 (to year under appeal) (Rs.)*
1	*Audit fees payable*	*25,000*	*25,000*
2	*Compilation of Expenses payable*	*91,000*	*5,000*
3	*Rent Payable*	*48,000*	*36,000*
4	*ROC Filing Fees Payable*		*11,500*
5	*Booking Advance*	*29,42,56,968*	*21,90,31,494*
6	*Sundry Creditors*	*67,92,132*	
7	*TDS Payable*	*73,500*	*5,76,674*
8	*Provision for Taxation*	*6,99,738*	*30,447*
	Total	***30,19,86,328***	***21,97,16,115***

However, copy of summary of current liabilities for the financial year 2016-17 relevant assessment year 2017-18 along with respective grounds marked as ***Annexure-VII*** *for your kind perusal.*

From the particulars given above, it would be seen that they are not in the nature of 'expenditure charged to Profit and loss Account' nor were in the nature of 'cash credit' simplicitor. Such liabilities/ credit balances could not be added to the income of the appellant.

Without prejudice to the submissions made above, there is Increase under the head 'current assets' in the year under appeal and also decrease in the figures of loan from others. Even if the Assessing Officer was reluctant to gather information at his own, he should have allowed set off of the said increase in current assets' and 'decrease in term loan', from the figures of net Increase under the head other payables'. This having not been done, the assessment order itself has become wholly unreasonable and vitiated in law and on facts in view of the principle laid down hereinabove.

a) The first appellate Authority has got Co terminus powers with that of the Assessing Officer, as such proceedings have always been treated to be an extension of assessment proceedings; and

b) In any case the assessee/appellant has been subjected to grave prejudice and injustice.

PRAYER

In view of the submissions made herein fore, it is respectfully prayed that

Firstly: *your honour be pleased to quash the ex-parte order dated 26.11.2019; and*

Secondly; *in any case delete the addition/disallowance for sums aggregating* ***Rs.10,87,60,305/-*** *(Rs.2,64,90,092+ Rs.8,22,70,123/-)*

so that income declared in the "return" is accepted and the demand created over and above the same is cancelled.

5c. The ld. CIT(A) partly allowed the appeal of the assessee by holding as under:

"Decision:

Appellant filed its return of income for the A.Y.-2017-18 on 30-10-2017 showing returned income Rs.23,42,610/-. AO asked the appellant to substantiate the 'term loan from others' amounting Rs.2,73,59,647/- through many notices issued u/s 142(1). Appellant did not comply with any of the notices and so questions asked for by AO remained unsubstantiated. AO rejected the books of accounts u/s 145(3) & made assessment u/s 144 of IT Act

after giving specific opportunity to the appellant as required by S. 144. AO for making the best judgment assessment analysed the data from the ITRS for the A.Y.- 2016-17 and 2017-18 where appellant had shown Rs. 8,69,555/- as 'term loans from others' as on 31-03-2016 and Rs. 2,73,59,647/- as 'term loans from other as on 31-03-2017. AO added the difference amount of Rs. 2,64,90,092/- as unexplained money u/s 69A of the Act. Similarly appellant had shown Rs. 21,97,16,115/- as 'other payables' as on 31-03-2016 andRs.30,19,86,328/- as 'other payables' as on 31-03-2017. Since, appellant failed to substantiate the 'other payables' AO disallowed the difference amount of Rs. 8,22,70,213/- and added to total income of the appellant.

Appellant's main contention is that AO has made the said addition of Rs.2,64,90,092/- owing to difference of two figures i.e. Rs. 2,73,59,647/- Rs. 8,69,555/-. However, as per Note no. 3 & 4 of the financial Accounts which read as under:-

Note No. 3 *Long Term Borrowings* *Vijaya Bank Term Loan A/c* *BabitaAgarwal (Prop. Shree Balaji Construction Company)*	 *1,48,26,962.00* *2,73,59,647.00*	 *3,17,53,511.00*
	4,21,86,609.00	***3,17,53,511.00***
Note No.4 *Other long term liabilities* *M.M. Gupta* *Umesh Chandra Gupta*	 ***---*** ***---***	 ***7,51,255.00*** ***1,18,300.00***
		8,69,555.00

there was a fresh loan of Rs. 2,73,59,647/-, and the figure of Rs. 8,69,555/- represented long term liabilities which had been fully square up. Thus, it is clear that AO has erred in adopting these figures. Secondly, the figure of Rs.2,73,59,647/- appeared on the credit side of the Balance sheet and provision of section 69A could not have been applied. Similarly for the next addition the AO has drawn adverse inference on the grounds of (1) increase in closing balances under the head 'other payables' and (ii) the sum in question has been charged to Profit and loss Account, as worked out hereunder:

Closing balance under the head 'other payables'
as on 31.3.2017 *30,19,86,328*
Deduct:
Opening balance under the head 'other payables'
As on 1.4.2016 (as brought forward from earlier year) *21,97,16,115*
Difference *8,22,70,213*

It is seen that there is a conflict between the narrations that has been referred to in the assessment order itself, for making the said addition of Rs. 5,22,70,213/-. It has been mentioned in the assessment order itself that the sum in question had been charged to profit and loss account, whereas it is not so, from a perusal of the profit and loss account (figure submitted along with return itself), it would be seen that there is no such figure "charged to profit and loss account. From the particulars given above, it would be seen that they are not in the nature of expenditure charged to Profit and loss Account' nor were in the nature of cash credit' simplicitor. Such liabilities/ credit balances could not be added to the income of the appellant.

I have gone through the facts and the written submissions filed along with the details filed enclose therein.

With regards to both the additions made, I agree with the facts given above by the appellant. AO has erred in adopting these figures while making the impugned additions as pointed out by appellant. It is also true that AO gave ample opportunities to the appellant to produce the books of accounts and supporting bills and vouchers for verification, which the appellant failed to comply with. Appellant was not ready to get their books of account examined and get their bills and supporting vouchers verified for the reason best known to them.

The A.O may proceed under Section 145(3) under any of the following circumstances:

(a) Where he is not satisfied about the correctness or completeness of the accounts; or
(b) Where method of accounting cash or mercantile has not been regularly followed by the assessee; or
(c) Accounting Standards as notified by the Central Government have not been regularly followed by the assessee.

It is legally valid proposition that once the AO reaches a conclusion that books of a/c are not available or not produced knowingly for the best reasons known to appellant for verification then book results are liable to be rejected, a fair estimate of income is required to be made on the basis of material available on record or some extraneous material like net profit rate of comparable cases. It is a fact in this case that the books of a/c were not produced and the bills and vouchers pertaining to all the expenses were not available for verification: AO has rejected the books of accounts u/s 145(3) of IT Act. On these facts and in the circumstances, best judgment assessment is required. I uphold action of AO in rejecting the books of accounts.

Hon'ble Allahabad High Court in the case of Awadhesh Pratap Singh Abdul Rehman & Bros v/s. CIT 201 ITR 406(All) held that:-

> *"It is difficult to catalogue the various types of defects in the account books of an assessee which may render rejection of account books on the*

ground that the accounts are not complete or correct from which the correct profit cannot be deduced. Whether presence or absence of stock register is material or not, would depend upon the type of the business. It is true that absence of stock register or cash memos in a given situation may not per se lead to an inference that accounts are false or incomplete. However, where a stock register, cash memos, etc., coupled with other factors like vouchers in support of the expenses and purchases made are not forthcoming and the profits are low, it may give rise to a legitimate inference that all is not well with the books and the same cannot be relied upon to assess the income, profits or gains of an assessee. In such a situation the authorities would be justified to reject the account books under section 145(2) and to make the assessment in the manner contemplated in these provisions.

Bombay High Court in the case of Bastiram Narayandas VIS. CIT (1994) 210 ITR 438 held the rejection of books of accounts justified under Section 145 and the Best Judgment assessment under Section 144 where the assessee had not produced relevant records relating to its day to day manufacture of 'bidis' Including the quantity of bidis manufactured daily, the figures of bidi leaves consumed per day in each factory and the records relating to the daily collection of CHAAT and MAPARI bidis, the Tribunal has been held correct in holding that the Income Tax Officer was not satisfied about the faimess or correctness of the accounts of the assessee. It is therefore held that the balance sheet shown by the appellant and its profit & loss a/c are to be correctly rejected being unverifiable and unsubstantiated by the appellant. Therefore, in the absence of non-production of books of account, the result in the books cannot be accepted as held by Income Tax Appellate Tribunal Chandigarh Bench in the case of The DCIT Spl. Range vs United Vanaspati Ltd. (2005) 275 ITR 124 Chd; (2004) 83 TTJ Chd 201.

The Hon'ble Allahabad High Court in the case of CIT VIS: Surjeet Singh Mahesh kumar (1994) 210 TR 83 has held that in every case of Best Judgment, the element of guess work cannot be eliminated so long as Best judgment has a nexus with material on record and discretion in that behalf has not been exercised arbitrarily or capriciously. I agree with the appellant's submission that a fair estimate of the income has to be made keeping in view surrounding facts.

However, Section 145 of the Income Tax Act 1961 lays down that income chargeable under the head "Profit and gains of business or profession" or Income from other sources shall, subject to the accounting standards notified by the Central Government in the Official Gazette, be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Subsection 3 of Section 145 lays down that where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting namely cash or mercantile systems or accounting standards

as notified by the Central Government, have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in Section 144 of the Act.

Though the broad parameters have been laid down in the Section itself under which the provisions are required to be invoked for rejection of books of account in a particular case, yet, a definite ground work is sine-qua-non on part of the Assessing Officer before resorting to the provisions of section. The Assessing Officer is required to analyse various other parameters which have the effect on the gross profit rate of the assessee for the relevant period, before drawing any conclusion on the merit of such claim. It is the duty of the Assessing Officer to pin point the malice and bring it out in the Assessment Order by marshaling the facts encompassing the same.

Further the AO's powers while estimating are not arbitrary and he must exercise his discretion and judgment judicially before making the best judgment assessment u/s 144 of the Act.

It is the well settled law that an act has to been done in accordance with the provisions of law. If it not so done, it is to be treated as if the "act has not been done at all". Hon'ble Allahabad High Court in the case of CIT vs. Kanpur Plastipack Ltd. (ITA No.238 of 2009), relevant portion of which is reproduced hereunder;- "The requirement of law is well known under a statute of certain act is required to be done in a certain manner which must be done in that manner, falling which, proceeding stands vitiated. The question of law, therefore, is decided in favour of the assessee and against the department. The appeal has no merit and is, accordingly, dismissed. No costs."

Without commenting on the correctness of these books, it can still be appreciated that the books of accounts are being maintained which were subject to audit during the year as evident from the audit report submitted by appellant. AQ could have used it as a good material to base his assessment.

Hon'ble Delhi High Court in the case of CIT vs. Jay Engineering Works Ltd. reported in (1978) 113 ITR 389 wherein their lordships have observed and held as under:-

"While the word "evidence" may recall the oral and documentary evidence as may be admissible under the Indian Evidence Act, the use of the word "material" shows that the Income-tax Officer not being a court can rely upon material which may not be strictly evidence admissible under the Indian Evidence Act for the purposes of making an order of assessment Court often take judicial notice of certain facts which need not be proved, while administrative and quasi-judicial authorities can take "official notice" of wider varieties of facts which need not be proved before

him. Thus, not only In respect of the relevancy but also in respect of proof the material which can be taken into consideration by the Income-tax Officer and other authorities under the Act is for wider than the evidence which is strictly relevant and admissible under the Evidence Act."
(389)
...The question arises, therefore, whether the reports of the auditors could be said to be 'material' on which reliance could be placed by the Income-tax authorities. Unlike the proof required of such reports as also of the account books under the Indian Evidence Act, it is quite competent for the income-tax authorities not only to accept the auditors' report, but also to draw the proper Inference from the same. The Income-tax authorities could, therefore, come to the conclusion that since the auditors were required by the statue to find out if the deductions claimed by the assessee's in their balance sheets and profit and loss accounts were supported by the relevant entries in their account books, the auditors must have done so and must have found that the account books supported the claims for deductions, when the deductions were disallowed, by the Income-tax Officer on the ground that detailed information regarding them was not available. Justice was not done to the assessee. It was not possible for the assessee 's to produce the original account books, which were destroyed in fire. There was, however, other material mainly consisting of the auditors reports were material. But the question of law is well settled and is not capable of being disputed and does not, therefore, call for reference.

The Tribunal has stated that, though, ordinarily, the adjustments relating to expenses should have been made by the assessee in the accounts of the year to which the adjustments relates and noting a subsequent year, it is often inevitable that such adjustments relating to earlier years have to be made in subsequent years. This is specifically so, when the business, as of the assessee, is of giant proportions and the branches are farflung, The Tribunal has also very properly relied upon the auditor's report to draw the proper inference from the same".

In the present case, the AO has estimated the income without any basis or any available information obtained from any Independent source and disregarding the facts available in the audit report filed with the return of income. As held by Hon'ble Court in the case of Jay Engineering (Supra), AO should have relied upon auditors' reports that constitutes relevant material for making assessment. If the books of account maintained by the appellant in accordance with the accepted system of accounting, in the regular course of his business, that have not been accepted by AO, then same books and data shown in them cannot be made the very basis for impugned additions made by AO.

There is no accounting standard or statutory provision to tax the difference of closing balance of figures of two F.Yrs. Thus all the additions so made are: made in haste without application of mind and without

passing a reasoned order, which is illegal hence the same are liable to be deleted, Appellant has specifically proved that the facts relied upon by AO while calculating the additions made are erroneous.

It is well settled legal proposition that AO must pass a reasoned and self-speaking order for expeditious justice in a meaningful manner. This is required because the orders are subject to appeal before higher authorities and courts. Orders passed by an authority without giving sufficient details of facts, applicable law, reasoning are called cryptic orders and such orders pose difficulty in further consideration in future by the same authority or any senior authority or Court.

In light of the above factual and legal position, it is clear in this case that the order of the AD is erroneous on the specificness of the both the accounting entries that AD thought could be added under IT Act. This order passed as best judgment assessment is not supported by any accounting standard or Statutory provisions. In view of the above the additions made by AD cannot be sustained on any ground. Hence the addition made is deleted. These grounds are allowed.
With regards to the additional grounds taken by appellant, same are not being adjudicated as they become academic.

Therefore, these grounds are dismissed.
Appeal is partly allowed."

6a. Now aggrieved by the appellate order passed by learned CIT(A), the Revenue has filed an appeal before the Tribunal while the assessee has filed Cross-Objections. The Ld. CIT DR opened arguments before the Bench and drew our attention to grounds of appeal raised by the Revenue before the Tribunal. It was submitted that the Ld. CIT DR that the assessment was framed ex-parte under Section 144 of the Act, as the assessee did not appeared before the AO nor filed any submissions during the course of assessment proceedings. It was submitted by ld CIT Learned D. R. that two additions were made by the AO based upon the balance sheet items, and our attention was drawn to the assessment order. It was submitted by learned CIT DR that CIT(A) has granted relief to the assessee on merits of the additions by deleting the additions, but no remand report/comments were called by the Ld. CIT(A) from the AO on the additional evidences filed by the assessee before the learned CIT(A) for the first time, as before the AO during assessment proceedings no reply was furnished by the assessee and ex-parte assessment order was passed by the Assessing Officer u/s 144. Our attention was drawn to page No. 13 of the CIT (A) appellate Order. It

was submitted that the assessee has raised fresh loan from Ms. Babita Agrawal (Prop. Shree Balaji Construction Company) to the tune of Rs.2,73,59,647/- during the year under consideration. The learned CIT DR submitted that the second addition made by the AO concerns itself with the difference between 'other payables' as part of the balance sheet, between the opening balance and closing balance, which translated in the addition to the tune of Rs. 8,22,70,213/-. It was submitted that no explanation was submitted by the assessee on both the issues before the Assessing Officer, and ld CIT(A) ought to have called remand report/comments from the Assessing Officer so that the Assessing Officer should have got an opportunity to examine/verify the claim of the assessee on merits of the additions. Reliance was placed by learned CIT Learned D. R. on section 250(2) of the 1961 Act and Rule 46A of the 1962 Rules.

6b. The Ld. Counsel for the assessee on the other hand submitted before the Bench that the assessee is engaged in the real estate business and it was submitted that the CIT(A) order should be upheld, it was submitted that territorial jurisdiction of ITO, Ward 5(2), Kolkatta who passed the order was vitiated, as the assessee was situated at Varanasi. It was submitted that the notice under Section 143(2) dated 14/08/2018 was issued by the AO situated at Kolkata and hence the assessee was having bona-fide belief that no reply was required to be filed before the AO situated at Kolkata had no jurisdiction to pass assessment order as he is not having jurisdiction of the assessee situated at Varanasi. It was submitted that notice under section 143(2) dated 14/08/2018 was issued by the Assessing Officer situated at Kolkata, and hence the assessee was having bona-fide belief that no reply was required to be filed before the AO viz. ITO, Ward 5(2], Kolkata , as the ITO, Ward 5(2) , Kolkatta lacked jurisdiction, and the correct AO to frame assessment order against the assessee was the AO situated at Varanasi, and hence the AO who passed the assessment order viz. The ITO, Ward 5(2), Kolkatta was not having jurisdiction to pass the assessment order, and the entire assessment order passed by the AO is liable to be quashed as the ITO, Ward 5(2), Kolkatta lacks jurisdiction. It was submitted that learned CIT(A), Varanasi has gone through the entire evidences and rightly deleted the additions as were made by the AO. It was submitted by Id. Counsel for the assessee that Section 69A has no applicability, and the ITO , Ward 5(2), Kolkatta wrongly applied Section 69A. It was submitted by Id. Counsel for the assessee that return of income was filed with ACIT,

Range 2,. Our attention was drawn by Id. Counsel for the assessee to page No. 72 of the paper book. Our attention was also drawn to page No. 314 of the paper book wherein Certificate of Registration issued by Registrar of Companies, Kanpur dated 01.09.2017 u/s 13(5) of the Companies Act, 2013 , regarding Change of office of the assessee company from State of West Bengal to State of Uttar Pradesh vide order of Regional Director dated 17.08.2017 is placed, and it was submitted that there was a change of Registered Office of the company, from State of West Bengal to Varanasi, U.P.. (page 221-313 missing in the PB) . It was submitted that notice under Section 143(2) was issued by ITO, Ward 5(2), Kolkatta, on'14th August, 2018. Our attention was also drawn by learned Counsel for the assessee to the provisions of Section 124(4) of the Act. It was submitted that the assessee filed reply on 29.11.2019, wherein it challenged the jurisdiction of the AO to frame assessment order. It was submitted that the AO did not took cognizance of this reply, and the assessment order was passed u/s 144 on 26.11.2019 without considering reply filed on 29.11.2019. It was submitted that the assessment order was digitally signed by AO on 29.11.2019 at 7.26PM(Page 358/PB) . At this stage , the Bench drew attention of Id. Counsel for the assessee to provisions of Section 124(3)(a) of the 1961 Act The Id. Counsel for the assessee fairly submitted that the assessee did not challenge the jurisdiction of the ITO Ward 5(2), Kolkatta to frame assessment in the instant case , within one month of the receipt of notice u/s 143(2), dated 14.08.2018, as is stipulated u/s 124(3)(a). It was submitted that the assessee duly received the notice dated 14.08.2018 issued by the AO u/s 143(2) of the 1961 Act. It was submitted that that the assessee changed registered office from West Bengal to Uttar Pradesh , effective from 17.08.2017. The PAN change application for changing address was filed by assessee, on 22.09.2017. Our attention was drawn to page 314/315 of the PB filed by the assessee: The notice u/s 143(2) was issued by AO on 14.08.2018. The objections as to jurisdiction was raised by the assessee before the AO on 29.11.2019, while the AO framed the assessment order on 26.11.2019. It was submitted by Learned counsel for the assessee that the assessee replied to show cause notices on 29th November, 2019 and after receiving the aforesaid reply, the assessment order was passed by the AO on 29.11.2019 by digitally signing on 29.11.2019 at 7.30PM, while the assessment order is dated 26.11.2019.

6c. Our attention was drawn by Id. CIT-DR to page 73/74 of the PB wherein computation of income is placed, and it was submitted that the assessee filed return of income for the impugned assessment year on 30.10.2017 , and the jurisdiction of the AO is stated to be WBG-W-105-2. Our attention was also drawn to Page 358/PB filed by the assessee, and it was submitted that digital signatures were affixed by the AO viz. ITO Ward 5(2), Kolkatta on 29th November, 2019, while assessment order was passed on 26.11.2019. Reliance was placed by Id. CIT DR on the provisions of Section 292BB. The Id. CIT DR relied upon provision of Section 124(3) (a).

6d. It was submitted by Id. Counsel for the assessee that provision of Section 124(3)(a) of the 1961 Act has no applicability. It was submitted that the Id. CIT(A) did not adjudicated on jurisdictional issue and granted relief to the assessee by adjudicating the issues of the two additions made by the AO by deleting both the additions on merits. The Learned counsel for the assessee submitted that Section 124 is not applicable , and there is an inherent defect in the assessment order passed by the AO, as it was passed by AO having no territorial jurisdiction over the assessee. It was submitted that learned CIT(A) was seized of the matter. It was submitted that learned CIT(A) was having material before him to consider and adjudicate the additions made by the AO on merits , and after considering the entire material on record, the Id. CIT(A) gave relief to the assessee by deleting both the additions on merits of the ***additions.*** *It was submitted that Id.- CIT(A) observed that an ex-parte assessment order was passed by the AO u/s 144 . It was submitted by Id. Counsel for the assessee that the assessee was earlier located in Kolkata and Ld. AO was also in Kolkata who was having the jurisdiction over assessee. It was submitted that the assessee shifted registered office on 17.08.2017 as per order of Regional Director(MCA), from the State of West Bengal to the State of Uttar Pradesh, which was registered by ROC, Kanpur on 01.09.2017. It was submitted that return of income for ay:2017-18 was filed on 30.10.2017 electronically(Page 72/PB). It was submitted that notice u/s 143(2) was issued by ITO, Ward 5[2], Kolkata on. 14.08.2018. It was submitted by Id. Counsel for the assessee that the said notice dated 14.08.2018 was served on the assessee through ITBA system and the address mentioned in the said notice was of the Varanasi (The assessee has not enclosed copy of any of the notices issued by the AO during assessment proceedings) . It was submitted that the AO viz.*

ITO , Ward 5(2), Kolkatta lost jurisdiction of the case much before the issuance of notice under Section 143(2) of the Act on 14th August, 2018. It was submitted that the registered office was shifted on 17.08.2017(Page 314/PB) and the assessment year under consideration is ay: 2017-18 and previous year is 2016-17. It was submitted that the registered office was shifted after the closure of the previous year. It was submitted that return of income was filed on 30.10.2017 and was filed with ACIT, Range 2, on 30.10.2017. It was submitted that ITO, Ward 5(2), Kolkatta issued notice u/s 143(2), on 14.08.2018, and the AO was lacking territorial jurisdiction. It was submitted that monetary limit for the ITO, Ward 5(2) , Kolkatta , to frame assessment was where return of income was having income upto Rs. 20 lacs, while the return of income filed by the assessee was having income declared of Rs. 23,42,636/- and hence ITO, Ward 5(2), Kolkatta was not having the competence to pass assessment order as the monetary limit to frame assessment was returned income upto Rs. 20 lacs while the returned income in the case of the assessee was exceeding Rs. 20 lacs. Our attention was drawn to page 67/PB(Paper Book filed on 7th February, 2023) and it was submitted that AO, Kolkatta , can only take up assessment where the returned income is upto Rs. 20 lacs(as the assessee is based in Varanasi) (Instruction No. l/2011(F.No. 187/12/2010-IT(A-1), dated 31.01.2011). It was submitted that there is a legal infirmity in the assessment order as principles of natural justice has not been adhered to while passing the assessment order , and the assessment order was passed by AO on 29th November, 2019 without considering the objections/reply filed by the assessee on 29.11.2019(Page 316-319/PB). The evidence of filing the above objection through e-portal of department, is placed at Page 320/PB. It was submitted that the assessment order passed by the AO was dated 26th November, 2019 , while digital signatures were affixed on 29.11.2019 at 7.26PM(Page 358/PB). It was submitted that the assessee did not participated through out in the assessment proceedings , but on 29.11.2019 above reply was duly filed with AO through departmental portal which was not considered by AO while passing assessment order. The Id. Counsel for the assessee submitted that the when there was a question of jurisdiction of the AO, it was incumbent on the AO to have referred the matter to the higher authorities. It was submitted that the appeal filed by Revenue lacks me.rit and need to be dismissed. Reliance was placed by Id. Counsel for the assessee on the decision of ITAT, Cuttack in the case of Khirod Kumar Pattnaik v. ITO, in ITA No. 380/CTK/2019, dated 10.12.2020.

Reliance was also placed on the decision of Hon'ble Supreme Court in the case of Kanwar Singh Saini v. High Court of Delhi , in Criminal Appeal No. 1798 of 2009, dated 23.09.2011.

6e. The Id. CIT-DR, on the other hand , submitted that notice dated 14th August, 2018 issued by AO to the assessee under Section 143(2) was duly received by the assessee, and the assessee had ample time to appear before AO to raise the jurisdiction issue of the AO. It is only on 29th November, 2019, the assessee filed reply before the AO raising the objection as to jurisdiction of the AO, but by that time assessment order was already passed on 26th November, 2019 . It was submitted by Id. CIT DR that digital signatures were affixed by AO on assessment order- on 29th November, 2019, but the assessment order was passed on 26.11.2019. It was submitted that assessment were completed on the system , and even order numbers are generated online through ITBA on 26.11.2019.The assessee filed reply on 29.11.2019 which was only after assessment order was passed on 26.11.2019, and it is only digital signatures which were affixed on 29.11.2019. It was submitted that objections u/s 124(3)(a) could have been raised by the assessee within one month of issuance of notice u/s 143(2). It was submitted by Id. CIT DR that the PAN is linked with AO,Kolkatta It was submitted that the monetary limit for ITO, Kolkatta , to frame assessment is returned income of upto Rs. 30 lacs and not Rs. 20 lacs as stated by Id. Counsel for the assessee. The Id. CIT DR relied upon decision dated 14.07.2022 of Hon'ble Allahabad High Court in the case of Shivaaditya- Jems and Jewellery Private Limited in Writ Tax No. 1047 of 2021(Para 20). It was submitted that hearing before Assessing Officer held on 06.09.2018, 03.04.2019, 01.08.2019, 14.10.2019 and 11.11.2019, but the assesse did not respond to the notices issued by AO for hearing, rather the assessee is claiming that it did not had to respond to the ITO, Kolkatta. It was submitted that the order was not antedated, and under the new e-system due to technology , the order cannot be manipulated, antedated , and the date of assessment order is correct viz. 26.11.2019. It was submitted by Id. CIT DR that all the notices u/s 143(2), 142(1) and 144, were rightly issued by AO, and it is the assessee who did not participated in the assessment proceedings conducted by AO. The Id. CIT DR submitted that relief was granted by Id. CIT(A) on the merits of the additions , by admitting additional evidences filed by the assessee for the first time before Id. CIT(A), while no remand report/comments were called from AO by Id. CIT(A) w.r.t. additional evidences filed by

the assessee for the first time before Id. CIT(A), and thus there is an infringement of Rule 46A of the Income-tax Rules, 1962. The Id. CIT DR submitted that the assessee did not participated in the hearings before the AO, as no reply was submitted by the assessee before the AO. The assessee did not file any reply before the AO during entire assessment proceedings, and now it is claimed that on 29.11.2019, the assessee filed reply electronically before the AO, which was in any case filed after completion of assessment, was the contentions of Id. CIT DR. It was submitted by Id. CIT DR that assessment was framed by AO u/s. 144, as he has no choice because the assessee did not participated in the assessment proceedings and no reply was filed before completion of assessment proceedings, and the AO has no choice but to go through the available material on record viz. the balance sheet and make the additions based on the figures reported in Balance Sheet . Our attention was drawn to ex-parte assessment order passed by the AO, and the two additions made by the AO. Our attention was also drawn by Id. CIT DR to the appellate order passed by Id. CIT(A) deleting the additions. It was submitted that the assessee raised fresh loan of Rs. 2,73,59,647/- from Mrs. Babita Agrawal. Our attention was drawn to Page 94/PB where audited financial statement is placed(Long Term Borrowings/Note-3 to audited financial statements) . It was submitted that no reply was filed before AO to satisfy the mandate of Section 68, while Id. CIT(A) deleted the additions based on additional evidence filed by the assessee for the first time before Id. CIT(A) without calling for remand report/comments from the AO. The Id. CIT DR relied upon provisions of Section 250(1) and 250(2) of the 1961 Act, and Rule 46A of the 1962 Rules, and prayers were made that the matter can be restored to the file of the AO for denovo assessment.

6f. The Id. Counsel for the assessee submitted that change in address was duly intimated to department by filing PAN amendment form, which was filed on 22.09.2017. (page 315/PB). The Id. Counsel for the assessee submitted that date of digital signature on assessment order is relevant . It was submitted that reply dated 29.11.2019 was not taken into consideration by the AO while framing assessment order. The Id. Counsel for the assessee submitted that the assessee was located in Varanasi, and hence the monetary limit of Varanasi of returned income upto Rs. 20 lacs will be applicable although it is ITO, Kolkatta who framed the assessment order. It was submitted by Id. Counsel for the assessee that the AO lacked territorial jurisdiction

over the assessee as well the AO lacked monetary limits to frame assessment order as returned income of the assessee was Rs. 23 lacs + , while monetary limit as applicable was Rs.20 lacs returned income to frame assessment by ITO. The Id. Counsel for the assessee relied upon appellate order dated 16.11.2022 in the case of Amiya Gopal Dutta v. DCIT , in ITA No. 126/Kol/2022. The Id. Counsel for the assessee submitted that Section 69A invoked by the AO has no applicability, as the amounts are recorded in books of accounts.lt was submitted by Id. Counsel for the assessee that the assessee received Rs. 29,42,56,958/- as booking advances and the said amount is not routed through P&L Account. The Id. Counsel for the assessee drew our attention to the appellate order passed by Id. CIT[A]. The Id. Counsel for the assessee submitted that Id. CIT(A) called for the records . It was submitted that the confirmation of Mrs. Babita Agrawal was filed and other details were filed, before Id. CIT(A). Our attention was drawn to page 164-220 of PB , and it was submitted that these details were before Id. CIT(A). It was fairly submitted that these details were not filed by the assessee before the AO, and were filed for the first time before Id. CIT(AJ. It was submitted by Id. Counsel for the assessee that the Id. CIT(A) deleted the two additions on merits as were made by AO based on evidence on record, and the appeal filed by Revenue is mechanical and ought to be dismissed. Reliance was placed on the decisions of ITAT , Delhi in the case of Bharti Airtel Limited v. ACIT, in ITA No. 5816/del/2012, dated 11.03.2014. The Id. Counsel for the assessee prayed for upholding of appellate order passed by Id. CIT[A).

7. We have considered rival contentions and perused the material on record including cited case laws. We have observed that the assessee filed its return of income electronically on 30.10.2017 with Revenue for impugned assessment year with returned income of Rs. 2 3,42,610/-. The return of income was selected by Revenue for framing scrutiny assessment under CASS. The ITO, Ward 5 [2] , Kolkatta issued notice dated 14.08.2018 u/s 143(2) of the 1961 Act to the assessee. Thereafter, several notices u/s 142(1) as well SCN's were issued by the AO viz. ITO, Ward 5(2), Kolkatta to the assessee, but the assessee never responded to the said notices/SCN's, which culminated into an ex-parte assessment order dated 26.11.2019 passed by ITO, Ward 5(2), Kolkatta u/s 144 of the 1961 Act, wherein the income assessed by the AO was Rs. 11,11,02,915/- as against returned income of Rs. 23,42,610/-. The said assessment order was digitally signed by the AO

on 29.11.2019, and the assessee has claimed that it filed reply on 29.11.2019 raising challenge to the jurisdiction of the AO to frame assessment , but the said reply was not considered by the AO. The assessee is claiming that its Registered Office stood shifted from the State of West Bengal- to the State of Uttar Pradesh w.e.f. 17.08.2017 vide order of Regional Director, and a certificate of Registration of Regional Director(MCA) order for change of State (PB/Page 314) was issued by Registrar of Companies (MCA) on 01.09.2017 .The assessee has claimed that it duly intimated the department by filing change in PAN particulars by intimating change of address from the State of West Bengal to the State of Uttar Pradesh(PB/Page 315). The preliminary challenge is raised to the jurisdiction of the ITO, Ward 5(2), Kolkatta, to frame assessment against the assessee, as it is claimed that the assessee is now based at Varanasi in the State of U.P. and hence AO based at Varanasi shall be having jurisdiction over the assessee, and not the ITO, Ward 5(2), Kolkatta. It is claimed that return of income was filed on 30.10.2017 , while change of address from State of West Bengal to State of Uttar Pradesh , took place effective from 17.08.2017 vide order of Regional Director(MCA). The AO viz. ITO, Ward 5(2), Kolkatta issued notice u/s 143(2) on 14.08.2018. This contention of the assessee lacks merit on two counts, firstly that the assessee is a company , and jurisdiction of the assessee company shall vide Section 124(1) (a) lie in respect of the person carrying on a business or profession, if the place at which he carries on his business or profession is situated within the area , or where his business or profession is carried out in more places than one , the jurisdiction of the AO where the principle place of his business or profession is situate within the area. Section 124(2) , inter-alia, provides that where a question arises as relating to an area within the jurisdiction of different Principal Directors General or Director Generals or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioner concerned or, if they are not in agreement, by the Board or by such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may , by notification in the Official Gazette , specify. The assessee filed PAN intimation form for intimating change of address, from State of West Bengal to State of Uttar Pradesh, on 22.09.2017. There is stark difference between intimation of change of address in PAN data base as sought by the assessee vide its application dated 22.09.2017, and seeking change of

*jurisdiction of AO from one place to another(i.e. from jurisdiction of one State to another State). The tax-payer can intimate change of address by filing change in PAN data base, and the change of address is updated by the department in their PAN data base, but so far as jurisdiction of AO is concerned , it shall lie where the principal place of business of the tax-**payer** is situated, in cases where the business or profession is carried out at more than one place. Reference is drawn to provisions of Section 124(1) (a). This requires an application to be made by the assessee for change of jurisdiction of the AO , from State of West Bengal to State of U.P., which will entail an enquiry as to where the principal place of business of the assessee is situated, as now the proposed jurisdiction to State of U.P. falls under the jurisdiction of different Principal Directors General or Director Generals or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioner concerned , and both the Principal Directors General or Director Generals or Directors General or Principal Chief Commissioners or - Chief Commissioners or Principal Commissioners or Commissioner concerned of the State of U.P. and also of the State of West Bengal have to agree and be at ad-idem that the principal place of business falls under the State of U.P. before any change of jurisdiction of AO is permitted, and then only the AO who shall exercise jurisdiction shall be the AO situated at Varanasi , once an order of change of jurisdiction from AO situated at Kolkatta to AO situated at Varanasi, U.P. was passed by aforesaid Principal Directors General or Director Generals or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioner concerned of both the States , and in case of any divergence , then by the Board or by such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette , specify. In the instant case, the assessee merely intimated change of address in PAN database vide'application dated 22.09.2017, and no **such** application was filed by the assessee seeking change of jurisdiction of the AO from State of West Bengal to State of U.P.. Merely because the registered office is changed from State of West Bengal to State of U.P. , may not entail change of jurisdiction of AO from State of West Bengal to State of U.P., unless after an enquiry conducted by Revenue by designated officers as above of both the States, it is found that principal place of business of the assessee is situated in the State of U.P.. No such application was filed by the*

assessee for seeking change of the jurisdiction of AO from one State to another, nor any such enquiry was conducted by Revenue in the absence of any request made by the assessee. Thus, merely intimating change of address in PAN data base is not sufficient. Say for example, the tax-payer is assessed to tax in the State of Haryana as the assessee is having an industrial unit in Haryana and registered office is also situated in Haryana. , and the said tax-payer transferred the registered office to Chennai in State of Tamil Nadu as the Managing Director resides in Chennai , while all economic activities and principal place of business is in the State of Haryana . The Revenue may refuse to shift jurisdiction of the AO from the State of Haryana to State of Tamil Nadu, as all the economic activities are carried out in the State of Haryana and principal place of business viz. industrial unit is located in the State of Haryana, while merely for sake of maintaining statutory records the Registered Office is shifted to the State of Tamil Nadu. Thus, since the assessee in the instant case never sought change of jurisdiction of the AO from State of West Bengal to State of U.P., as also the assessee did not demonstrated that its principal place of business by way of major economic interest is in the State of U.P. before the tax-authorities, then in our considered view, the AO situated at Kolkatta who ***was*** *exercising jurisdiction prior to shifting of registered office of the assessee from State of WB to State of U.P., rightly exercised jurisdiction over the assessee. Further, Section 124(3](a) clearly and unequivocally states that no person shall be entitled to call in question the jurisdiction of the AO , where the return of income has been filed, inter-alia, after the expiry of one month ' from the date when the said person is served with notice u/s 143(2). The assessee has electronically filed return of income on 30.11.2017 , and the ITO, Ward 5(2], Kolkatta was the jurisdictional AO. The case of the assessee was selected for framing scrutiny assessment under CASS. The ITO, Ward 5(2), Kolkatta issued notice elated 14.08.2018 u/s 143(2) to the assessee, which was admittedly served on the assessee. On its part, the assessee never challenged the jurisdiction of the ITO, Ward 5(2), Kolkatta , within one month from the date of service of notice u/s 143(2), and hence the assessee is now debarred to raise challenge to the jurisdiction of ITO, Ward 5(2), Kolkatta to pass assessment order in the case of the assessee , and hence we hold that assessment order dated 26.11.2019 passed by ITO, Ward 5(2), Kolkatta, does not suffer from any infirmity as to jurisdiction of ITO, Ward 5(2), Kolkatta. The assessee has raised the contention that it raised jurisdictional issue challenging jurisdiction*

of ITO, Ward 5(2), Kolkatta to frame assessment vide reply dated 29.11.2019, but this reply is much belated which was filed much after one month of the service of notice u/s 143(2) dated 14.08.2018. Thus, there is no merit in the contention of the assessee. Now, coming to the issue of the monetary powers of the ITO, Ward 5(2), Kolkatta, to frame assessment against the assessee. We have gone through CBDT instruction number 1/2011 (F.No. 187/12/2010-IT(A-1)) , dated 31.01.2011, and we have observed that in Metro cities, the cases upto income declared of Rs 30 lacs by corporate assessee's can be assigned to ITOs. The Metro charges for the purposes of above instruction, inter-alia, include Kolkatta. The assessee is a corporate entity and has filed return of income for the impugned assessment year declaring income of Rs. 2342,610/- which is less than Rs. 30 lacs, and hence we hold that ITO, Ward 5(2), Kolkatta has the powers to frame assessment in the case of the assessee for the impugned assessment year. This contention of the assessee is also rejected. Now, since we have upheld the jurisdiction of ITO, Ward 5(2), Kolkatta to frame assessment in the case of the assessee, then first appeal arising from the assessment order dated 26.11.2019 passed by ITO, Ward 5(2), Kolkatta, shall lie with jurisdictional CIT(A) located at Kolkatta. The assessee has filed an appeal with Id. CIT(A), Varanasi, and in our considered view, the Id. CIT(A), Varanasi had no jurisdiction to pass an appellate order dated 23.09.2020 , and this appellate order passed by Id. CIT(A) is non-est as Id. CIT(A) lacks inherent and territorial jurisdiction over the assessment order passed by the ITO,Ward 5(2), Kolkatta. Under these circumstances, we set aside the appellate order dated 23.09.2020 passed by Id. CIT(A), Varanasi. However, we are inclined to give liberty to assessee to file an first appeal with jurisdictional Id. CIT(A), Kolkatta, if so advised, and delay for filing the first appeal by assessee before Id. CIT(A) shall be condoned by jurisdictional Id. CIT(A), Kolkatta, as in our considered view the assessee had under bonafide belief filed and pursuing first appeal with Id. CIT(A), Varanasi, owing to change in the Registered Office from State of West Bengal to State of Uttar Pradesh. Filing of legal proceedings at the correct forum having jurisdiction is the fundamental and cardinal principle and back bone of robust judicial delivery system. Reference is drawn to the decision of Hon'blel Supreme Court in the case of ***PCIT v. ABC Papers Limited , reported in (2022) 141 taxmann.com 332(SC).*** *The second appeal from the appellate order passed by jurisdictional CIT(A), Kolkatta shall lie with ITAT, Kolkatta Benches, Kolkatta, and an appeal u/s 260A from the*

appellate order to be passed by ITAT, Kolkatta Benches, Kolkatta shall lie with Hon'ble High Court of Calcutta. So far as merit of the additions are concerned, for the sake of completeness;, we have observed that the assessee did not file any reply before the AO during assessment proceedings to various queries raised by the ITO, Ward 5(2), Kolkatta, aV the assessee never participated in assessment proceedings . The ITO, Ward 5(2), Kolkatta issued several notices and SCNs to the assessee, but none stood replied by the assessee. An ex-parte assessment order was passed by the AO u/s 144 of the 1961 Act, on 26.11.2019. The digital signatures were affixed by the AO on 29.11.2019 at 7.26 PM. The assessee has claimed that it filed reply on 29.11.2019 which was not considered by the AO. Be that it may be, the said reply mainly challenges the jurisdiction of the AO to frame assessment, and there is no replies on the issues raised on merit by the AO in his notices as well SCN's. The assessee has for the first time filed replies/evidences with respect of the additions made by the AO on merits, before Id. CIT(A) and the Id. CIT(A) did not sought remand report/comments from the AO as to additional evidences filed by the assessee for the first time before the Id. CIT(A), and additions were deleted by Id. CIT(A). There is clearly breach of Section 250(1) and 250(2) of the 1961 Act, as well there is a breach of Rule 46A of the 1962 Rules, and hence even on this count the appellate order passed by Id. CIT(A),Varanasi is not sustainable. ***Thus,*** *we are setting aside and quashing the appellate order passed by Id. CIT(A), Varanasi as non-est, and we hold that Id. CIT[A] , Varanasi lacked the jurisdiction to pass the appellate order dated 23.09.2020. However, we are granting liberty to the assessee to file first appeal with jurisdictional CIT(A), Kolkatta, if so advised, immediately on the receipt of this order, and in that event the Id. CIT(A), Kolkatta shall condone the delay in filing the first appeal, and adjudicate the same on merits in accordance with law. With the aforesaid directions both the appeal filed by the Revenue as well C.O. filed by the assessee stands disposed off. We order accordingly.*

8. Thus, the appeal filed by Revenue in ITA no. 135/Vns/2020 for ay: 2017-18 and C.O. No. 04/Vns/2021 for ay: 2017-18 filed by the assessee, stands disposed off in terms of our aforesaid order."

PER VIJAY PAL RAO, J.M.

Unable to agree with the finding and conclusion reached by Ld. Brother, I proceed to write my separate order.

2. I have gone through the order authored by Ld. Brother (AM) and given my de-thought to the reasoning, view and finding of my Ld. Brother but I could not able to agree and concur with the reasoning, view and finding of Ld. AM.

3. At the outset, it is pertinent to note that the impugned assessment order was passed by ITO, ward 5(2), Kolkata therefore, territorial jurisdiction of the appellate authorities including the Income Tax Appellate Tribunal is vested with the Kolkata, Benches under whose jurisdiction the Ld. AO who has passed the assessment order located. The jurisdiction of appellate authorities including tribunal as well as the Hon'ble High Court is determined based on the location of the Ld. AO who has passed the assessment order and therefore, irrespective of the validity of the assessment order the jurisdiction to entertain the appeal against the assessment order lies with the Income Tax Appellate Tribunal having tutorial jurisdiction over the Ld. AO who has passed the impugned order.

4. The Hon'ble Supreme Court in the case of *Pr. CIT vs. ABC, Papers Ltd. 447 ITR 1* has analysed the relevant provision of Income Tax in detail and ruled that the appeal against decision of ITAT shall lie before the High Court under whose jurisdiction the Ld. AO who passed the assessment order is situated. The relevant finding of Hon'ble Supreme court in para 25 to 34 is as under:

> *"25. The reasoning adopted by the High Court of Delhi in Sahara is based only on the meaning that it attributed to the expression 'cases' in the Explanation to Section 127(4) of the Act. The High Court of Delhi was of the view that 'cases' must include within its sweep, not only the*

cases pending before the Authorities enlisted under Section 116 of the Act, but also the proceedings before the ITAT as well as a High Court. We are of the opinion that the High Court of Delhi has misread the scope and ambit of Section 127.

26. We will explain this in detail. Section 127 occurs in Chapter XIII of the Act which relates to Income Tax Authorities. In the same chapter, Section 116 enlists the Income Tax Authorities and Section 120 specifies the jurisdiction of such Authorities. While Section 124 specifically speaks of the jurisdiction of Assessing Officers, Section 127 enables a higher authority to transfer a 'case' from one Assessing Officer to another Assessing Officer. All these provisions in Chapter XIII only relate to the executive or administrative powers of Income Tax Authorities. We have no hesitation in our mind that the vesting of appellate jurisdiction has no bearing on judicial remedies provided in Chapter XX of the Act before the ITAT and the High Court. The mistake committed by the High Court was in assuming that the expression "case" in the Explanation to Sub- Section 4 of Section 127 has an overarching effect and would include the proceedings pending before the ITAT as well as a High Court. This fundamental error has led the Division Bench of the High Court of Delhi to come to a conclusion that an order of transfer made under Section 127 would have the effect of transferring the case "lock, stock and barrel" not only from the jurisdiction of the ITAT, but also from that of the High Court in which the Assessing Officer was located, and vest it in the High Court having jurisdiction over the transferee Assessing Officer. This erroneous interpretation was in fact advanced before other High Courts as well, but they were rejected straightaway. One instant example is the case of CIT v. Parke Davis (India) Ltd.22, where the Andhra Pradesh High Court held: -

"...The interpretation sought to be placed on the Explanation to section 127 leads to incongruous results quite contrary to the scheme of the Act and has the effect of investing the prescribed authorities with the power to virtually interfere with the territorial jurisdiction of the concerned High Court. ..."

27. With a slight digression from the main issue, we may note that the Assessee as well as the Revenue are on the same page in these appeals, taking the view that the decision of the High Court of Delhi in Sahara is not correctly decided. They may be right. However, as there was no serious contest at the bar, the principle suggested by the Assessee as accepted by the Revenue did not suffer strict scrutiny as is always the case in any contested case, and therefore, the Court is left to

imagine the contrary proposition in support of the view taken in Sahara. We had no difficulty in conceptualising that, since every judge had once been a lawyer. We have raised and dealt with them in the following paragraphs.

28. Returning to the analyses in the decision in Sahara, we have noticed that the Division Bench of the High Court of Delhi sought to distinguish the two decisions of the very same High Court in Suresh Desai and Digvijay Chemicals on the ground that those cases did not involve the transfer of cases of the very same assessment year. We will reformulate this as a proposition of law. If it is the accepted principle to determine the jurisdiction of a High Court under Section 260A of the Act on the basis of the location of the Assessing Officer who assessed the case, then, by the strength of the very same logic, upon transfer of a case to another Assessing Officer under Section 127, the jurisdiction under Section 260A must be with the High Court in whose jurisdiction the new Assessing Officer is located. A logical extension of this argument is that, once the case is transferred to an Assessing Officer situated outside the jurisdiction of the existing High Court, the entire files relating to the case should now be in the possession and custody of the new Assessing Officer. It could be argued that the Assessing Officer who exercised the jurisdiction before its transfer will not be in a position to assist the High Court, further, he cannot implement the decision of that High Court, after it decides the question of law as he is no more the Assessing Officer. We will now proceed to deal with these arguments.

29. The binding nature of decisions of an appellate court established under a statute on subordinate courts and tribunals within the territorial jurisdiction of the State, is a larger principle involving consistency, certainty and judicial discipline, and it has a direct bearing on the rule of law. This 'need for order' and consistency in decision making must inform our interpretation of judicial remedies. An important reason adopted in the case of Seth Banarasi Dass Gupta, further highlighted by Justice Lahoti in Suresh Desai, is that a decision of a High Court is binding on subordinate courts as well as tribunals operating within its territorial jurisdiction. It is for this very reason that the Assessing Officer, Commissioner of Appeals and the ITAT operate under the concerned High Court as one unit, for consistency and systematic development of the law. It is also important to note that the decisions of the High Court in whose jurisdiction the transferee Assessing Officer is situated do not bind the Authorities or the ITAT which had passed orders before the transfer of the case has taken place. This creates an anomalous situation, as the erroneous principle adopted by the

authority or the ITAT, even if corrected by the High Court outside its jurisdiction, would not be binding on them.

30. The legal structure under the Income Tax Act commencing with Assessing Officer, the Commissioner of Appeals, ITAT and finally the High Court under Section 260A must be seen as a lineal progression of judicial remedies. Culmination of all these proceedings in question of law jurisdiction of the High Court under Section 260A of the Act is of special significance as it depicts the overarching judicial superintendence of the High Court over Tribunals and other Authorities operating within its territorial jurisdiction.

31. The power of transfer exercisable under Section 127 is relatable only to the jurisdiction of the Income Tax Authorities. It has no bearing on the ITAT, much less on a High Court. If we accept the submission, it will have the effect of the executive having the power to determine the jurisdiction of a High Court. This can never be the intention of the Parliament. The jurisdiction of a High Court stands on its own footing by virtue of Section 260A read with Section 269 of the Act. While interpreting a judicial remedy, a Constitutional Court should not adopt an approach where the identity of the appellate forum would be contingent upon or vacillates subject to the exercise of some other power. Such an interpretation will clearly be against the interest of justice. Under Section 127, the authorities have the power to transfer a case either upon the request of an assessee or for their own reasons. Though the decision under Section 127 is subject to judicial review or even an appellate scrutiny, this Court for larger reasons would avoid an interpretation that would render the appellate jurisdiction of a High Court dependent upon the executive power. As a matter of principle, transfer of a case from one judicial forum to another judicial forum, without the intervention of a Court of law is against the independence of judiciary. This is true, particularly, when such a transfer can occur in exercise of pure executive power. This is a yet another reason for rejecting the interpretation adopted in the case of Sahara.

32. For the reasons stated above, we hold that the decision of the High Court of Delhi in Sahara and Aar Bee do not lay down the correct law and therefore, we overrule these judgments.

33. In conclusion, we hold that appeals against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the Assessing Officer who passed the assessment order is situated. Even if the case or cases of an assessee are transferred in exercise of power under Section 127 of the Act, the High Court within whose jurisdiction the Assessing Officer has passed the order, shall continue to exercise

the jurisdiction of appeal. This principle is applicable even if the transfer is under Section 127 for the same assessment year(s).

34. We will now deal with the decisions of certain High Court which have taken a view that the jurisdiction of the High Court must be based on the location of the ITAT. These judgments are CIT v. Parke Davis (India) Ltd.23, CIT v. A.B.C. India Ltd.24, CIT v. J.L. Marrison (India) Ltd.25, CIT v. Akzo Nobel India Ltd.26, Pr. CIT v. Sungard Solutions (I) Pvt. Ltd.27 and CIT v. Shree Ganapati Rolling Mills (P) Ltd.28 We have examined these cases in detail and found that the Assessing Officers in each of these cases were in fact not located within the territorial jurisdiction of these High Courts. For this reason, the aforesaid decisions are correct to the extent of these High Courts not exercising jurisdiction. However, while returning the files to be represented in the appropriate court, certain observations were made stating that the appeals could be filed in the High Court which exercises territorial jurisdiction over the concerned ITAT. These observations are only obiter. In any event they did not preclude the party from filing the appeal before the appropriate High Court where the Assessing Officers exercised jurisdiction. However, we are reiterating for clarity and certainty that the jurisdiction of a High Court is not dependent on the location of the ITAT, as sometimes a Bench of the ITAT exercises jurisdiction over plurality of states.

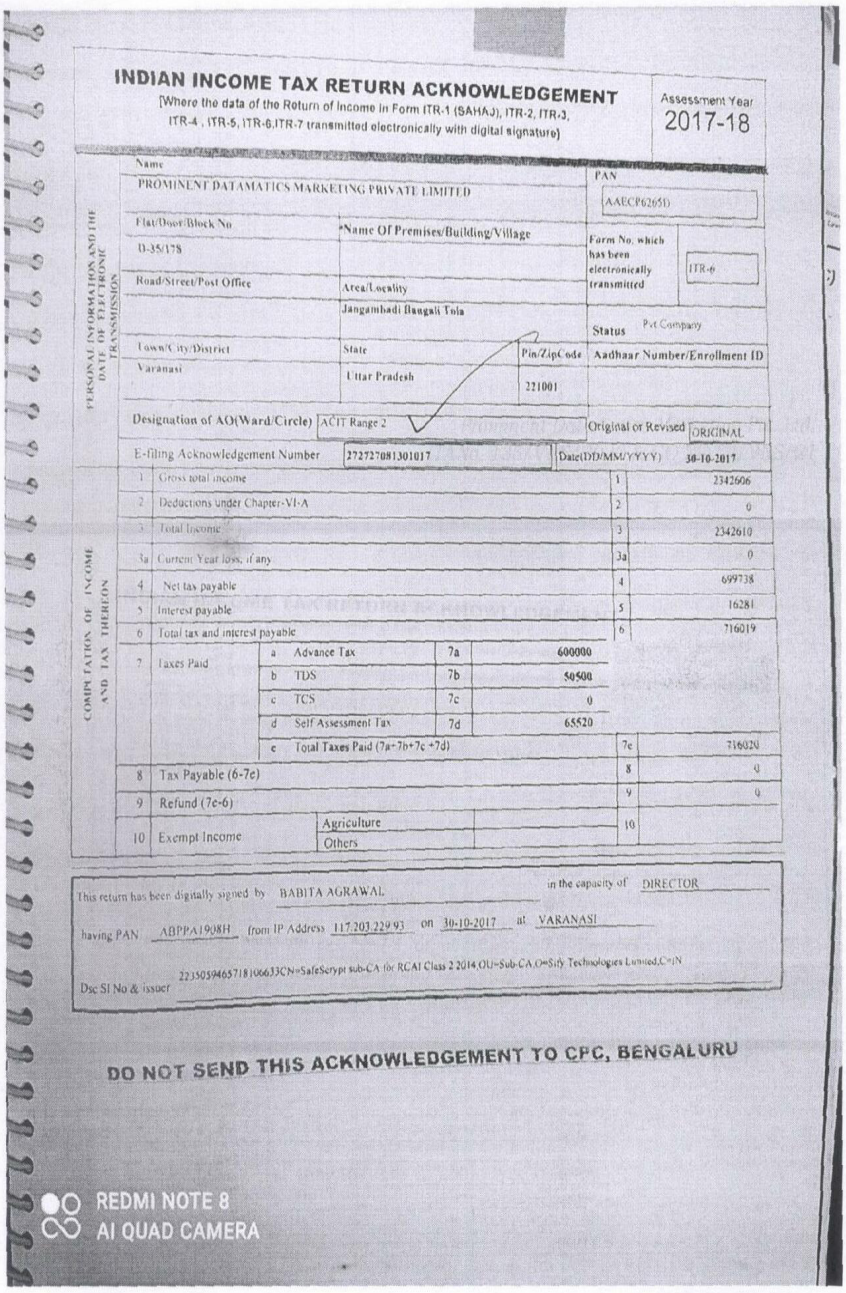
5. Thus, the territorial jurisdiction of the appellate authority including the High Court shall be determined on the basis of the location of the Ld. AO who passed the assessment order. Thus what is relevant and important is the impugned assessment order and the situs /location of the Ld. AO who passed the impugned assessment order for exercising jurisdiction by appellate authority including the Hon'ble High Court to entertain the appeal arising from the assessment order. Even in the case where after the impugned assessment order is passed the jurisdiction is transferred to other AO at a new location the jurisdiction of the appellate authority would not get changed but will remain with the appellant authority including the Tribunal and Hon'ble High Court who has the territorial jurisdiction over the Ld. AO who has passed the impugned order. Therefore, the subsequent change of

the jurisdiction of the Ld. AO would not change the jurisdiction of appellate authority to entertain and decide the appeals arising from the order passed by the Ld. AO prior to the change of jurisdiction. Rule 4(1) of the ITAT, Rules 1963 contemplates that the power of the Benches of the Tribunal to hear and determine such appeal and application made under the Act, are as per the standing order amended from time to time till date. It has been directed vide standing order that subject to any special order all appeals and applications from the District, States, Union Territory specified thereunder shall with effect from 1st October 1997, be heard and determined by the benches specified in colum no.2 of the table. At serial no.6 of the said table the Kolkata Benches of the ITAT has powers and jurisdiction to hear and determine the appeals from state of West Bangal, Sikkim and Union Territory of Andaman and Nicobar Islands. There is no dispute that ITO, Ward 5(2) Kolkata falls under the territorial jurisdiction of ITAT, Kolkata Benches and therefore, the ITAT, Kolkata Benches have the jurisdiction to hear and determine the appeal arising from the impugned assessment order. In absence of any special order the ITAT, circuit Bench Varanasi has no jurisdiction to hear and determine the appeal arising from impugned assessment order passed by ITO, Ward 5(2), Kolkata. Once, it is found and held that the jurisdiction to hear and determine the appeal arising from the impugned assessment order lies with ITAT, Kolkata Benches, the Varanasi Circuit Bench has no jurisdiction to go beyond the question of its own jurisdiction. Therefore, having no jurisdiction to hear and determine the appeal arising from the impugned assessment order, the Varanasi Circuit Bench cannot decide any other issue arising from the assessment order passed by the ITO, Ward 5(2), Kolkata or the impugned order passed by the Ld. CIT(A). When the ITAT, circuit Bench Varanasi has no jurisdiction to hear and determine the appeal then the question of giving any finding on the validity of the order passed by the Ld. AO or order passed by the Ld. CIT(A) does not arise. Even otherwise the jurisdiction of CIT(A) has not been

questioned by either of the parties before us and therefore, no such issue of jurisdiction of CIT(A) is subjected matter of the appeal of the revenue or CO of the assesse. Accordingly, the appeal filed by the department with Varanasi Circuit Bench of the Tribunal is not maintainable for want of jurisdiction and the same is liable to be dismissed. Consequently, the CO filed by the assesse is also not maintainable and liable to be dismissed. The parties have the liberty to avail the appropriate remedies as per law.

6. Ld. AM has given finding on some of the issues arising from the impugned assessment order therefore, for sake of completeness, I am also giving my separate finding on those issues, though ITAT, Circuit Bench Varanasi has no jurisdiction to determine the appeal.

7. The assessee in the cross objections challenged the jurisdiction of the Ld. AO and submitted that once the assessee company has shifted its registered office from Kolkata to Varanasi and applied for change of jurisdiction of PAN of the assessee. Thus the ITO, Ward 5(2) Kolkata has no jurisdiction to assess the assessee and passed the impugned order for the assessment year under consideration. The assessee filed return of income on 30.10.2017 vide acknowledgement as under :



INDIAN INCOME TAX RETURN ACKNOWLEDGEMENT

[Where the data of the Return of Income in Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR-4 , ITR-5, ITR-6,ITR-7 transmitted electronically with digital signature)

Assessment Year 2017-18

PERSONAL INFORMATION AND THE DATE OF ELECTRONIC TRANSMISSION

Name		PAN
PROMINENT DATAMATICS MARKETING PRIVATE LIMITED		AAECP6265D
Flat/Door/Block No	*Name Of Premises/Building/Village	Form No. which has been electronically transmitted: ITR-6
D-35/178		
Road/Street/Post Office	Area/Locality	
	Jangambadi Bangali Tola	Status: Pvt Company
Town/City/District	State / Pin/ZipCode	Aadhaar Number/Enrollment ID
Varanasi	Uttar Pradesh / 221001	
Designation of AO(Ward/Circle)	ACIT Range 2	Original or Revised: ORIGINAL
E-filing Acknowledgement Number	272727081301017	Date(DD/MM/YYYY): 30-10-2017

COMPUTATION OF INCOME AND TAX THEREON

1	Gross total income			1	2342606
2	Deductions under Chapter-VI-A			2	0
3	Total Income			3	2342610
3a	Current Year loss, if any			3a	0
4	Net tax payable			4	699738
5	Interest payable			5	16281
6	Total tax and interest payable			6	716019
7	Taxes Paid	a Advance Tax	7a 600000		
		b TDS	7b 50500		
		c TCS	7c 0		
		d Self Assessment Tax	7d 65520		
		e Total Taxes Paid (7a+7b+7c +7d)		7e	716020
8	Tax Payable (6-7e)			8	0
9	Refund (7e-6)			9	0
10	Exempt Income	Agriculture / Others		10	

This return has been digitally signed by BABITA AGRAWAL in the capacity of DIRECTOR

having PAN ABPPA1908H from IP Address 117.203.229.93 on 30-10-2017 at VARANASI

Dsc Sl No & issuer 223503946571810663JCN=SafeScrypt sub-CA for RCAI Class 2 2014,OU=Sub-CA,O=Sify Technologies Limited,C=IN

DO NOT SEND THIS ACKNOWLEDGEMENT TO CPC, BENGALURU

REDMI NOTE 8
AI QUAD CAMERA

8. The Assesee has given address in the return of income at Varanasi, UP with Pin Code-221001. The designation of the AO is stated in the acknowledgement as ACIT, Range-2 whereas the impugned order has been

passed by the ITO, Ward 5(2), Kolkata. Therefore, it is apparent that the assessee did not file the return of income for the year under consideration with the ITO, Ward 5(2), Kolkata. It is also pertinent to note that prior to filing the return of income the assessee applied for change of PAN jurisdiction from Kolkata to Varanasi on 22nd September 2017, after obtaining the certificate of registration issued by Registrar of companies, Kanpur dated 01.09.2017 u/s 13(5) of Companies Act regarding change of the office of the assessee company from state of West Bangal to State of UP. Thereafter the assesse filed the return of income which shows that the return was filed with ACIT Range-2 stated to be ACIT, Range -2 of Varanasi. Since the jurisdiction of the assessee in Kolkata being a Metro city lies with ITO and after the change of address and in the event of change of jurisdiction the jurisdiction of the assessee in Varanasi would lie with the ACIT because of pecuniary jurisdiction. Thus *prima facie*, it is evident that the return of income for the year under consideration was filed with ACIT, Range -2 Varanasi and not with ITO ward 5(2), Kolkata. It is also manifest from the record that in the subsequent year also the assessee filed the return of income with ACIT, Range-2, Varanasi as per the acknowledgement for the assessment year 2018-19. Therefore, once the assessee has filed the return of income with ACIT, Range -2 Varanasi, then the provision of section 124(3)(a) would not be attracted to challenged the jurisdiction of ITO, Ward 5(2) Kolkata. For ready reference sub-section (3)(a) of section 124 is reproduced as under:

> *"(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer-*
> *(a) where he has made a return under sub- section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub- section (1) of section 142 or subsection (2) of section 143 or after the completion of the assessment, whichever is earlier;"*

9. Sub-section (3)(a) prohibits the assesse who has made a return to question the jurisdiction of the Ld. AO after the expiry of one month from the date of service of notice u/s 142(1) or 143(2) or after completion of the assessment whichever is earlier. This restriction as per clause (a) of sub-section(3) is application where a return is filed with the AO who has issued notice u/s 142(1) or 143(2) of the Income Tax Act then the assessee cannot question the jurisdiction of the AO after expiry of one month from the said notice or after the completion of the assessment. If the return of income is filed with AO but the notice u/s 142(1) or 143(2) is issued by another Ld. AO then the restrictions provided under sub-section (3) clause(a) of section 124 would not be pressed into service. The logic of clause (a) of sub-section (3) is simple that once the assessee has surrendered to the jurisdiction of the AO by filing the return of income then he cannot question the jurisdiction of the said AO after the expiry specific time period or event. This restriction the assessee to question the jurisdiction of the AO who has otherwise no territorial jurisdiction over the assessee. The assessee has already applied for change of address and jurisdiction of PAN and the department has not produced anything to show that the said request was rejected by the authorities. Therefore, in the absence of any rejection of the said request it cannot be said that the jurisdiction of the assessee was not changed from ITO ward 5(2) Kolkata to ACIT Range-2, Varanasi. Thus, this question cannot be conclusively decided in the absence of relevant facts and the decisions of the authorities of the department on the application of the assessee for change of PAN jurisdiction. Therefore, once the assessee has question the jurisdiction of the Ld. AO vide his objection dated 29.11.2019 then the Ld. AO ought to have first decided the said objection before passing the assessment order. It is pertinent to note that impugned assessment order was passed on the same date i.e. 29.11.2019 as per the digital signature and it was not time barring on that date. The Ld. AO was having a reasonable time to decide the objection of the assessee and then pass the

assessment order. Since this issue has not been decided by the Ld. CIT(A) therefore, in any case this issue is required to set aside to the record of the ld. CIT(A) for adjudication.

10. As regards the additions made by the Ld. AO while passing assessment order u/s 144 which were deleted by the Ld. CIT(A). The assessee has submitted written submission before the Tribunal as under:

D. Because yet another issue which was canvased was that foundation of any case, it is imperative for a proper officer to issue SCN. wherein the assessment officer derelicted from issuing any SCN under section 69 A, which carved out as under:

"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

E. On the count of merits confirming the maintenance of accounts in the teeth of accounting standards the Respondents have placed before the Appellate Authority the following grounds:

I. There is no accounting standard or statutory provisions to tax the difference of closing balance of figures of two financial years. Thus, all the additions so made are made in a haste, without application of proper mind and without passing a reasoned order, which is illegal hence the same are liable to be deleted. Appellant has specifically proved that the facts relied upon by the AO while calculating the additions made, are erroneous.

F. It was also argued that the assessment order was passed in tearing haste, non-speaking and in mechanical manner and a candid examination of the order of the impugned decision would show that the date of the impugned decision was 26.11.2019, and infact the digital signatures was of 29.11.2019.

G. The sum and substance of the prayer was that irreparable injury was caused to the Respondent, but for the reason of the decision being ex-parte, being violative of principles natural justice, without balancing

the equity and fair play, and for want of jurisdiction and authority and secondly in any case delete the addition/disallowance for sums aggregating Rs. 10,87,60,215/- (Rs. 2,64,90,092/- + Rs. 8,22,70,123/-), so that income declared in the "Return" is accepted and the demand crested over and above the same is cancelled.

H. Counter to the grounds taken-up by the Revenue, are elaborately perused hereunder:

I. Because the respondent submit, that in the teeth of the proceedings, as carved out under the provisions of the Income Tax Act, 1961, the inherent powers vested with the CIT (Appeal), is self-enabling powers acting as a proper assessment officer of the Income Tax Department, which is also settled as per the law of the land, declared by the Hon'ble Apex Court in the matter of CIT Vs. Kanpur Coal Syndicate, reported in (1964) 53 ITR 225 (SC), wherein it has been held as follows:

"The Appellate Assistant Commissioner has therefore powers in disposing of the appeal. The scope of the power is coterminous with that of Income Officer. He can do what the Income Tax officer can do and also direct him to do, what he has failed to do. Similar views were expressed by the Hon'ble Apex Court in the case of Jute Corporation of India Vs. CIT. reported in (1991) 187 ITR 688."

Article 141 of the Constitution of India, carves out that the law declared by the Hon'ble Apex Court, is the law of the land, binding upon all the creatures of the statute or any authorities who have seen the horizon, by an act of Parliament.

II. Because the present proceedings, in the light of the law declared by the Hon'ble Apex Court, gets subsumed, by the virtue of the principles of Doctrine of Mergers, behoving that CIT (Appeal), inherently was vested with the powers to see the light of the day, of all the documents, books of accounts and under the self-enabling provisions to act as a proper office of assessment under the Income Tax Act, but for the above counter objection, the very basic ground, which had been taken by the revenue, the edifice of the same gets demolished for want of jurisdiction and authority of law and the revenue has preferred the appeal in most mechanical manner.

II. *Because relating to the candid examination of all the books of accounts of the Respondent assessee, the findings of the learned CIT (Appeal), were very specific and all the documents, which passed through the eagle eyes of the CIT (Appeals), were the same documents, which were well with in the hands of the respondent company, carving out that all the documentary evidences, the assessing officer was already seized of the matter and as a fact finding Authority the learned CIT (Appeal), were vested with the powers and did perform the act accordingly, to revaluate all the books of accounts and ledgers to be aligned with the balance sheet, which were part of the proceedings and speaking decision was passed by the CIT (Appeal).*

IV.Because the learned CIT (Appeals) made a speaking order based on factual and legal position, and summarised ".... it is clear that in this case the order of the AO is erroneous both on the specificness and the accounting entries that the AO thought, this order passed as best judgment for assessment is not supported by any accounting standards or statutorily provisions. In view of the above the additions made by the AO cannot be sustained on any ground. Hence the additions made is deleted. These grounds are allowed.

V. Because the respondent crave indulgence of the Hon'ble Bench, to counter the grounds of appeal on the limb of merits, submit that the approach of the assessing officer, was surely unbecoming, without authority of law, and in tearing hast, for the reason that not only the AO transgressed the jurisdictional power, but also failed to understand that the additions amounting to 8,22,70,213/- made on account of difference in "other payables", which also consist of booking advance, the income against which was recognised by the respondent assessee in following and next following assessment year and if the AO is permitted to make such additions it would have the effect of taxing the same income twice, which not only shall be against various legal pronouncements of the Hon'ble Supreme Court of India, but also with the very intent of the Income Tax Act, 1961, which specifically debars the revenue from taxing same income twice in all. such cases where it has not been specifically provided in the Act.

VI. It is submitted that the finding of the learned CIT (Appeal) were valid, speaking and in consonance with the Constitutional provision under article 265, which carves out that no duty or tax can be levied, but without authority of law,

and as already stipulated and argued in the preceding counter to the grounds of appeal that it is an inherent provision under the Income Tax Act, that under the same income, no assessee can be taxed twice, meaning there by that the provision of res judicata also comes into play and infact the learned Commissions Appeals, as a proper officer balanced the equity and reconciled and freezed on the amount received as booking advance and adjusted, and/or subsumed in the income and tax in the subsequent years and on the factual matrix of the case the leamed CIT (Appeals), had candidly examined the fact that the subjected income in the subsequent year, had also seen the light of the day in the books of accounts /balance sheet and was a part of the assessment, which was done in accordance of law.

VII.Because it is also a settled law by touch stone of various judicial pronouncement and more particularly in Mahavir Kumar Jain Vs. CIT, which says that it is a fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice.

VIII. Because the decision passed by the learned CIT (Appeal) was valid, legal and proper.

IX. Because there is one more glaring fact, which was brought to the notice of learned CIT (Appeal), thoroughly examined on the factual matrix, that a sum of Rs. 2,64,90,092/-, was added to the income of the Respondent on account of difference between the previous year and the year under scrutiny by the AO, without appreciating the fact that a sum of Rs. 2,73,59,647/-, was taken as a short term loan from Mrs. Babita Agarwal and the same was dully refunded/subsumed in subsequent financial year. The said addition was made by the AO and taxed under section 69A of the Income Tax Act, without understanding the said provision that amounts not recorded in the books of the account of The Respondent can be brought to tax under this section, whereas this amount was not only dully recorded but also fully disclosed in the books of accounts/audited balance sheet. That reliance is placed upon the judgment of the Hon'ble ITAT, Bengaluru in the matter of Teena Bethala Vs. Income Tax Officer, vide
judgment dated 28.08.2019, wherein it has been stated hereunder:
"On a reading of section 694 of the Act, it is clear that the onus is upon the AO to find the assessee to be the owner of any money, bullion, jewellery or valuable article and such money,

bullion, jewellery or valuable article was not recorded in the books of account, if any, maintained by the assessee for any source of income. In these circumstances. the AO can resort to making an addition under section 69A of the Act only in respect of such monies/assets/articles or things which are not recorded int eh assessee's books of account. In the case on hand, the cash deposits are recorded in the books of account and are reportedly made on the receipt from a creditor. Further, the PAN and address of the creditor as well as ledger account copies of the creditor in the assessee's books of account have also been field before the AO. In these circumstances, it is evident that the AO has not made out a case calling for an addition under section 69A of the Act. Probably, an addition under section 68 of the Act could have been considered; but then that is not the case of the AO. The assessee, apart from raising several other grounds, has challenged the legality of the addition being made under section 69A of the Act. In support of the assessee's contentions, the learned AR placed reliance on the decision of the ITAT-Mumbai Bench in the case of DCIT Vs. Karthik Construction Co. in ITA No.2292/Mum/2016 dated 23.02.2018, wherein the Bench at para 6 thereof has held that addition under section 694 of the Act cannot be made in respect of those assets/monies/entries which are recorded in the assessee's books of account. In my considered view, the aforesaid decision of the ITAT- Mumbai Bench (supra) is squarely applicable to the facts of the case on hand, where the entries are recorded in the assessee's books of account. In this view of the matter, I am of the opinion that the addition of Rs.33,23,425/-made under section 69A of the Act is bad in law in the facts and circumstances of the case on hand and therefore delete the addition of Rs. 33,23,425/- made thereunder."

X. The mischief of section 69A of the Income Tax Act, comes into play only when the said income stands to be undisclosed in the books of the accounts, which is not the case of the Respondent, because the same was cohesively aligned and disclosed well under the statutorily audited financial statements. The Respondent beg to submit that All these docuemnts were submitted before the CIT(A) who passed an order after appreciating, examining the same.

11. Ld. CIT(A) has deleted the addition by considering the factual details which are duly recorded in the books of account and very much part of the financial statements of the assessee company i.e. balance sheet. Since the assessee did not appear before the Ld. AO and questioned the jurisdiction to pass the impugned assessment therefore, the Ld. AO has made the addition on the basis of the entries in the books of account itself and that too under the provisions of section 69A to attract the higher tax @ 60% + surcharge @ 25% on such tax in respect of the term loan. The provision of section 69A of the Income Tax Act reads as under:

> *69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.".*

12. It is clear from the plain and unambiguous language of section that any money etc. found to be owned by the assessee and such money, bullion, jewellery or valuable article is not recorded in the books of account and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article or the explanation offered by him is not in the opinion of the AO, satisfactory may be deemed to be income of the assessee. Therefore the mandatory precondition for attracting the provisions of section 69A is that the assessee is found to be the owner of any money, bullion, jewellery or other valuable articles and **the same is not recorded in the books of accounts**. Thus, only if such money, bullion, jewellery or other valuable article owned by the assessee are not recorded in the books of account, the same will fall in the mischief of section 69A and not otherwise. Once the loan transactions are duly recorded in the

books of account and are part of the financial statements then the provision of section 69A cannot be invoked. Accordingly, the addition made by the Ld. AO u/s 69A is not sustainable and therefore, I do not find any reason to interfere with the order of the Ld. CIT(A) *qua* this issue particularly, when the revenue has not brought on record any material or facts to show that the claim of the assessee is bogus. Similarly, the other additions made by the Ld. AO on account of other payables the AO simply added the difference of opening and closing balance by considering incorrect fact that the said sum has been charged to the profit and loss account. The Ld. CIT(A) has given clear cut finding of fact that they are not in the nature of expenditure charged to the profit and loss account nor were in the nature of cash credit simplicitor. The Revenue has not disputed these factual finding of the Ld. CIT(A) but only pleaded that the Ld. AO has not been given opportunity prior to considering the books of account and other evidence produced by the assesse first time before the Ld. CIT(A). The Ld. AO could have pointed out that factual finding given by the Ld. CIT(A) is contrary to the facts or apparently incorrect. In absence of any such allegations or contrary facts brought on record I do not find any error or illegal in the impugned order of Ld. CIT(A) qua this issue.

13. In the result, appeal of the Revenue in ITANo.135/VNS/2020 and Assesse's CO NO.04/VNS/2021 are dismissed.

(A.2.1) On conjoint reading of the aforesaid orders of Hon'ble Accountant Member, Hon'ble Judicial Member and Hon'ble Third Member along with aforesaid Questions of Difference referred to Hon'ble Third Member by Hon'ble Accountant Member and Hon'ble Judicial Member; we find that the Hon'ble Third Member, has held that Varanasi Bench of Income Tax Appellate Tribunal does not have jurisdiction over this appeal and therefore, the present appeal deserves to be dismissed being not maintainable. Hon'ble Third

Member has also held that the parties will be at liberty to avail (of) the appropriate remedies, as per law. Hon'ble Third Member has also held that Revenue would be at liberty to approach the appropriate forum at appropriate place, if so advised. Furthermore, Hon'ble Third Member has held that other questions referred to him are academic in nature and redundant in the proceedings of the present appeal; and Varanasi Bench of Income Tax Appellate Tribunal (ITAT), lacking jurisdiction over the appeal, cannot comment on issues on merit. Hon'ble Third Member has also held, that the issues may be considered on merits where a valid appeal is being filed before appropriate authority of ITAT.

(B) At the time of hearing before us, there was no representation from the side of the assessee.

(B.1) In the absence of any representation from the assessee's side, we heard the learned Departmental Representative. He submitted that Revenue should be permitted to file appeal before the appropriate Bench of ITAT; and delay in filing of appeal before that (appropriate) Bench of ITAT should be condoned.

(B.2) We have heard the learned Departmental Representative. We have also perused materials on record. We have also considered the view of Hon'ble Third Member as referred to in foregoing paragraphs (A.1.1) and (A.2.1) of this order. We have also considered the orders passed by Hon'ble Accountant Member and Hon'ble Judicial Member; along with the questions of difference referred by them to Hon'ble

Third Member. On conjoint reading of the aforesaid, and after hearing the learned Departmental Representative, we hold that Varanasi Bench of Income Tax Appellate Tribunal does not have territorial jurisdiction over the present appeal of Revenue and (for the same reason) over the present Cross Objections of the assessee. Therefore, Revenue's appeal and assessee's Cross Objection are not maintainable in Varanasi Bench of Income Tax Appellate Tribunal.

(B.2.1) In accordance with the above, we dismiss the appeal filed by Revenue and Cross Objection filed by the assessee, both being not maintainable in Varanasi Bench of ITAT. Revenue, as well as the assessee, both are at liberty to approach the appropriate forum at appropriate place, having jurisdiction over the case; and to seek remedies in accordance with law.

(B.3) As regards the plea of learned Departmental Representative, that delay in filing of appeal before appropriate Bench of ITAT should be condoned; we decline to express any opinion on this, as held already, Varanasi Bench of ITAT does not have jurisdiction over this case.

(C) In the result, the appeal of Revenue and Cross Objection of assessee; both are dismissed being not maintainable.

(Pronounced on 05/02/2026)

Sd/.
(KUL BHARAT)
Vice President

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:05/01/2026
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. D.R. ITAT