IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW

BEFORE SHRI A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.553/Lkw/2018
Assessment Year:2014-15

Income Tax Officer-6(1), Kanpur.	Vs.	M/s Arti Securities & Services Ltd., Flat No.60, B-Block, Sector-02, Noida, Gautam Buddha Nagar, NOIDA-201301 PAN:AABCA1714B
(Appellant)		(Respondent)

Appellant by	Shri S. K. Madhuk, CIT (D.R.)
Respondent by	Shri Kapil Goel, Advocate
Date of hearing	21/10/2020
Date of pronouncement	06/11/2020

O R D E R

PER T. S. KAPOOR, A.M.

This is an appeal filed by the Revenue against the order of learned CIT(A)-I, Kanpur dated 09/04/2018 pertaining to assessment year 2014-2015.

2. The assessee has filed an application under Rule 27 of the I.T.A.T. Rules raising therein two issues; one relating to jurisdiction and the other relating to issue of limited scrutiny. Learned counsel for the assessee, at the outset, submitted that though the appeal has been filed by the Revenue but against the appeal filed by the Revenue, the assessee has preferred to file application under Rule 27 of the I.T.A.T., Rules raising therein preliminary issues which go to the root of the matter and which are coming

out of records and material already available on record. Learned counsel for the assessee, in view of the judgment of Hon'ble I.T.A.T. in the case of AAA Paper Marketing Ltd. vide order dated 27/04/2018, prayed that the issues raised by the assessee in its application under Rule 27 of the I.T.A.T. Rules may be admitted and adjudicated first before taking up the appeal filed by the Revenue. Learned counsel for the assessee, in support of his arguments that the said application under Rule 27 can be admitted and adjudicated at I.T.A.T. level also, relied on a number of case laws besides its reliance on the case laws of Lucknow Bench of the Tribunal in the case of AAA Paper Marketing Ltd. Our specific attention was invited to the cases listed in the paper book at pages 7 and 8. Therefore, in view of the judicial precedents, Learned counsel for the assessee argued that the application, moved by the assessee under Rule 27 of the I.T.A.T. Rules, may be admitted and adjudicated.

3. Learned D. R., on the other hand, vehemently argued against acceptance of application under Rule 27 of the I.T.A.T. Rules and submitted that the issues raised in application do not arise either from the order of the Assessing Officer or learned CIT(A) and none of the authorities below have decided the issue against the assessee and therefore, there is no occasion available to the assessee to raise these issue at this point of time. It was argued that the application filed by the assessee may be dismissed.

4. In response Learned counsel for the assessee submitted that this aspect has been examined in various decisions of various authorities cited by him and stated that even the Hon'ble Lucknow Bench of the Tribunal in the case of AAA Paper Marketing Ltd. has considered this aspect and has passed a detailed order in this respect. It was submitted that Hon'ble Tribunal has taken note of such arguments of the Revenue and after relying

on the case law of DCIT vs. Jubiliant Enpro Pvt. Ltd. decided by Delhi 'D' Bench, has decided this issue in favour of the assessee.

5. We have heard the rival parties and have gone through the material placed on record. We find that the assessee has invoked the provisions of Rule 27 of the I.T.A.T. Rules to challenge the order of CIT(A) on the following grounds:

(i) That the Department has initiated the assessment for limited scrutiny which has been converted into fill scrutiny without taking the approval of concerned Pr. CIT, which was mandatory in view of CBDT Instruction No.20/2015 and 5/2016.

(ii) The other ground taken in the application is that notice u/s 143(2) dated 03/09/2015 is issued by DCIT, Circle-6, Kanpur and later on assessment is framed by Income Tax Officer, Ward-6(1), Kanpur without valid issue of mandatory notice u/s 143(2) of the Act and therefore, the assessment is bad in law and void ab initio.

We find that these issues have not been decided by the Assessing Officer or by learned CIT(A) in their respective orders. However, these issues go to the root of the assessment itself and are forming part of the material already available on record. Learned counsel for the assessee had invited our attention to the following case laws where under similar facts and circumstances, the various Benches of the Tribunal have decided the issue in favour of the assessee:

(i) SIS Live, Delhi Benches:I-2, New Delhi. I.T.A. No.1313/Del/2015 dated 02/12/2015

(ii) Jubiliant Enpro Pvt. Ltd., I.T.A. No.560/Del/2010, dated 19/05/2014

(iii) Raj Kumar Jalan, IT(SS)A. No.28/Del/2012, dated 08/07/2015

(iv) M/s Tata Petrodyne Ltd., I.T.A. No.7679/Mum/2010, dated 16/09/2015

(v) M/s Cerner Healthcare Solutions Pvt. Ltd., I.T.A. No.675/Bang/2012, dated 08/01/2016
(vi) Great Wall Marketing (P) Ltd., I.T.A. No.660/Kol/2011, dated 03/02/2016
(vii) CIT vs. Edward Deventer (successors) Pvt. Ltd. 123 ITR 200 (Del)
(viii) Deep Chand Kothari vs. CIT 171 ITR 381 (Raj)
(ix) R. B. Construction, I.T.A. No.1537/Ahd/2011, datedl 10/04/2015
(x) IME International Pvt. Ltd., I.T.A. No.1873/Deol/2012, dated 08/01/2016
(xi) Thandi Ram Jai Narain, I.T.A. No.1289/Del/2013, dated 27/06/2017
(xii) Jolly Fantasy World Ltd. 373 ITR 530

Besides the above noted cases, Learned counsel for the assessee has also invited our attention to an order passed by Lucknow Bench of the Tribunal vide order dated 28/04/2017 in the case of AAA Paper Marketing Ltd. We find that in this order the Tribunal has considered the arguments raised by Learned D. R. and after considering the arguments and after relying on the case law of Jubiliant Enpro Pvt. Ltd. (supra), has decided the issue in favour of the assessee by holding as under:

> *"2. We have heard argument of both the sides and carefully considered the relevant material available on record of the Tribunal. Ld. counsel of the assessee-respondent submitted that the assessee want to invoke the provision of ITAT Rules 27 to challenge the order of the CIT(A) on following grounds:*
>
> > *"The Ld. CIT(A) has erred in law and on facts in affirming the jurisdiction of the Assessing Officer under section 153A, ignoring that the Additional Commissioner has granted the approval in a mechanical manner, the CIT(A) has further erred in not appreciating that no proceedings were pending on the date of search and the entire assessment has been framed without any reference to incriminating material found as a result of search."*

3. The Ld. counsel further submitted that under Rule 27 of the ITAT Rules, a legal plea, which was not raised by the assessee before the lower authorities, can be raised at any stage by the assessee before the Tribunal as per proposition laid down by various decision and orders including order of the ITAT 'ID' Bench Delhi dated 19.05.2014 in the case of DCIT Vs. Jubiliant Enpro Pvt. Ltd. in ITA No. 560/Del/2010 Assessment Year 1998-99.

4. In reply to the above, Ld. DR strongly opposed to admission of the above noted ground and submitted that the legal plea which was not raised before the Assessing Officer and CIT(A) cannot raised before the Tribunal at the appellate stage under any provision including Rule 27 of ITAT Rules.

5. On careful consideration of rival submission, we are of the view that in the similar situation ITAT Delhi 'D' Bench in the case of Jubiliant Enpro Pvt. Ltd. (Supra) held as follows :

> *"13. Thus, it can be seen from the above discussion that we have reversed the order of the Ld. CIT(A) by restoring the penalty u/s 271(1)(c) of the Act in respect of three items, viz., Interest of Rs. 2,996/- earned but not declared as income; amount of Income-tax paid at Rs.71,432/- claimed as deduction by clubbing with Interest expenditure ; and interest on late deposit of wealth-tax amounting to Rs.19,084/- claimed as deduction by clubbing with Interest expenditure.*
>
> *14.1. The assessee has filed an application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 requesting for the deletion of entire penalty on a legal issue, being the final determination of total income of the assessee u/s 115]A of the Act and the additions sustained pertaining only to the income computed under the normal provisions of the Act. The Id. AR relied on the judgment of the Hon'ble jurisdictional High Court in C1T Vs Nalwa Sons Investment Ltd. (2010) 327 ITR 543 (Del) to propel this submission.*
>
> *14.2. Before proceeding with the matter on merit, it would be apposite to first decide about the*

maintainability or otherwise of such application. Rule 27ofITA T Rules, 1963 with its marginal note reads as under-
'Respondent may support order on grounds decided against him.
The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him.'

14.3. The effect of this rule is that a respondent has been entitled to support the order on the ground which has been decided against him. The underlying idea and the spirit of Rule 27 is to arm a respondent, in an appeal filed by the plaintiff, with an option to contest unfavorable decision of the CIT(A) on the aspect(s) of an issue, the final decision on which Issue has been delivered in his favor. Take an instance of first appellate authority deciding the legal issue of reopening of an assessment against the assessee *but deleting the addition on merits in favor of the assessee. When the Revenue files appeal against this order before the tribunal, it will naturally assail the finding of the CIT(A) qua the deletion of addition on merits. Notwithstanding the fact that the respondent assessee did not file any appeal against the order passed by the CIT(A), he shall still be entitled under Rule 27 of the ITAT Rules, 1963, to support the conclusion of the order of the first appellate authority, being the deletion of addition, by challenging the finding of the. CIT(A) which was delivered against him on the legal issue of reopening of assessment.*

14.4. The mandate of Rule 27 is to be seen in contradistinction to the provisions of section 253(4) of the Act, which empower the respondent, on an appeal filed by the plaintiff, to file cross objection against any part of the order. At this stage, it may be fruitful to take note of the prescription of sec. 253(4), which provides that: The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) or the

Assessing Officer in pursuance of the directions of the Dispute Resolution Panel has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Assessing Officer (in pursuance of the directions of the Dispute Resolution Panel) or Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time, specified in sub-section (3) or sub-section (3A).' When we consider Rule 27 of the ITA T rules in juxtaposition to sec. 253(4) of the Act, the position which emerges is that whereas rule 27 is a remedy to the respondent to support the ultimate favourable conclusion of the CIT(A) by challenging such aspects of the issue which were decided against him, a cross objection u/s 253(4) of the Act is a remedy to the respondent to challenge' the ultimate unfavorable conclusion of the CTT(A).

14.5. A cursory look at the language of rule 27 transpires that a respondent has been empowered to support the order appealed against on any of the grounds decided against him. In other words, the challenge can be made by a respondent only in respect of a ground decided against him' In such circumstances, a question arises that if there is no decision at all of the CIT(A) on a particular aspect, which is otherwise germane to the overall issue decided in favor of the respondent, can the respondent espouse such aspect under rule 27 in an appeal filed by the plaintiff. If we go by the literal interpretation of the Rule, then the answer is in negative that unless the ground is not decided against' the respondent, he cannot take recourse to this provision. However, it is of paramount importance to keep in mind the fundamental object of enshrining rule 27, being giving an opportunity to the respondent to support the impugned order in an appeal filed by the

plaintiff A pragmatic approach on consideration of the object of such Rule, in our considered opinion, necessitates the adoption of liberal interpretation that when a particular issue is decided in favor of the respondent and the plaintiff has come up in appeal against such decision on the issue, then all the relevant aspects having bearing on the overall issue, even though not specifically decided against the plaintiff, should be open for challenge by the respondent under the rule. If the respondent is debarred from raising that aspect of the issue, which was not taken up before the first appellate authority or taken up but remained undecided, and the appeal of the plaintiff is allowed, the respondent would be rendered without remedy. It has been noticed above that a respondent is not entitled to file cross objection on such aspects of the issue u/s 253(4) of the Act, the scope of which provision is *circumscribed to challenging the ultimate unfavorable conclusion drawn by the CIT(A). In common parlance, when an issue is decided in favor of one party whether on one aspect or the other, it is not expected of such a party to challenge the order by asserting that the decision should have been given in his favor on that issue on all the aspects and not on that particular aspect on which it was given. When an appeal* is *filed against such favorable decision on the issue by the other party, and suppose the impugned order is not sustainable on that aspect of the issue on which it was decided, but on some other aspect which was not decided by the first appellate authority and the respondent is restrained from taking up such aspect on the reasoning that Rule 27 is not applicable on such aspect, the respondent would stand nowhere. In view of the foregoing discussion, it* is *clear that hyper technicalities of rule 27 cannot come in the way of the deciding such aspects of the issue taken up by the respondent before the tribunal which were germane to the main issue but were not contested or decided provided no fresh investigation of facts is required for rendering decision on such aspects."*

6. In view of above, legal ground raised by the assessee by invoking Rule 27 of the ITAT Rules in all three appeals is

admitted for consideration on adjudication. Consequently, applications of the assessee in all three appeals of the Revenue are allowed.

Keeping in view the facts and circumstances of the case and the legal precedents cited by Learned counsel for the assessee, we admit the application under Rule 27 of the I.T.A.T. Rules and Learned counsel for the assessee was asked to proceed with his arguments on merits of the grounds taken by him in the application.

6. Learned counsel for the assessee, at the outset, submitted that the second ground taken by the assessee is a jurisdictional issue therefore, he will be taking up the same first and invited our attention to the fact that the assessee had e-filed return of income on 26/09/2014 declaring income of Rs.11,11,750/- and the case was selected for scrutiny u/s 143(2) vide notice issued by DCIT, Circle-4, Kanpur and DCIT-6, Kanpur on the same date i.e. 03/09/2015 and in this respect our attention was invited to pages 40 to 42 of the paper book where the fact of having filed the return for Rs.11,11,750/- along with the two notices issued by DCIT, Circle-4, Kanpur and DCIT-6, Kanpur were placed. Learned counsel for the assessee submitted that as per assessment order dated 29/12/2016 read with transfer memo dated 16/05/2016, the present case was transferred from DCIT-6, Kanpur to Income Tax Officer -6(1), Kanpur on the ground of monetary limit vide Pr. CIT-2, Kanpur order dated 28/04/2016 and in this respect our attention was invited to pages 31 to 32 of the paper book. It was submitted that when the first notice u/s 143(2) was issued on 03/09/2015, Revenue was aware of the fact that as per monetary limit for ITR of Rs.11,11,750/- only concerned and competent Assessing Officer to issue notice u/s 143(2) of the Act was Income Tax Officer-6(1), Kanpur only. The jurisdictional Income Tax Officer, Kanpur did not issue any notice

u/s 143(2) of the Act and completed the assessment without issuing any notice u/s 143(2). Learned counsel for the assessee invited our attention to copy of order sheet placed at paper book pages 27 to 30 and our specific attention was invited to the fact that the jurisdictional Assessing Officer started the proceedings from 18/05/2016 by mentioning that case records were received from DCIT-6, Kanpur because of change of monetary limit. Learned counsel for the assessee submitted that on this copy of order sheet there is no mention of issue of notice u/s 143(2) of the Act and neither there is any mention of any order passed by Commissioner u/s 127 of the Act. Learned counsel for the assessee further took us to paper book page 31 where a copy of transfer memo dated 16/05/2016 transferring the record from DCIT-6 to Income Tax Officer, Ward-6(1) was placed. Our specific attention was invited to reason for transferring the case which was as modified monetary limits upto Rs.20 lacs vide CIT order dated 28/04/2016. The Learned counsel for the assessee submitted that firstly this is not an order by Pr. CIT and moreover, there was no change in the monetary limit as the CBDT Instruction No. 1/2011 itself mentions the monetary limit of Rs.20 lacs for which the assessment was to be completed by Assessing Officer. Learned counsel for the assessee therefore, submitted that the Department was aware from the beginning itself that the assessment of the assessee was to be completed by Income Tax Officer-6 only and therefore Income Tax Officer-6 was required to issue notice u/s 143(2) and which he has not done as the notices were issued only by DCIT-4 and DCIT-6 and therefore, it was argued that such assessment order is bad in law in view of the various decisions by I.T.A.T. Benches of Kolkata and also was bad in view of the judgment of jurisdictional High Court of Allahabad in the case of Mohd. Rizwan and also in view of the judgment of Hon'ble Gujarat High Court in the case of Pankaj Bhai Shah 425 ITR 70. Learned

counsel for the assessee in this respect invited our attention to the short write up at page 3 where the orders favouring the assessee were placed. Inviting our attention to CBDT Instruction No. 1/2011 dated 31/01/2011 of CBDT, Learned counsel for the assessee argued that the competent person to issue notice u/s 143(2) was Income Tax Officer-6, Kanpur who had passed the assessment order as the income of the assessee was less than Rs.20 lacs whereas the notice u/s 143(2) has been issued by DCIT and that too by two DCITs from Circle-4 & 6 and, therefore, it was argued that the assessment in this case is bad in law and is void ab initio and the appeal filed by the Revenue needs to be dismissed. At the asking of Bench regarding judgment of Hon'ble Supreme Court in the case of I-Ven Interactive Ltd, the Learned counsel for the assessee stated that in that judgment Hon'ble Supreme Court has held that notice issued to assessee u/s 143(2) at the address mentioned in the PAN database is a valid notice. Learned counsel for the assessee submitted that this judgment is not applicable in the case of the assessee as in this case the Hon'ble Supreme Court has decided the issue of service of notice u/s 143(2) at the address mentioned in PAN database of the assessee whereas in the present case the issue is not of the service of notice but the issue of notice issued by the Assessing Officer not having jurisdiction over the assessee. Therefore, it was stated that even this judgment of Hon'ble Supreme Court cannot come to the rescue of the Department.

7. Learned D. R., on the other hand, submitted that the PAN at that time was lying with DCIT-4, Kanpur and therefore, he issued notice u/s 143(2) on 03/09/2015 and since the natural jurisdiction over the assessee was with DCIT-6, Kanpur, he also issued the notice u/s 143(2) on 03/09/2015 and the notices were duly served upon the assessee within the time limit as prescribed under the Act. Learned D. R. submitted that subsequently the

Pr. CIT-2, Kanpur, vide order dated 28/04/2016, modified the monetary limits and ordered that jurisdiction over the cases having returned income below Rs.20 lacs shall lie with the Income Tax Officer and jurisdiction over the cases with returned income above Rs.20 lacs shall lie with ACIT and DCIT and accordingly, in view of the revised monetary limits, DCIT-6, Kanpur vide letter dated 16/05/2016 transferred the case record to the Income Tax Officer-6, Kanpur as the jurisdiction over the case lied with him and therefore, it was argued that the technical ground of jurisdiction with respect to issue of notice by the jurisdictional Assessing Officer is not sustainable in the eyes of law. It was further argued that if the assessee had any objection with regard to jurisdiction, it should have been challenged by the assessee during the course of assessment proceedings but no such objection was raised by the assessee during the assessment proceedings and therefore, the provisions of section 292BB are applicable in this case. It was further argued that if the arguments of the assessee are accepted then section 119, 120 and 127 of the Act, which deal with the income tax authorities and deal with the transfer of cases, have no meaning and therefore, it was prayed that the ground taken by the assessee be dismissed.

8. Learned counsel for the assessee, in the rejoinder, submitted that it is an admitted fact that notice u/s 143(2) was not issued by the Assessing Officer who had completed the assessment and submitted that Instruction No. 1 of 2011 are the instructions issued by the CBDT which are binding on the Department and which says that the assessment of the assessees with income less than Rs.20 lacs has to be completed by Income Tax Officer and since the assessee had filed return of income declaring income of Rs.11,11,750/- which is less than Rs.20 lacs, the jurisdictional Assessing Officer was Income Tax Officer-6, Kanpur who was mandatorily required to

issue notice u/s 143(2) and which he did not do. Therefore, it was prayed that since the statutory notice u/s 143(2) was not issued by jurisdictional Income Tax Officer, the assessment order is bad in law. As regards the reliance placed by Learned D. R. on sections 119, 120 and 127 are concerned, Learned counsel for the assessee submitted that section 119 in fact goes in favour of assessee which empowers the CBDT to issue instructions/orders etc. to income tax authorities and which are binding on Department therefore, Instruction No. 1/2011 issued by CBDT are binding instructions. Regarding section 120, the Learned counsel for the assessee submitted that this section deals with jurisdiction of income tax authorities which again says that income tax authorities will perform all the functions as may be assigned to them by CBDT. As regards section 127, Learned counsel for the assessee submitted that this section does not apply to the assessee as there is no order passed under that section.

9. We have heard the rival parties and have gone through the material placed on record. We find that it is an admitted fact that two notices u/s 143(2) were issued by DCIT-4, Kanpur and DCIT-6, Kanpur on the same date i.e. 03/09/2015. The copies of these notices are placed at pages 41 and 42 of the paper book. Page 41 is the copy of notice issued by DCIT-4, Kanpur whereas page 42 is the copy of notice issued by DCIT-6, Kanpur. This is also an admitted fact that assessment was completed by the Assessing Officer, Ward-6(1), Kanpur. The Assessing Officer while framing the assessment himself has noted that statutory notice u/s 143(2) dated 03/09/2015 was issued by DCIT-4, Kanpur and DCIT-6, Kanpur and were duly served upon the assessee. The Assessing Officer has not mentioned about any fact of having issued notice u/s 143(2) by him. Learned D. R. had argued that the Pr. CIT-2, Kanpur, vide order dated 28/04/2016, had modified monetary limit and had ordered that the jurisdiction over the cases

having returned income below Rs.20 lacs shall lie with the Income Tax Officer and therefore, the case of the assessee was transferred from DCIT to Income Tax Officer. Learned D. R. has further placed reliance on section 127 which authorizes the continuation of assessment proceedings even if the records are transferred from one Assessing Officer to another. In this respect it is important to visit the provisions of sections 119, 120 & 127 relating to income tax authorities and transfer of cases respectively.

9.1 As regards section 119 of the Act, we find that this section relates to instructions to subordinate authorities and which reads as under:

> ***[SECTION 119.***
>
> ***Instructions to subordinate authorities.***
>
> *(1) The Board may from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:*
>
> ***Provided*** *that no such orders, instructions or directions shall be issued-*
>
> *(a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or*
>
> *(b) so as to interfere with the discretion of the [Commissioner (Appeals)] in the exercise of his appellate functions.*
>
> *(2) Without prejudice to the generality of the foregoing power,-*
>
> *(a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of [sections [115P, 115S], [115WD, 115WE, 115WF, 115WG, 115WH, 115WJ, 115WK]] [139,] 143, 144, 147, 148, 154, 155, [158BFA] [sub-section (1A) of section 201, sections 210, 211, 234A, 234B, 234C, [234E],]*

[270A,] 271 [,271C, 271CA] and 273 or otherwise), general or special orders in respect of [any class of incomes or fringe benefits] or class of cases, setting forth directions or instructions (not being prejudicial to assessees) as to the guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise [any income-tax authority, not being a Commissioner (Appeals)] to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.

[(c) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class or cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A, where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the following conditions, namely:-

(i) the default in complying with such requirement was due to circumstances beyond the control of the assessee; and

(ii) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed:

***Provided** that the Central Government shall cause every order issued under this clause to be laid before each House of Parliament.]*

9.1.2 The above provisions clearly empower the CBDT to issue such orders, instructions and directions to income tax authorities as it may deem fit for the proper administration of the Act.

9.1.3 In view of these provisions of section 119 only, the CBDT issued instructions No.1/2011 for completion of assessment by Income Tax Officers and ACITs and DCITs. This instruction is binding on the Department and therefore, in view of section 119 & in view of CBDT instructions, the assessment of the assessee was to be completed by Assessing Officer-6(1), Kanpur and all statutory notices were to be issued by him only. In fact the reliance placed by Learned D. R. on section 119 goes in favour of the assessee.

9.2 Similarly section 120 deals with jurisdiction of income tax authorities wherein it has been mentioned that income tax authorities shall exercise all powers and perform all functions conferred on or as the case may be as assigned to such authorities under this Act in accordance with such directions as the Board may issue for exercise of powers and performance of the functions by all or any of these authorities. The reliance placed by Learned D. R. on this section is also not helpful to Revenue as this section only binds the authorities to act in accordance with directions of CBDT and therefore, only the jurisdictional Assessing Officer as per instruction No.1/2011 should have issued the notice u/s 143(2) of the Act whereas the notices have been issued by non jurisdictional Assessing Officers.

9.3 Now coming to provisions of section 127 relating to transfer of cases. This is an important section and for the sake of completeness, the provisions of section 127 are reproduced below:

"[SECTION 127.

Power to transfer cases.

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

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same [Principal Director General or Director General] or [Principal Chief Commissioner, Chief Commissioner or Principal Commissioner or Commissioner],-

(a) where the [Principal Director General or Director General] or [Principal Chief Commissioner, Chief Commissioner or Principal Commissioner or Commissioner] to whom such Assessing Officers are subordinate are in agreement, then the [3774][Principal Director General or Director General] or [3775][Principal Chief Commissioner, Chief Commissioner or Principal Commissioner or Commissioner] from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the [Principal Director General or Director General] or [Principal Chief Commissioner, Chief Commissioner or Principal Commissioner or Commissioner] aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Director General or Director General] or [Principal Chief Commissioner, Chief Commissioner or Principal Commissioner or Commissioner] as the

Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.-In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.]"

The analysis of above provisions clearly demonstrate that Principal Commissioner or Chief Commissioner can pass an order u/s 127 of the Act for transfer of assessment records from one Assessing Officer to another Assessing Officer and earlier assessment proceedings undertaken by earlier Assessing Officer will be deemed to be part of assessment proceedings continued by new Assessing Officer but the requirement of section is the passing of order u/s 127 of the Act which in this case has not been done. In the present case instead of order having been passed by Commissioner, the transfer memo has been prepared by DCIT-6 and records have been transferred to jurisdictional Assessing Officer. A copy of transfer memo is placed in paper book at page 31. The transfer memo does not talk about

any order u/s 127 of the Act and instead talks about the reason for transferring the case which reads out as under:

TRANSFER MEMO
OFFICE OF THE
DY. COMMISSIONER OF INCOME TAX-6
KANPUR

Dated:16/05/2016

1. Name and address of the assessee: M/s Arti Securities & Services Ltd. Shalimar, Ghaziabad-201005
2. PAN AADCK6717A
3. Status Com.
4. Details of IT/WT/GT records Assessment records 2014-15 (in one volume)
5. Details of pending assessments
6. Time barring pendency, if any Dec 2016
7. Details of audit objections
8. Details of penalty proceedings pending

Assessment year	Under section	Enactment

9. Details of arrear demand:

Assessment year (s)	D & CR No.	Nature of demand | Amount
		|

10. Records sent for further action to ITO 6(1), Kanpur

11. Reasons for transferring records Due to modified monetary limits Upto 20 lakh vide PCIT-II order No.17/2016-17 dated 28/4/2016

12. Any other proceedings pending NIL

Sd/.
(Dr. Sangeeta Yadav)
Dy. CIT-6, Kanpur.

As per the transfer memo the reason for transferring the case was the revision in monetary limits for passing orders by Income Tax Officers. This revision in monetary limit is in fact not a revision as this limit is already there in the CBDT Instruction No. 1/2011 dated 30/11/2011 which for the sake of completeness is reproduced below:

> *"INSTDRUCTION NO.1/2011 [F.No.187/12/2010-IT(A-I)], DATED 31-1-2011 Reference have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship oo the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship.*
> *An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:*

	Income declared (mofussil areas)	
	ITOs	*ACs/DCs*
Corporate returns	*Upto Rs.20 lacs*	*Above Rs.20 lacs*
Non corporate returns	*Upto Rs.10 lacs*	*Above Rs.15 lacs*

> *Metro charges for the purpose of above instructions shall be Ahmedabad, Banagalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune. The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from 1-4-2011."*

The above CBDT instruction clearly states that for corporate assessees having income upto Rs.20 lac, the assessment is to be done by Income Tax Officer. In the present case, admittedly the assessee is a corporate assessee and its returned income is less than Rs.20 lac as the assessee had filed return for an income of Rs.11,11,750/-. Therefore, as per the above instructions, the jurisdictional Assessing Officer was Income Tax Officer and not DCIT or ACIT who had issued noticed u/s 143(2) of the Act. It is also an admitted fact that jurisdictional Assessing Officer which is Income Tax Officer, Ward-6, Kanpur had not issued any notice u/s 143(2) of the Act. Therefore, in the case before us, the following final facts emerge:

(i) The assessee is a corporate assessee.
(ii) The assessee filed return of income declaring income of Rs.11,11,750/-.
(iii) The jurisdictional Assessing Officer was Income Tax Officer, Ward-6, Kanpur. (as per CBDT instruction No.1/2011)
(iv) The statutory notice u/s 143(2) has not been issued by the jurisdictional Assessing Officer.
(v) No order u/s 127 has been passed by the CIT transferring the case from DCIT-6 to Income Tax Officer-6 Kanpur.

Under these facts and circumstances, the Hon'ble Kolkata Tribunal in the case of Krishnendu Chowdhury vs. Income Tax Officer in I.T.A. No.1153/Kol/2015 vide order dated 18/11/20167 has decided the issue by holding as under:

"5. The first issue raised by assessee in this appeal is that the assessment framed u/s. 143(3) of the Act is invalid as the notice u/s. 143(2) of the Act was not issued by the jurisdictional Income Tax Officer.

6. At the outset, we find that assessee has challenged the re-assessment proceeding on the ground that no valid notice under section 143(2) of the Act has been issued. The Ld. AR before us submitted that as per the CBDT Instruction No.

1/2011 dated 31.01.2011a new monetary limits in Mofussil areas was fixed for selecting the case under scrutiny. Accordingly the ITOs were empowered to take up the case up to the income of Rs. 15 lacs for non-corporate assessee and Rs. 20 lacs for corporate assessees. It is pertinent to mention here that the assessee's return income was Rs. 12,65,830/-. As per the CBDT Instruction No. 1/2011 dated 31.01.2011, the jurisdiction for scrutiny assessment vested to the ITO from 1.4.2011 and the notice u/s. 143(2) of the Act should/must be issued by the ITO, Ward - 1, Haldia and by none of the ACIT / DCIT. In the present case, the notice was issued by the ACIT, CircleHaldia on 14.9.2011 much after the CBDT instruction. Certified copy of the notice u/s. 143(2) is attached in the paper Book marked as Annexure as – 3 which has been challenged. The ACIT, Circle-Haldia issued the notice u/s. 142(1) of the Act 3.7.2012 which is in the paper book. The said notice for issuing is beyond the jurisdiction of the ACIT, Haldia the as per the CBDT Instruction marked as Annexure – 4 in the paper book. The ld. AR further submitted the Section 119, strategically placed in Chapter XIII which deals with "income-tax authorities" and enabling power of the Central Board of Direct Taxes, which is recognized as an authority under the Income-tax Act u/s 116(a). The Central Board of Direct Taxes under this section is empowered to issue such orders, instructions and directions to other income-tax authorities "as it may deem fit for proper administration of this Act". Such authorities and all other persons employed in execution of this Act are bound to observe and follow such orders, instructions and directions of the Central Board of Direct Taxes. The proviso to sub-section (1) of Section 119 recognizes two exceptions to this power. The first exception is that the CBDT cannot require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner. The second is with regard to interference with the discretion of the Commissioner of (Appeals) in exercise of his appellate functions. Sub-section (2) of Section 119 provides for the exercise of power in certain special cases and enables the CBDT, if it considers it necessary or expedient so to do for the purpose of proper and efficient management of the work of assessment and collection of revenue, to issue general or special orders in respect of any class of incomes or class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be

followed by other income-tax authorities in the discharge of their work relating to assessment or initiating proceedings for imposition penalties. The powers of the CBDT are wide enough to enable it to grant relaxation from the provisions of several sections enumerated in clause (a). Such orders may be published in the Official Gazette in the prescribed manner, if the CBDT is of the opinion that it is so necessary. The only bar on the exercise of power is that it is not prejudicial to the assessee. In the present case, assessee's return income was ₹12,65,830/-. As per CBDT Instruction No. 1/2011 dated 31.01.2011, the jurisdiction over the assessee is of the ITO, Ward - 1, Haldia and not of the ACIT, Circle - Haldia. The notice u/s. 143(2) of the Act must be issued by the ITO, Ward -1, Haldia and by none of the ACIT, Circle - Haldia. The ACIT, Circle - Haldia was very much aware that he has no jurisdiction over the assessee from 1.4.2011 for scrutiny assessment and accordingly cannot issue the notice u/s. 143(2) of the I. T. Act, 1961 after the CBDTs Instruction No. 1/2011 dated 31.01.2011. In this regard, it is important to read the provisions of section 143(2) of the I. T. Act 1961 as follows.

> *"143(2) Where a return has been furnished under section 139, or in response to a notice under sub-section(1) of section 142, the Assessing officer shall*
> *(i) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim; (Provided that no notice under this clause shall be served on the assessee on or after the 1st day of June, 2003)*
> *(ii) notwithstanding anything contained in clause (1), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of*

the return. (Provided that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished)."

On a perusal of the foregoing provision, it is evident that the provisions of this section are mandatory in nature. If the Assessing Officer considers it necessary or expedient to verify the correctness and completeness of the return then he is bound to serve a notice under this sub section on the assessee requiring him, on a specified date, either to attend at the AO's office or to produce or cause to be produced any evidence on which the assessee desire to rely in support of his return. The above view gets fortified by the decision of the Hon'ble Madras High Court in the case of COMMISSIONER OF INCOME-TAX v. GITSONS ENGINEERING CO. reported in [2015] 370 ITR 87, wherein it is held that,

"the word "shall" employed in section 143(2) of the Income tax Act, 1961, contemplates that the Assessing Officer should issue notice to the assessee so as to ensure that the assessee has not understated income or has not computed excessive loss or has not under paid the tax in any manner. It is therefore, clear that when the Assessing Officer considers it necessary and expedient to ensure that tax is paid in accordance with law, he should call upon the assessee to produce evidence before him to ensure that the tax is paid in accordance with law. The section makes it clear that service of notice under section 143(2) of the Act within the time limit prescribed is mandatory and it is not a mere procedural requirement."

In the light of above submission, it is crystal clear that Instruction No. 1/2011 dated 31.01.2011 was applicable in the present case. In view of the specific stipulation in the Instruction "Non-corporate returns Income upto 15 lacs in Mofussil areas" are vested with the ITO's and considering that in the present case the return income below Rs. 15 lacs. The notice u/s. 143(2) of the Act must be issued by the ITO. Ward - 1. Haldia. But in the instant case, the notice u/s. 143(2) was issued by the ACIT, Circle - Haldia without his jurisdiction over

the assessee knowing fully well and he was very much aware that he has no jurisdiction over the assessee from 1.4.2011. In the instant case, there was no notice u/s. 143(2) of the Act was not issued by the ITO, Ward - 1, Haldia before the completion of the assessment proceedings. Therefore, the notice u/s. 143(2) issued by the ACIT, Circle - Haldia for scrutiny of the assessee's case in contravention to CBDT Instruction is invlid, bad-in- law and liable to be annulled. And on the basis of notice u/s. 143(2) of the Act ACIT, Circle - Haldia the assessment was completed by the ITO, Ward -1, Haldia without issuing the notice u/s. 143(2) of the I. T. Act, 1961 is also invalid, bad-in-law, void ab initio and liable to be annulled.

7. On the other hand the ld. DR before us submitted that the assessee cannot raise the question on the jurisdiction of AO after the expiry of one month from the date on which he was served with the notice or after the completion of assessment, whichever is earlier in terms of the provisions of section 124(3) of the Act.

7.1 The ld. DR further submitted that as per the provisions of Section 127(3) of the Act no opportunity will be given to the assessee where the transfer of the jurisdiction is from one AO is to any other AO provided the offices all the such officers are situated in the same city, locality and place. In the instant case the notice was issued by the ACIT under section 143(2) of the Act and later it was transferred to ITO. The transfer of the file was within the same locality. Therefore the validity of the assessment framed by the AO cannot be challenged on the ground of non-issuance of notice by the ITO.

The ld DR also referred to the provisions of Section 129 of the Act which allows the succeeding income tax authority to continue the proceedings from the stage at which the proceeding was left by his predecessor. The ld DR vehemently supported the order of lower authorities.

8. We have heard rival submissions and gone through facts and circumstances of the case. We have also perused the assessment records. The crux of the issue in the case is that the notice under section 143(2) of the Act was not issued by the ITO in terms of the instruction No. 1/2011 [F.No.

187/12/2010-IT(A-I)], dated 31.1.2011. As per the instruction the notice was to be issued by the ITO but the notice was issued by the ACIT. Therefore in view of above the notice issued by the ACIT is invalid and consequently the assessment framed by the ITO becomes void. Now the issue before us arises so as to whether the notice issued by the ACIT u/s 143(2) of the Act is without jurisdiction in terms of the aforesaid instruction. In this connection we consider it fit to incorporate the relevant portion of Instruction No.1/2011 dated 31.1.2004 of the CBDT Circular in respect of issuance of notice to non-corporate assesses which reads as under :-

> *"INSTDRUCTION NO.1/2011 [F.No.187/12/2010-IT(A-I)], DATED 31-1-2011 Reference have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship oo the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship.*
> *An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:*

	Income declared (mofussil areas)	
	ITOs	*ACs/DCs*
Corporate returns	*Upto Rs.20 lacs*	*Above Rs.20 lacs*
Non corporate returns	*Upto Rs.10 lacs*	*Above Rs.15 lacs*

> *Metro charges for the purpose of above instructions shall be Ahmedabad, Banagalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune. The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from 1-4-2011. -See more*

at: http://taxguru.in/income-tax/section-119-of-the-income-tax-act1961-instructions-too-subordinate-authorities-instdructions-regarding-inclimits-for-assigning-cases-to-deputy-commissioners assistant commissionersitos. html#sthash.U17d65534.dpuf"

The notice u/s 143(2) and order sheet entries which were referred by the ld. counsel for assessee are placed at Annexure no. 2 & 5 of the paper book respectively. Admittedly the notice u/s 143(2) in the instant case was issued by the ld. ACIT to initiate the assessment proceedings which was later transferred to ITO. However, the ITO did not further issue any notice u/s 143(2) of the Act. Therefore, ITO assumed the charge without issuing notice and consequently completed assessment u/s 143(3) of the Act without jurisdiction. In similar facts and circumstances, the Co-ordinate Bench of this Tribunal has decided the issue in favour of assessee in the case of Ajanta Financial Services Pvt. Limited Vs ITO in ITA No. 1426/Kol/2011. We consider it fit to incorporate the relevant portion of the Tribunal order which is as under :-

> *"5. We find that the Hon'ble Chhatishgarh High Court in the case of DCIT Vs. Sunita Finlease Ltd. (2011) 330 ITR 491 (Chh) has considered the same Instruction No. 9/2004 dated 20.09.2004 which are applicable in the present case also and quash the selection of scrutiny and completion of assessment by holding as invalid. Hon'ble Chattishgarh High Court in Sunita Finlease Ltd.'s case (supra) has considered section 119 of the Act by stating that Section 119 of the Act, empowers the Central Board of Direct Taxes to issue orders, instructions or directions for the proper administration of the Act or for such other purposes specified in sub-section (2) of the section. Hon'ble High Court further held that such an order, instruction or direction cannot override the provisions of the Act. Direction by issuing instructions to the officers for the process of selection of cases for scrutiny for returns for a particular financial year and allowing time of three months for completion of the same cannot be considered to override or detract from the provisions of the Act. It only directs that the above exercise should be completed within three months of the date of filing of*

return by the assessee, which amounts to an assurance to the assessee that the return filed by him can be scrutinized by the Assessing Officer within three months of filing of the return. The Hon'ble High Court, dismissing the appeal held that Instruction No. 9 of 2004 dated September 20, 2004, was applicable in the present case, in view of the specific stipulation in the circular that "for returns filed during the current financial year 2004-05, the selection of cases for scrutiny will have to be completed within three months of the date of filing the returns" and considering that the return had 5 ITA 1426/K/2011 Ajanta Financial Services Pvt. Ltd.

A.Y. 03-04 admittedly, been filed by the assessee on October 29, 2004, i.e., during the current financial year 2004-05. The selection for scrutiny of the assessee's case and completion of the assessment was not valid.

6. We find that the Hon'ble Chhatishgarh High Court in Sunita Finlease Ltd.'s case (supra) has also considered the decision of Hon'ble Supreme Court in the case of UCO Bank (1999) 237 ITR 889 and quoted from page 896 as under:

"Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigor of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Income-tax Act, which are binding on the authorities in the administration of the Act. Under section 119(2) (a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section

119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that

undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities." The facts and circumstances in the present case are that the selection of scrutiny in this case is also completed beyond the prescribed period as prescribed in Instruction No. 9/2004 dated 20.09.2004. The assessee's case was selected for scrutiny first time on 18.10.2004, as per copy of order sheet entry, and notice was issued fixing the hearing on 18.10.2004 itself. As per Instruction No. 9/2004 dated 20.09.2004, the process of selection of cases for scrutiny for returns filed up to 31.03.2004, in the present case assessee filed its return of income on 01.12.2003 must be completed by 15.10.2004. The factual position as noted by CIT(A) in his appellate order that notice u/s. 143(2) is dated 10.10.2004, is not supported by Ld. Sr. DR at the time of hearing rather assessee contested that this finding of fact is erroneous and actual case was selected by issuing notice as on 18.10.2004. Even the basis of recording this fact is only from the assessment order wherein it is mentioned that notice u/s. 143(2) is dated 10.10.2004 and the same was served on the assessee on 19.10.2004 fixing the date of hearing on 16.12.2004. When going through the order sheet entry, which is taken by assessee from the assessment records clearly reveals that factually notice u/s. 143(2) was first time issued on 18.10.2004 and not on 10.10./2004. This fact has not been contested by Ld. Sr. DR. Respectfully following the decision of Hon'ble Chhatisgarh High Court in the case of Sunita Finlease Ltd. (supra), we quash the issuance of notice u/s. 143(2) of the Act and subsequent assessment framed u/s. 143(3) of the Act. Appeal of assessee is allowed."

Keeping in view of the above and the facts relating to ITA No.1426/Kol/2011 this Tribunal has squashed the assessment framed u/s 143(1) of the IT Act since the issuance of notice u/s 143(2) of the Act is beyond the dates specified in Instruction No.9 dated 20th September, 2004. At this juncture, we would like to clarify that Instruction No.9/2004 dated 20th September,

2004 referred by the Tribunal in ITA No.1426/Kol/2011 in the case of Ajanta Financial Services Pvt. Ltd. (supra) as well as the Hon'ble Chattisgarh High Court in the case of Sunita Finlease Ltd. (supra) are in respect of the corporate assesses. However, in the case of the non-corporate assesses similar instruction has been issued in Instruction No.10 dated 20.09.2004. In this case also as per the order sheet entries incorporated in the preceding paragraphs, it is observed that the selection of scrutiny was made on 20.06.2005 and notice u/s 143(2)(ii) and 142(1) was issued on 11.07.2005 i.e. beyond the period of the scrutiny as specified in Instruction No.10/2004 dated 20.09.2004. Therefore, keeping in view of the decision of Hon'ble Chattisgarh High Court in the case of Sunita Finlease Ltd (supra) as well as Tribunal's order in ITA No.1426/Kol/2011 in the case of Ajanta Financial Services Pvt. Ltd.(supra).

8.1 In view of above we set aside the orders of the revenue authorities by squashing the order of the assessment framed u/s 143(3) of the Act since the issue of notice u/s 143(2) of the Act was not done by the ITO as specified in CBDT Instruction No.1/2011 dated 31.01.2011. As the assessment proceedings u/s 143(3) of the Act have been held as invalid, therefore in our considered view the other issues raised by the assessee."

10. Similarly, Kolkata Bench of the Tribunal in the case of Sukumar Ch. Sahoo vs. ACIT in I.T.A. No.2073.Kol/2016, vide order dated 27/09/2017, has decided the similar issue by holding as under:

"4. Brief facts of the case are that the assessee is an individual who filed his return of income for the year under consideration wherein he declared total income to the tune of Rs.50,28,040/-. The Ld. AR for the assessee submitted that as per the CBDT Instruction No. 1/11 (F. No. 187/12/2010-IT(AT) dated 31.01.2011 CBDT fixed new monetary limit in Mufassil areas, according to which income above Rs. 15 lacs for 'non corporate assessee' and Rs.20 lacs for 'corporate returns' has to be assessed by ACIT/DCIT. Thus, according to Ld. Counsel, since Haldia is a Muffasil area and instructions given by the CBDT is binding on the officers of the Department and since the assessee has declared more than Rs. 50 lacs as his returned income, then the scrutiny assessment can be done only by the

ACIT/DCIT and not by the ITO who does not have the jurisdiction to do so. For ready reference, Instruction No. 1/2011 is reproduced below:

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

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

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

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

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

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

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

since the returned income is more than Rs. 15 lacs the case was transferred from the ITO, Ward-1, Haldia to ACIT, Circle-27 and the same was received by the office of the ACIT, Circle-27, Haldia on 24.09.2014 and immediately ACIT issued notice u/s. 142(1) of the Act on the same day. From the aforesaid facts the following facts emerged:

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

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

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

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

after the limitation period for issuance of statutory notice u/s. 143(2) of the Act has set in, goes to the root of the case and makes the notice bad in the eyes of law and consequential assessment order passed u/s. 143(3) of the Act is not valid in the eyes of law and, therefore, is null and void in the eyes of law. Therefore, the legal issue raised by the assessee is allowed. Since we have quashed the assessment and the appeal of assessee is allowed on the legal issue, the other grounds raised by the assessee need not to be adjudicated because it is only academic. Therefore, the additional ground raised by the assessee is allowed.

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

10.1 Similar is the position with other cases decided by Kolkata Bench of the Tribunal, the details of which are as under:

(i) Sanat Kumar Sahana vs. ACIT, I.T.A. No.2202/Kol/2019
(ii) Dipti Kumar Sahana vs. ACIT, I.T.A. No.2203/Kol/2019
(iii) DCIT vs. Proficient Commodities Pvt. Ltd., I.T.A. No.1346/Lol/2016
(iv) Shake Akhtar Hossain vs. ACIT, I.T.A. No.2572/Kol/2019
(v) K.A. Wires Ltd. vs. Income Tax Officer, I.T.A. No.1149/Kol/2019
(vi) S.N. Ghosh & Associates vs. ACIT, I.T.A. No.462/Kol/2019

10.2 We further find that Lucknow Bench of the Tribunal in the case of Bajrang Bali Industries vs. ACIT in I.T.A. No.724/Lkw/2017, vide order dated 30/11/2018 has allowed appeal of the assessee by declaring the assessment order void ab initio. In that case also the notice u/s 143(2) was issued by non jurisdictional Assessing Officer and the assessment records were transferred by a transfer memo and assessment was made by jurisdictional Assessing Officer. The Hon'ble Tribunal held the assessment order bad in law by holding as under:

"5. We have heard the rival parties and have gone through the material placed on record. It is undisputed fact that the assessment order dated 11.03.2016 has been passed by DCIT-

2, Kanpur who had issued notice u/s 143(2) on 07.09.2015. The provisions relating to time limit for issue of statutory notice u/s 143(2) are contained in the provisions to Section 143(2) itself which provides that no notice under this section shall be served on the assessee after the expiry of six months from the end of financial year in which the return is furnished.

6. In the present case, the return of income was furnished on 30.09.2013. The financial year in which the return was filed expired on 31.03.2014 and therefore, last date for issue of notice was 30.09.2014. The statutory period for issuance of notice u/s 143(2) expired on 30.09.2014 and by 30.09.2014 the notice u/s 143(2), which was within the prescribed period of time, was issued only by DCIT-IV, Kanpur who had no jurisdiction over the case, as the DCIT-IV himself had transferred the case to DCIT-2, Kanpur vide memo dated 20.08.2015, a copy of which is placed at paper book Page 3. Therefore from the above facts and circumstances, it become apparent that the first Assessing Officer who issued notice on 30.09.2014 had no jurisdiction to assess the assessee and, therefore, he transferred the case to DCIT-2, Kanpur who though had jurisdiction to assess the assessee but issued notice u/s 143(2) only on 07.09.2015 by which date period for issuance of notice had expired. We further find that no order u/s 127 of the Act was passed by the Assessing Officer to transfer the case from Kanpur-4 to Kanpur-2. The Assessing Officer who had jurisdiction to assess the assessee issued notice u/s 143(2) only on 07.09.2015 which was beyond the prescribed time limit for issuance of such notice. Therefore, the notice issued u/s 143(2) by DCIT, Kanpur-2 beyond the statutory period of time is without jurisdiction and therefore, any order passed in consequence of such notice is also liable to be quashed. Therefore, we are in agreement with the argument of Ld. AR. Accordingly, additional grounds of appeal 5 to 8 are allowed. Since we have decided the legal issues, in favour of assessee the grounds on merits of the case have become infructuous and have not been adjudicated."

We further find that Hon'ble jurisdictional High Court in the case of Pr. CIT vs. Mohd. Rizwan, Prop. M/s M. R. Garments Moulviganj, Income Tax Appeal No.100 of 2015, vide order dated 30/03/2017 has held that if an

order is passed by judicial or quasi-judicial authority having no jurisdiction, it is an obligation of appellate court to rectify the error and set aside order passed by authority or forum having no jurisdiction. Though this case relates to notice u/s 148 however, the crux of the findings of Hon'ble jurisdictional High Court, after noting down the provisions of section 292BB are that only jurisdictional Assessing Officer can issue the statutory notice. For the sake of completeness, the relevant paragraphs starting from para 32 to 57 are reproduced below:

> *"32. Now we come to legality of notice issued under Section 148. Admittedly, it was issued by a Designated Officer authorized to receive AIR information and make inquiry. Thereafter, said Designated Officer was supposed to furnish entire material to Competent A.O. for further action.*
>
> *33. In the present case, notice under Section 148 was not issued by A.O. having jurisdiction over Assessee and instead it was issued by Designated Officer authorized to collect AIR information and make inquiry in this regard. No notice was issued under Section 148 admittedly by Jurisdictional A.O.*
>
> *34. Section 148 clearly talks of issue of notice by A.O. Meaning thereby, A.O. having jurisdiction over Assessee. In fact, it is his satisfaction which is to be recorded for justifying reopening of assessment/reassessment proceedings as contemplated under Section 147 and recording of reasons for the same purpose is mandatory. The satisfaction of A.O. could not have been hired or be delegated to any other authority.*
>
> *35. In **Commissioner of Income Tax, Kerala Vs. Thayaballi Mulla Jeevaji Kapasi 1967 (66) ITR 147 (SC)**, Court held that notice under Section 148 cannot be regarded as mere procedural requirement. It is a condition precedent for initiation of proceeding for assessment.*
>
> *36. In **Y. Narayana Chetty and another Vs. Income Tax Officer, Nellore and others 1959 (35) ITR 388 (SC)**, it was held, that, if notice issued is invalid or not properly*

served, any proceeding taken by A.O. to back assess, would be illegal and void.

*37. A Constitution Bench, in **Sardar Baldev Singh Vs. Commissioner of Income Tax, Delhi (1960) 40 ITR 605 (SC)**, a pari materia provision, i.e., Section 34 under old Indian Income Tax Act, 1922 (hereinafter referred to as "Act, 1922") was considered and it was held that A.O. having power to issue notice should be a particular A.O. having jurisdiction over Assessee at the time of issue of requisite notice. If notice issued by any other A.O. or notice is bad for any reason, than such back assessment would be illegal.*

*38. In **Anirudhsinhji Jadeja and another Vs. State of Gujarat 1995 (5) SCC 302**, Court held, if a statutory authority has been vested with jurisdiction he has to exercise it according to its own discretion.*

*39. In **K.K. Loomba and Mrs. Uma Loomba Vs. Commissioner of Income Tax and others 2000 (241) ITR 152 (Delhi)** it was held that A.O. having natural jurisdiction over the area would have jurisdiction to assess, issue notice under Section 148 as well and it cannot be done by anyone else.*

*40. Punjab and Haryana High Court in the case of **Lt. Col. Paramjit Singh Vs. Commissioner of Income Tax and another 1996 (220) ITR 446 (Punjab)** said "a notice for reassessment can be issued only by A.O. who had concluded the proceedings."*

41. We, however, do not go to that extent for the reason that there may be any subsequent change resulting in change of jurisdiction of A.O. Notice of reassessment can be issued by such an Officer but not by Officer who has no jurisdiction for assessment/reassessment.

*42. In **Commissioner of Income Tax Vs. Rajeev Sharma 2011 (336) ITR 678**, Court observed "provisions contained in Section 148 of Act, 1961 with regard to escaped assessment must be construed strictly with regard to procedure prescribed for escaped assessment."*

43. The reason for issuance of notice by Competent A.O. is quite obvious inasmuch as such notice could have been issued only when concerned A.O. has reason to believe that some income has escaped assessment and recomputation/ reassessment is needed. Now such satisfaction can be of that A.O. only who has jurisdiction in the matter and not of any third party.

44. We, therefore, hold that in the present case, no valid notice under Section 148 was issued by Jurisdictional A.O. before making assessment/reassessment and, therefore, proceedings of reassessment pursuant to notice issued under Section 148 by an incompetent Officer are void and ab initio.

45. When a notice under Section 147/148 issued is a jurisdictional step, it cannot be treated to be mere irregularity curable under Section 292BB. In fact, Section 292BB has no application to a case where no valid notice has been issued by Competent A.O. This is clear from a bare reading of Section 292BB of Act, 1961 which reads as under:"

> ***292BB.*** *Where an assessee has appeared in any proceedings or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was*
>
> *a) not served upon him; or*
> *(b) not served upon him in time; or*
> *(c) served upon him in an improper manner:*
>
> ***Provided*** *that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."*

46. The curability permitted under Section 292BB is with regard to service of notice upon Assessee and not with regard to competence of authority who has issued notice.

47. A similar question was considered in ***Commissioner of Income Tax, Gujarat II Vs. Kurban Hussain Ibrahimji Mithiborwala 1972 (4) SCC 394*** *and Court said "Income Tax Officer's jurisdiction to reopen an assessment under Section 34 depends upon issuance of a valid notice. If notice issued by him is invalid for any reason, entire proceedings taken by him would become void for want of jurisdiction." Court then held that notice was invalid as A.O. had no jurisdiction to revise assessment then it cannot be treated to be mere irregularity so as to validate proceedings of assessment if the Assessee had participated.*

48. Similar is the view taken by a Full Bench of this Court in ***Laxmi Narain Anand Prakash Vs. Commissioner of Sales Tax, Lucknow AIR 1980 ALL 198.***

49. The contention of learned counsel for Revenue that participation of Assessee before Jurisdictional A.O. would operate as acquiescence or waiver and will not invalidate proceedings is thoroughly misconceived.

50. In ***Karnal Improvement Trust, Karnal Vs. Smt. Prakash Wanti and another (1995) 5 SCC 159****, Court said that acquiescence does not confer jurisdiction and erroneous interpretation should not be permitted to perpetuate and perpetrate defeating of legislative animation.*

51. In ***Abdul Qayume Vs. Commissioner of Income Tax 1990 (184) ITR 404****, Court said "an admission or an acquiescence cannot be a foundation for assessment where the income is returned under an erroneous impression or misconception of law."*

52. It is well settled that a jurisdiction can neither be waived nor created even by consent and even by submitting to jurisdiction, an Assessee cannot confer upon any jurisdictional authority, something which he lacked inherently.

53. Even if, it can be said that Assessee submitted to jurisdiction of A.O., law is that Assessee cannot confer jurisdiction on an authority who did not have the same and we find support from ***Commissioner of Income Tax Vs. Hari Raj Swarup and sons (1982) 138 ITR 462 (Alld.)****.*

54. In ***Mir Iqbal Husain Vs. State of U.P. 1963 (50) ITR 40****, it was held that requirement of valid notice cannot be waived. The mere fact that Assessee filed Return of Income pursuant to invalid notice would not render notice valid or validate subsequent proceedings which are vitiated in law for want of valid notice.*

55. In ***Raza Textile Ltd. Vs. Income Tax Officer, Rampur (1973) 87 ITR 539 (SC)****, Court said that it is incomprehensible to think that a quasijudicial authority like A.O. can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen.*

56. If an order is passed by a judicial or quasijudicial authority having no jurisdiction, it is an obligation of Appellate Court to rectify the error and set aside order passed by authority or forum having no jurisdiction. This is what was held in ***State of Gujarat Vs. Rajesh Kumar Chimanlal Barot and another AIR 1996 SC 2664.***

57. In view of above discussion, we have no manner of doubt to answer all the four questions against Revenue and in favour of Assessee."

11. As regards the applicability of section 292BB of the Act, we find that under similar facts and circumstances, the Hon'ble Kolkata Bench of the Tribunal in the case of Soma Roy vs. ACIT in I.T.A. No.462/Kol/2019, examined this issue and relying on the judgment of Hon'ble Supreme Court in the case of CIT vs. Laxman Das Khandelwal [2019] 108 taxmann.com 183 (SC) held that section 292BB would apply only where the notice u/s 143(2) had emanated from the Department and it is only the infirmities in the manner of service of notice which the section seeks to cure. The relevant

part of the judgment of Hon'ble Supreme Court order, reproduced in the order of Kolkata Bench of the Tribunal in the case of Soma Roy, is reproduced below:

> *"7. A closer look at Section 292BB shows that if the assessee has participated in the proceedings it shall be deemed that any notice which is required to be served upon was duly served and the assessee would be precluded from taking any objections that the no (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner. According to Mr. Mahabir Singh, learned Senior Advocate, since the Respondent had participated in the proceedings, the provisions of Section complete answer.*
> *On the other hand, Mr. Ankit Vijaywargia, learned Advocate, appearing for the Respondent submitted that the notice under Section 143(2) of the Act was never issued which was evident from the orders passed on record as wel appeal. It was further submitted that issuance of notice under Section 143(2) of the Act being prerequisite, in the absence of such notice, the entire proceedings would be invalid.*
>
> *8. The law on the point as regards applicability of the requirement of notice under Section 143(2) of the Act is quite clear from the decision in Hotel Blue Moon's case (supra). The issue that however needs to be considered is the impact of Section 292BB of the Act.*
>
> *9. According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself."*

11.1 In the present case we have already held that statutory notice u/s 143(2) was not issued by the jurisdictional Assessing Officer and therefore, the reliance placed by Learned D. R. on 292BB is of no help to Revenue.

11.2 As regards the judgment of Hon'ble Supreme Court in the case of I-Ven Interactive Limited (supra), we find that though this judgment was not relied upon by Learned D. R. but at the asking of the Bench, Learned counsel for the assessee had clarified that this judgment is not applicable to the facts and circumstances of the case and we also hold that this judgment is not applicable to the facts of the present case as in that case Hon'ble Supreme Court has held the validity of notice u/s 143(2) if the same was served at the address mentioned in the PAN database whereas in the case before us, there is no dispute about service of notice but the dispute is regarding the issue of notice by a non jurisdictional Assessing Officer. Therefore, we agree with the arguments of Learned counsel for the assessee that this judgment is not applicable to the present facts. Under similar facts and circumstances in the case of K. A. Wires Pvt. Ltd. in I.T.A. No.1149/Kol/2019, the Kolkata Bench of the Tribunal examined the judgment of Hon'ble Supreme Court in the case of I-Ven Interactive Ltd. and held that this judgment was not applicable. For the sake of completeness, the relevant part of the order of the Tribunal is reproduced below:

> *"8.27. The Ld. DR cited the judgment of the Hon'ble Supreme Court in the case of I -Ven Interactive Limited (Civil Appeal No. 8132 of 2019 dated 18.10.2019). This judgment is not on the issue of jurisdiction of the Assessing Officer. In that case, there is no dispute that the assessing officer issuing notice had jurisdiction over the assessee. In that case the selection of the return for scrutiny was generated under automated system of the Income Tax Department which picks up the address of the assessee from the PAN database. The notice u/ s 143(2) was*

sent at the assessee's address available as per the PAN database. Intimation for further hearing and three more notices were sent at the same address as available in the PAN. Finally, the assessee appeared before the tax authority but challenged the notices saying that these notices were not served upon him and that he never received notice u/s 143(2) of the Act and that further subsequent notices served and received by the assessee were beyond the period of Imitation prescribed under the law. The assessee submitted that he changed his address and the new address was mentioned in the return of income filed for subsequent years. The assessee also submitted that he filed Form No.18 with Registrar of Companies, regarding change of address. No separate intimation was given to the Assessing Officer by the assessee regarding change of address. The Court held that mere mentioning of the new address on subsequent return without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed, is not enough and sufficient. The court found that the assessee claimed to have filed a letter for change of address but such letter was never produced before any of the authorities. It was held that on the facts of the case, the notice issued on the address available on the PAN data base was proper and valid service of notice u/s 143(2) of the Act The court held that the change of address in the database of PAN is must, in case of change of the name of the company and/ or any change in the registered office of the corporate office of the assessee and the same has to be intimated to the Registrar of Companies in the prescribed format i.e., Form 18 and after completing the said requirement, the assessee is required to approach the Department with the copy of the said document and then the assessee is required to make an application for change of address in the departmental database of the PAN. In the present case the assessee has failed to do so. This judgment is on the issue of service of notice. It is not an issue as to whether the Assessing Officer has jurisdiction over the assessee. As already stated, it is not a case of notice being issued by a non-jurisdictional Assessing Officer. It is therefore clear that the issue in the case before the Hon'ble Supreme Court was not with regard to the jurisdiction of the officer in issuing the notice but was with regard to the service of notice on the proper address. The said judgment therefore does not help the department on this issue of jurisdiction now before us.

Jurisdiction has to be conferred u/s 120 of the Act. Any act by an authority without jurisdiction is ab-initio void.

8.28. In view of the above discussion, as the Assessing Officer who had jurisdiction over the assessee i.e., ITO Ward - 8(3), Kolkata had not issued the notice to the assessee u/s 143(2) of the Act as mandatorily required under the Act, the assessment framed u/s 143(3) of the Act, is bad in law as held by the Hon'ble Supreme Court in the case of ACIT & Anr. Vs. Hotel Blue Moon: 321ITR 362 (SC). Hence we quash the same.

9. As we have held that the assessment is bad in law, in view of the non-issual of the statutory notice u/s 143(2) of the Act by the Assessing Officer, having jurisdiction over the assessee, we would not go into the merits of the case as it would be an academic exercise."

12. Keeping in view the above facts and circumstances and legal precedents, we allow the jurisdictional ground taken by the assessee that the notice u/s 143(2) was not issued by an officer having jurisdiction on the assessee and who had passed the assessment order and therefore, we hold that in view of non issue of statutory notice u/s 143(2), the assessment order is bad in law and void ab in initio and hence all further proceedings including the order passed by the learned CIT(A) is bad in law and therefore, the appeal filed by Revenue against the order of learned CIT(A) does not stand and is dismissed.

13. In the result, the appeal of the Revenue is dismissed by allowing one of the grounds of the assessee raised under Rule 27 of the I.T.A.T., Rules.

14. Before we part with the order, it is pertinent to note that the Revenue has raised several grounds on merit and assessee has also raised another plea under Rule 27, but since we have annulled the assessment order, the ground of Revenue as well as the other plea of the assessee has become

academic and infructuous therefore, we are not adjudicating these grounds as having become infructuous.

15. In the result, the appeal of the Revenue is dismissed and the application filed by the assessee under Rule 27 is partly allowed.

(Order pronounced in the open court on 06/11/2020)

Sd/.	**Sd/.**
(A. D. JAIN)	**(T. S. KAPOOR)**
Vice President	**Accountant Member**

Dated:06/11/2020
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar