

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

Before Shri Sanjay Garg, Judicial Member and Rajesh Kumar, Accountant Member

I.T.A No.99/Kol/2022  
Assessment year: 2008-09

ITO, Ward-5(1), Kolkata.....Appellant  
vs.

M/s BPO Finance and Investments Pvt. Ltd. ....Respondent  
R No.54,5/1, Clive Row (2<sup>nd</sup> Floor),  
Kolkata-1.  
[PAN: AACCB5328F]

**Appearances by:**

Shri Manish Tiwari, AR appeared on behalf of the appellant.

Shri Vijay Kumar, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 15, 2023

Date of pronouncing the order : July 04, 2023

**आदेश / ORDER**

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

The present appeal has been preferred by the revenue against the order dated 10.09.2020 of the Commissioner of Income Tax (Appeals)-13, Kolkata (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The revenue originally has taken the following grounds of appeal:

*"1. Whether on the facts and in the circumstances of the case, Ld, CIT(A) was justified in the quashing the addition of Rs. 1,85,000,00/- made by the Assessing Officer on account of share capital and premium in the course assessment in absence of identity of the creditors, genuineness and creditworthiness of the entire transactions.*

*2. Whether on the facts and in the circumstances of the case, Ld, CIT(A) was justified in the quashing the addition of Rs. 1,85,00,000/- made by the Assessing Officer where no personal attendance was made by any director of the share allottee companies during the course of assessment proceedings and as such identity & creditworthiness of the creditors and genuineness of transactions could not be verified.*

3. *Whether on the facts and in the circumstances of the case, and in law, the Ld CIT(A) has erred in considering the ratio of the case in the case of Pr. CIT(C)-1, Kolkata vs NRA Iron & Steel Pvt. Ltd (412 ITR 161).*

4. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in considering the facts, that the assessee company discharged its onus as is envisaged u/s. 68 of the Act.*

5. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in deleting the disallowance made u/s. 14A.*

6. *The appellant craves to add, alter, amend, delete or substitute any of the grounds and/or take additional grounds before or at any time of hearing of this appeal.”*

A perusal of the above grounds of appeal would reveal that the revenue has contested the action of the CIT(A) in deleting the additions citing factual matrix of the case. However, a perusal of the impugned order of the CIT(A) would reveal that the ld. CIT(A) has not decided any issue on factual matrix of the case, rather, the ld. CIT(A) has held the assessment order as bad in law for want of valid jurisdiction of the Assessing Officer to frame the assessment. The aforesaid lacuna in not raising the valid grounds of appeal relating to the action of the CIT(A) in setting aside the assessment order as bad in law was brought into the knowledge of the department. The ld. DR sought adjournment on 16.01.2023 to get clarification from the Assessing Officer regarding the grounds of appeal. Thereafter, a letter dated 16.01.2023 was written on behalf of the ld. DR to the concerned Income Tax Officer requesting therein that in the case in hand, the ld. CIT(A) deleted the addition on issue of jurisdiction (technical ground) but the appeal has been filed by the Assessing Officer on the basis of the merit of the case and that there is nothing in grounds of appeal challenging the action of the CIT(A) in setting aside the assessment order on the basis of legal ground. In view of the above, it was requested to send the revised grounds of appeal. A copy of the said letter was also sent to the ld. Principal Commissioner of Income Tax-2,

Kolkata and Additional Commissioner of Income, Range-5, Kolkata. In reply to the said letter, the concerned Income Tax Officer/Assessing Officer sent the revised grounds of appeal vide his letter dated 25.01.2023 to the office of the CIT-DR, which were placed on record by the ld. DR and the same are reproduced as under:

- “1. That on the facts and circumstances of the case, Ld. CIT(Appeals) erred in law in deleting the addition of Rs. 1,85,00,000/- as unexplained cash credit u/s. 68 of the Act, ignoring the facts that the assessee failed to produce any director for verification of identity, creditworthiness and genuineness of transaction.*
- 2. That the appellant subtly avoided the onus to produce any director for verification of identity, creditworthiness and genuineness of transaction.*
- 3. That on the facts and circumstances of the case, Ld. CIT(Appeals) erred in coming to the conclusion that the assessee had discharged the initial onus which lay upon him in terms of section 68 of the Act.*
- 4. That on the facts and circumstances of the case, Ld. CIT(Appeals) erred in law in deleting the addition of Rs. Rs. 13,56,097/- u/s. 14A of the Act, denying the findings of the Assessing Officer.*
- 5. That on the facts and circumstances of the case, Ld. CIT(Appeals) failed to appreciate the facts in proper prospective while concluding in favour of the assessee.*
- 6. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or at the time of hearing.”*

A perusal of the above grounds of appeal would show that despite bringing this fact specifically to the knowledge of the concerned authorities, the concerned authorities have again repeated the grounds of appeal agitating the deletion of the addition by the CIT(A) citing the factual matrix of the case, whereas, the CIT(A) has not touched upon the factual merits of the case, rather, he deleted the additions on the legal ground relating to the validity of the assessment framed by the Assessing Officer, which issue, has not been raised at all by the revenue through grounds of appeal despite bringing this fact to the knowledge of the concerned authorities and giving sufficient opportunities. However,

considering the principles of natural justice, we proceed to adjudicate the issue relating to the action of the CIT(A) in setting aside the assessment holding the same as bad in law.

3. The assessee before the CIT(A) had made the following submissions agitating the validity of reassessment proceedings initiated u/s 147 of the Act by the Assessing Officer:

**“4. Submission of the appellant:**

*These grounds are interconnected and challenge the action of assessing officer to contest the validity of re-assessment proceeding initiated u/s 147 of I.T. Act, 1961 along with challenging the validity of notice issued u/s 148 of the IT Act by an jurisdictional assessing officer situated in New Delhi. The reassessment proceeding us 147 initiated by non- jurisdictional assessing officer is not maintainable in law and is liable to be quashed. In support of our contention we submit as follows:-*

*a) The appellant prior to 01.04.2009 was assessed with ITO Ward 5(2), New Delhi. Thereafter by an order form Ld CIT-I Delhi, dated 01.04.2009 passed u/s 127 of the IT Act. The jurisdiction of the appellant company was transferred from ITO Ward 5(2) New Delhi to ITO Ward 5(3) Kolkata.*

*b) Notice u/s 148 is stated to have been issued by the ITO 5(2) New Delhi on 30.03.15 who had no jurisdiction over the appellants case, thereafter the case was transferred to the jurisdictional assessing officer ITO Ward 5(3) Kolkata, who passed the reassessment order without issuance of any notice u/s 148 of the IT Act.*

*c) The appellant company on 29.02.2016 received communication in form of a notice u/s 142(1) from ITO Ward 5(3) Kolkata, wherein for the first time it was made aware of any proceedings u/s 148 of the IT Act. In reply to the said notice the appellant company on 07.03.2016 stated the appellant was never served with any mandatory notice u/s 48 of the IT Act and hence slated that the re assessment proceeding is void and bad in law and even if assuming that notice u/s 148 was served within the due date, the notice being issued by non-jurisdictional AO is invalid in absence of any jurisdiction by ITO Ward 5(2) New Delhi.*

*d) The assessing officer in Kolkata on 15.03.2016 issued another notice to the appellant, in the said notice he ignored the previous objections raised*

by the appellant company and asked the appellant to make compliance. The AO in Kolkata did not issue fresh notice u/s 148 of the Act as the due date for issuing notice w/s 148 already expired long time back i.e. in the month of March 2015.

e) Before going further, it is important to note the significant dates which will assist your honour in understanding the series of events leading to the reopening of the case and the completion of the re-assessment as follows;

Sl.	Particulars	Date	Remarks
1	Order u/s 127 of the IT Act issued by Ld. CIT-1, New Delhi	01.04.2009	Appellant's case file transferred from New Delhi to Kolkata
2	Return filed by the assessee for the AY 2008-09	17.02.2009	Return filed with ITO Kolkata
3	Notice u/s 148 issued by ITO Ward-5(2), New Delhi		No notice u/s 148 was received by the appellant
4	Notice u/s 142(1) received from ITO, 5(3), Kolkata	29.02.2016	This is the first time the appellant was Aware about the ongoing proceedings u/s 147 of the IT Act.
5	Objection challenging the jurisdiction filed by the appellant	07.03.2016	The appellant stated that no notice u/s 148 was served upon it.
6	Notice u/s 142(1) received from ITO, 5(3), Kolkata	15.03.2016	The ITO stated the sequence of events in appellants case and called for compliance to the notice
7	Reply filled by the appellant	21.03.2016	The appellant requested the AO to supply the recorded reasons for initiation of proceeding u/s 148
8	Supply of recorded reasons	21.03.2016	Recorded reasons was received
9	Reply by the appellant	22.03.2016	The appellant requested for a short adjournment
10	Date of order	29.03.2016	

f) The appellant's case was transferred from New Delhi to Kolkata 01.04.2009 the order u/s 127 of the Act with regard to the same form part of our paper book. The appellant's case was transferred u/s 127 of the Act, the effect of such transfer is that all the proceedings of the appellant

company, under the Act in respect of any assessment year which may be pending on the date of such order will stand transferred, all the completed assessment order of the appellant on or before the date of transfer stood transferred and all the proceedings under the Act in respect of the appellant which may be commenced after the date of such transfer order have to be undertaken by the new assessing officer i.e. ITO Ward 5(3) Kolkata only. Accordingly ITO New Delhi does not had any power conferred under the Act for the purpose of initiating proceedings u/s 148 of the Act against the appellant. Hence initiation of proceedings u/s 148 of the IT Act upon the appellant by non-jurisdictional AO is void ab initio. Similar view was taken by ITAT Kolkata in the case of Rungia Irrigation Ltd vs ACIT CC- 3(1) Kolkata [113 Taxmann. com 330]. Thus, it is the ITO Ward 5(3) Kolkata, who is "vested with the relevant jurisdiction", who is the authority who is required to issue a notice under section 148 of the IT of the Act. In the appellant's case no such notice u/s 148 of the IT Act was issued by the ITO Ward 5(3) Kolkata. Thus the proceedings itself is bad in law. The foundation of the case fails and hence all consequent actions of AO is bad in law.

g) At his juncture would like to highlight the provision of section 148(1) of the Act which is as under:

"Before making the assessment, reassessment or re-computation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed ; and the provisions of this Act shall, so far as may be apply accordingly as if such return were a return required to be furnished under section 139,"

h) Hence, upon plain reading of section 148(0) we can make Out that it is a statutory mandate on the AO to serve notice on the assessee to furnish the return of income, before making, inter alia the reassessment under section 147 of the Act. Now, "Assessing Officer" is defined in section 2(7A), as follows:

2(7A) "Assessing Officer" means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions

or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to. an Assessing Officer under this Act.'

i) In the appellant's case, notice u/s 148 of the IT Act was not issued by the Assessing Officer as defined under the Act, since the said notice was issued by non-jurisdictional ITO New Delhi. As notice u/s 148 of the IT Act was issued by an incompetent officer, i.e. one who has no jurisdiction and subsequently the matter is transferred to the jurisdictional assessing officer having jurisdiction, assessment should have been made by issuing a fresh notice u/s 148 of the IT Act. Similar view was taken by Hon'ble ITAT Lucknow Bench in the case of Ramesh Mishra vs DCIT Range-6 [111 Taxmann.com 268]. Hence completion of re-assessment by ITO 5(3) Kolkata without issuing mandatory notice u/s 148 of the IT Act is void and bad in law.

j) The appellant would like to bring to Your Honour's kind attention to the notice dated 15.03.2016 issued by ITO Ward 5(3) Kolkata wherein the AO in point no (ix) quotes the following "From the copy of the said order u/s 127 of the IT Act dated 01.04.2009 it appears that the order u/s 127 of the Act was issued against PAN AACCB5328F. But since you have another Pan AACCB2556N, the notice u/s 148 of the IT Act was issued under this PAN So the so Called order u/s 127 of the IT Act dated 01.04.2009 has no bearing with this PAN AACCB2556N. Hence your objection that the notice u/s 148 of the IT Act 30.03.2015 is "illegal ab-initio " does not stand at all

k) The allegation of the AO that the appellant company is having two PAN i.e. AACCB5328F & AACCB2556N is totally incorrect. The appellant states that PAN AACCB5328F is the only PAN held by the appellant company and the appellant has always used this PAN for filing its return of income since its incorporation. Further this is not the first time that an income tax proceeding has been initiated upon the appellant, in past also the appellant has been assessed by the Income Tax department and in PAN AACCB5328F at New Delhi/Kolkata. Hence the contention of the AO that the appellant is having two PAN is baseless and unfounded. Your Honour from the above we can note that the notice u/s 148 was never issued against PAN AACCB5328F either by the Delhi ITO or by the impugned officer. Notice u/s 148 was issued by Non jurisdictional officer against a

*PAN which is not known, which is fundamentally illegal. The appellant raised the issue before the assessing officer but he altogether ignored the same. Hence the reassessment proceeding against the appellant is void ab initio and nullity in the eye of law. Hence the re-opening should be quashed.*

*I) In view of what has been mentioned hereinabove, the appellant company humbly prays before your kindness to quash the re-assessment proceedings initiated under section 148 of the Act as it is void-ab-initio.”*

4. Considering the above submissions of the assessee, the ld. CIT(A) held the assessment order passed by the Assessing Officer i.e. ITO, Ward-5(3), Kolkata as bad in law, observing as under:

**“5. OBSERVATION & DISCUSSION:**

*The appellant company is a Non-Banking Finance Company registered with Reserve Bank of India and engaged in the activity of Investment and Finance.*

*5.1 Grounds of Appeal Number 1 to 4 pertains to the contentions of the appellant against the initiation of reassessment proceedings us 147 The registered office of the appellant was in Delhi and it was assessed in Delhi till 31.03.2009.*

*From 01.04.2009 onwards the appellants income tax jurisdiction was transferred from Delhi to Kolkata vide order u/s 127 dated 01 04.2009 The return of income for the AY 2008-09 was filed on 17.02.2009 electronically at declared total income at Nil.*

*Later on notice u/s 148 was issued and order u/s 144/147 was passed on 29.03.2016 and total income was assessed at Rs 1,30,77,220/- Being aggrieved by the re-assessment order of the AO, the appellant preferred appeal before the undersigned on 11 grounds*

*5.2 **Grounds of Appeal Number1 to 4** are interconnected and challenge the legal validity of the impugned reassessment order. The appellant has contended that this legal issue goes to the root of the matter and since all material facts for deciding this legal issue are available on record, this issue is taken up before dealing with the merits of the case.*



*It is observed that these grounds relate to validity of order passed u/s 147 of the Income Tax Act, 1961.*

*It has been stated by the AR of the appellant that notice u/s 148 of the Act was issued on 30.03.2015 by the ITO, Ward-5(3), New Delhi.*

*The contention of the appellant is that the issue of notice u/s 148 by the ITO, Ward-5(3), New Delhi is beyond jurisdiction and bad in law. It is observed that previously the company was situated in New Delhi and subsequently the office of the appellant company shifted to Kolkata after order u/s 127 of the Act was passed by the CIT. Delhi-1 dated 01.04.2009 in respect of the assessee with PAN AACCB5328F.*

*Thereafter, the appellant company was filing its return regularly with the ITO, Ward-5(3), Kolkata whereas the notice u/s 148 was issued on 30.03.2015 by the ITO. Ward-5(2), New Delhi, So clearly the issue of notice u/s 148 by the ITO, Ward-5(2), New Delhi is beyond jurisdiction.*

*5.2.1 During the course of re-assessment proceeding before the ITO. Ward-5(3) Kolkata the appellant company raised the objection of beyond jurisdiction and bad in law vide its letter dated 07.03.2016 which is available in the Paper Book at page 97*

*In reply to this objection the AO issued a letter dated 15.03.2016 which is also available in the Paper Book at page 91.*

*From point Nos. (viii) & (ix) of AO's letter, it gathered that the order u/s 127 was passed in respect of PAN- AACCB5328F whereas notice u/s 148 was issued in respect of another PAN of the appellant company and the PAN is AACCB2556N. So the AO rejected the objection raised by the appellant company.*

*From the perusal of the Assessment order, it is observed that the order u/s 144/147 was passed on 29.03.2016 in respect of PAN AACCB5328F. Therefore, the claim and assertion of the AO is income as the AO himself passed re-assessment order in respect of PAN:- AACCB5328F*

*In its submission, the appellant company has vehemently denied the allegation of double PAN. The appellant stated that PAN: AACCB53228F is the only PAN of the appellant company, which is its only PAN for all the income tax matters since its incorporation.*

*On perusal of pages 26 & 27 of the paper book it is observed that the appellant company used this above stated PAN for filing of Income Tax Return. Again, pages 50 & 51 of the paper book indicate that the A.O also used this PAN for the scrutiny assessment purpose. Moreover, pages 104 & 105 of the paper book indicate the transfer of address of the appellant company from Delhi to Kolkata with the same PAN.*

*In this background the letter dated 15.05.2016 of the AO with the allegation that the appellant company has two PAN is incorrect and without any basis.*

*Furthermore as, the appellant's case was transferred u/s 127 of the Act on 01.04.2009, the effect of such transfer is that all the proceedings of the appellant company under the Act in respect of any assessment year which may be pending on the date of such order will stand transferred, all the completed assessment order of the appellant on or before the date of transfer stood transferred and all the proceedings under the Act in respect of the appellant which may be commenced after the date of such transfer order have to be undertaken by the new assessing officer i.e. ITO Ward 5(3) Kolkata only. The appellant has further argued that the ITO New Delhi did not had any power conferred under the Act for the purpose of initiating proceedings u/s 148 of the Act against the appellant. Hence initiation of proceedings u/s 148 of the IT Act upon the appellant by non-jurisdictional AO is void ab-initio. Thus, it is the ITO Ward 5(3) Kolkata, who is "vested with the relevant jurisdiction", who is the authority who is required to issue a notice under section 148 of the IT of the Act. In the appellant's case no such notice u/s 148 of the IT Act was issued by the ITO Ward 5(31) Kolkata. Thus the proceedings itself is bad in law. The foundation of the case fails and hence all consequent actions of AO bad in law.*

*5.2.2 I have carefully perused the reassessment order of the AO and the written submissions filed by the AR of the appellant. The A/R of the appellant has submitted a comprehensive Paperbook containing the relevant documentary evidences to substantiate its claim.*

*The basic requirement of Section 147 is that the Assessing Officer must have a reason to believe that any income chargeable to tax has escaped assessment and such belief must be belief of the jurisdictional Assessing Officer and not any other Assessing Officer or authority.*

*Therefore, the jurisdiction of A.O. to reopen an assessment depends upon issuance of a valid notice and in absence of the same, entire proceedings*

taken by him would become void for want of jurisdiction [**ACIT vs. Resham Petrotech Ltd. (2012) 136 ITD 185 (Ahd.)(Trib)**]

5.2.3 Further, In the case of **Smriti Kedia vs. UOI (2012) 250CTR221 (Cal.)**, the assessment was in Kolkata and the Reassessment notice was issued in Delhi, and such reassessment was held to be without jurisdiction. It was held that Assessment having been made by A.O. in Kolkata, in the absence of any order under Section 127 transferring the case, reassessment notice issued by A.O. at Delhi and all subsequent proceedings based on said notice are without jurisdiction.

In the case of **Gaurav Joshi vs. ITO (2019) 197 TTJ 946(Asr.)(Trib.)**, it was held that the assessment framed by A.O had not issued notice u/s 148 of the Act is void-ab-initio.

As the notice was issued by the A.O. who had no jurisdiction, the reassessment was held to be bad in law. In this case, the ITO- 1(5), Ludhiana reopened the assessment and issued notice dated 30/03/2017 u/s 148 of the Act on the basis of reasons so recorded .In response to such notice, assessee filed return of income declaring income of Rs.49,320/- Thereafter, the assessment was framed by ITO-1(5), Jalandhar assessing the income at Rs. 6.71,915/-.

5.2.4 The Tribunal observed that ITO- 1(5), Ludhiana issued the notice u/s 148 read with section 147 and thereafter, the jurisdiction was transferred to ITO- 1(5), Jalandhar who never issued the notice us 148 of the Act but framed the assessment u/s 143 of the Act. The Tribunal further relying on the decision of the ITAT Agra Bench in the case of Jawahar Lal Agarwal vs. ITO where the issue was similar held that the AO may assess or reassess any income escaping assessment, if he has reason to believe such escapement of income.

The section starts with the words if the Assessing Officer has the reason to believe'. As per section 2(7A) of the Act, 'Assessing Officer' means an Officer, as named therein, who is vested with the relevant jurisdiction. Thus, it was only the Officer having jurisdiction of the matter that u/s 147 of the Act, could have formed any reason to believe escaping assessment and none other.

In view of the above, Tribunal held that since the reasons were recorded by the AO who did not exercise the relevant jurisdiction, such reasons were non-est, being in flagrant violation of the express provision of section

147 read with section 2(7A) of the Act. Thus, the reassessment order was quashed.

5.2.5 It is also relevant to note that **Hon'ble ITAT, Kolkata in Income Tax Appeal No.894/Kol/2012 dated 14/05/2013 in the case of Chanakya Finvest (P) Ltd. Vs. Income Tax Officer** held that:

"6. After going through the provisions of sections 120,124 and 127 of the Act, the plenary powers regarding conferment of jurisdiction has been vested, by delegation by the statute, on the Commissioner having jurisdiction in respect of assessment of the case. This power, in the absence of any prohibition or restriction, empowers the Commissioner of Income Tax to effect realignment of jurisdiction. The Commissioner of Income Tax by order or direction, while divesting these authorities of the power in respect of performance of their duties under the Act conferred earlier, may confer such jurisdiction to other authorities under the Act, as he may direct.

As soon as such order or direction is made completely divesting the jurisdiction of the authorities so long so empowered, all proceedings including those which might arise thereafter, before them as also proceedings pending before them, come within the jurisdiction of the newly conferred authorities unless any specific provision is made in respect of any pending proceedings. Such consequence is inevitable when there is withdrawal of jurisdiction, which means automatic extinction of jurisdiction of one authority with simultaneous conferment of jurisdiction on another authority under the Act in respect of all pending and future proceedings.

Explanation to section 127 of the Act makes it clear that the word "case" in relation to any person whose name is specified in the order of transfer means all proceedings under the Act in respect of any year which may be pending on the date of the transfer, and also all proceedings under the Act which may be commenced after the date of transfer in respect of any year. The word "case" is thus used in a comprehensive sense of including both pending proceedings and proceedings to be instituted in the future.

Consequently, an order of transfer can be validly made even if there be no proceedings pending for assessment of tax and the purpose of the transfer may simply be that all future proceedings are to take place before the Officer to whom the case of the assessee is transferred.

7. In view of the above principle regarding jurisdiction and facts of the present case, the order passed by CIT-1 Delhi, transferring jurisdiction from ITO, Ward 3(3), New Delhi on 04/01/2010, subsequent action of the AO i.e ITO, Ward 3(3), New Delhi issuing notice u/s 14% of the Act dated 25/03/2010 is invalid because the jurisdiction was transferred from ITO, Ward 10), New Delhi by CIT-1 Delhi to ITO, Ward 6(1), Kolkata.

At the time of passing of order by CIT-I Delhi transferring jurisdiction from ITO, Ward 3(3), New Delhi dated 04/01/2010 to ITO, Ward 6(1), Kolkata, there is no proceedings pending before the ITO, Ward 3(3), New Delhi. The CIT-I, Delhi passed order u/s 127 of the Act on 04/01/2010 transferring the jurisdiction of the assessee to ITO, Ward 6(1), Kolkata and the jurisdiction in respect to every action for all assessment years lies with the ITO, Ward 6(1), Kolkata and only he is competent to issue notice u/s 148 of the Act. In such circumstances, the notice issued u/s 148 of the Act by the ITO, Ward 3(3), New Delhi is bad and illegal in view of the clear provisions of the Act because an order for transfer of case was validly made by CIT and the purpose for transfer was simply that all future proceedings are to be taken by ITO, Ward-6(1), Kolkata w.e.f. 04/01/2010. Hence, the notice issued u/s 148 of the Act dated 25/03/2010 is quashed..

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

5.2.6 in view of the above discussion and respectfully following the judgment of Hon'ble Calcutta High Court in the case of **Smriti Kedia vs. UOI (2012) 250CTR221 (Cal.)**, various judicial pronouncements of **Hon'ble Jurisdictional ITAT, Kolkata in Income Tax Appeal No 894/Kol 2012 dated 14/05/2013 in the case of Chanakya Finvest(P) Ltd. Vs. Income Tax Officer, Gauras Joshi vs. ITO (2019) 197 TTJ 946(Asr.)(Trib.)**, and **ACIT vs. Resham Petrotech Ltd (2012) 136 ITD 185 (Ahd.)(Trib)**, the assessment order u/s 144/147 dated 29.03.2016 is bad in law and hence quashed. Accordingly, the appeal of the A.O in respect of ground nos.1 to 4 is hereby allowed."

5. The ld. DR before us could not point out any defect and infirmity in the order of the CIT(A) holding the reassessment order passed u/s 147 of the Act as bad in law.

6. The ld. CIT(A) has categorically held that the jurisdiction of the assessee having PAN No.AACCB5328F was transferred from New Delhi to

Kolkata vide order dated 01.04.2009 passed by the Id. CIT, New Delhi u/s 127 of the Act. However, the notice u/s 148 of the Act, which is a pre-requisite to assume jurisdiction to frame the assessment u/s 147 of the Act, was issued on 30.03.2015 by the ITO, Ward-5(2), Kolkata, New Delhi, who did not have any jurisdiction to proceed with any assessment/reassessment proceedings in the case of the assessee. The assessee duly raised objections regarding the jurisdiction of the Assessing Officer at Delhi to frame the assessment. However, the objections of the assessee were rejected noting that the assessee was having two PAN numbers. That though the PAN No.AACCB5328F was transferred to Kolkata, however, the second PAN number of the same assessee was lying within the Delhi jurisdiction against which the notice u/s 148 of the Act was issued by the ITO, Ward-5(2), New Delhi. The assessee denied any second PAN number in his name and stressed that the assessee has been regularly filing its return of income from 01.04.2009 onwards at Kolkata only. The Id. CIT(A) noted that though it has been alleged that the notice u/s 148 was issued against PAN No.AACCB2556N, the jurisdiction of which was allegedly lied with ITO, New Delhi, however, the assessment order was passed against PAN No.AACCB5328F only. Admittedly, the ITO, Kolkata did not issue any notice u/s 148 of the Act before framing assessment u/s 147 of the Act despite the assessee having raised specific objections in this respect. The ITO, Kolkata totally ignored the objections of the assessee in this respect. The ITO, Kolkata did not form any belief that the income of the assessee has escaped assessment and did not issue any notice u/s 148 of the Act to the assessee to proceed to frame the assessment u/s 147 of the Act. Moreover, the ITO, New Delhi having issued notice u/s 148 of the Act transferred the case to the ITO, Kolkata without obtaining any valid order from the competent authority. Even the notice u/s 148 of the Act

issued by the ITO, Ward-5(2), New Delhi, as per the own version of the Assessing Officer, was issued in a different PAN number and no assessment proceedings were continued against the said PAN number. The order of the Id. CIT(A) is well reasoned order based on various case laws. Neither the department has taken any grounds of appeal relating to the aforesaid findings given by the CIT(A) on the legal ground taken by the assessee nor the Id. DR could bring any infirmity in the order of the CIT(A) having given opportunity in this respect. In view of this, we do not find any infirmity in the order of the CIT(A) and the same is hereby upheld. The appeal of the revenue is hereby dismissed.

7 . In the result, the appeal of the revenue stands dismissed.

***Kolkata, the 4<sup>th</sup> July, 2023.***

Sd/-  
**[Rajesh Kumar]**  
लेखा सदस्य /Accountant Member

Sd/-  
**[Sanjay Garg]**  
न्यायिक सदस्य /Judicial Member

Dated:04.07.2023.

RS

*Copy of the order forwarded to:*

1. ITO, Ward-5(1), Kolkata
2. M/s BPO Finance and Investments Pvt. Ltd.
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches