

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA

(Before Sri J. Sudhakar Reddy, Hon'ble Accountant Member & Sri Aby T. Varkey, Hon'ble Judicial Member)

ITA No. 457/Kol/2020  
Assessment Year: 2012-13

*M/s. Cosmat Traders Pvt. Ltd.....Appellant*  
*8, AJC Bose Road*  
*3<sup>rd</sup> Floor*  
*Circular Road*  
*Kolkata - 700 017*  
*[PAN : AABCC 0990 R]*

**Vs.**

*Income Tax Officer, Ward-(2), Kolkata.....Respondent*

**Appearances by:**

*Shri Miraj D. Shah, A/R, appeared on behalf of the assessee.*

*Smt. Ranu Biswas, Addl. CIT, D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : March 31<sup>st</sup>, 2021

Date of pronouncing the order : April 21<sup>st</sup>, 2021

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) - 7, (hereinafter the "ld. CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 28/03/2018, for the Assessment Year 2012-13.

2. The assessee is a company and is in the business of share transactions and investments. It has its registered office at "8, AJC Bose Road, Kolkata -700 017". It filed its return of income for the impugned Assessment Year on 17/01/2013, declaring total income of Rs.38,220/-. Notice u/s 143(2) of the Act was issued to the assessee by the Income Tax Officer (ITO), Ward (Wd) - 6(1), Kolkata on 23/09/2013. On 03/10/2013, the assessee filed a letter objecting to the notice given u/s 143(2) of the Act, dt. 23/09/2013 by the ITO, Wd -6(1), Kolkata, on the ground that this officer does not hold jurisdiction over the assessee. Thereafter, the Commissioner of Income Tax passed an order u/s 120 of the Act, transferring the jurisdiction of the assessee to the file of Tax Recovery Officer (TRO), Range-2, Kolkata. The details of this transfer orders are at page 1 para 2 of the assessment order. Thereafter, the TRO-2, Kolkata, passed an order u/s 144 of the Act, determining the total income of the assessee at Rs. 5,02,98,220/-

2.1. Aggrieved the assessee carried the matter in appeal. The Id. First Appellate Authority passed an *ex-parte* order. While doing so, he has not disposed off the case on merits. He dismissed the case for non-prosecution, which is not permissible in law.

3. Aggrieved the assessee is in appeal before us.

4. The Id. Counsel for the assessee, filed an additional grounds of appeal under Rule 11 of the Income-tax (Appellate Tribunal) Rules, 1973 ('Rules'). The original grounds of appeal and the additional grounds read as follows:-

*1a. That the Ld. CIT(A) was wrong in passing ex-parte order alleging that the notices of hearing remained unserved on the assessee. The assessee has not received any notice of hearing dt. 15.11.2017, 20.12.2017, 15.01.2018 & 12.03.2018 through any mode of communication. However, the notice dt. 28.11.2016 was served and for which adjournment petition was also filed on 26.11.2016 & 27.01.2017. Thus, it is unjustified to be said that the address "not known" of 3 last notices issued. Further, the assessee came to know about the last 3 hearing notices date only from Appellate Order. Thus, passing of the ex-parte order without giving the proper opportunity of being heard to the assessee is bad in law and needs to be deleted.*

*1b. That the assessee came to know about such Ex-parte order passed by the Id. CIT(A)-7, Kolkata, when it received Penalty order passed u/s 271(1)(c) by Ld. AO on 16.03.2020 received on 20.03.2020 through registered post at its company address. In the penalty order, the Ld. AO has mentioned about the such order has been passed by the Ld. CIT(A)-7, Kolkata. It is to be noted that the address which has mentioned by Ld. AO in his order is same that has been given in the order of Ld. CIT(A), thus, giving a remark regarding address as "NOT KNOWN" is unjustified.*

*2. That without prejudice to the above ground, the Ld. CIT(A) erred in confirming the addition made by the Ld. AO of Rs.5,02,60,000/- being the share capital & share premium money received during the year from the share applicants u/s 68 of the Act on the basis of arbitrary and perverse conclusions drawn by him on the facts of the cases relying on several judgments of the Hon'ble Kolkata ITAT and different High Courts which have no application to the facts of the instant case and are distinguishable on facts and law. As such addition needs to be deleted.*

*3. That the Ld. CIT(A) was erred in confirming addition of the share capital & share premium money received. Out of 20 share applicants 13 are individual and the rest 7 are body corporates. All share applicants are assessed to income tax and heir source of money is part of regular IT return. The entire share application money was received through proper banking channels. The body corporate companies are registered with MCA. He did not take his own enquiry and investigation, just to reply on various judicial pronouncement and finding of Ld. AO . Thus, confirming said addition in a generalized manner is unjustified and needs to be deleted.*

*4. That the assessee craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing."*

4.1. The additional grounds raised by the assessee read as follows:-

*"1. For that the Assessing Officer issuing the notice u/s 143(2) of the IT Act 1961 did not have jurisdiction over the case of the assessee hence said notice and the consequential assessment order is bad in law and hence the same is quashed.*

*2. For that the Assessing Officer passing the order u/s 144 of the IT Act 1961 did not have jurisdiction over the case of the assessee hence the assessment order is bad in law and hence the same be quashed."*

5. The Id. Counsel for the assessee, Shri Miraj D. Shah, submitted that, under the original grounds, the issue has to be restored to the file of the Assessing Officer for the reason that there was violation of principles of natural justice. He pointed out that notice of hearing was not received by the assessee from the Assessing Officer and only when it received penalty notice u/s 271(1)(c) of the Act, dt. 16/03/2020, it came to know about the *ex-parte* orders. He also pointed out that the Id. CIT(A) has not disposed off the case on merits.

On the additional grounds, he submitted that the assessee is challenging the jurisdiction of the Assessing Officer to issue notice u/s 143(2) of the Act and alternatively, the jurisdiction of the Assessing Officer, who has completed the assessment u/s. 144 of the Act. He submitted that the jurisdictional issues go to the root of the matter and has no facts need be enquired into, the legal grounds may be admitted by the ITAT. For this proposition, he relied on the judgment of the Hon'ble Supreme Court in the case of *NTPC vs. CIT* reported as *229 ITR 383 (SC)*.

5.1. The Id. D/R, could not controvert these submissions of the assessee. Hence, we admit these additional grounds of appeal, as all the facts are on record and as these are jurisdictional issues which go to the root of the matter.

6. The Id. Counsel for the assessee submitted that the Assessing Officer was informed through letter dt. 25/04/2007 that, the address of the assessee has shifted from "71B, BRB Sarani, Kolkata - 700001" to "28B SP Sarani Kolkata - 700017". He further submitted that, on 19/08/2010, yet another letter was written to the Assessing Officer intimating him about the change of address from "28B SP Sarani Kolkata - 700017" to "8, AIC Bose Road, Kolkata - 700 017". This letter was attached to the ROC from, giving the current

address of the assessee. He submitted that, this return for the Assessment Year 2012-13 was filed on 17/01/2013, electronically, from the current address at “8, AJC Bose Road, Kolkata -700 017”.

He submitted that, copy of the notification, giving the jurisdiction of the Assessing Officer and pointed out that all companies geographically located in the city of Kolkata and having Pin code of 700017, would fall under the jurisdiction of the Commissioner of Income Tax (CT) Kol – III, and that the companies who names start with B, C, F, I, J & L, fall within the jurisdiction of ITO, Wd – 7(4), Kolkata under Commissioner of Income Tax (CT) Kol – III. He submitted that, as per the geographical jurisdiction determined by the notification of the CBDT, the jurisdiction of the assessee company clearly falls within ITO, Ward -7(4), Kolkata. While so, he submits that the ITO Wd- 6(1), Kolkata, issued notice u/s 143(2) of the Act, which is without jurisdiction. Thus, he submits that this notice is bad and non-existent in law. He emphasised that on receipt of the notice dt. 23/09//2013, the assessee on 03/10/2013 had written to the ITO Ward-6(1), Kolkata, pointing out that, he has no jurisdiction to issue notice u/s 143(2) of the Act, to the assessee company. He submitted that the Assessing Officer has not replied. He further pointed out that the TRO-2, Kolkata, completed best judgment assessment u/s 144 of the Act, without issuing the statutory notice u/s 143(2) of the Act and hence, the assessment is bad in law. For this proposition, he relied on the judgment of the Hon'ble Supreme Court in the case of *ACIT & Anr. Vs. Hotel Blue Moon* reported in 321 ITR 362 (SC). He prayed for relied.

7. The ld. D/R, Smt. Ranu Biswas, on the other hand, opposed the contention of the assessee and submitted that, the assessee kept changing his address and though the same was intimated to the Assessing Officer, the PAN Data of the assessee was not changed. She submitted that, as per the PAN Data, the jurisdiction of the assessee lies with the ITO, Ward 6(1), Kolkata. She further pointed out to the acknowledgement of the return of income filed by the assessee and submitted that, the return itself was filed with ITO Ward-6(1), Kolkata. She argued that, the issue of notice u/s 143(2) of the Act, is a technical requirement and this has been complied with by the Assessing Officer. Thus, she submits that the jurisdictional ground has to be dismissed. On the second additional grounds of appeal, she submitted that the Commissioner of Income Tax has passed an

order u/s 120 of the Act and accordingly, the TRO-2, Kolkata, was granted jurisdiction to assess the assessee under the Act and hence, the assessment is validly passed. On merits, she submitted that the issue may be restored to the file of the Assessing Officer for fresh adjudication in accordance with law, as the assessee had not cooperated before the lower authorities, which resulted in the Assessing Officer not being able to verify all the documents filed by the assessee in the assessment proceedings. She submitted that there was violation of the principles of natural justice.

8. The Id. Counsel for the assessee controverted the arguments of the Id. D/R and submitted that the jurisdiction is conferred by the CBDT on various Income Tax Authorities vide Notification dt. 50/2014, dt. 22/102/2014. As per this notification, the jurisdiction of the assessee falls with the ITO, Ward – 7(1), Kolkata. He argued that PAN data and or computerised systems or NSDL cannot confer jurisdiction on an Assessing Officer under the Act, to issue notice to an assessee. Just because the computer were not updated with the data of the assessee, it does not lead us to a conclusion that the CBDT granted jurisdiction to the Assessing Officer to assess the company was ITO, Ward-6(1), Kolkata and not ITO, Ward-7(1), Kolkata. On the issue of filing of return of income with ITO, Ward-6(1), Kolkata, he submitted that this column in the ITR form is auto-filled by the department and the assessee has no role in the same. He prayed for relief.

9. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

10. The undisputed fact is that, the address of the assessee company from 12<sup>th</sup> August, 2010, relevant to Assessment Year 2011-12, is “8, AIC Bose Road, Kolkata – 700017”. This fact was intimated to the Assessing Officer on 19/08/2010. The assessee has also filed its return of income for the impugned Assessment Year with the address “8, AIC Bose Road, Kolkata – 700017” on 17/01/2013. Copy of the official ROC record, discloses the above address from that date. The address of the assessee for the previous year 2010-11 and 2011-12 is the same.

10.1. The territorial jurisdiction as applicable to the assessee for the Assessment Year 2012-13, is given by the CBDT, vide notification 220A/2001 dt. 31/07/2001. As per this

notification, the territorial area falling with the pin code 700017 is with Commissioner of Income Tax (CT) Kol-III and the jurisdictional Assessing Officer for the assessee company is ITO, Ward – 7(1), Kolkata, Range-7. This case never fell within the jurisdiction of ITO, Ward-6(1), Kolkata. Notice u/s 143(2) of the Act, was issued by this non-jurisdictional officer.

10.2. The undisputed fact in this case is that, the notice u/s 143(2) of the Act was issued by the ITO, Ward-6(1), Kolkata. This officer did not have the jurisdiction over the assessee.

The ITAT Kolkata Bench of the Tribunal in the case of *Hillman Hosiery Mills Pvt. Ltd. vs. DCIT in ITA No. 2634/Kol/2019*, order dt. 12/01/2021, under similar circumstances, held as follows:-

*“10. In this case, the ITO Ward-3(3), Kolkata, issued notice u/s 143(2) of the Act on 04/09/2014. In reply, on 22/09/2014, the assessee wrote to the ITO, Ward-3(3), Kolkata, stating that he has no jurisdiction over the assessee. Thereafter on 31/07/2015, the DCIT, Circle-11(1), Kolkata, had issued notice u/s 142(1) of the Act to the assessee. The DCIT, Circle-11(1), Kolkata, completed assessment u/s 143(3) of the Act on 14/03/2016. The issue is whether an assessment order passed by DCIT, Circle-11(1), Kolkata, is valid as admittedly, he did not issue a notice u/s 143(2) of the Act, to the assessee. This issue is no more res-integra. This Bench of the Tribunal in the case of *Soma Roy vs. ACIT in ITA No. 462/Kol/2019*; Assessment Year 2015-16, order dt. 8<sup>th</sup> January, 2020, under identical circumstances, held as under:-*

*“5. After hearing rival contentions, I admit this additional ground as it is a legal ground, raising a jurisdictional issue and does not require any investigation into the facts. The ld. Counsel for the assessee submitted that as per Board Instruction No. 1/2011 [F. No. 187/12/2010-IT(A-I)], dt. 31/01/2011, the jurisdiction of the assessee is with the Assistant Commissioner of Income Tax, Circle-1, Durgapur, as the assessee is a non-corporate assessee and the income returned is above Rs.15,00,000/- and whereas, the statutory notice u/s 143(2) of the Act, was issued on 29/09/2016, by the Income Tax Officer, ward-1(1), Durgapur, who had no jurisdiction of the case. He submitted that the assessment order was passed by the ACIT, Circle-1(1), Durgapur, who had the jurisdiction over the assessee, but he had not issued the notice u/s 143(2) of the Act, within the statutory period prescribed under the Act. Thus, he submits that the assessment is bad in law.*

*5.1. On merits, he rebutted the findings of the lower authorities. The ld. Counsel for the assessee relied on certain case-law, which I would be referring to as and when necessary.*

*6. The ld. D/R, on the other hand, submitted that the concurrent jurisdiction vests with the ITO as well as the ACIT and hence the assessment cannot be annulled simply because the statutory notice u/s 143(2) of the Act, was issued by the ITO and the assessment was completed by the ACIT. He further submitted that the assessee did not object to the issue of notice before the jurisdictional Assessing Officer and even otherwise, Section 292BB of the Act, comes into play and the assessment cannot be annulled. On merits, he relied on the orders of the lower authorities.*

7. I have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, I hold as follows:-

8. I find that there is no dispute in the fact that the notice u/s 143(2) of the Act dt. 29/09/2016 has been issued by the ITO, Wd-1(1), Durgapur. Later, the case was transferred to the jurisdiction of the ACIT on 11/08/2017. Thereafter, no notice u/s 143(2) of the Act was issued by the Assessing Officer having jurisdiction of this case and who had completed the assessment on 26/12/2017 i.e., ACIT, Circle-1(1), Durgapur. Under these circumstances, the question is whether the assessment is bad in law for want of issuance of notice u/s 143(2) of the Act.

9. This Bench of the Tribunal in the case of Shri Sukumar Ch. Sahoo vs. ACIT in ITA No. 2073/Kol/2016 order dt. 27.09.2017, held as follows:-

"5. From a perusal of the above Instruction of the CBDT it is evident that the pecuniary jurisdiction conferred by the CBDT on ITOs is in respect to the 'non corporate returns' filed where income declared is only upto Rs.15 lacs ; and the ITO doesn't have the jurisdiction to conduct assessment if it is above Rs 15 lakhs. Above Rs. 15 lacs income declared by a non- corporate person i.e. like assessee, the pecuniary jurisdiction lies before AC/DC. In this case, admittedly, the assessee an individual (non corporate person) who undisputedly declared income of Rs.50,28,040/- in his return of income cannot be assessed by the ITO as per the CBDT circular (supra). From a perusal of the assessment order, it reveals that the statutory notice u/s. 143(2) of the Act was issued by the then ITO, Ward-1, Haldia on 06.09.2013 and the same was served on the assessee on 19.09.2013 as noted by the AO. The AO noted that since the returned income is more than Rs. 15 lacs the case was transferred from the ITO, Ward-1, Haldia to ACIT, Circle-27 and the same was received by the office of the ACIT, Circle-27, Haldia on 24.09.2014 and immediately ACIT issued notice u/s. 142(1) of the Act on the same day. From the aforesaid facts the following facts emerged:

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

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

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

6. We note that the CBDT Instruction is dated 31.01.2011 and the assessee has filed the return of income on 29.03.2013 declaring total income of Rs.50,28,040/-. As per the CBDT Instruction the monetary limits in respect to an assessee who is an individual which falls under the category of 'non corporate returns' the ITO's increased monetary limit was upto Rs.15 lacs; and if the returned income is above Rs. 15 lacs it was the AC/DC. So, since the returned income by assessee an individual is above Rs.15 lakh, then the jurisdiction to assess the assessee lies only by AC/DC and not ITO. So, therefore, only the AC/DC had the jurisdiction to assess the assessee. It is settled law that serving of notice u/s. 143(2) of the Act is a sine qua non for an assessment to be made u/s. 143(3) of the Act. In this case, notice u/s. 143(2) of the Act was issued on 06.09.2013 by ITO, Ward-1, Haldia when he did not have the pecuniary jurisdiction to assume jurisdiction and issue notice. Admittedly, when the ITO realized that he did not had the pecuniary jurisdiction to issue notice he duly transferred the file to the ACIT, Circle-27, Haldia on 24.09.2014 when the ACIT issued statutory notice which was beyond the time limit prescribed for issuance of notice u/s. 143(2) of the Act. We note that the ACIT by assuming the jurisdiction after the time prescribed for issuance of notice u/s. 143(2) of the Act notice became *quarum non judice* after the limitation prescribed by the statute was crossed by him. Therefore, the issuance of notice by the ACIT, Circle-27, Haldia after the limitation period for issuance of statutory notice u/s. 143(2) of the Act has set in, goes to the root of the case and makes the notice bad in the eyes of law and consequential assessment order passed u/s. 143(3) of the Act is not valid in the eyes of law and, therefore, is null and void in the eyes of law. Therefore, the legal issue raised by the assessee is allowed. Since we have quashed

*the assessment and the appeal of assessee is allowed on the legal issue, the other grounds raised by the assessee need not to be adjudicated because it is only academic. Therefore, the additional ground raised by the assessee is allowed.*

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

9.1. *This Bench of the Tribunal in the case of Krishnendu Chowdhury vs. ITO reported in [2017] 78 taxmann.com 89 (Kolkata-Trib.) held as follows:-*

***“Return of income of assessee was Rs. 12 lakhs - As per CBDT instruction, jurisdiction for scrutiny assessment vested in Income-tax Officer and notice under section 143(2) must be issued by Income-tax Officer, Ward-I, Haldia and none other - But, notice was issued by Asstt. Commissioner, Circle Haldia much after CBDT's instruction and knowing fully well that he had no jurisdiction over assessee - Whether, therefore, notice issued by Asstt. Commissioner was invalid and consequently assessment framed by Income-tax Officers becomes void since issue of notice under section 143(2) was not done by Income-tax Officers as specified in CBDT instruction No. 1/2011.”***

9.2. *The Hon'ble High Court of Calcutta in the case of West Bengal State Electricity Board vs. Deputy Commissioner of Income Tax, Special Range – I, reported in [2005] 278 ITR 218 (Cal.) has held as follows:-*

***“Section 254 of the Income-tax Act, 1961 - Appellate Tribunal - Powers of - Assessment years 1983-84 to 1987-88 - Whether a question of law arising out of facts found by authorities and which went to root of jurisdiction can be raised for first time before Tribunal - Held, yes Whether jurisdiction of Assessing Authority is not dependent on date of accrual of cause of action but on date when it is initiated - Held, yes - Whether once a particular jurisdiction is created, same must be prospective and cannot be retrospective and it has to be interpreted having regard to manner in which it has been sought to be created - Held, yes - Assessee”***

9.3. *The Hon'ble Supreme Court in the case of CIT vs. Laxman Das Khandelwal [2019] 108 taxmann.com 183 (SC), held as follows:-*

***“7. A closer look at Section 292BB shows that if the assessee has participated in the proceedings it shall be deemed that any notice which is required to be served upon was duly served and the assessee would be precluded from taking any objections that the notice was (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner. According to Mr. Mahabir Singh, learned Senior Advocate, since the Respondent had participated in the proceedings, the provisions of Section 292BB would be a complete answer.***

*On the other hand, Mr. Ankit Vijaywargia, learned Advocate, appearing for the Respondent submitted that the notice under Section 143(2) of the Act was never issued which was evident from the orders passed on record as well as the stand taken by the Appellant in the memo of appeal. It was further submitted that issuance of notice under Section 143(2) of the Act being prerequisite, in the absence of such notice, the entire proceedings would be invalid.*

***8. The law on the point as regards applicability of the requirement of notice under Section 143(2) of the Act is quite clear from the decision in Hotel Blue Moon's case (supra). The issue that however needs to be considered is the impact of Section 292BB of the Act.***

***9. According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself.”***

10. *Respectfully following the propositions of law laid down in all these case-law and applying the same to the facts of the case, we hold that the assessment order is bad in law for the reason that the Assessing Officer having jurisdiction over the assessee, has not issued a notice u/s 143(2) of the Act as required by the statute. Notice issue by the officer having no jurisdiction of the assessee is null and void. When a notice is issued by an officer having no jurisdiction, Section 292BB of the Act, does not comes into play. Coming to the argument of the Id. D/R that objection*



*u/s 124(3) of the Act has to be taken by the assessee on rectifying notice u/s 143(2) of the Act from a non-jurisdictional assessing officer, I am of the view that I need not adjudicate this issue, as I have held that non-issuance of statutory notice/s 143(2) of the Act by the jurisdictional Assessing Officer makes the assessment bad in law. Under these circumstances, we allow this appeal of the assessee."*

11. Respectfully following the proposition of law laid down by the co-ordinate bench of the Tribunal, cited above, we have to necessarily hold that the notice u/s 143(2) of the Act, issued by the, Assessing Officer who has no jurisdiction over the assessee, is bad in law and *void-ab-initio*.

12. The Hon'ble Calcutta High Court in the case of *Pr. CIT vs Oberoi Hotels Pvt. Ltd. (409 ITR 132)* followed the judgment of the Hon'ble Supreme Court in the case of *ACIT vs. Hotel Blue Moon* reported in *[321 ITR 328 (SC)]* and held as follows:-

*"9. In the light of the above discussion, particularly taking into consideration the law laid down by the Supreme Court in Hotel Blue Moon (supra), it is inescapable that the issuance of a notice under Section 143(2) of the Act is mandatory if the Assessing Officer seeks not to accept any part of the return as furnished by the assessee or make an assessment order contrary thereto and, even in course of reassessment proceedings, such notice cannot be dispensed with.*

*10. One of the arguments put forth on behalf of the Revenue is that in course of reassessment proceedings once a notice is issued under Section 148 of the Act, the assessee is made aware of what part of the income or on what count the assessee's income is perceived to have escaped attention. It is submitted that in such a scenario, the requirement of a notice under Section 143(2) may be somewhat diluted, if not unnecessary. Apart from the fact that such argument cannot be countenanced in the light of the dictum in Hotel Blue Moon (supra), it is evident that an assessment under Section 143(3) of the Act is consequent upon a hearing and the production of evidence on such points on which the Assessing Officer may harbour doubts and are indicated in his notice under Section 143(2) of the Act. Section 143(3) of the Act contemplates an assessment undertaken by the Assessing Officer upon material being produced by the assessee on grounds which are indicated by the Assessing Officer in his notice under Section 143(2) of the Act in respect whereof the Assessing Officer may have misgivings or may disagree with the return filed by the assessee. Implicit in the wording of Section 143(3) of the Act is the indispensability of a notice under Section 143(2) thereof.*

*11. Apropos the second question framed above, it is necessary that Section 292BB of the Act be noticed in its entirety:*

*"292BB Notice deemed to be valid in certain circumstances -*

*Where an assessee has appeared in any proceeding 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 had raised such objection before the completion of such assessment or reassessment."*

**12.** *Even if the provision does not carry a non-obstante clause, since Section 292BB is a provision of general application, it would be applicable in all situations; but only in so far as it proclaims to operate. Section 292BB of the Act, read in the context of several provisions of the Act which mandatorily require notices to be issued in divers situations, cannot be said to have dispensed with the issuance of such notices altogether. Section 292BB must be understood to cure any defect in the service of the notice and not authorise the dispensation of a notice when the appropriate interpretation of a provision makes the notice provided for thereunder to be mandatory or indispensable.*

**13.** *This is not a case where the assessing officer says that a notice had been issued and there is a contradiction thereof by the assessee. It is evident that the assessee carried the objection before the Commissioner (Appeals) and the Commissioner brushed aside the objection on the ground that it was a technicality without addressing the issue or applying his mind to such aspect of the matter. Further, it is evident from the order impugned passed by the Appellate Tribunal that no notice under Section 143(2) of the Act had, in fact, been issued in this case. In such a situation, where a notice that is mandatorily required to be issued is found not to have been issued, Section 292BB of the Act has no manner of operation.*

*The two substantial questions of law are answered accordingly as follows:*

- (1) *If the time for issuance of the notice under Section 143(2) of the Act has expired or the time for completing the reassessment proceedings under Section 153(2) of the Act has run out, the failure to issue such notice under Section 143(2) of the Act would result in the entire proceedings, including any order of assessment, to be quashed.*
- (2) *Section 292BB of the Act does not dispense with the issuance of any notice that is mandated to be issued under the Act, but merely cures the defect of service of such notice if an objection in such regard is not taken before the completion of the assessment or reassessment.*

*In addition, it is held that in the light of the Supreme Court dictum in Hotel Blue Moon (supra), the view expressed in Humboldt Wedag India (P.) Ltd. (supra) is per incuriam and, as such, not good law."*

13. Similarly, the Hon'ble Supreme Court in the case of *CIT vs. Laxman Das Khandelwal* [2019] 108 taxmann.com 183 (SC), held as follows:-

*"7. A closer look at Section 292BB shows that if the assessee has participated in the proceedings it shall be deemed that any notice which is required to be served upon was duly served and the assessee would be precluded from taking any objections that the notice was (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner. According to Mr. Mahabir Singh, learned Senior Advocate, since the*

*Respondent had participated in the proceedings, the provisions of Section 292BB would be a complete answer.*

*On the other hand, Mr. Ankit Vijaywargia, learned Advocate, appearing for the Respondent submitted that the notice under Section 143(2) of the Act was never issued which was evident from the orders passed on record as well as the stand taken by the Appellant in the memo of appeal. It was further submitted that issuance of notice under Section 143(2) of the Act being prerequisite, in the absence of such notice, the entire proceedings would be invalid.*

**8.** *The law on the point as regards applicability of the requirement of notice under Section 143(2) of the Act is quite clear from the decision in Hotel Blue Moon's case (supra). The issue that however needs to be considered is the impact of Section 292BB of the Act."*

14. Applying the propositions of law laid down in the above case-law to the facts of the case on hand, we have to necessarily hold that the passing of assessment order u/s 144 of the Act, without issuing notice u/s 143(2) of the Act, by the Assessing Officer having jurisdiction over this assessee, is bad in law and has to be quashed. As we have quashed the assessment itself on the grounds of jurisdiction, we do not consider the other issues raised by the assessee as it would be an academic exercise.

15. In the result, appeal of the assessee is allowed.

***Kolkata, the 21<sup>st</sup> day of April, 2021.***

***Sd/-***  
**[Aby T. Varkey]**  
Judicial Member

Dated: 21.04.2021  
{SC SPS}

***Sd/-***  
**[J. Sudhakar Reddy]**  
Accountant Member

*Copy of the order forwarded to:*

- 1. M/s. Cosmat Traders Pvt. Ltd**  
**8, AJC Bose Road**  
**3<sup>rd</sup> Floor**  
**Circular Road**  
**Kolkata - 700 017**
- 2. Income Tax Officer, Ward-(2), Kolkata**
3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

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By order

Assistant Registrar  
ITAT, Kolkata Benches