

आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member]

I.T.A. No.1173/Kol/2026
Assessment Year: 2015-16

Rajesh Jalan (PAN: ADAPJ 6706 H)	Vs.	ITO, Ward-49(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	16.10.2026
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	16.10.2026
For the Appellant/ निर्धारिती की ओर से	Shri Somnath Ghosh, Advocate
For the Respondent/ राजस्व की ओर से	Shri Sobhan Sutradhar, Sr. DR

ORDER / आदेश

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-Addl/JCIT(A)-2, Gurugram (hereinafter referred to as the “Ld. CIT(A)”) dated 07.01.2026 for the AY 2015-16.

2. The issues raised by the assessee during the hearing were against the order of Ld. CIT(A) confirming the assessment framed u/s 143(3) dated 22.12.2017 de hors the

mandatory notice u/s 143(2) of the Act and also the said notice is issued in violation of *of the CBDT circular 1/2011 [F. No. 187/12/2010-IT(A-I)] dated 31.01.2011.*

3. Facts in brief are that the assessee filed return of income on 03.08.2015 declaring total income of Rs. 1,96,740/-. The case was selected for scrutiny and statutory notice along with questionnaire were duly issued and served upon the assessee. The assessee complied with all the notices/questionnaires issued and finally taking into consideration the reply of the assessee, the AO treated the long term capital gain from sale of 4000 equity shares of M/s Jackson Investments Ltd. as bogus and non-genuine. The AO noted that the price of the shares was raised astronomically by manipulation as reported by the investigation wing and thus extended accommodation to the beneficiaries. Consequently the same is added to the income of the assessee .

4. The order of AO was confirmed by the Ld. CIT(A).

5. We have heard the rival contentions and perused the material on record. We find that notice in this case issued u/s 143(2) dated 1.08.2016 was returned by the postal authority with the postal comment "Left" on 14.09.2016 and thereafter the database was checked and did not find out how the notice was served on the assessee. The Ld. Counsel vehemently claimed before the Bench that this issuance of notice would not meet the requirement of good service and is not suffice. Whereas the Act mandates the service of the notice on the assessee. Thus in our opinion the notice was not served at all. In our opinion the defects in non-serving the notice on the assessee goes to the root of the matter and renders the assessment framed as nullity in the eyes of law. We also note that only notice u/s 143(2) was not served on the assessee whereas the remaining notices were duly served on the address which is also mentioned in the assessment order at sr. no. 2 at page 1. The Ld. Counsel therefore prayed that the assessment so framed by the AO may kindly be quashed.

6. We also note that the said notice u/s 143(2) dated 1.8.2016 was issued by the ACIT, Circle 62, Kolkata whereas the return income of the assessee is 1,96,740/-.

The said action of the ACIT is in violation of the CBDT circular 1/2011 [F. No. 187/12/2010-IT(A-I)] dated 31.01.2011. The Board has issued instruction in exercise of power u/s 119 of the Act that in case of non-corporate assessee where the income is declared up to Rs. 15 Lacs, the assessment would be framed by ITO and above Rs. 15 Lacs AC/DCs whereas the said limit was set at Rs. 20 Lacs and above Rs. 20 Lacs ITO/ and AC/DCs respectively. The case of the assessee is squarely covered by the decision of the Jurisdictional High Court in the case of *Kusum Goyal vs. ITO & ors* in GA No. 81 of 2010 WP No. 1229 of 2009 wherein the Hon'ble Court has decided the similar issue in favour of the assessee. The relevant extracts of the High Court are extracted below:

*"It is evident that the respondent no. 2 had sought to justify his action by stating that the jurisdiction automatically gets vested with the jurisdictional officer and no order under Section 127 is required to be passed. In my view, the letter/notice dated 21st October, 2009 is patently illegal since it has been held in this judgment that in case of transfer within the same city, locality or place although the opportunity of hearing as postulated in Section 127(1) and (2) has been dispensed with, other statutory formalities which includes issuing an order are required to be complied with. Similarly transfer of files for the assessment years 2007-2008, 2008-2009 and the earlier years letter/notice dated 30th July, 2009 issued by the respondent no.1 is also bad in law. The argument of the respondents that in case of intra city transfer no order is required to be passed, cannot be accepted in view of the settled position of law in *Kashiram Aggarwalla (supra)* and in *S. L.Singhania (supra)* wherein the validity of the orders were under challenge, meaning thereby an order recording transfer has to be on the records. The judgment in *Subhas Chandra Bhaniramka (supra)* where it has been held that in case of transfer of file under section 158BD resort has to be made to section 127 also applies in the instant case. The judgement in *M.A.E.K.K. Verma (supra)* relied on by the Revenue is not applicable as it dealt with the question whether in case of intra city transfer notice is required to be served and whether separate orders of transfer are required under Wealth Tax Act, 1957 and Gift Tax Act, 1956. Therefore, since it has been held in this judgement that it is imperative on part of the respondents to issue order under section 127(3), the letters/notices under challenge are set aside and quashed. The writ petition is allowed. Consequential proceedings are also set aside and quashed. Accordingly, the notice dated 6th January, 2010 regarding the penalty proceedings under section 271(1)(c) for the assessment year 2006-07 is also set aside and quashed. The application being G.A.No. 81 of 2010 is also allowed.*

7. Considering the facts as narrated hereinabove and decision cited before us, we are of the considered view that non-service of notice is a fatal mistake on the part of the AO which will render the assessment order dated 22.12.2017 as invalid and

nullity in the eyes of law. Similarly on the pecuniary jurisdiction also , the assessment framed by the ITO while the notice u/s 143(2) was issued by the ACIT is bad in law and is accordingly quashed.

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

Order is pronounced in the open court on 16th October, 2026

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 16th October, 2026

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Rajesh Jalan, C/O, S.N. Ghosh & Associates, Advocates, 2, Garstin Place, 2nd Floor, Suite NO. 203, Off Hare Street, Kolkata-700001
2. Respondent – ITO, Ward-49(1), Kolkata
3. Ld. CIT(A)- Addl/JCIT(A)-2, Gurugram
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata

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By Order