

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'SMC', AGRA BENCH, AGRA**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No. 169/Agr/2022  
(Assessment Year 2011-12)**

Veerendra Singh, Vill. Dakor Mohana, Orai, Distt. Jalaun (UP)-285001.	v.	Income-tax Officer, Ward 2(1)(5), Orai, Distt. Jalaun (UP)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: <b>BBJPS 3108 J</b>		
Appellant	..	Respondent

Assessee represented by :	Sh. Sohrabh Jindal, CA
Department represented by:	Sh. Shailendra Srivastava, Sr. DR

Date of Hearing	23.01.2025
Date of Pronouncement	19 .02.2025

**ORDER**

**PER RAMIT KOCHAR, AM:**

This appeal in ITA No. 169/Agr/2022 filed by the assessee for the Assessment Year 2011-12 has arisen from the appellate order dated 23.08.2022 in DIN & Order No. ITBA/NFAC/S/250/2022-23/1044863445(1) passed by the Commissioner of Income Tax (Appeals) (NFAC), Delhi u/s 250 of the Income-tax Act, 1961 ("the Act"), which appeal before learned CIT(A), National Faceless

Appeal Centre (NFAC), Delhi had arisen from the reassessment order dated 30.11.2018 passed by the Assessing Officer u/s 147 of the Act.

2. Grounds of appeal raised by the assessee in memo of appeal filed with the Income Tax Appellate Tribunal, Agra Bench, Agra, read as under:

*“1. That the Present assessment order is bad in the eyes of law and liable to be quashed as the Ld' AO completed the assessment proceedings without issuing and serving the notice u/s 143(2) of the Income Tax Act-1961.*

*2. That the Present assessment order is bad in the eyes of law and liable to be quashed as the reasons recorded by the Ld AO are factually incorrect and without application of mind. Further the necessary approvals taken are also without application of mind.*

*3. The Ld. CIT (A) is not justified in law and on facts in confirming the addition of Rs. 950000/- made by the Ld AO. The addition of Rs.950000/- done by Ld AO is liable to be deleted.”*

3. Brief facts of the case are that the case of the assessee was reopened by the Revenue u/s 147 of the Act for reassessment of the concluded assessment, with the approval of the competent authority. A notice u/s 148, dated 23.03.2018, was issued by the Assessing Officer to the assessee, requiring the assessee to file return of income in pursuance to notice u/s 148. The assessee sought adjournments from time to time. The case of the assessee was reopened based upon AIR information that assessee had deposited cash of Rs. 26,78,350/- in his bank account during the year under consideration. The Assessing Officer observed **“It is a No PAN case & No Return is found on records”**. Hence, the Assessing Officer had reasons to

believe that income of assessee to the tune of Rs. 26,78,350/- had escaped assessment within the meaning of section 147 of the Act, and proceedings u/s 147 were initiated against the assessee. The Assessing Officer issued questionnaire to the assessee. The AO has recorded in the assessment order that the assessee filed his return of income on 16.7.2018 in response to notice u/s 148 of the Act as is emerging from the reassessment order passed by the Assessing Officer. So far as merits of the additions are concerned, the Assessing Officer made additions to the tune of Rs. 13,81,377/- in the hands of the assessee, being interest income from bank account to the tune of Rs. 21,882/-; unexplained cash deposit Rs. 55,000/-; unsecured loan raised in cash to the tune of Rs. 9,50,000/-; and unexplained investment in cash purchases to the tune of Rs. 3,54,495/-. Aggrieved, assessee filed first appeal to the learned CIT(Appeals) and the CIT(Appeals) partly allowed the appeal of the assessee. Now the assessee is in appeal before Tribunal.

4. At the outset, learned counsel for the assessee submitted and drew our attention to page nos. 28 to 31 of the paper book in which copy of the ITR filed originally u/s 139 for the impugned assessment year is placed. It was submitted that it was an erroneous finding on the part of the AO that no return was filed by the assessee originally u/s 139 of the Act. The assessee is engaged in retail sale of liquor and the assessee has availed presumptive scheme of taxation u/s 44AD of the Act and on gross turnover of Rs. 19,07,263/-, the assessee computed income of

Rs. 1,52,589/- u/s 44AD which was offered for taxation under the presumptive scheme u/s 44AD of the Act.

4.1 Learned counsel for the assessee also submitted that the said return of income was processed by the Revenue and refund of Rs. 16,610/- was issued to the assessee on 7.11.2012. Learned counsel for the assessee also drew my attention to the e-portal information downloaded from the e-portal of the IT Department in which it is mentioned that the assessee has filed return of income 18.09.2011 and the ITR filed was received by the CPC on 14.10.2011 which was processed on 1.2.2012 and refund was issued on 7.11.2012. Thus it was submitted that it was wrong to conclude that the assessee has not filed return of income originally u/s 139 of the Act. It was also submitted and my attention was drawn to ground no. 1 raised by the assessee in memo of appeal filed with the Tribunal in which assessee has raised legal issue that the reassessment order is liable to be quashed as the same has been passed without issuing and serving notice u/s 143(2) of the Act. Learned counsel for the assessee relied upon several judicial pronouncements in support of his contention as under:

- (1) Hon'ble Delhi High Court's judgment & order in the case of PCIT v. Dart Infrabuild Pvt. Ltd. (2024) 460 ITR 532 (Delhi);

(2) Hon'ble Delhi High Court's judgment & order in the case of Indus Towers Limited v. DCIT dated 29.5.2017 [2017 (6) TMI 24 – Delhi High Court]

(3) Learned counsel for the assessee also relied upon the decision of the Hon'ble Supreme Court in the case of ACIT & Another v. M/s Hotel Blue Moon (2010) 321 ITR 362 (SC) dated 02.02.2010.

4.2 Learned counsel for the assessee has also relied upon large number of judicial precedents which are placed in paper book filed by the assessee. A contention was raised by the learned counsel for the assessee that the reassessment order passed by the AO is liable to be quashed.

5. Learned Sr. DR on the other hand submitted that no return of income was filed in pursuance to notice u/s 148 of the Act. It was submitted that the Bench had directed to produce the assessment record which was duly produced before the Bench. On legal ground the learned Sr. DR submitted that reopening was validly done and it is the assessee who has not filed return of income in response to notice u/s 148 of the Act and hence there is no requirement to issue notice u/s 143(2) of the Act.

6. I have considered rival contentions and perused the material available on record. It is observed that on the basis of AIR information, case of the assessee was reopened by the Assessing Officer u/s 147 of the Act. It is stated by the Assessing

Officer that it is a case of 'no return and no PAN'. There was deposit of cash to the tune of Rs. 26,78,350/- in the bank account of the assessee which purportedly, as per Revenue, has escaped assessment within the meaning of section 147 of the Act leading to the reopening of the concluded assessment. I have observed that notice u/s 148 dated 23.3.2018 was issued to the assessee. The assessee has filed return of income originally u/s 139 of the Act which is placed in paper book pages 28 to 31. Thus, it was an erroneous finding on the part of the Assessing Officer while reopening of the assessment u/s 147 that the assessee has not filed return of income. Further, I observe that the assessee has duly filed return of income before the Assessing Officer during the reassessment proceedings. However, while filing return of income the wording used by the assessee was not happily worded. However, from the assessment order it is clear that the Assessing Officer has clearly stated that the assessee has filed return of income on 16.7.2018 in response to notice u/s 148 of the Act. The statutory authorities have to be very careful while framing the orders and from the wordings used by the Assessing Officer it is very clear that he has taken the filing of the original return of income u/s 139 by the assessee to be a return filed in response to notice u/s 148. Be that as it may, the Assessing Officer is under obligation to issue notice u/s 143(2) of the Act. There are large number of judicial precedents relied upon by the assessee which support the stand of the assessee, three of which are as under:

- (1) PCIT v. Dart Infrabuild Pvt. Ltd. (2024) 460 ITR 532 (Delhi);
- (2) Indus Towers Limited v. DCIT dated 29.5.2017 [2017 (6) TMI 24 – Delhi High Court]
- (3) ACIT & Another v. M/s Hotel Blue Moon (2010) 321 ITR 362 (SC) dated 02.02.2010.

6.1 Thus, keeping in view the legal position as emerging from the several judicial precedents which have taken the consistent stand that issue of notice u/s 143(2) is mandatory even in reassessment proceedings, hence the reassessment order framed by the Assessing Officer u/s 147 of the Act is not sustainable in the eye of law and is liable to be quashed. Thus, I order quashing of the reassessment order dated 30.11.2018 passed by the Assessing Officer u/s 147 of the Act.

6.2 Since I have adjudicated on the ground no. 1 raising legal issue that the reassessment order passed by the Assessing Officer without issuance of notice u/s 143(2) of the Act was bad in law and not liable to be sustained, I refrain to adjudicate the other issues raised by the assessee on merits. Thus the appeal of the assessee is allowed in the manner as indicated above.

Order pronounced in the open court on 19.02.2025.

Sd/-  
(Ramit Kochar )  
ACCOUNTANT MEMBER

Dated: 19.02.2025.

PS: \*MP\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT AGRA