

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No:- 4080/Del/2024
(Assessment Year- 2011-12)**

Shri Raj Kumar, Prop. M/s Raj Cotton & Oil Mills Kanina Road, Charkhi Dadri Bhiwani-127306, Haryana	Vs.	Deputy Commissioner of Income Tax, Central Circle-1, Gurgaon.
PAN No: AEGPK1974D		
APPELLANT		RESPONDENT

Assessee by : Sh. Lalit Mohan, CA &
Sh. Parth Singhal, Adv.
Revenue by : Sh. Sunil Yadav, CIT(DR)

Date of Hearing : 02.04.2025
Date of Pronouncement : **04.04.2025**

ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

The present appeal has been filed by the assessee against order passed by the Ld. Commissioner of Income Tax (Appeals) -3 Gurgaon (in short referred to as CIT(A), u/s 250(6) of the Income Tax Act, 1961,

(hereinafter referred to as “Act”) pertaining to Assessment Year (A.Y) 2011-12.

2. The grounds raised by the assessee read as under:

“ That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that since no notice u/s 143(2) of the Act has been served on the appellant on filing of return in response to notice u/s 148 of the Act, the assessment framed u/s 147/143(3) of the Act is without jurisdiction and deserve to be quashed as such.”

3. As is evident from a bare perusal of the ground, the assessee has challenged the validity of the assessment framed in the present case u/s 147 of the Act in the absence of notice issued u/s 143(2) of the Act after return of income was filed by the assessee in response to notice u/s 148 of the Act.

4. At the outset itself it was pointed out that this is the second round before us for adjudicating the ground raised as above. That in the first round the ITAT had restored the issue back to the Ld. CIT (A) to adjudicate the issue afresh after verifying the contention of the assessee from the records before him that no notice under section 143(2) was issued to the assessee in the present case after return, in response to notice under section 148 of the Act, was filed by the assessee.

5. Ld. Counsel for the assessee pointed out that in the second round the Ld. CIT(A) noted as a matter of fact from the records that no notice at the section 143(2) was issued to the assessee, however, he held that since the assessee had not raised any objection in this regard initially and had participated in the assessment proceedings, the non-issuance of notice under section 143(2) of the act would not be fatal to the assessment proceedings. He drew attention to the findings of the Ld. CIT (A) in this regard at para 4 of his order as under:

“ 4. Ground of appeal no.-3

In this ground of appeal, the appellant has contended that notice u/s 143(2) of the Act was not issued. The CIT(A) order dated 18.02.2023 states that AO was justified in not issuing notice u/s 143(2) as no return was furnished in response to notice u/s 148 of the Act. The Hon'ble ITAT has restored the matter back to the file of the undersigned for the purpose of verifying the contention of the appellant that notice u/s 143(2) of the Act needed to be issued in this case since he requested the AO to accept the original return filed u/s 139(1) of the Act in response of notice u/s 148 of the Act. In this respect, as per the directions (para 10 of order) of Hon'ble ITAT vide order in ITA No. 807/ Del/2022 dated 09.02.2023, the assessment record in this case was called for from the AO. Upon perusal of assessment records, it is found that notice u/s 143(2) of the Act was not issued in this case. However, it is noted that issuing notice u/s 143(2) of the Act was not required in this case since the appellant did not raise this contention during the course of assessment proceedings. It is noted that the appellant was always aware of the fact that notice u/s 143(2) of the Act was not issued but refrained from contending the same before the AO. Reliance is hereby placed on the decision of Hon'ble Punjab and Haryana High Court in the case of CIT, Hisar vs Ramnaren Bansal (2011) 13 taxmann.com 216 wherein it was held that it is not disputed that the assessee had appeared before the Assessing Officer on various dates and participated in the reassessment proceedings before the finalization and no objection

regarding issuance and service of notice under section 143(2) was raised before the Assessing Officer. The Commissioner (Appeals) and the Tribunal were, thus, in error in nullifying the reassessment proceedings and declaring the reassessment order to be invalid. Further reliance is placed on the decision of Hon'ble Delhi High Court in the case of Atsushi Yoshida vs ACIT (2012) 17 taxmann.com 80 wherein it was held that non issuing of notice u/s 143(2) of the Act is not a ground for questioning assessment u/s 147 of the Act. Accordingly, in view of above discussion, the ground of appeal no. 3 is hereby dismissed.

6. During the course of hearing before us, Ld. Counsel for the assessee contended that the issue of the entire proceedings being vitiated on account of non-issuance of notice under section 143(2) of the Act is settled. He submitted that the Hon'ble Apex Court in the case of CIT vs Lakshman Das Khandelwal reported in 417 ITR 325 had categorically held that if no notice under section 143(2) of the Act was ever issued by the department, the entire proceedings would be vitiated and be invalid. He pointed out that the Hon'ble Court had dealt with the applicability of section 292BB of the Act to the issue, as per which if the assessee had participated in proceedings, it shall be deemed that any notice which is required to be served is duly served on him and the assessee would be precluded from taking any objections to that notice. Ld. Counsel for the assessee pointed out that the Hon'ble court noted that section 292 BB of the Act dealt with the infirmities in the **service** (emphasis supplied by us) of notice and

where notices were not **issued (emphasis supplied by us)** at all under section 143(2) of the Act the entire proceedings would be invalid .He pointed out that the Hon'ble Court had interpreted the scope of section 292BB of the Act as to make the service of notice having infirmities, to be proper and valid if there was requisite participation on the part of the assessee. That it did not however save the complete absence of notice. Our attention was drawn to the relevant findings of the Hon'ble apex court, in this regard at para 6 to 10 of its order as under:

" 6. The question, however, remains whether Section 292BB which came into effect on and from 01.04.2008 has effected any change. Said Section 292BB is to the following effect:-

"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 has raised such objection before the completion of such assessment or reassessment."

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 *Blue Moon 's case*. 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. Since the facts on record are clear that no notice under Section 143(2) of the Act was ever issued by the Department, the findings rendered by the High Court and the Tribunal and the conclusion arrived at were correct. We, therefore, see no reason to take a different view in the matter." [Emphasis supplied]

7. Ld. Counsel for the assessee contended that it is clear that the law of the land mandates that an assessment made without the

issuance of the jurisdictional notice is invalid. He referred to several other judicial pronouncements of various high courts affirming this view as under:

“ a) 283 ITR 148 (Del) Pr. CIT v. Silver Line and Anr. (pages 8-12 of Paper Book)

b) 282 CTR 435 (Del) Pr. CIT v. Shri Jai Shiv Shankar Traders (P) Ltd.

c) 345 ITR 29 (All) CIT v. Mukesh Kumar Agrawal

d) 346 ITR 67 (All) CIT v. Bihari Lal Agrawal

e) ITA No. 180/2004 (All) dated 17.1.2012 CIT v. Deco Glass

f) DB ITA NO. 197/2018 (Raj) Pr. CIT v. Kamla Devi Sharma affirming the decision of Hon'ble Tribunal in the case of Kamla Devi Sharma v ITO

g) 210 Taxman 78 (Mad) (Mag) Sapthagiri Finance & Investments v. ITO”

8. Reliance was also placed on the decision of the Hon'ble Apex court in this regard in the case of ACIT vs Hotel Blue Moon reported in 321 ITR 362(SC).

9. The Ld. Counsel for the assessee further contended that the Ld. CIT(A) had referred to the decision of the Hon'ble Delhi High Court in the case of Atsushi Yoshida vs ACIT (supra), which he contended was distinguishable on facts since the issue involved in the said case was not the non-issuance of notice under section 143(2) of the Act

perse but was that of no notice under section 148 of the Act can be issued once return has been accepted under section 143(1) of the Act and no notice has been issued u/s 143(2) of the Act. He contended that in view of the settled position of law as pointed out above the reliance placed by the Ld. CIT(A) on the decision of the Hon'ble Punjab and Haryana High Court in the case of CIT versus Ram Narayan Bansal (supra) was also misplaced. He therefore contended that the order of the learned CIT(A) appeal was not sustainable in law.

10. The Ld. DR though heavily relied on the order of the Ld. CIT(A) but was unable to controvert the contention of the Ld. Counsel for the assessee that the issue of the entire proceedings initiated under section 148 of the Act being vitiated on account of non-issuance of notice under section 143(2) of the Act was settled law by the decision by of the Hon'ble Apex court in the case of Lakshman Das Khandelwal (supra).

11. In view of the above, we are unable to agree with the Ld. CIT(A) that the non-issuance of notice under section 143(2) of the Act in the present case was not fatal to the proceedings conducted under

section 147 of the Act considering the settled position of law in this regard by the decision of the Hon'ble Apex Court in the case of Lakshman Das Khandelwal (supra). We completely agree with the Ld. Counsel for the assessee that that in the facts of the present case where no notice under section 143(2) of the Act was issued against the return of income filed by the assessee, the assessment framed was invalid.

12. Ground of appeal raised by the assessee is allowed.

13. In effect appeal of the assessee is allowed.

Order pronounced in the open court on 04.04.2025

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Dated: 04.04.2025

Pooja, Sr. PS/-

Copy forwarded to:

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

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, Delhi

Sr. No.	Particulars	Date
1	<i>Date of dictation of Tribunal Order</i>	
2	<i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i>	
3	<i>Date on which the typed draft Tribunal Order is placed before the other Member</i>	
4	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S. /P.S.</i>	
5	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
6	<i>Date on which the signed order comes back to the Sr. P.S. /P.S</i>	
7	<i>Date on which the final Tribunal Order is uploaded by the Sr. P.S. /P.S. on official website</i>	
8	<i>Date on which the file goes to the Bench Clerk along with Tribunal Order</i>	
9	<i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i>	
10	<i>Date on which the file goes to the Supervisor (Judicial)</i>	
11	<i>Date on which the file goes for Xerox</i>	
12	<i>Date on which the file goes for endorsement</i>	
13	<i>Date on which the file goes to the superintendent for checking</i>	
14	<i>The date on which the file goes to the Assistant Registrar for signature on the tribunal order</i>	
15	<i>Date on which the file goes to dispatch section</i>	
16	<i>Date of Dispatch of the Order</i>	