

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.1244/KOL/2023
(Assessment Year: 2017-18)**

Sajal Biswas
C/o. S.N.Ghosh & Associates,
Advocates 2, Garstin Place,
2nd Floor, Suite No.203.
Off Hare Street, Kolkata,
West Bengal, 700001

(Appellant)

Vs.

I.T.O, WD 24(1), HOOGHLY
Aayakar Bhawan, Hooghly,
Khadina More, G.T.Road, 3rd
Floor, P.O- Chinsurah, P.S.
Chinsurah, Hooghly,
West Bengal, 712101

(Respondent)

PAN No. AWPPB6287R

Assessee by : Shri Somnath Ghosh, AR
Revenue by : Ms. Monalisha Pal Mukherjee, DR

Date of hearing: 13.03.2025
Date of pronouncement : 26.03.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 15.05.2023 for the AY 2017-18.

02. At the outset, we observe from the noting made by the registry that there is a delay of 129 days in filing the appeal for which the assessee has filed the condonation petition. It was submitted that the assessee became ill in the last week of June, 2023 and was bed ridden for a long period. The condition further deteriorated when She was diagnosed with Hepatitis and viral fever. The assessee ultimately recovered only in the third week of October and there after steps were

taken to prepare and filed the appeal on 20.11.2023. Considering the facts of the case and reasons cited before us, we are inclined to condone the delay in filing the appeal.

03. At the time of hearing, we note that the assessee has raised an additional ground challenging the issuance of notice u/s 143(2) of the Act. The ground raised by the assessee is as under:-

"FOR THAT in the facts and circumstances of the instant case, the Ld. Commissioner of Income Tax (Appeals)-N.F.A.C. acted unlawfully in not appreciating that none of the conditions precedent existed for and/or were fulfilled by the Ld. Income Tax Officer, Ward 24(1), Hooghly for his specious action of framing the assessment order u/s. 143(3) of the Income Tax Act, 1961 on 26-12-2019 in the instant case de hors any valid notice u/s. 143(2) of the Income Tax Act, 1961 issued in contravention of the C.B.D.T. Instruction F. No. 225/157/2017/ITA-II Dated 23-06-2017 and the impugned inaction on that account renders the assessment order framed ab initio void, ultra vires and null in law."

04. The Id. Counsel for the assessee submitted that the said ground is purely a legal issue and the assessee is within his legal right to raise the same before any of the appellate authority at any stage whatsoever. The Id. Counsel for the assessee submitted that the notice u/s 143(2) of the Act has been issued in an invalid format in violation to the CBDT instruction no. F. No. 225/157/2017/ITA-II Dated 23-06-2017 and accordingly, the assessment order passed consequently is void ab initio, ultra virus and nullity in the eyes of law. The Id. Counsel for the assessee submitted that since the issue raised is legal issue which goes to the root of the matter and since no further verification of facts is required to be done from any quarter whatsoever, the legal ground raised by the assessee may kindly be admitted for adjudication. In defense of his arguments the Id. AR relied on the decisions of the Apex court in the case of i) Jute Corporation of India Ltd. Vs CIT in 187 ITR 688, ii) National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383 and also by the decision of

Hon'ble Calcutta High Court in PCIT vs. Britannia Industries Ltd. [2017] 396 ITR 677 (Cal).

05. The Id. DR on the other hand submitted that the issue was not raised before any of the authorities below and therefore, may kindly be restored to the file of any of the authorities below for adjudication.
06. After hearing the rival contentions and perusing the material on record, we find that the assessee has raised an additional ground of appeal challenging the validity of the notice issued u/s 143(2) of the Act being in an invalid format and in our opinion the issued raised in the additional ground is a purely a legal issue qua which all the facts are available in the appeal folder and no further verification of facts are required from any quarter whatsoever. In our considered view the assessee is at liberty to raise any legal issue before any appellate authority for the first time even when the same has not been raised before the lower authorities. The case of the assessee is squarely covered by the decisions of the Apex court in the case of i) Jute Corporation of India Ltd. Vs CIT (supra) ii) National Thermal Power Co. Ltd v. CIT (supra) and also by the decision of Hon'ble Calcutta High Court in PCIT vs. Britannia Industries Ltd. (supra). Therefore, we are inclined to admit the same for adjudication.
07. The Id. AR vehemently submitted that the notice u/s 143(2) of the Act, a copy of which is available at page no.61 of the Paper Book, does not specify whether it is a limited scrutiny or a complete scrutiny or a compulsory manner scrutiny. The Id. AR submitted that the CBDT has issued specific instruction vide instruction no. F. No. 225/157/2017/ITA-II Dated 23-06-2017, that the notice u/s 143(2) can be issued in one of the three format which specifically mentioned and prescribed but the present notice issued is not in accordance with

such said instruction and therefore, the assessment framed consequently is invalid and void ab initio. The Id. AR in defense of his argument relied on the decision of Tapas Kumar Das Vs. ITO in ITA No. 1660/KOL/2024 vide order dated 11.03.2025 for A.Y. 2017-18, wherein similar issue has been decided in favour of the assessee. The Id. AR therefore prayed that the additional ground raised by the assessee may kindly be allowed.

08. The Id. DR on the other hand submitted that this is a computer-generated notice and the non-mentioning of the fact of either limited or complete scrutiny or compulsory manual scrutiny would not render the issuance of notice u/s 143(2) of the Act as invalid. Therefore, additional ground raised by the assessee may kindly be dismissed.
09. After hearing the rival contentions and perusing the materials available on record, we find that undisputedly the notice issued u/s 143(2) of the Act dated 10.08.2018, specifies only computer aided scrutiny selection which neither mentioned it either to be a limited or a complete scrutiny nor compulsory manual scrutiny. Thus, the said notice has been issued in violation of the instruction issued by CBDT as noted above. In our opinion, the revenue authorities have to follow the instruction issued by CBDT and violation thereto would certainly render the notice as invalid with the result all the consequential proceeding would also be invalid. The case of the assessee find support from the decision of the co-ordinate Bench in the case of Tapas Kumar Das Vs. ITO (supra), wherein a similar issue has been decided in favour of the assessee. The operative part of the same is extracted below:-

"After hearing the rival contentions and perusing the materials available on record, we find that particularly the notice was issued u/s 143(2) of the Act, a copy of which is available at page no. 25 of the Paper Book. We note that the said notice has not been

issued in consonance with the CBDT Instruction F No. 225/157/2017/ITA-II Dated 23.06.2017. The said notice is extracted below for the sake of ready reference:-

""आमकरअधिनियम 1961 कीधारा 143(2) केअधीननोटिस

Notice under section 143(2) of the Income-tax Act, 1961

संवीक्षा (कंप्यूटरआधारितसंवीक्षाचयन Scrutiny (Computer Aided Scrutiny Selection)

महोदय/महोदया/ भेसर्स,

Sir/Madam/ M/s,

आपकोसूचितकियाजाताहैकिनिर्धारणवर्ष 2017-18 केपावतीसंख्या 269322761301017 केअनुसारआपकेद्वारादिनांक 30/10/2017 कोदाखिलकीगईआयकरविवरणकोसंवीक्षाकेलिएचुनागयाहै।

This is for your kind information that the return of income filed by you for assessment year 2017-18 vide ack, no. 269322761301017 on 30/10/2017 has been selected for Scrutiny.

2. इससंबंधमें, आपकोदिनीक 16/11/2018 को 01:00 PM तकसाक्ष्यप्रस्तुतकरनेअथवासाक्ष्यप्रस्तुतकरानेकाअवसरप्रदानकियाजारहाहैजिसपरआपउक्तआयकरविवरणकोसमर्थनमेंनिर्भरहैं/ रहेंगे।

2. In this regard, an opportunity is being given to you to produce or cause to produce any evidence on which you may like to rely in support of the said return of income by 16/11/2018 at 01:00 PM.

3. उपर्युक्तनिर्दिष्टप्रमाण / सूचनाकोआपकोऑनलाइनमाध्यमसेइलेक्ट्रॉनिकरूपमें Incometaxindiaefiling.gov.in परअपनेई-फाइलिंगखाताद्वाराप्रस्तुतकियाजानाहै।बादकीनिर्धारणकार्यवाहीभीआयकरविभागकी 'ई-कार्यवाही' सुविधाद्वाराकीजायेगी। 'ई-कार्यवाही' परएकसंक्षिप्तनोटआपकेसंदर्भकेलिएसंलग्नहै।

3. The evidence/information specified above has to be furnished online electronically through your E-filing account in incometaxindiaefiling.gov.in. Subsequent assessment proceedings shall also be conducted electronically through the 'E-Proceeding' facility of Income-tax Department. A brief note on 'E-Proceeding' is enclosed for your kind reference.

4. निर्धारणकार्यवाहीकेदौरान, यदिआवश्यकहोगातोसूचना / दस्तावेजहेतुविशेषप्रश्नावली (यों) याअधियाचना (यों) कोबादमेंजारीकियाजाएगा।

4. In course of assessment proceedings, if required, specific questionnaire(s) or requisition(s) for information/document shall be issued subsequently.

5. कृपयाध्यानर्देकियदिआपकेपासई-फाइलिंगखाताहैतोआपकेलिएपैरा 3 लागूहै।आपकेद्वारास्वयंपनाखातानबनालेनेतकनिर्धारणकार्यवाहीआपकेद्वारावर्णितकीगईई-मे

is created by you, assessment proceedings shall be carried out either through your specified e-mail account or manually (if e-mail is not available).

संलग्नक : यचौधरि

Enclosure as above

"

7. In our opinion, the notice issued u/s 143(2) of the Act which is not in the prescribed format as provided under the Act is an invalid notice and accordingly, all the subsequent proceedings thereto would be invalid and void ab initio. The case of the assessee find support from the decision of Shib Nath Ghosh Vs. ITO in ITA No. 1812/KOL/2024 for A.Y. 2018-19 vide order dated 29.11.2024, wherein the co-ordinate Bench has held as under:-

"10. After hearing both the sides and the materials available on record, we find that the notice issued u/s 143(2) dated 9th August, 2017 was not in any of the formats as provided in the CBDT instruction F.No.225/157/2017/ITA-II dated 23.06.2017. We have examined the notice, copy of which is available at page no.1 of the Paper Book and find that the same is not as per the format of CBDT Instruction F.No. 225/157/2017/ITA-II dated 23.06.2017 as stated above. In our opinion, the instruction issued by the CBDT are mandatory and binding on the Income tax authorities failing which the proceedings would be rendered as invalid. Hon'ble Apex Court in case of UCO Bank (supra) held that the circular issued by CBDT in exercise of its statutory powers u/s 119 of the Act, are binding on the authorities. The Hon'ble Apex court held as under:-

"The Central Board of Direct Taxes under section 119 of the Income-tax Act, 1961, has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Act which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases Which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by Issuing circulars binding on the taxing authorities.

In order to aid proper determination of the income of money lenders and banks, the Central Board of Direct Taxes issued a circular dated October 6, 1952, providing that where interest accruing on doubtful debts is credited to a suspense account, It need not be included in the assessee's taxable income, provided the Income-tax Officer is satisfied that recovery is practically improbable. Twenty-six years later, on June 20, 1978, in view of the judgment of the Kerala High Court In STATE BANK OF TRAVANCORE v. CIT [1977] 110 ITR 336, the Board by another

circular, withdrew with immediate effect the earlier circular. However, by circular dated October 9, 1984, the Board decided that Interest in respect of doubtful debts credited to suspense account by banking companies would be subjected to tax but Interest charged in an account where there has been no recovery for three consecutive accounting years would not be subjected to tax in the fourth year and onwards. The circular also stated that if there is any recovery in the fourth year or later, the actual amount recovered only would be subjected to tax in the respective years. This procedure would apply to assessment year 1979-80 and onwards."

8. *Considering the facts of the instant case in the light of the decision of the co-ordinate bench, we are inclined to hold that notice issued u/s 143(2) of the Act is invalid notice and accordingly, the assessment framed consequentially to that is also invalid and is hereby quashed."*

010. Since the facts of the assessee's case are similar to one as decided by the co-ordinate Bench, we therefore, respectfully following the same hold that the notice issued u/s 143(2) of the Act is invalid notice and accordingly, the assessment framed consequentially is also invalid and is hereby quashed. The additional ground raised by the assessee is allowed.

011. Since, we have allowed the appeal of the assessee on legal issue, the other grounds raised on merit are not being adjudicated at this stage and are being left open to be decided at the later stage if need arises for the same.

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

Order pronounced in the open court on 26.03.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 26.03.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

True Copy//

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata