

**आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.115/RJT/2025

निर्धारण वर्ष /Assessment Year : 2017-18

Haresh J Rathod Shop No. 7 Hairline Unisex Salon, Amin Marg, Gujarat Housing Board, Rajkot-360 001	बनाम Vs.	Income Tax Officer, Ward- No.2(1)(2), Rajkot, T-Office, New Aayakar Bhawan, Vatiaka, Rajkot-360 001
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: ABXPR 2350 L		
(अपीलार्थी/Assessee)	..	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Kalpesh Doshi, AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Sr- DR

सुनवाई की तारीख/**Date of Hearing : 28/04/2025**

घोषणा की तारीख/**Date of Pronouncement : 21/05/2025**

आदेश/Order

Per Dr. Arjun Lal Saini, A.M

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the National Faceless Appeal Centre, Delhi /Commissioner of Income Tax (Appeals), [in short "the Id. CIT(A)/NFAC"] under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 17.12.2024, which in turn arises out of an assessment order passed by the Assessing Officer u/s 144(1)(b), dated 30.07.2019.

2. Grounds of appeal raised by the assessee are as follows:

"1. That the Ld.CIT(A) has wrongly set aside and remanded back the matter for fresh assessment.

2. That the Ld. CIT(A) has wrongly set aside the assessment order passed without serving the statutory notice u/s 143(2) of the I.T Act, 1961.

3. The Ld. CIT(A) has wrongly set aside the addition of cash deposit amounting to Rs.33,95,000/- on account of unexplained money in the bank account u/s 69A of the I.T. Act, 1961.

The assessee craves leave to add, amend, alter, or withdraw any aforesaid grounds of appeal."

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual. In the assessee`s case, the assessment proceedings were initiated for the reason that assessee has deposited cash in the bank account during the demonetization period starting from 09.11.2016 to 30.12.2016. The notice under section 142(1) of the Act, was first issued by the assessing officer, on 19.12.2017, seeking the assessee to file the return of income for assessment year (AY) 2017-18. The assessing officer issued further notices under section 142(1) of the Act, on 10.04.2019 and 24.05.2019. The said notices were issued & served electronically on the assessee.

4. In response to above notices, u/s 142(1) of the Act, the assessee has filed the reply before the assessing officer electronically. In response to above notices, the assessee has also filed return of income for assessment year (A.Y.) 2017-18, on 03.06.2019, before the assessing officer, declaring the income at Rs.5,64,690/- in Income Tax Return (ITR)

Form No.3. The assessing officer noticed that the assessee has filed return of income beyond the time limit of notice u/s 142(1) of the Act.

5. During the assessment proceedings, in response to notice u/s 142(1) of the Act, the assessee also filed copies of accounts, copy of ITR-V, computation of income for assessment years (A.Y.) 2015-16 to 2017-18 before the assessing officer. The assessee also filed, before the assessing officer, the bank statements for the A.Y 2017-18, of all bank accounts. Further details have been called for from all the banks u/s 133(6) of the Act, by the assessing officer, and all the said details have been received by the assessing officer.

6. After taking into account, the return of income filed by the assessee, in response to notice u/s 142(1) of the Act, and other details and documents and evidences submitted by the assessee, as noted above, during the assessment proceedings, the assessing officer decided to frame the assessment order u/s 144(1) (b) of the Act.

7. The assessing officer, based on the documents and evidences, and the return of income filed by the assessee, in response to notices u/s 142(1) of the Act, concluded that source of cash deposit of Rs.33,95,000/- made in various bank accounts during demonetization period, has not been proved and has therefore remained unexplained within the meaning of section 69A of the Act. Therefore an amount of Rs.33,95,000/- was treated as unexplained money within the meaning of

section 69A r.w.s. 115BBE of the Act and added to the total income of the assessee, for the year under consideration.

8. Considering the details available on record and after due verification, the income was assessed by the assessing officer as under:

Income as per return of income (filed on 3/6/2019) Rs. 5,64,690/-

Add: Addition as above Rs.33,95,000/-

Assessed income Rs.39,59,690/-

9. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A), who has confirmed the action of the assessing officer, observing as follows:

"5.3 In view of the above fact as discussed above and changes in the Act, as enumerated above, it is felt that the consideration of the recent submissions filed by the assessee, is justified for the correct appreciation of the issue under deliberation. Therefore, the order passed by the assessing officer u/s 144(1)(b) of the Act dated 30.07.2019 is hereby set aside for making fresh assessment, de-novo, after taking into account the above submissions filed by the assessee. Needless to say that the assessing officer should, while conducting the set aside proceedings, shall give proper opportunities of representation of its case to the assessee and take into account any further submissions which it has to file during the course of the said proceedings. The assessee should duly comply with the correspondences issued by the assessing officer.

5.4 The appeal filed by the assessee is thus disposed-off and assessment is set aside to the file of the A.O."

10. In para no.4, vide page number 3 of the order of the Id. CIT(A), the Id. CIT(A) mentioned that assessee has submitted written submission before him, and these written submissions have been considered by the

Ld. CIT(A). The Ld. CIT(A) after taking into account, the written submission of the assessee and the documents filed before him, stated that assessing officer has correctly framed the assessment order u/s 144 of the Act. Not only that the order passed by the assessing officer u/s 144 of the Act, dated 30.07.2019 was hereby set aside for making fresh assessment, de-novo, after taking into account the above submissions filed by the assessee.

11. Further aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.

12. Shri Kalpesh Doshi, Learned Counsel for the assessee, vehemently argued that during assessment proceedings, assessee has submitted entire details and documents, as required by the Assessing Officer, which is placed in paper book page no 26 and paper book page Nos. 27 to 29 of assessee's paper book. In response to notice u/s 142(1) of the Act, the assessee has submitted the return of income also. Based on the return of income, the Assessing Officer framed the assessment order, vide para No.5 of the assessment order. Despite submission of all the details and documents, as required by the assessing officer, during the assessment proceedings and filing of the Return of Income by the assessee, in response to notice u/s 142(1) of the Act, the assessing officer framed the assessment order under section 144 of the Act, which is not tenable in the eye of law. Therefore, in this scenario, the assessing officer should have framed the assessment order u/s 143(3) of the Act, instead of u/s 144 of

the Act. Therefore, the Assessing Officer has mentioned the section 144 of the Act, on the face of the order, does not mean that it is an *ex parte* order, rather it is a mistake committed by the Assessing Officer, in quoting the section 144 of the Act. The Assessing Officer ought to have mentioned the section 143(3) on the face of the assessment order instead of section 144 of the Act, as the Assessing Officer has collected the entire details and documents from the assessee during the assessment proceedings and then after the assessment order was framed. In fact, the assessing officer took the base of the Return of Income (ROI) filed by the assessee, in response to notice under section 142(1) of the Act, while making the assessment and the income mentioned by the assessee, in said, Return of Income, has been considered by the assessing officer. Therefore the assessment order cannot be treated u/s 144 of the Act.

13. On technical ground No.2, the Ld. Counsel for the assessee submitted that during the assessment proceedings, notice u/s 143(2) of the Act, was not issued, on the assessee, at all. To acquire the jurisdiction to make assessment, the notice u/s 143(2) of the Act, is mandatorily to be issued by the assessing officer. The Ld. Counsel for the assessee submitted that once the assessee filed his return of income, in response to notice u/s 142(1) of the Act, then it was the duty of the Assessing Officer to issue the notice u/s 143(2) of the Act, to obtain the jurisdiction to make the assessment on the assessee. Since the assessment was framed without issuing notice u/s 143(2) of the Act, therefore, the

assessment order is itself invalid and hence the assessment order should be quashed.

14. On the other hand, Ld. Senior DR for the Revenue supported the order of lower authorities. The Ld. Sr-DR submitted that assessment has been framed u/s 144 of the Act, as an *ex parte* order, because the assessee has failed to file the return of income during the assessment proceedings before the assessing officer, on time, within the time mentioned in the notice u/s 142(1) of the Act. Besides, during the assessment proceedings, the assessee has not submitted the entire details and documents, therefore assessment order was framed by the assessing officer u/s 144 of the Act and Id. CIT(A) was also right to set-aside, the order of the assessing officer and remit the issue back to the file of Assessing Officer for fresh adjudication.

15. The Ld. Sr.DR for the Revenue also submitted that first of all, the assessee did not file return of income, on time, in response to notice u/s 142(1) of the Act, before the assessing officer, therefore, the assessing officer did not issue the notice, u/s 143(2) of the Act. In order to issue notice u/s 143(2) of the Act, the condition is that the assessee should file the return of income, in response to notice u/s 142(1) of the Act, on time. The assessee under consideration has filed his return of income, before the assessing officer, very late, and because of this reason, the Assessing Officer did not issue the notice u/s 143(2) of the Act. Therefore, considering these circumstances, it was not mandatory for the Assessing

Officer to issue notice u/s 143(2) of the Act, and the assessment order so framed by the assessing officer, u/s 144 of the Act, is valid in the eye of law.

16. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee with the able assistance of Shri Kalpesh Doshi, representing the assessee and Shri Abhimanyu Singh Yadav, Learned Sr-(DR), representing the Revenue. We find that one key issue arises for our apt adjudication in the instant *lis*, which is, whether it is necessary to issue notice u/s 143(2) of the Act, when the assessee has filed the Return of Income, in response to notice under section 142(1) of the Act, before the assessing officer. We find that in response to notice, u/s 142(1) of the Act, the assessee has filed Return of Income for A.Y 2017-18, on 03.06.2019, before the assessing officer, declaring the income at Rs.5,64,690/- in Income Tax Return (ITR) Form No.3. However, the assessing officer noticed that the assessee has filed said return of income beyond the time limit of notice u/s 142(1) of the Act. We note that time limit stated by the assessing officer, as per his own whim, or desire, in the notice u/s 142(1) of the Act, is not a **LAXMAN REKHA**, (that is, expiry date), on which the assessee should have filed the return of income, before the assessing officer. Some assessing officers, may allow the time in notice u/s 142(1) of the Act, one month to the assessee, to file Return of Income before him, some assessing officers may allow time, to file return of income, in

notice u/s 142(1) of the Act, for two Months/three Months, therefore it is only administrative and individual decision of the assessing officer, to allow the time limit to the assessee, to file the return of income, in response to the notice u/s 142(1) of the Act. However, once the assessee has filed the Return of Income, in response to notice, u/s 142(1) of the Act, *(although it is late, as compare to the date mentioned in the notice u/s 142(1) of the Act)*, then it would be mandatory for the assessing officer, in order to acquire the jurisdiction, to make the assessment on the assessee, to issue the notice u/s 143(2) of the Act. Without issue of notice u/s 143(2) of the Act, the assessing officer does not get jurisdiction to make the assessment on the assessee.

17. We also noticed that assessing officer framed the assessment order u/s 144 of the Act, wrongly, without considering the fact that assessee has submitted during the assessment proceedings, all the details and documents required by the assessing officer. As we have noted earlier, that during the assessment proceedings, in response to notice u/s 142(1) of the Act, the assessee filed copies of accounts, copy of ITR-V, computation of income for A.Ys. 2015-16 to 2017-18, before the assessing officer. The assessee also filed, before the assessing officer, the bank statements for the A.Y 2017-18, of all bank accounts. Further details have been called for from all the banks u/s 133(6) of the Act, by the assessing officer, and all the said details have been received by the assessing officer, therefore, assessment order ought to have been framed

by the assessing officer u/s 143(3) of the Act, instead of u/s 144 of the Act. Therefore, action of the assessing officer, in quoting the section 144 of the Act, on the face of the assessment order and to frame the assessment order u/s 144 of the Act is bad in law, as the assessee has submitted entire details and evidences before the assessing officer, during the assessment proceedings and nothing was remained on the part of the assessee to submit further details before the assessing officer.

18. As we have noted above that in para no.4, vide page number 3 of the order of the Id. CIT(A), the Id. CIT(A) mentioned that assessee has submitted written submission before him, and these written submissions have been considered by the Id. CIT(A). The Id. CIT(A) after taking into account, the written submission of the assessee and the documents filed before him, stated that assessing officer has correctly framed the assessment order u/s 144 of the Act, whereas all the details and evidences filed by the assessee, during the assessment proceedings, before the assessing officer, were on the file of the Id. CIT(A), along with written submission of the assessee. Not only that the order passed by the assessing officer u/s 144 of the Act, dated 30.07.2019 was set aside by Id CIT(A) for making fresh assessment, de-novo, after taking into account the written submissions filed by the assessee. We find that in the assessment year 2017-18, the Id CIT(A) did not have power to set aside the assessment order and to remit the assessment order back to the file of the assessing officer to pass the fresh assessment order. Moreover, in

the assessee`s case under consideration, the assessment order is framed u/s 143(3) of the Act, as we explained above, therefore Id CIT(A) ought to have adjudicated the appeal of the assessee, on merit, (*as all the documents and evidences, including written submission of the assessee, were on record*) rather than to remit the issue back to the file of the assessing officer for fresh assessment.

19. We find that notice u/s 142(1) of the Act has been issued by the assessing officer, requiring assessee to file return of income. The assessee has duly filed return of income in response to the said notice issued u/s 142(1) of the Act, declaring total income at Rs.5,64,690/-. The assessment has been completed by passing an order u/s 144(1)(b) of the Act. The assessing officer has duly acknowledged the return of income filed by the assessee. The assessing officer, while passing assessment order has duly considered the return of income, filed by the assessee, in response to the notice issued u/s 142(1) of the Act, dated 03.06.2019 and addition was made after due consideration of income reflected in the return of income. The relevant extract of para No.6 of the assessment order, reflecting assessed income, is as follows:

"6. Considering the details available on record and after due verification, the income is assessed as under:

<i>Income as per return of income (filed on 3/6/2019</i>	<i>Rs. 5,64,690/-</i>
<i>Add: Addition as per para-5 above</i>	<i>Rs.33,95,000/-</i>
<i>Assessed income</i>	<i>Rs.39,59,690/-"</i>

Thus, the assessment order was finalized on the basis of return of income filed by the assessee and the assessing officer has nowhere discarded the return of income, as invalid return in the entire assessment proceedings. Therefore, the return filed by the assessee is valid.

20. Once the return of income is filed by the assessee and the assessing officer has duly considered the said return of income, then the assessing officer shall issue notice u/s 143(2) of the Act, for the further assessment proceedings. The notice u/s 143(2) of the Act is the starting point of assessment proceedings whereby assessing officer seeks documents / evidences from the assessee to support the claims made in the return of income. By way of issuing notice u/s 143(2) of the Act, the assessing officer gets the jurisdiction to make the assessment on the assessee by examining the details, documents and evidences submitted by the assessee. After receipt of the return of income filed in response to notice u/s 142(1), it is mandatory for the Assessing Officer to serve a notice, under sub-section (2) of section 143 of the Act. The return of income has been filed beyond the stipulated time frame specified in the notice u/s 142(1) of the Act, for filing such return of income. Nonetheless, the assessing officer has duly considered the said return of income and therefore, once the return of income is accepted by the assessing officer, he is bound to issue notice u/s 143(2) of the Act for the furtherance of the proceedings. Therefore, even though filed belatedly, the return filed in response to notice u/s 142(1) would still qualify, as a valid return

furnished. Therefore, the assessing officer is required to issue notice u/s 143(2) of the Act before passing order u/s 143(3) of the Act, for that, reliance is placed on the judgement in the case of CIT v. Nagendra Prasad (Patna HC) (156 taxmann.com 19) where notice was issued by Assessing Officer under section 148, requiring assessee to file a return within thirty days but return was filed after eight and a half months, since return was filed by assessee in response to said notice though delayed, there should have been a notice issued under section 143(2) of the Act, as requirement to issue notice could not be dispensed with.

21. We find that the return of income filed by the assessee has been duly acknowledged by the assessing officer. Nowhere, in the assessment order or show cause notice, or proceedings, the assessing officer has stated that return filed by the assessee is invalid or non-est. The assessing officer has not discarded such return but still initiated the proceedings on the basis of return filed by the assessee. Since, the return filed by assessee is belated return and the same is not discarded, as invalid, by the assessing officer, in such a case, if assessing officer wants to frame assessment at higher income, on the assessee, then in that circumstances, the assessing officer is bound to issue a notice u/s 143(2) of the Act and a reasonable opportunity of hearing should be given to the assessee, for that we rely on the judgement of the jurisdictional Gujarat High Court in the case of Devendranath G Chaturvedi,[2017] 83 taxmann.com 141 (Guj-HC), wherein it was held as follows:

"IT: Where return for block period filed by assessee belatedly was not discarded as invalid, in such a case, if Assessing Officer wanted to frame assessment at higher income, he was bound to issue a notice under section 143(2)

Section 143, read with section 158BC, of the Income-tax, Act, 1961 - Assessment (issue of notice u/s 143(2) – Block assessment period 1990 to 2001 – Whether where assessee, in response to notice issued under section 158BC, filed a return after long delay, however, said return was not discarded as invalid, in such a case, if Assessing Office wanted to frame assessment at higher income, he was bound to issue a notice under section 143(2) – Held, yes [para 6] [in favour of assessee]

*6. In the present case, however, the assessee did file the return, though belatedly. The Assessing Officer did not discard such return but proceeded on the basis of such return and framed an assessment assessing the income higher than the returned income. Under the circumstances, before rejecting such income, notice under Section 143(2) of the Act was necessary. Such notice not having been issued, the Tribunal correctly upheld the judgment of the CIT(Appeals). Tax Appeal is **dismissed**."*

22. An analysis of section 143(2) of the Act, indicates that after the return is filed, this sub-section enables the Assessing Officer to complete the assessment by following the procedures, like issue of notice u/s 142(1) of the Act and complete the assessment. When the assessing officer is in repudiation of the return filed by the assessee, then, the assessing officer has to proceed to make an enquiry, and he should necessarily follow the provisions of section 142(1) and provisions of sub-section (2) and (3) of section 143 of the Act. The notice u/s 143(2) is mandatory if the return filed is not accepted and subsequently an assessment order is to be made at variance with the return filed by the assessee. It is also to be evident that the issue is not limited to block assessment but would apply to every case where a notice u/s 143(2) is necessary. Therefore, even if the assessing officer repudiates the return

of income filed by assessee, still the assessing officer is bound to issue notice u/s 143(2) of the Act. Therefore, the omission on the part of the assessing authority to issue notice u/s 143(2) of the Act is not curable, and therefore, the requirement of notice u/s 143(2) cannot be dispensed with. In the assessee's case under consideration, the assessing officer did not issue the notice u/s 143(2) of the Act, therefore we quash the assessment order framed by the assessing officer, and allow the appeal of the assessee.

23. In view of the reasons set out above, as also bearing in mind entirety of the case, we, have quashed the assessment proceedings. As the assessment itself has been quashed, therefore, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

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

Order pronounced in the open court on 21/05/2025.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(DR. ARJUN LAL SAINI)
लेखा सदस्य/**ACCOUNTANT MEMBER**

राजकोट /Rajkot
दिनांक/ Date: 21/05/2025
DKP Outsourcing Sr.P.S

आदेश की प्रतिलिपि अत्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेश से,

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सहायक पंजीकार

आयकर अपीलीय अधिकरण, राजकोट