

**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 Nos. 929/RJT/2024

(Assessment Year: 2017-18)

(Hybrid Hearing)

M/s. Nihal Projects, BH Ram Mandir, Meghpar, Kumbhardi, Kachchh-370205 (Gujarat)	Vs.	ITO, Ward-2, Gandhidham
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAHFN1322M		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारितकीओरसे/Assessee by

: Shri Kalpesh Doshi, Ld. AR

राजस्वकीओरसे/Revenue by

: Shri Abhimanyu Singh Yadav, Sr. DR

मुनवाईकीतारीख/ Date of Hearing

: 26/08/2025

घोषणाकीतारीख/Date of Pronouncement

: 27/10/2025

आदेश/ORDER

Per, Dr. Arjun Lal Saini, AM:

By way of this appeal, the assessee has challenged correctness of the order dated 17.10.2024 passed by the learned Commissioner of Income Tax (Appeals) [in brief 'CIT(A)'], in the matter of assessment under section 143(3) of the Income Tax Act 1961, for the assessment year 2017-18.

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

(1). That, the Ld. CIT(A) has wrongly confirmed the disallowance of the outstanding service tax liability of Rs. 77,29,459/- u/s 43B of the I.T. Act, 1961.

(2). That, the Ld. CIT(A) has wrongly confirmed the addition of Rs. 13,343/-u/s 2(24)(x) r.w.s. 36(1)(va) of the LT. Act, 1961.

(3). That, the Ld. CIT(A) has wrongly confirmed the disallowance of interest on delayed payment of TDS amounting to Rs. 57,298/-.

(4). That, the Ld. CIT(A) has wrongly confirmed the addition amounting to Rs. 25,35,850/- on account of difference in receipts as per books of accounts and form 26AS.

(5). That, the Ld. CIT(A) has wrongly confirmed the addition of Rs. 30,50,000/- on account of unexplained cash deposits u/s 68 of the I.T. Act, 1961.

(6). That, the Ld. CIT(A) has wrongly confirmed application of provisions of section 115BBE of the I.T. Act, 1961.

(7). That, the Ld. CIT(A) has wrongly confirmed initiation of penalty proceedings u/s 274 r.w.s. 270A and 271AAC of the I.T. Act, 1961.

(8). That, the Ld. CIT(A) has wrongly charged interest u/s 234A, 234B, 234C and 234D of the I. T. Act, 1961.

(9). That, the findings of the Ld. CIT(A) are not justified and are bad-in-law.

3. The assessee has also raised additional grounds of appeal, which is as follows:

“The notice issued under section 143(2) of the Act dated 23.08.2018, is in violation of CBDT instruction F.No.225/157/2017/ITA-II dated 23.06.2017.”

4. Learned Counsel for the assessee submitted that the above additional legal ground raised by the assessee goes to the root of the matter, and it is a legal ground as to the validity of assessment under section 143(3) of the Act, and such a legal ground can be raised by the assessee at any stage. Therefore, learned Counsel prayed the Bench to admit the above additional ground on legal issue and adjudicate the same first, as it goes to the root of the matter.

5. On the other hand, learned DR for the revenue opposed the prayer of the assessee to admit the above legal ground and stated that such legal ground was not raised by the assessee before the authorities below, that is, neither before assessing officer, nor before, learned CIT(A), therefore, at this stage, the assessee cannot raise such legal ground.

6. We have heard both the parties on this preliminary issue. Having considered the additional grounds of appeal filed, the issue involved has been carefully gone through and it is noticed that the additional ground of appeal is technical in nature and has synergies with the facts of the case and other grounds of appeal and we also noticed that the additional grounds of appeal is legal in nature and goes into roots of the matter and all the facts are already on record. Therefore following the principle of natural justice the same as admitted considering various judicial pronouncements noted hereunder;

- (i) Himachal Gramin Bank Vs. DCIT [2008] 305 ITR 163 (HP High Court)
- (ii) CIT Vs. Smt. Madhu Patni [2009] 18 DTR 110 (Kerala High Court)
- (iii) CIT Vs. Vadilal Industries Ltd. (2008) 217 CTR 318 (Gujarat HC)
- (iv) ITO Vs. XS Cad India Pvt. Ltd. [2015] 61 Taxmann.com 82
- (v) National Thermal Power Corporation 229 ITR 383 (Supreme Court)
- (vi) CIT Vs. B. Hill & Co. (P) Ltd. (1983) 142 ITR 185 (Allahabad H.C)

Having admitted the additional ground of appeal raised by the assessee in the present proceedings, the same is decided as under:

7. The facts necessary for disposal of the appeal, qua additional legal ground, are stated in brief. The assessee has filed original return of income on

03.11.2017, declaring total taxable income of Rs.3,28,650/-. The assessee's case was subsequently selected for scrutiny and notice u/s 143(2) of the Act, was issued on 23.08.2018 and duly served upon the assessee. Due to change of incumbent, notice u/s 142(1) r.w.s. 129 of the Act, along with questionnaire was issued on 08.09.2019 and served upon the assessee. In response to the notices, the assessee- firm e-filed the details as called for. The assessee is a contractor and has earned contract income during the year. The various submission and evidences filed by the assessee were verified by the assessing officer. Since the assessing officer did not satisfy with the reply filed by the assessee, therefore assessing officer made disallowance of Rs.77,29,459/- under section 43B of the Act, addition on account of difference in 26AS Rs.30,50,000/- and other small additions were also made by the assessing officer under various heads.

8. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the learned CIT(A), who has confirmed the action of the assessing officer, therefore, assessee is in further appeal before us.

9. Learned Counsel for the assessee vehemently argued on the additional legal ground raised by the assessee stating that first notice issued u/s 143(2) of the Act dated 17/08/2018 and second notice u/s 143(2) of the Act, dated 23/08/2018, have been issued without following the instructions prescribed in CBDT Circular No. F.No.225/157/2017/ITA-II dated 23.06.2017. The copy of CBDT Circular No. F.No.225/157/2017/ITA-II dated 23.06.2017, was submitted by the Id.Counsel before the Bench. Both the notices u/s 143(2) of the Act, have not specified whether it is a limited scrutiny or a

complete scrutiny or a compulsory manual scrutiny. The copy of both the notices issued u/s 143(2) dated 17/08/2018 and 23/08/2018, were submitted by the learned Counsel before the Bench. Therefore, learned Counsel submitted that since the notices issued u/s 143(2) dated 17/08/2018 and 23/08/2018, were not issued as per the CBDT circular (supra), therefore assessment order framed by the assessing officer under section 143(3) of the Act, dated 24.12.2019 should be quashed, for that learned Counsel for the assessee relied on the following judgements:

- (i). Tapas Kumar Das Vs. ITO, Ward-50(5), Kolkata (ITA No. 1660/KOL/2024) (ITAT Kolkata).
- (ii). Anita Garg Vs. ITO (I.T.A No.4053/Del/2024) (ITAT Delhi)
- (iii). eilburger Coatings (India) (P.) Ltd. Vs. PCIT (2023) 155 taxmann.com 580 (Calcutta HC).

10. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

11. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We find merit in the submissions of learned Counsel for the assessee. In our considered view, it was wholly erroneous on the part of the Revenue authorities, not to consider the circular issued by the CBDT, vide circular No. **F. No. 225/157/2017/ITA-II dated 23.06.2017**, while issuing notice under section 143(2) of the Act, as the notices u/s 143(2) of the Act, have not specified whether it is a limited scrutiny or a complete scrutiny or a compulsory manual scrutiny. It is a settled law that the Circulars issued by

CBDT are binding on the Revenue. This position was confirmed by the Apex Court in the case of Commissioner of Customs Vs. Indian Oil Corporation Ltd. reported in 267 ITR 272 wherein their Lordships examined the earlier decisions of the Apex Court with regard to binding nature of the Circular and laid down that when a circular issued by the Board remains in operation then the Revenue is bound by it and cannot be allowed to plead that it is not valid or that it is contrary to the terms of the statute. The assessment framed by the assessing officer, under consideration has certainly been contrary to the Circular issued by the CBDT, No. F. No. 225/157/2017/ITA-II dated 23.06.2017 (supra).

12. We note that assessee -firm is engaged in the business of excavation and similar civil contracts as well as sub-contractor for the Government Organization namely, Gujarat Mineral Development Corporation Limited. During the year under consideration, the assessee -firm has filed the return of income on 31/10/2017, by declaring the total income of Rs. 3,28,650/-. The assessee- firm has maintained regular books of accounts and are duly audited u/s 44AB of the I.T. Act. The assessee`s case has been selected for scrutiny and first notice u/s 143(2) of the Act has been issued as on 17/08/2018 and second notice u/s 143(2) of the Act has been issued on 23/08/2018. We find that these notices were issued by the assessing officer, without following the instructions prescribed in CBDT Circular No. F.No.225/157/2017/ITA-II dated 23.06.2017. Both the notices u/s 143(2) of the Act, have not specified whether it is a limited scrutiny or a complete scrutiny or a compulsory manual scrutiny. Therefore, it is abundantly clear that since the notices issued u/s 143(2) dated 17/08/2018 and 23/08/2018,

were not issued as per the CBT circular (supra). In this regard it was also stated that on perusal of CBDT Circular F.No.225/157/2017/TA-II dated 23.06.2017, it can be seen that the Notice u/s 143(2) of the Act has to be issued as per three formats, that are:

- (i). Limited Scrutiny (Computer Aided Scrutiny System)
- (ii). Complete Scrutiny (Computer Aided Scrutiny System)
- (iii). Compulsory Manual Scrutiny

From the above it is clear that as per CBDT circular mentioned above, the notice u/s 143(2) of the Act, has to be issued in given format and not any other format. Therefore, as per format of the notice as per the above circular, the notice should specifically mention the type of scrutiny for which it is selected. Whereas in the assessee's case, we find that the notice u/s 143(2) is silent about the type of scrutiny being carried out. The notice merely states as follows:

"This is for your kind information that the return of income filed by you for assessment year 2017-18 vide ack. No. 286548901031117 on 03/11/2017 has been selected for scrutiny".

13. However, we find that said format is not as prescribed by CBDT Circular F.No.225/157/2017/ITA-II dated 23.06.2017. We note that the CBDT Circular F.No.225/157/2017/ITA-II dated 23.06.2017 specifically provided separate format for each type of scrutiny, which is reproduced below:



The following are the formats as per CBDT Circular F.No.225/157/2017/ITA-II dated 23.06.2017

1. Format for Limited Scrutiny (Computer Aided Scrutiny Selection)

Limited Scrutiny (Computer Aided Scrutiny Selection)

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

PAN No.

Dated:

To

Sir/Madam

This is for your kind information that the return of income for Assessment Year..... filed vide ack. no. on..... has been selected for Scrutiny. Following issue(s) have been identified for examination:

2. Format for Complete Scrutiny (Computer Aided Scrutiny Selection)

Complete Scrutiny (Computer Aided Scrutiny Selection)

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

PAN No:

Dated:

To

Sir/Madam

This is for your kind information that the return of income for Assessment Year..... filed vide ack. no. on..... has been selected for Complete Scrutiny.

3. Format for Manual Selection

Compulsory Manual Selection

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

PAN No:

Dated:

To

Sir/Madam

This is for your kind information that the return of income for Assessment Year..... filed vide ack. no. on..... has been selected for Scrutiny on the basis of parameter at Para 1(.....) of Manual Compulsory Guidelines of CBDT issued vide Instruction No. dated

14. Therefore, on perusal of the above format of CBDT, we note that the notice issued in case of the assessee, dated 23/08/2018 and 17/08/2018, do not specify whether the notice has been issued for "Limited Scrutiny" (Computed Aided Scrutiny Selection), "Complete Scrutiny (Computed Aided Scrutiny Selection)" or "Complete Manual Scrutiny". Further, the Instruction dated 23.06.2017 specifically prescribed the framework for Computer Aided Scrutiny Selection (CASS), procedure for service of notices, and approval requirements. The notice u/s 143(2) was issued by the assessing officer, in the assessee's case on 23/08/2018, that is, after the Board Circular dated 23.06.2017, whereby a format is laid down by the Board to be used by the Assessing Officer. Therefore, we are of the view that the notice u/s 143(2) of the Act has to be issued in format given in CBDT Circular F.No.225/157/2017/ITA-II dated 23.06.2017 and not any other format. We note that as per CBDT Instructions the burden is on the revenue authority, assuming jurisdiction, to show and establish that such instructions have been duly complied and satisfied in letter and spirit. Further, Section 119 of the Income-tax Act empowers the CBDT to issue circulars and instructions for the purpose of proper administration of the Act. On perusal of section 119, it can be stated that the circular, the instruction issued by the CBDT are mandatory and binding on the Income tax authorities failing which the proceedings would be rendered as invalid. In this regard reliance is placed on Hon'ble Apex Court in case of UCO Bank wherein it was 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."

15. Therefore, we note that the notice issued u/s 143(2), in the assessee's case, is in contravention to the circular issued by the CBDT, which are binding in nature and therefore the notice issued u/s 143(2) of the Act, in the assessee's case under consideration, is invalid. In this regard reliance is placed on decision of Calcutta Tribunal in case of Sajal Biswas ITA No.1244/KOL/2023 (A.Y. 2017-18), wherein it has been held 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. 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. 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. In the result, the appeal of the assessee is allowed".

16. We find that Hon'ble High Court of Calcutta has also took the same view in the case of Weilburger Coatings (India) (P.) Ltd. Vs. PCIT (2023) 155 taxmann.com 580 (Calcutta HC). The Coordinate Bench of ITAT Delhi in the case of Anita Garg Vs. ITO (I.T.A No.4053/Del/2024) (ITAT Delhi) held that the assessment framed by the Assessing Officer u/s 143(3) dated 27.12.2019 pursuant to the notice issued u/s 143(2) dated 22.09.2018 which

was not in the prescribed format as notified by the CBDT, is bad in law and void ab initio and the same was quashed. Therefore, 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. We therefore, 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 legal ground raised by the assessee is allowed.

17. We, therefore, quash the assessment proceedings/assessment order dated 24.12.2019. As the assessment u/s 143(3) of the Act, itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

18. In the result, the appeal is allowed in the terms indicated above.

Order pronounced in the open court on 27-10-2025

Sd/-
(Dinesh Mohan Sinha)
Judicial Member

Rajkot (True Copy)

Dated: 27/10/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Rajkot
6. Guard file.

Sd/-
(Dr. Arjun Lal Saini)
Accountant Member

By order/आदेश से,

Assistant Registrar/Sr.PS/PS
ITAT, Rajkot