IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

SHRI DR. B.R.R. KUMAR, VICE PRESIDENT AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No.847/AHD/2026
(Assessment Year: 2016-2017)

Pavan Anil Bakeri
Sankarut, 1st Floor,
Old High Court Road, Ashram Road,
Ahmedabad-380009, Gujarat
[PAN:AENPB5730M] ..... **Appellant**

Vs

Assistant Commissioner of Income Tax,
Circle-1(1)(1),Ahmedabad
PratyashkarBhawan,B/H Stock
Exchange,Nr.Panjarapole Road, Ambawadi
Ahmedabad-380014, Gujarat ..... **Respondent**

Appearance

For the Appellant/Assessee	:	Shri Mehul Thakker,
For the Respondent/Department	:	Shri Abhijit Sr.DR

Date

Conclusion of hearing	:	13.08.2026
Pronouncement of order	:	28.10.2026

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. The present appeal has been preferred by the Assessee against the Order, dated 05/02/2026, passed by National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the '**CIT(A)'**] whereby the Learned CIT(A) had dismissedthe appeal against the Assessment Order, dated 15/12/2018, passed under Section 143(3) of the Income Act, 1961 [hereinafter referred to as 'the **Act**'] for the Assessment Year 2016-2017.

2. When the appeal was taken up for hearing, the Learned Authorised Representative for the Assessee invited our attention to the additional ground raised by the Letter, dated 10/06/2026, which reads as under:

"On the facts and in the circumstances of the case and in law, the assessment order passed by the Assessing Officer is bad in law and liable to be quashed, as the statutory notice under Section 143(2) alleged to have been served on ITBA Portal only on 19/12/2017. This service was made far beyond the mandatory statutory limitation period of six months from the end of the financial year in which the return was filed (i.e., beyond the absolute statutory limitation of 30/09/2017), rendering the assumption of jurisdiction invalid."

3. We have considered the rival submission on the above ground and have perused the material on record. We are of the view that the above additional ground raised by the Assessee can be adjudicated on the basis of facts already on record and therefore, keeping in view the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT 229 ITR 383 (SC), we admit the above additional ground and proceed to adjudicate the same since it goes to the root of the matter.

4. We note that it is admitted position that the Assessee filed the original Return of Income for Assessment Year 2016-17 on 03/08/2016 which was revised by way of return filed on 21/10/2016 under Section 139(5) of the Act. Subsequently, notice under Section 143(2) of the Act was issued which was served upon the Assessee on 19/12/2017. The contention of the Assessee is that the aforesaid notice has been issued after the expiry of statutory period and therefore, the same is bad in law.

5. As per the Proviso to Section 143(2) of the Act, no notice under Section 143(2) of the Act can be served upon the Assessee after the expiry of 6 months from the end of the financial year in which the return is furnished. The original return as well as the revised return was filed during the financial year 2016-2017 which ended on 31/03/2017. Thus, as per Proviso to Section 143(2) of the Act, the Assessing Officer had time till 30/09/2017 to issue notice under Section 143(2) of the Act whereas in the present case, admittedly, notice has been served upon the Assessee on 19/12/2017.

6. During the course of hearing, the Learned Departmental Representative had placed reliance upon the provisions contained in Section 292BB of the Act to contend that the Assessee had participated in the assessment proceedings and therefore, could not now raise the issue of validity of notice issued under Section 143(2) of the Act for the first time before the Tribunal. We note that in this regard, the Learned Authorised Representative for the Assessee had placed reliance upon the judgment of the Hon'ble Gujarat High Court in the case of CIT Vs. Panorama Builders (P.) Ltd. ([2014] 45 taxmann.com 159 (Gujarat)/[2014] 224 Taxman 203) wherein it was held as under:

> *"10. Even assuming arguendo that section 292BB applied retrospectively and on 1.4.2008 it applied to the appeal filed by the Revenue which was pending before the Income Tax Appellate Tribunal (for short 'the Tribunal') then what will be the effect of the new section.* ***On a close scrutiny of section 292BB, we find that it cures the defect in service of notice and lays down that it shall be deemed that any notice under the provisions of the Act which is required to be served on the assessee would be deemed to have been served provided the assessee had appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment. This section is only confined to service of notice under the Act. Section 292BB does not apply to issuance of notice under the provisions of the Act. It does not lay down that if a mandatory notice is required to be issued by the Assessing Officer and it has not been issued within the period of limitation fixed by the section or its proviso, then such notice shall be deemed to have been issued within time.***
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> *13. In this tax appeal, we find that on 6.10.2004 the assessee had furnished his return under section 139.* ***The notice under section 143(2) could be issued by the Assessing Officer, [as per the provisions as existed in the year 2004, 2005 and 2006] within 12 months from the end of the month in which return is***

furnished, that is to say on or before 31.10.2005. But the notice under proviso to section 143(2) was issued on 6.7.2006, after about 20 months. Under proviso to under section 143(2) the notice under section 143(2) was issued after the expiry of statutory period of 12 months from the end of the month in which return was filed, therefore, if the notice itself has not been issued within statutory time limit of 12 months, there was no question of deemed service of the notice within the statutory period fixed by the proviso to section 143(2) of the Act. Therefore, to such a case, section 292BB will not come to aid of the Revenue, even if we take a view that section 292BB would apply retrospectively Resort cannot be taken by the Revenue to section 292BB to give a go-bye to mandatory requirement of issuance of notice within the statutory fixed by the proviso to section 143(2) of the Act*.*

14. ***Therefore, we are of the considered opinion that section 292BB does not apply to issuance of notice, neither it cures the defect or enlarges statutory period where a mandatory notice under section 143(2) of the Act is required to be issued within limitation fixed under the Act****. In absence of issuance of the notice under the proviso to section 143(2) of the Act within a period of 12 months from the end of the month in which return was furnished by the assessee, the proceedings initiated by the Assessing Officer with regard to block assessment period 1.4.1997 to 25.7.2002 on the basis of notice issued on 6.7.2006 under section 143(2), after about 20 months, was time barred and the entire proceedings in pursuance of such notice is null and void." (Emphasis Supplied)*

7. On perusal of the above, we find that the Jurisdictional High Court had, in identical facts and circumstances, rejected the submission of Revenue to hold that Section 292BB of the Act cannot enlarge the statutory period granted for issuance of notice under Section 143(2) of the Act. In that case the Hon'ble High Court had quashed the assessment proceedings since the notice under Section 143(2) of the Act was issued after the expiry of period specified in Proviso to Section

143(2) of the Act.

8. Respectfully following the above judgment, we quash the notice issued under Section 143(2) of the Act which was served upon the Assessee on 19/12/2017, which fell beyond the period of 6 months from the end of the relevant financial year specified in Proviso to Section 143(2) of the Act. Consequently, the Assessment Order, dated 15/12/2018, passed under Section 143(3) of the Act for the Assessment Year 2016-2017 is quashed. Thus, the above additional ground raised by the Assessee is allowed while all the other grounds/additional grounds are dismissed as having been rendered infructuous.

9. In result, appeal preferred by the Assessee is partly allowed.

Order pronounced on 28.10.2026

Sd/-	**Sd/-**
(Dr. B.R.R. Kumar)	**(Rahul Chaudhary)**
Vice President	**Judicial Member**

दिनांकDated :28.10.2026
अहमदाबाद Ahmedabad; **True Copy**
HC.PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल /Guard file.

JEETENDRA DEVENDRA BHAI UPADHYAY

Digitally signed by JEETENDRA DEVENDRABHAI UPADHYAY
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Date: 2026.10.30 17:09:16 +05'30'

आदेशानुसार/BY ORDER,
उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad