आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
MS.SUCHITRA R. KAMBLE, JUDICIAL MEMBER

ITA No.891 and 892/Ahd/2024
Assessment Year : 2012-13 and 2017-18

Jatin Dilipbhai Jani 64, Asopalav Bungalows Shalaj B.O. Ahmedabad. PAN : ADNPJ 6303 R	Vs.	ITO, Ward-1(1)(1) Ahmedabad.

(Applicant)		**(Responent)**

Assessee by :	Shri Deepak R. Shah, AR
Revenue by :	Shri V. Nandakumar, CIT-DR and Shri ashokkumar Suthar, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 18/12/2024**
घोषणा की तारीख /**Date of Pronouncement: 27/02/2025**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

The above two appeals relate to the same assessee and are against separate orders passed by the Commissioner of Income Tax(Appeal), National Faceless Appeal Centre (NFAC), Delhi of even dated i.e. 29.2.2024 under section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the assessment years 2012-13 and 2017-18.

2. At the outset itself, it was stated that the issue arising in both the appeals was common, being the addition made to the income of the assessee on account of cash found deposited in bank account remaining unexplained. The Ld. Counsel for the assessee stated that the assessee remained largely unheard, both during the assessment

proceedings, and even before the ld.CIT(A) ,with respect to the proceedings in both the impugned years. It was pointed out that while for the Asst.Year 2012-13, the assessment was framed by reopening the case of the assessee, and passing order under section 147 of the Act, for Asst.Year 2017-18, the addition was made in regular assessment framed under section 143(3) of the Act. The ld.counsel for the assessee contended that while on the merits of the case, there was identical argument to be made for both the years, but in Asst.Year 2012-13, the assessee also has challenged the validity of the assessment framed under section 147 of the Act. He pointed out that there was additional ground raised by the assessee, raising the legal challenge therein. Accordingly, the appeal of the assesse in ITA No.891/Ahd/2024 for Asst.Year 2012-13 was taken for hearing first.

ITA No.891/Ahd/2024 Asst.Year 2012-13

3. Giving background of the case, it was pointed out that the AO had received information of huge transactions aggregating to Rs.19,18,64,789/- in the assessee's saving bank account with ICICI Bank. The assessee for the impugned year had declared income of Rs.70,05,000/- and the same had been assessed under section 143(3) of the Act at Rs.77,31,340/- vide order dated 31.3.2015. On the basis of the information in the possession of the AO of huge deposits in the bank account of the assessee, the case of the assessee was reopened by issuing notice under section 148 of the Act and thereafter after giving due opportunity of hearing to the assessee, the AO framed assessment treating the deposits to the tune of Rs.11,33,64,789/- as remaining unexplained ,out of the total deposits of Rs.19,18,64,789/- ,accepting the assessee's explanation of deposits of Rs.7,85,00,000/- being attributable to the consideration received from sale of land

deposited in the bank account. This addition made by the AO was confirmed by the ld.CIT(A).

4. Before us, the assessee has challenged the validity of the assessment framed in the present case vide additional grounds raised on 26.11.2024 as under:

> *"1.The ld.CIT(A) erred in law and in the facts of the case in confirming the order of the AO in reopening the case of the appellant u/s.147 of the Act.*
>
> *2. The ld.CIT(A) erred in law and in he facts of the case in confirming the order of the AO in not issuing notice u/s.143(2) of the Act."*

5. During the hearing on the issue of admission of the additional ground, it was submitted by the ld.counsel for the assessee that the additional ground is purely legal in nature, and it is a well-settled law that legal grounds which do not require investigation of fresh facts can be raised at any time, as per the ratio of the decision of the Hon'ble Supreme Court in the case of NTPC Ltd. Vs. CIT, 229 ITR 383 (SC). On the other hand, the ld.DR has not contested this proposition of law.

6. Considering the submissions of the ld.counsel for the assessee, we are convinced that the additional grounds raised by the assessee and sought to be admitted is a legal issue, goes to the root of the case, which does not require further investigation into the fact of the matter. Therefore, following the decision of the Hon'ble Supreme Court on the issue in the case of NTPC Ltd. (supra), we admit the additional ground, and proceed to dispose of the appeals of the assessee.

7. Before us, the ld.counsel for the assessee first made arguments with respect to ground no.2 of the additional grounds that the assessment order passed was invalid for the reason that no notice under section 143(2) of the Act was issued to the assessee. The

ld.counsel for the assessee pointed out that it is settled law that the notice under section 143(2), being the jurisdictional notice, any assessment framed in the absence of the same was invalid. His contention was that it is a fact on record, noted by the AO also, that the assessee had filed return of income in response to the notice under section 148 of the Act, but the AO did not issue any notice under section 143(2) of the Act thereafter to the assessee .

8. The ld.DR per contra pointed out from para 4.2 of the assessment order that the assessee, despite the issuance of notice requiring the assessee to file its return of income issued under section 148 of the Act on 30.3.2019, filed return only on 20.12.2019, ignoring six notices issued in between all repeatedly asking the assessee to file its return of income.

9. The ld.counsel for the assessee responded by stating that Hon'ble Patna High Court in the case of CIT Vs. Nagendra Prasad, (2023) 156 taxmann.com 19 (Pat) held that even if the return filed in response to the notice under section 148 of the Act is after a delay of eight and a half months, there ought to have been notice issued under section 143(2) of the Act for a valid assessment ,as requirement of issuance of notice could not be dispensed with. In the present case he contended the delay was of 8 plus months and the decision of the Hon'ble Patna High Court would squarely apply. Copy of the order was placed before us.

10. To this, the ld.DR countered by pointing out that the assessment in the present case was getting time barred on 31.12.2019 and the assessee had filed return in response to the notice under section 148 of the Act only at fag end of the limitation/expiry of framing the assessment i.e. on 20-12-2019. She therefore contended that it was

improbable & impossible for the AO to have taken any cognizance of such delayed return with no time left for scrutinizing the same at all. She contended that such delayed return filed by the assessee could not be treated as valid return, and therefore, non-issuance of notice under section 143(2) of the Act would not render the entire assessment proceedings as invalid and nullity.

11. We have heard contentions of both the parties. The issue for adjudication is, whether the non-issuance of notice under section 143(2) of the Act in the present case would render entire assessment proceedings as invalid and a nullity.

The contention of the Ld.Counsel for the assessee is that once return has been filed by the assessee in response to notice u/s 148 of the Act, issuance of notice u/s 143(2) of the Act is mandatory for a valid assessment .The Revenue however has contended that in the light of the fact that the return filed by the assessee u/s 148 of the Act was unreasonably delayed leaving no scope for scrutinizing the same by the AO , due to the assessment getting barred by limitation by the time the return was filed by the assessee, the non issuance of notice u/s 143(2) of the Act was not fatal to the assessment framed.

12. The fact that the assessee filed delayed return in response to the notice under section 148 of the Act is not disputed, so much so that despite several notices issued to the assessee, totaling in all approx. to six notices, the assessee did not file any return of income. That it was only on the last occasion when the assessment was getting time barred on 31.12.2019 i.e. just 10 days before the assessee filed its return of income on 31.12.2019.

13. The issue for adjudication before us is, whether the AO under such circumstances, where the return was filed almost at fag end of

the limitation for framing the assessment ,was required as per law to issue notice under section 143(2) of the Act for framing a valid assessment.

14. Undoubtedly, courts in a number of decisions have held the issuance of notice u/s 143(2) of the Act in response to return filed u/s 148 of the Act to be a mandatory requirement of law. The Hon'ble Delhi High court in the case of PCIT vs Shri Jai Shiv Shankar Traders Pvt. Ltd. 383 ITR 448(Delhi) has categorically held that failure to issue notice u/s 143(2) of the Act is fatal to reassessment order. Notice u/s 143(2) of the Act has been held to be jurisdictional notice for scrutinizing returns filed by assessees and any defect with respect to the issuance of such notice is held to be not curable since it effects the assumption of jurisdiction itself to frame assessment.

Having noted the position of law as above, we however find that this is not a blanket proposition of law to be applied irrespective of and ignoring the fact situation prevailing in a case. This is so because the proposition is workable only if it fulfils the purport and objective behind the issuance of notice u/s 143(2) of the Act. For the said purpose it is pertinent to reproduce the provisions of section 143(2) of the Act.

> *143(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:*

15. As is evident from a bare perusal of the above that where the AO considers it necessary or expedient to verify the correctness the return filed by the assessee , to do so he has to put the assessee to notice,

and thereafter proceed to make inquiries as he wishes. Therefore, the purpose of issuance of notice under section 143(2) of the Act is to put the assessee to notice that the AO considers it necessary and expedient to scrutinize the return filed by the assessee.

16. Our view is supported by various decisions of courts holding that the AO has to apply his mind to the contents of the return filed in response to notice u/s 148 of the Act, and thereafter it is mandatory to issue notice u/s 143(2) of the Act before proceeding to decide the controversy with regard to escapment of income.

Pr.CIT Vs. Paramount Biotech Industries Ltd., (2017) 398 ITR 701 (Del):

"The wording of Section 143(2)(ii) of the Act, which is applicable in the present case, requires the AO to be satisfied on examining the return filed that prima facie the Assessee has 'understated the income' or has 'computed excessive loss' or has 'underpaid the tax in any manner'. The AO has the discretion to issue a notice under Section 143 (2) if he considers it 'necessary or expedient' to do so. This exercise by the AO under Section 143 (2) of the Act is qualitatively different from the issuance of a notice under Section 142(1) of the Act, which as noted hereinbefore, is in a standard proforma."

CIT Vs. Rajeev Sharma, (2011) 336 ITR 678 (All):

When the statute provides for a particular procedure, the authority has to follow it and cannot be permitted to act in contravention of the same. It has been provided that after receipt of notice under section 148 of the Income-tax Act, 1961, afresh return may be filed and in consequence thereof, the Assessing Officer has to apply his mind to the contents of the fresh return and then issue a notice under section 143(2) of the Act. While computing escaped assessment, the return filed in response to a notice under section 148 shall be deemed to be furnished under section 139 of the Act. Meaning thereby, that the procedure of section 139 of the Act shall be followed while dealing with the case of escaped assessment under section 148 of the Act. The plain reading of section 148 of the Act further reveals that within the statutory period specified therein, it shall be incumbent to send a notice under section 143(2). The provisions contained in section 148 of the Act with regard to escaped assessment, must be construed strictly with regard to the procedure prescribed for escaped assessment.

17. In a circumstance, where there is a hardly any time given by the assessee to the AO for scrutinizing the returns, as in the present case

where the assessee has barely given 10 days' time to the AO for the said purpose, the AO is not in a position to scrutinize the return filed by the assessee and therefore there cannot be any occasion for issuing any notice to the assessee u/s 143(2) of the Act.

What is culled out from the above is that issuance of notice u/s 143(2) of the Act though is mandatory for scrutinizing returns filed by assessees, but where the return filed is unreasonably delayed leaving no scope for scrutinizing the same by the AO, as in the facts of the present case, the non-issuance of the same is not fatal to the assessment framed.

18. The reliance placed by the ld.counsel for the assessee on the decision of Hon'ble Patna High Court in the case of Nagendra Prasad (supra), we find is of no assistance to the assessee, since the facts of the said case is not clearly brought out as to whether the delay of eight months resulted in a situation similar to the facts of the case before us. The said decision, therefore, we hold does not apply to the case before us.

We, therefore, reject the contention of the Ld. Counsel for the assessee that the failure of the AO to issue notice u/s 143(2) of the Act in the present case has rendered the assessment invalid.

19. During the course of hearing, our attention was drawn by the ld.counsel for the assessee to the provision of law, which provide that the returns filed delayed attract levy of penalty. Our attention was drawn to the provisions of section 234A in this regard, and it was pointed out that the delayed return filed in response to the notice under section 148 of the Act also attract interest for the period of delay. The contention of the ld.counsel for the assessee was that law itself condones the delay in filing of returns ,compensating it by

levying interest for the period of delay, therefore, whatever the quantum of time in the filing of the return of income, it cannot, by any chance, be treated as *non-est* return filed by the assessee.

20. We again are not convinced with this explanation of the ld.counsel for the assessee. Undoubtedly, the provisions of section 234A provides for interest to be charged for the delayed filing of the return, which applies to even for the return filed in response to the notice under section 148 of the Act. But by no stretch can the provision be interpreted to condone delays by levy of interest more particularly in the facts of the present case where there is an unreasonable delay in the filing of return , leaving hardly any scope for the AO to scrutinize the return filed by the assessee. The law cannot be interpreted in such an unreasonable manner.

In view of the above, we hold that non-issuance of notice under section 143(2) of the Act in the present case is not an impediment to the validity of assessment framed under section 147 of the Act.

21. Ground No.2 raised by the assessee in its additional ground, is accordingly, dismissed.

22. With respect to additional ground no.1, raised by the assessee, the contention of the ld.counsel for the assessee was that the reassessment proceedings were initiated on the assessee beyond four years and original scrutiny assessment under section 143(3) of the Act had been framed on the assessee; that therefore, the condition mandatory for assuming jurisdiction to frame assessment under section 147 of the Act was that of the AO being satisfied that the assessee failed to disclose fully and truly all material facts for its assessment for that year. The contention of the ld.counsel for the assessee was that this satisfaction of the AO was missing in the

present case. The contention of the ld.counsel for the assessee in this regard was that all material facts relating to the issue for which reassessment was resorted to, already stood disclosed in the original scrutiny assessment proceedings, and there could have been no charge against the assessee for having failed to disclose any material facts. The ld.counsel for the assessee pointed out that the reasons for reopening of the case of the assessee was that there were huge deposits in the assessee's bank account to the tune of Rs.19.18 crores, source of which remained unexplained. The ld.counsel for the assessee contended that during the assessment proceedings, all facts relating to the credits in the bank account were furnished to the AO in response to the query raised by the assessee.

23. In this regard, he drew our attention to the notice issued during the assessment proceedings on various dates. Placed before us at PB Page No.1, 2 and 4, which he contended was the notice under section 142(1) of the Act dated 3.2.2015, wherein the assessee was asked to furnish all the secured/unsecured loans obtained during the year. To furnish details of the property sold during the year for Rs.7.83 crores and to furnish the details of source of cash deposited in his bank account amounting to Rs.2.19 crores in ICICI saving bank account. The ld.counsel for the assessee, thereafter, pointed out that after seeking all the details, the assessment has been framed by making no adjustment on account of deposits in the bank account.

24. The ld.DR responded by stating that the assessee has filed no evidences showing that all deposits in its bank account in ICICI Bank were explained during the assessment proceedings. Her contention was that the ld.counsel for the assessee has only showed the question raised by the AO during the assessment proceedings. No reply filed by the assessee in this regard has been furnished so as to

demonstrate that all facts relating to the deposits in the bank account of the assessee were duly disclosed by the assessee during the assessment proceedings. She, therefore, contended that there is no doubt that there was a failure on the part of the assessee to disclose material facts relating to the deposits in his bank account in ICICI Bank and reopening resorted to, therefore, beyond the four years was valid.

25. Having heard contentions of both the parties, we do not find any merit in the contention of the ld.counsel for the assessee that reopening was resorted to in the present case was invalid for the reasons that there was no default on the part of the assessee for having failed to disclose material facts relating to the issue of cash deposits in its ICICI Bank A/c, for which purpose the reopening was resorted to. As rightly pointed out by the ld.DR, the ld.counsel for the assessee except for pointing out the question raised by the AO during the assessment proceedings has failed to demonstrate that all the facts explaining the deposits in its ICICI Bank A/c, amounting to Rs.19.18 crores, was placed before the AO.

26. We agree with the ld.DR that there was failure on the part of the assessee to disclose material facts relating to the deposits in its bank account and jurisdiction, therefore, for reopening of the case of the assessee beyond the four years was validly assumed by the AO, we hold.

27. The additional ground no.1 raised by the assessee is, therefore, dismissed.

28. Other grounds in the appeal are on the merits of the case, and read as under:

1. *The CIT(A) erred in law and in the facts of the case in passing exparte order u/s 250 of the act.*

2. *The CIT(A) erred in law and in the facts of the case in confirming the order of the AO in making addition of Rs.11,33,64,789/- u/s 69A of the act.*

29. The ld.counsel for the assessee pointed out that before both the AO and the ld.CIT(A), the assessee remained unheard. It was pointed out that due to personal exigencies, the assessee was unable to participate in the assessment proceedings for a very long period of time, and did not respond to various notices issued to it; that the assessee was able to respond only to the last notice issued to it on 16.12.2016, in response to which, the assessee filed his return of income and finally in response to the notice issued on 21.12.2019, the assessee submitted certain details, explaining the source of credits in its ICICI Bank account. The ld.counsel for the assessee contended that the assessee was able to furnish only the details explaining the source of credits in its bank account of Rs.19.21 crores, which is reproduced at page no.7 of the assessment order also; that due to shortage of time, as the assessment was getting time barred, no further replies could be filed by the assessee, and without the assessee being properly heard, therefore, the addition was made of Rs.11.33 crores of the credits in its bank account as remaining unexplained, the explanation with regard to Rs.7.8 crores credited, relating to the sale of the land, being accepted by the AO. He thereafter pointed out that before the ld.CIT(A) also ,due to personal exigencies, the appeal was filed late and reasons for delay were accepted by the ld.CIT(A). The assessee, he contended, had pointed out that there was personal problems/disputes ongoing, due to which he was unable to comply with the income-tax proceedings, and that there was physical brutal attack under business rivalry and for which he was hospitalised and was not in good health and position to comply

with the tax proceedings. It was thereafter pointed out that the assessee had submitted evidences to explain the genuineness of the source of deposits in its bank account, and filed an application under Rule 46A of the Income Tax Rules for admitting the same. The assessee has stated to the ld.CIT(A) that he had obtained confirmation from various persons from whom funds were received and deposited in his bank account, and few more confirmations were awaited, and he was in the process of clubbing the same. The assessee, he contended, has collated and compiled the information received in respect of cash deposits in the bank accounts, which demonstrated each and every deposits in the bank account, and had requested for one more opportunity so as to admit all necessary details in this regard. The ld.counsel for the assessee pointed out that despite noting of these factual submissions in his order, the ld.CIT(A) ignoring all of them went on to confirm the order of the AO without dealing with the assessee's request for admitting the additional evidences, and without even considering them. He pleaded therefore that the matter be restored back to the AO for consideration afresh.

The ld.DR had no objection to the same.

30. Considering the contentions of the ld.counsel for the assessee, demonstrating clearly that the additions made in his hands have been confirmed in defiance of the principles of natural justice , without giving a fair opportunity of hearing to the assessee, which even the Ld.DR has fairly agreed to, we consider it fit to restore the matter back to the file of the AO for reconsideration of the issue of source of deposits in bank account of the assessee. The AO is directed to give the assessee due opportunity of hearing and thereafter decide the issue in accordance with law.

The grounds raised on merits are accordingly allowed for statistical purposes.

In effect appeal of the assessee is partly allowed for statistical purposes.

ITA No.892/Ahd/2024

31. The grounds raised in this appeal are as under:

1. *The CIT(A) erred in law and in the facts of the case in passing exparte order u/s 250 of the act.*

2. *The CIT(A) erred in law and in the facts of the case in confirming the order of the AO in making addition of Rs.30,10,000/- u/s 69A of the Act.*

3. *The CIT(A) erred in law and in the facts of the case in confirming the order of the AO in making addition of Rs.87,01,600/- u/s 69A of the Act.*

4. *The CIT(A) erred in law and in the facts of the case in confirming the order of the AO in making addition of Rs. 11,04,32,918/- u/s 69A of the Act.*

32. The ld.counsel for the assessee pointed out that the issue in the impugned year also related to the source of deposits in the bank account to the tune of Rs.123.21 remained unexplained. He pleaded that the facts in such cases are identical to that of Asst.Year 2012-13. The assessee remained unheard both before the AO and the ld.CIT(A), and his request, therefore, was that this appeal also be restored to the AO for fresh consideration. The ld.DR fairly agreed with the same.

33. In view of the above the matter is restored back to the AO to be decided afresh after giving due opportunity of hearing to the assessee and in accordance with law.

The appeal of the assessee is allowed for statistical purposes.

34. In the result, the appeal of the assessee in ITA No.891/Ahd/2024 is partly allowed for statistical purposes while the appeal in ITA No.892/Ahd/2024 is allowed for statistical purposes.

Order pronounced in the Court on 27th February, 2025 at Ahmedabad.

Sd/-	**Sd/-**
(SUCHITRA R. KAMBLE)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad,dated 27/02/2025