

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.4053/Del/2024
निर्धारणवर्ष/Assessment Year: 2017-18

ANITA GARG Hapur, Santosh Garhi, Opp. Jareeb Kirana Store, Near KMS School, Rampura, Pilkhuwa, Uttar Pradesh. PAN No.AAYPG2767Q	<u>बनाम</u> Vs.	INCOME TAX OFFICER, Ward 2(3)(4), Aayakar Bhawan, Teachers Colony, Bulandshahar, Hapur, Uttar Pradesh.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Assessee by	Shri Deepak Upadhyay, CA
Revenue by	Shri Ajay Kumar Arora, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	05.06.2025
उद्घोषणाकीतारीख/ Pronouncement on	30.07.2025

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi dated 13.6.2024 for the AY 2017-18. The assessee in her appeal raised the following ground:

“The Ld. Assessing Officer is erred in making addition amounting to Rs.2,68,78,500/- without providing an opportunity of being heard in the principles of natural justice.”

2. The assessee also filed application for admission of the following additional grounds:

1. *“Ld. AO erred in treating the cash deposit as unexplained cash on basis of books of account without rejecting the same is legally not permissible;*
2. *On the facts and circumstances of the case, the Assessing Officer erred in issuing notice u/s 143(2) of the Income Tax Act, 1961 dated 09.08.2018 in violation of CBDT Instruction F.No.225/157/2017/ITA-II dated 23.06.2017. Therefore, the said notice is invalid, and assessment framed pursuant thereto is vitiated in law.”*

3. Ld. Counsel for the assessee, at the outset, submits that ground no.2 of additional grounds of appeal filed by the assessee is a legal ground going to the root of the very validity of framing the assessment and therefore the same may be admitted for adjudication. Reliance was placed on the decision of the Hon’ble Supreme Court in the case of NTPC vs. CIT 229 ITR 383.

4. Heard rival submissions. The additional grounds raised by the assessee since going to the root of the very validity of the assessment made based on the notice issued u/s 143(2) the same is admitted for adjudication.

5. Ld. Counsel for the assessee submitted that the notice issued u/s 143(2) by the Assessing Officer on 24.09.2018 is *void ab initio* having been issued in violation of the binding CBDT Instruction No. F.No.225/157/2017/ITA-II dated 23.06.2017. Ld. Counsel submits that the CBDT u/s 119 of the Act issued the above instructions prescribing mandatory revised formats for all scrutiny notices issued u/s 143(2) of the Act. He submitted that these instructions are binding on all the Income tax authorities and placed reliance on the decision of the Hon'ble Supreme Court in the case of UCO Bank vs. CIT (237 ITR 889) and Back Office IT Solution Pvt. Ltd. vs. Union of India (2021) SCC OnLine (Del) 2742. Ld. Counsel for the assessee referring to para 3 of the above instructions of CBDT submitted that the Board has directed that all scrutiny notices u/s 143(2) of the Act shall henceforth be issued in the revised formats only. The Ld. Counsel for the assessee submits that in the present case the Assessing Officer did not issue the notice in the prescribed revised format and this is a direct violation of the CBDT's binding instructions. Ld. Counsel placed reliance on the following decisions:

1. *"Hind Ceramics Pvt. Ltd. vs. DCIT, Circle - 10(1) [ITA Nos. 608 & 610/KOL/2024] dated 06.05.2025;*
2. *Tapas Kumar Das v. ITO, Ward-50(5), Kolkata [ITA No. 1660/KOL/2024] dated 11.03.2025;*

3. *Sajal Biswas v. I.T.O, WD 24(1), HOOGHLY [I.T.O, WD 24(1), HOOGHLY] [ITA No.1244/KOL/2023] dated 26.03.2025; and*
4. *Srimanta Kumar Shit vs. Assistant Commissioner of Income Tax [I.T.A. No.1911/KOL/2024].”*

6. The Ld. Counsel for the assessee further submitted that the issuance of notice u/s 143(2) in proper format is a jurisdictional requirement and any defect therein goes to the root of the assessment proceedings. A notice issued in violation of law cannot confer jurisdiction on the Assessing Officer to proceed with scrutiny assessment. Therefore, he submits that the notice dated 22.09.2018 issued u/s 143(2) is invalid and un-enforceable in law.

7. Heard rival contentions, perused the materials placed before us and the case laws relied on. The contention of the assessee that the notice issued u/s 143(2) dated 22.09.2018 by the AO is in violation of the CBDT instruction dated 23.06.2017 as it is not in the specified format. This fact was not controverted by the Revenue before us.

8. We observed that on identical situation the Kolkata Bench of the Tribunal in the case of Hind Cyramics Pvt. Ltd. vs. DCIT in ITA Nos. 608 & 610/Kol/2024 dated 06.05.2025 quashed the assessment framed pursuant to the notice issued u/s 143(2) which was not in the prescribed format as per the CBDT instructions observing as under:

“011. After hearing the rival contentions and perusing the material on record, we find that the assessee has raised an additional grounds 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 grounds is a purely a legal issue qua which all the facts are available in the appeal folder and no further verification of facts is 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.

012. The Id. AR vehemently submitted that the notice u/s 143(2) of the Act issued to the assessee did not specify whether it was a limited scrutiny or a complete scrutiny or a compulsory manual scrutiny. The Id. AR submitted that the CBDT has issued specifically provided 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 have specifically 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.

013. 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.

014. 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 09.08.2018, 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:-

"6. 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:-

"आयकर अधिनियम 1961 की धारा 143(2) के अधीन नोटिस
Notice under section 143(2) of the Income-tax Act, 1961
संवीक्षा (कंप्यूटर आधारित संवीक्षा चयन Scrutiny (Computer Aided Scrutiny Selection))

महोदय/महोदय/ श्रीमान्,
Sir/Madam/ M/s,

आपको सूचित किया जाता है कि निर्धारण वर्ष 2017-18 के पत्राई संख्या 269322761301017 के अनुसार आपके द्वारा दिनांक 30/10/2017 को दाखिल की गई आयकर विवरणी को संवीक्षा के लिए चुना गया है।

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. इस संबंध में, आपको दिनांक 16/11/2018 को 01:00 PM तक राख्य प्रस्तुत करने अथवा राख्य प्रस्तुत करने का अवसर प्रदान किया जा रहा है जिस पर आप उक्त आयकर विवरणी के समर्थन में लिखें हैं। 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. उपर्युक्त निर्दिष्ट धारा 143(2) के अधीन आपको ऑनलाइन माध्यम से इलेक्ट्रॉनिक रूप में incometaxindiaefiling.gov.in पर अपनी ई-फाइलिंग खाता द्वारा प्रस्तुत किया जाना है। काद की निर्धारण कार्यवाही और आयकर विभाग की ई-कार्यवाही सुविधा द्वारा की जाएगी। 'ई-कार्यवाही' पर एक संक्षिप्त नोट आपके संदर्भ के लिए संलग्न है।

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. निर्धारण कार्यवाही के दौरान, यदि आवश्यक होगा तो सूचना/दस्तावेज हेतु विधिक प्रस्तावना (सी) या अधिसूचना (सी) को खद में जारी किया जाएगा।

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

5. कृपया ध्यान दें कि यदि आपके पास ई-फाइलिंग खाता है तो आपको लिए पैरा 3 लागू है। आपके द्वारा स्वयं अपना खाता न बना लें तो निर्धारण कार्यवाही आपके द्वारा चालित की गई ई-मेल से

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 : यथापरि
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.

9. The other grounds raised on merit are not being decided at this stage and are being left open to be decided if need arises for the same at later stage.

10. In the result, the appeal of the assessee is allowed."

015. 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."

9. Similar view has been taken by the Kolkata Bench of the Tribunal in the case of Sajal Biswas vs. ITO in ITA No. 1244/Kol/2023 dated 26.03.2025, Srimanta Kumar Shit vs. ACIT in ITA No.1911/Kol/2024 dated 19.11.2024, Tapas Kumar vs. ITO in ITA No.1660/Kol/2025 dated 11.3.2025. Therefore, facts being identical respectfully following the above said decisions, we hold 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 is hereby quashed. The additional ground no.2 raised by the Assessee is allowed.

10. Since we have quashed the assessment allowing additional ground no.2, all other grounds are not adjudicated as they become only academic at this stage.

11. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 30.07.2025

**Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 30.07.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**