IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री एस बालाकृष्णन, माननीय लेखा सदस्य

SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI S BALAKRISHNAN HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A. No. 373/Viz/2025**
(निर्धारणवर्ष/ **Assessment Year:2017-18)**

KVRECPL – IRPINFRATECH (JV) D. No. 54-20-6, Kanakadurga Gazetted Officers Colony, Gurunanak Colony, Vijayawada -520008, Andhra Pradesh. PAN: AAQFK1247B	*VS.*	The Assistant Commissioner of Income Tax, Circle-2(1), Vijayawada.
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

करदाताकाप्रतिनिधित्व/ Assessee Represented by	:	Shri MV Prasad, CA
राजस्वकाप्रतिनिधित्व/ Department Represented by	:	Dr. Satyasai Rath, CIT-DR
सुनवाईसमाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	24/07/2025
घोषणा की तारीख/ Date of Pronouncement	:	08/08/2025

ORDER

PER S. BALAKRISHNAN, AM:

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre,

Delhi (in short "Ld. CIT(A)") vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1074375261/(1), dated 11/03/2025 arising out of the order passed U/s. 144 of the Income Tax Act, 1961 (in short "the Act"), dated 18/12/2019 for the AY 2017-18.

2. Brief facts of the case are that the assessee is a partnership firm engaged in the business of construction has not filed its return of income for the Asst. Year 2017-18. The Department having noticed that the assessee has made cash deposits into the bank, selected case for scrutiny and statutory notice U/s. 142(1) of the Act was issued on 09/03/2018 through email. In response to the notice, the assessee has failed to comply by filing the return of income for the AY 2017-18. Thereafter, on 20/07/2019 the assessee filed its return of income in response to notice issued U/s. 142(1) of the Act dated 18/07/2019. The Ld. AO did not consider the return of income. However, based on the bank account statement, Form-26AS, the Ld. AO treated an amount of Rs. 73,60,62,875/- as unaccounted income of the assessee-firm while estimating the profit percentage @ 8% on the entire income amounting to Rs. 5,88,85,030/-. Thus, the Ld. AO determined the total income of the assessee at Rs. 5,88,85,030/- and passed the assessment order U/s. 144 of the Act, dated 18/12/2019. On being aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A).

3. Before the Ld. CIT(A), the assessee responded to the various notices issued by the Ld. CIT(A). After examining the submissions made by the assessee, the Ld. CIT(A) in accordance with the provisions of section 251(1)(a) of the Act remitted the matter back to the file of the Ld. AO for fresh adjudication of the case since the Ld. AO has not considered the return filed by the assessee belatedly in response to the notice U/s. 142(1) of the Act by framing the assessment U/s. 144 of the Act. On being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

"1. The Ld. CIT(A) is erred in facts and law while passing the order.
2. The Ld. CIT(A) is not justified in remitting the matter back to the file of the AO for fresh adjudication.
3. The Ld. CIT(A) would have appreciated that the assessment made by the Assessing Officer is not an ex-parte assessment made U/s. 144 of the Act but it was only on the pretext that the appellant has not filed any valid return of income which is not correct.
4. The Ld. CIT(A) would have appreciated that return filed in response to notice issued U/s. 142(1) calling for return of income is a valid return of income.
5. The Ld. CIT(A) would have noticed that no notice U/s. 143(2) of the Act was issued and therefore would have treated the assessment proceedings as invalid and void ab initio.
6. The Ld. CIT(A) would have appreciated that the case has been selected for the reason that "cash deposits for demonetization period" but the AO has travelled beyond his jurisdiction by making it to full scrutiny without obtaining the permission of Hon'ble PCIT and also the Assessing Officer has not followed the Circular given by CBDT vide F. No. 225/402/2018/ITA-II in respect of limited scrutiny cases. Therefore, the assessment made is invalid and void.
7. The Ld. CIT(A) would have setting aside the assessment would have considered that the appellant firm has given total works for contract on back to back basis and hence the profit cannot be at 8% and hence would have accepted the percentage of profit declared by the appellant.
8. Any other legal and factual grounds that may be urged at the time of hearing of the appeal. "

4. At the outset, the Learned Authorized Representative (in short "Ld. AR") submitted that Ground No.5 being legal issue can be taken up for adjudication. On this issue, the Ld. AR submitted that the Ld. AO ought to have issued notice U/s. 143(2) of the Act when the return has been filed by the assessee in response to notice U/s. 142(1) of the Act, even though belatedly. He further submitted that the Ld. AO has not considered the return of income filed by the assessee which was also intimated to the Ld. AO while submitting the response on 13/09/2019 as evident from the Screenshot available on Paper Book Page No. 64. He further argued that the Ld. AO has erred in concluding the assessment U/s. 144 of the Act without issuing notice U/s. 143(2) of the Act. On this issue, the Ld. AR relied on the decision of the Coordinate Bench of ITAT, Rajkot in ITA No. 115/RJT/2025 (AY: 2017-18), dated 21/05/2025 in the case of Haresh J Rathod vs. ITO. Further, the Ld. AR also placed reliance on the decision of the jurisdictional Bench in the case of Baanavatu Tulasi vs. ITO in ITA No. 451/Viz/2024 (AY: 2015-16), dated 07/03/2025. He therefore pleaded that since the assessment order was framed without issuing notice U/s. 143(2) of the Act, it is null and void-ab-initio and cannot be enforced.

5. Per contra, the Learned Departmental Representative (in short "Ld. DR") submitted that the assessee has not placed on record the return of

income filed by the assessee on 20/07/2019 before the Ld. AO. In this situation, the Ld. CIT(A) remitted the matter back to the file of the Ld. AO to consider the issue after considering the return of income filed by the assessee. He therefore pleaded that the order of the Ld. CIT(A) be upheld.

6. We have heard the rival contentions and perused the material available on record. It is an undisputed fact that the assessee has filed its return of income belatedly in response to notice U/s. 142(1) of the Act. This fact was also intimated to the Ld. AO when the assessee submitted its response on 13/09/2019. The Ld. AR demonstrated the proof of submission by providing the Screenshot of the assessee's response to the notice in the IT portal which is available in Paper Book Page No.64, before the Ld. AO. While framing the scrutiny assessment order U/s. 144 of the Act on 18/12/2019, the return of income was very much available before him which was filed on 20th July, 2019. However, the Ld. AO has not considered the return of income filed by the assessee belatedly. The Ld. AO without discarding the return of income or considering it as an invalid return, he ought to have issued notice U/s. 143(2) of the Act when resorting to the Best Judgment Assessment U/s. 144 of the Act. It is mandatory for the Assessing Officer to serve a notice U/s. 143(2) of the Act when the return of income is filed in response to the notice U/s. 142(1) of the Act. Even though, the return of income is

filed belatedly in response to notice U/s. 142(1) of the Act, it would still qualify as a valid return of income furnished. It is also found that nowhere in the assessment order or during the scrutiny proceedings, the Assessing Officer has stated that the return of income filed by the assessee is invalid or non-est. We extract below the provisions of section 234A(1) of the Act for the sake of brevity:

> ***"Sec. 234A.*** *(1) Where the return of income for any assessment year under sub-section (1) or sub-section (4) or sub-section (8A) of section 139, or in response to a notice under sub-section (1) of section 142, is furnished after the due date, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date, and,—*
>
> *(a) where the return is furnished after the due date, ending on the date of furnishing of the return; or—*
>
> *(b) where no return has been furnished, ending on the date of completion of the assessment under section 144,*
>
> *on the amount of the tax on the total income as determined under sub-section (1) of section 143, and where a regular assessment is made, on the amount of the tax on the total income determined under regular assessment, as reduced by the amount of,—*
>
> *(i) advance tax, if any, paid;*
>
> *(ii) any tax deducted or collected at source;*
>
> *(iia) any relief of tax allowed under section 89;*
>
> *(iii) any relief of tax allowed under section 90 on account of tax paid in a country outside India;*
>
> *(iv) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;*
>
> *(v) any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and*
>
> *(vi) any tax credit allowed to be set off in accordance with the provisions of section 115JAA or section 115JD.*
>
> *Explanation 1.—In this section, "due date" means the date specified in sub-section (1) of section 139 as applicable in the case of the assessee.*
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> *Explanation 2.—In this sub-section,—*
>
> *(i) "tax on total income as determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 140B or section 143; and*

(ii) tax on the total income determined under regular assessment shall not include the additional income-tax payable under section 140B.

Explanation 3.—Where, in relation to an assessment year, an assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

Explanation 4.—[* *]"*

7. It is clear that there is no specified time limit apart from the time limit mentioned in the notice U/s. 142(1) of the Act by the Assessing Officer to file the return of income. From the bare reading of the provisions of section 234A as extracted above, if the return of income is furnished after the due date specified in the notice U/s. 142(1) of the Act, it does not render the return of income invalid, however, will be subject to interest U/s. 234A of the Act. It is an administrative issue and the individual decision of the Assessing Officer to allow the time limit to the assessee to file the return of income in response to notice U/s. 142(1) of the Act. When the assessee does not comply with the time limit specified in the notice U/s. 142(1) of the Act, it does not render the return of income invalid and it would be mandatory to the Assessing Officer, to acquire the jurisdiction to make the assessment of the assessee by issuing a notice U/s. 143(2) of the Act and without it the Assessing Officer does not get jurisdiction to make the assessment. Further, we have also noticed that the Assessing Officer framed the assessment order U/s. 144 of the Act wrongly, without considering the documents available before him during the assessment proceedings.

Even though the return of income filed by the assessee in response to the notice U/s. 142(1) of the Act has been furnished before the Ld. AO, he has not taken cognizance of the same. We extract below Section 143(2) of the Act which reads as under:

> *"Sec.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:*
>
> *Provided that no notice under this sub-section shall be served on the assessee after the expiry of three months from the end of the financial year in which the return is furnished."*

The Assessing Officer is mandated to serve on the assessee a notice requiring him to furnish any evidence on which the assessee may rely in support of the return of income. However, in the instant case, the Ld. AO has not issued notice U/s. 143(2) of the Act and has also not taken cognizance of the return of income filed in response to the notice U/s. 142(1) of the Act. The provisions of section 143(2) clearly stipulate the legal necessity of compliance of issue of notice U/s. 143(2) of the Act to complete the assessment U/s. 143(3) of the Act. At this juncture, we find it relevant to extract the observation of the coordinate Bench of ITAT, Rajkot in the case of Haresh J Rathod vs. ITO (supra) as under:

> *"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."

8. Further, this jurisdictional Bench in the case of Baanavatu Tulasi vs. ITO in ITA No. 451/Viz/2024 (supra) has decided the identical issue and the relevant paras are extracted as under:

"10. In the instant case, the Ld. AO has not issued notice U/s.143(2) of the Act and has not considered the return of income filed in response to notice U/s. 142(1) of the Act. The above provisions of section 143(2) clearly stipulate the legal necessity of issuance of notice U/s. 143(2) of the Act to complete the assessment. It is an accepted legal proposition that where the return of income has been filed in response to notice U/s. 148 of the Act, the provisions of the Act shall apply as if such return was a return required to be furnished U/s. 139 of the Act. In the instant case, the Ld. AO did not consider the return of income filed by the assessee on 23/09/2021 stating that the return filed by the assessee is beyond the stipulated time frame of 30 days as specified in the notice U/s. 148 of the Act for filing the return of income. In our opinion, the return of income even though filed belatedly would still qualify as return furnished U/s. 139 of the Act and should be taken on record by the Ld. AO. In the instant case, the Ld. AO in his order has stated that since the assessee did not furnish the return of income

within the time limit specified in the notice U/s 148 of the Act, no notice U/s. 143(2) of the Act was issued to the assessee. The failure of the Ld. AO to issue notice U/s. 143(2) of the Act, prior to finalizing the re - assessment order, cannot be curable by the provisions of section 292BB of the Act. Further, the Hon'ble Supreme Court in the case of CIT vs. Laxman Das Khandelwal (2019) 417 ITR 325 (SC) held that "it is to be noted that the section 292BB of the Act does not save complete absence of notice. For section 292BB to apply, the notice must have emanated from the Department. It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself (para-9)". Therefore, in the light of the facts and circumstances of the case, as stated in the foregoing paragraphs of this order and by relying on various judicial pronouncements wherein it was clearly held that notice U/s. 143(2) of the Act presupposes the assessment order, we are of the considered view that the assessment order passed by the Ld. AO U/s. 147 r.w.s 144 r.w.s 144B of the Act, dated 29/03/2022 in the case of the assessee is bad in the eyes of law and cannot be sustained. We therefore quash the assessment order. Thus, the Grounds No.2, 3 & 4 raised by the assessee allowed."

9. Further, a failure of the Assessing Officer to issue notice U/s. 143(2) cannot be curable by the provisions of section 292BB of the Act. In the light of the above facts and circumstances of the case, as discussed above, and by relying on various judicial pronouncements as discussed above wherein it was clearly held that notice U/s. 143(2) of the Act pre-supposes the assessment order, we are of the considered view that the assessment order passed by the Ld. AO U/s. 144 of the Act dated 18/12/2019 in the case of the assessee cannot be sustained and deserves to the quashed. It is ordered accordingly. Thus, the legal issue raised by the assessee in Ground No.5 is allowed in favour of the assessee.

10. Since the legal issue raised in Ground No.5 of the grounds of appeal is decided in favour of the assessee, the adjudication of the other

grounds raised by the assessee becomes a mere academic exercise. Hence, the Grounds of Appeal Nos. 1, 2, 3, 4, 6, 7 & 8 are dismissed as academic.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 08th August, 2025.

Sd/- **(रवीश सूद)** **(RAVISH SOOD)** **न्यायिकसदस्य/JUDICIAL MEMBER**	**Sd/-** **(एस बालाकृष्णन)** **(S BALAKRISHNAN)** **लेखासदस्य/ACCOUNTANT MEMBER**

Visakhapatnam, dated 08.08.2025.

OKK/sps

आदेशकीप्रतिलिपिअग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	KVRECPL – IRPINFRATECH (JV) D. No. 54-20-6, Kanakadurga Gazetted Officers Colony, Gurunanak Colony, Vijayawada -520008, Andhra Pradesh.
2.	राजस्व/ The Revenue	:	Asst. Commissioner of Income Tax, Circle-2(1), Income Tax Office, CR Building, 1st Floor Annex, MG Road, Vijayawada-520002, Andhra Pradesh.
3.	The Principal Commissioner of Income Tax,		
4.	विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरणDR/ ,ITAT, Visakhapatnam.		
5.	The Commissioner of Income Tax		
6.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam.