

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH 'H' : NEW DELHI)**

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 3947/Del/2019, A.Y. 2008-09

ITA No.3952/Del/2019, A.Y. 2013-14

ACIT, Circle-64(1), New Delhi- 110002	Vs.	Sh. Gurnihal Singh Pirzada H.No. 59, Sector-4, Chandigarh PAN : AHDPP3265C
Appellant		Respondent

Assessee by	Sh. Parikshit Aggarwal, CA
Revenue by	Ms. Sapna Bhatia, CIT-DR and Shri Pramod Kumar, Sr. DR

Date of hearing:	21.02.2023
Date of Pronouncement:	23.02.2023

**ORDER**

**Per Anubhav Sharma, JM :**

Two appeals have been filed by the revenue against order dated 14.02.2019 in appeal for assessment years 2008-09 and 2013-14 passed by Commissioner of Income Tax (Appeals)-28, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 21.03.2016 u/s 143(3) / 147 of the Income Tax Act by ITO, Ward-64(3), New Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. The facts in brief are that in the present two assessment years no returns was filed by the assessee u/s 139(1) of the Act. However, on the basis of information received from Punjab Vigilance Bureau regarding investment by assessee in the property and treating the same as benami transactions, reasons were recorded and notice u/s 148 of the IT Act was issued on 23.03.2015. The assessee filed the return of income on 09.03.2016 in regard to both the relevant assessment years. The assessment was completed on 21.03.2016 and disallowances/ additions were made on account of investments in mutual funds, cash deposits in bank account and investments in immovable property of different amounts. The same was challenged by the assessee before Ld. CIT(A) and who by the impugned order had sustained the contention on behalf of the assessee that mandatory notice u/s 143(2) at the time of reassessment proceedings was not issued and served upon the assessee subsequent to filing of return by it.

3. Relevant here is to state that Ld. CIT(A) vide letter dated 17.08.2017 sought comments of the Ld. AO and which are reproduced as under :-

*“Kindly take reference to your office letter F.No. CIT(A)-21/Remand t/2017-18/112 dated 17.08.2017 on the subject cited above.*

*In this connection it submitted that the query raised by the assessee Sh. Gurnihal Singh Pirzada in the case of his assessment order for A. Y. 2008- 09. On the basis of available records the requisite report for the above mentioned year is given below:-*

*1. A.Y. 2008-09:-*

*The case of Sh. Gurnihal Singh Pirzada, was reopened u/s 147 of the I.T. Act, 1961, by the DCIT, Circle-64(1), New Delhi with the approval of competent authority from the issue as mentioned in assessment order, after taking the approval for issue of notice u/s 148 of the I.T. Act, 1961 notice was issued to the assessee on 23.03.2015 vide speed post no. as per Annexure no. 1 on available different addresses, (copy enclosed)*

*Notice u/s 143(2) of the I.T. Act, 1961 was issue on 27.10.2015 by the Income Tax Officer, Ward-64(3), New Delhi. Neither*

*assessee nor any authorised representative has attended the case in stipulated time. As per that to process the case further notice u/s 142(1) of the I.T. Act 1961 was issued on 23.03.2016 to attend the case on 29.02.2016.*

*In reference thereto, Sh. Anil Kumar katia, C.A. of the assessee was appeared and submit the reply against the penalty. The reasons recorded for re-opening the case of Sh. Gurnihal Singh Pirzada has also been provided vide letter dated 10.03.2016 as requested by him.*

*In this regard, the assessment u/s 147/143(3) of the I.T. Act 1961 was completed at the assessed income of Rs. 10,33,90,945/- on 21.03.2016.*

*The main addition was made on the basis of available record and AIR information available with the department. On going through the submission of the assessee, it was found that the assessee has filed his ITR for A.Y. 2008-09 on 09.03.2016 declaring income of Rs. 40,945/-.*

*"As per the Punjab Vigilance Bureau report submitted on 23.07.2015 to Chairman CBDT, during the financial year under consideration a property (H.No. 59, Sector-4, Chandigarh) was purchased in the name of M/s fateh Homes Pvt. Ltd. On 13.04.2007 for a consideration of Rs. 10,33,50,000/- vide sale deed no. 239. The Fateh Homes Pvt. Ltd. In which the Joginder Singh and Smt. Amrita Kaur were appointed directors. Both of these are relatives of the assessee. M/s Fateh Homes Pvt. Ltd. purchased the said property with funds provided by M/s International Customers Related Management Services Pvt. Ltd. There was no written agreement between M/s Fateh Homes Pvt. Ltd. (FHPL) and M/s International Customers Related Management Services Pvt. Ltd. (ICRMS) for providing funds.*

*As per the Punjab Vigilance Bureau report, J S Dua, Director of ICRMS Pvt. Ltd. has made a statement that M/s FHPL was incorporated by G.S. Pirzada through his CA D.K. Singla through Avtar Singh and Anil Latawa who were initially made Director in M/s FHPL. Avtar Singh and Anil Latawa were were close associated of Sh. G.S. Pirzada and no investment was made by Avtar Singh and Anil Latawa. The loan from ICRMS to M/s FHPL was given on the assurance of G.S. Pirzada. The said property as per statement of J.S. dua is in the de-facto possession of G.S. Pirzada and his family. The enquiries conducted by Punjab Vigilance Bureau reveals that ICRMS Pvt. Ltd. was incorporated at the behest of G.S. Pirzada. M/s ICRMS Pvt. Ltd. Given loan to M/s FHPL on assurance of G. S. Pirzada*

*and from these loans the in possession of G. S. Pirzada and his family. The lease rent being paid by G.S. Pirzada and his family for the above property is lower than the market rate. In view of the above Sh. G.S. Pirzada and his family for the above property is lower than the market rate. In view of the above Sh. G.S. Pirzada is beneficiary owner of H.No. 59, Sector-4, Chandigarh. The same investment made for the purchase of the above property that is Rs. 10,33,50,000/- is added back in the income of the assessee for FY 2008-09 being benami transaction."*

*The remand Report has been summarized on the available record on assessment file."*

4. Consequently concluding that no notice u/s 143(2) was issued or served subsequently to initiation of reassessment proceedings and taking notice of various judicial pronouncements submitted on behalf of the appellant assessee the Ld. CIT(A) held the reassessment proceedings were invalid and accordingly quashed the re-assessment.

5. The revenue is in appeal and grounds raised are common for both the appeals and for convenience grounds of appeal for A.Y. 2008-09 are reproduced below :-

*"(i) The Ld. CIT(A) has grossly erred on the facts and in the circumstances of the case and in law in holding the reassessment proceedings as invalid and without jurisdiction.*

*(ii) The Ld. CIT(A) has grossly erred on the facts and in the circumstances of the case and in law in holding that no notice u/s 143(2) was issued, regardless of actual fact of the case that notice u/s 143(2) was issued and served upon the assessee.*

*(iii) The Ld. CIT(A) has grossly erred on the facts and in the circumstances of the case and in law by relying upon the case laws which are entirely different from the present case of the assessee because this is case where notice u/s 143(2) was issued and served upon the assessee and not otherwise."*

*(iv) The Ld. CIT(A) has grossly erred on the facts and in the circumstances of the case and*

*in law in not holding that this is not a case where notice u/s 143(2) was not at all issued % and served upon the assessee.*

(v) *The Ld. CIT(A) has grossly erred on the facts and in the circumstances of the case and in law by relying upon the case laws pertaining To Section 292B# which are entirely different from the present case of the assessee because, this is not a case where notice u/s; 143(2) was not issued and served upon the assessee.*

(vi) *The Ld. CIT(A) has grossly erred on the facts and in the circumstances of the case and in law by completely ignoring the applicability of the provisions of Section 292BB to this case, given that assessee has duly appeared and co-operated in the reassessment proceedings, and has never raised such objection regarding validity cr propernessbf any notices issued during the proceedings, including the one issued: u/s 143 (2).*

(vii) *The Ld. CIT(A) has grossly erred on the facts and in the circumstances of the case and in law by quashing the reassessment proceeding and in not holding that the notice us 143(2) is deemed to be valid in view of the applicability of the provisions of Section 292BB of the IT Act and thereby deleting the entire addition of Rs. 10,33,50,945/- for this assessment year.*

(viii) *The Ld. CIT(A) has grossly erred on the facts and in the circumstances of the case and in law in quashing the reassessment proceeding despite the binding emphasisTaid down by the Hon'ble Supreme Court in the case of CIT vs. Jai Prakash Singh (1996) 219 ITR 737 examining the validity of the assessment where notice u/s 143(2) was not issued and served on the Assessee has held that an omission to issue or serve or any defect in the service of notices: provided by procedural provisions does efface or erase the liability to pay; tax where such liability is created by charging section. Further the Hon'ble Apex Court held that any such omission or defect may render the order irregular depending upon the nature of provision not complied with but certainly will not make order void or illegal and such order cannot be quashed.*

(ix) *The Ld. CIT(A) has grossly erred on the facts and in the circumstances of the case and in law in quashing the reassessment proceeding despite the various binding judgments/ observations pronounced by the Hon'ble High Court of Delhi in the case of Intarcraft India vs. CIT (1985) 154 ITR 662; and also*

*in the case of CIT vs. Narain Dass (2001) 249 ITR 148 that non-issue of notice u/s 143(2) is merely a procedural irregularity which can be corrected by remitting matter back to the AO.*

(x) *The Ld. CIT(A) has grossly erred on the facts and in the circumstances of the case and in law in quashing the reassessment proceeding despite the legal jurisprudence as held by Hon'ble Supreme Court in the case of Krishan Lai & vs. State of J&K (1994) 4 SCC 422, 432 that irregularity is for want of adherence to some prescribed procedure whereas nullity is a void act or an act having no legal force or validity.*

(xi) *The Ld. CIT(A) has grossly erred on the facts and in the circumstances of the case and in law in not considering the quantum additions made in A.Yrs. 2008-09 to 2013-14 on merits*

(xii) *The appellant craves, leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal."*

6. Heard and perused the record.

7. Ld. DR relying the judgment of Hon'ble Supreme Court of India in **CIT vs. Jai Prakash Singh 1996 AIR 1303** and Hon'ble Delhi High Court in **Intarcraft India vs. CIT 1985 154 ITR 662 Delhi** contended that Ld. CIT(A) has failed to take note of these two judgments which hold that non-issuance of notice u/s 143(2) of the Act is a mere irregularity and the reassessment is not void ab initio as held by Ld. CIT(A). It was submitted that as Ld. CIT(A) has failed to consider the case on merits, matter be remanded back to the Ld. CIT(A).

8. On the other hand, Ld. AR relied the findings of Ld. CIT(A) and specifically referred to the remand report made available in the paper book. It was submitted that the settled proposition of law is that the notice u/s 143(2) is mandatory in nature and there is no exception to it. Ld. AR has relied following judgments of Hon'ble Supreme Court, Hon'ble Delhi High Court, Co-ordinate Bench's Delhi and Allahabad High Court :-

<i>S. No.</i>	<i>Name of the Judgement</i>	<i>Citation</i>
1.	<i>CIT vs. Laxman Das Khandelwal</i>	<i>(2019) 417 ITR 325</i>
2.	<i>ACIT vs. Hotel Blue Moon</i>	<i>(2010) 321 ITR 362</i>
3.	<i>CIT vs. Delhi Kalyan Samiti</i>	<i>(2016) 95 CCH 399</i>
4.	<i>PCIT vs. Jai Shiv Shankar traders P. Ltd.</i>	<i>(2016) 338 ITR 448</i>
5.	<i>PCIT vs. Consortium Nussli Comfort Net</i>	<i>(2022) 113 CCH 116</i>
6.	<i>PCIT vs. Paramount Biotech Industries Ltd.</i>	<i>(2017) 398 ITR 701</i>
7.	<i>M/s. Halcrow Group Ltd. vs. ADIT</i>	<i>ITA no.163/Del./2010 Dtd. 02.07.2018</i>
8.	<i>ITO vs. Innovative Welfare and Educational Society</i>	<i>ITA No. 166/Del./2015 dtd. 29.04.2022</i>
9.	<i>U.P. State Industrial Development Corporation Ltd. vs. CIT</i>	<i>ITA No. 11/2015 dtd. 11.07.2016”</i>

9. Giving thoughtful consideration to the matter on record and after considering the remand report available at the paper book it appears admittedly notice u/s 143(2) of the Act was not issued after serving of notice u/s 147/148 of the Act and filing of the return of income in consequence to this notice. The order of ld. AO and remand report suggest that after issuing on notice u/s 148 of the Act on 26.03.2015 notice u/s 143(2) of the Act was issued on 27.10.2015 to which assessee had not responded. Subsequently, notice u/s 142(1) was issued on 23.02.2016. However, assessee requested for transfer of the case to Chandigarh which was declined and an opportunity was given by the Ld. AO to file the response to proposed addition. On the date of hearing 09.03.2016 on request of assessee, the case was reopened u/s 147/148 by issuing a notice on 23.03.2015 when assessee along with representative appeared and made written submission and requested for providing reasons for reopening of the case u/s 148 of the Act. The same were provided on 10.03.2016 itself and the next date was fixed on 14.03.2016, assessee made further submission on 11.03.2016 challenging the reopening. No one attended on 14.03.2016 and the objections

for reopening were disposed of on 15.03.2016 fixing next date of hearing on 17.03.2016. On telephonic request, proceedings were adjourned to 18.03.2016 when assessee and AR appeared and made written submissions.

10. As the matter of fact on 09.03.2016 the return of income was filed by the assessee. The copy of return acknowledgement for A.Y. 2008-09 is available at page no. 21 of volume 1 of the paper book for A.Y. 2008-09 and the same is in consequence to notice u/s 148 of the Act dated 23.03.2015 available at page no. 22 of the same paper book. Similarly in regard to appeal for A.Y. 2013-14 the income tax return acknowledgement at page no. 21 of volume 1 of the paper book for A.Y. 2013-14 and the same is in sequence of the notice u/s 148 of the act available at page no. 66. It appears that Ld. AO skipped to issue and serve notice u/s 142 of the Act, after return was filed and he has somehow treated the prior notice sufficient.

11. Hon'ble Supreme Court of India in **CIT vs. Laxman Das Khandelwal (2019) 417 ITR 325 (SC)** referring to provision Section 292BB of the Act has held that omission on the part of Assessing Authority to issue u/s 143(2) cannot be a procedural irregularity and the same is not curable and therefore the requirement of notice u/s 143(2) cannot be dispensed with. The catena of judgment relied on behalf of the assessee only strengthen the view of Ld. CIT(A).

12. The judgment which Ld. DR has relied are distinguishable as judgment of Hon'ble Supreme Court of India in the case of **CIT(A) vs. Jai Prakash Singh (supra)** was in regard to examining the fact of non-service of notice u/s 143(2) of the Act against nine out of the ten legal representatives of the deceased assessee and those circumstances, Hon'ble Supreme Court had considered it to be a mere irregularity which does not vitiate the reassessment and don't make it void ab initio. Similarly, Hon'ble Delhi High Court in **Infracraft India vs. CIT**

(Supra) was dealing with the issue on an reference application filed by the assessee as the Tribunal while setting aside the assessment on the ground of non-issuance of notice u/s 143(2) directed AO for *de nova* assessment. The Hon'ble High Court had not got on the merits of the matter whether notice u/s 143(2) is necessary and its non-issuance is fatal and disposed of the reference application u/s 256(1) of the Act with following findings in para no. 9 :-

*“9. In the circumstances, we reject the application. In view of the novelty of the point and particularly the contentions raised regarding procedural irregularity and procedural illegality, we make no order as to costs.”*

13. Thus, there is no error in the findings of Ld. CIT(A) and the bench is inclined to decide the grounds raised in appeal against the revenue and both **the appeals of revenue are dismissed.**

**Order pronounced in the open court on 23<sup>rd</sup> February, 2023.**

**Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

*Date:-23.02.2023*

*\*Binita, SR.P.S\**

Copy forwarded to:

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

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI