

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR**  
**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
AND SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No.39/JAB/2023  
Assessment Year:2009-10

Jt. C.I.T. Central Circle, Jabalpur.	Vs.	Shri Manish Sarogi, IDBI Building, Ghantaghar, Katni. PAN:APQPS9550L
(Appellant)		(Respondent)

C.O.No.11/JAB/2023  
(inI.T.A. No.39/JAB/2023)  
Assessment Year:2009-10

Shri Manish Sarogi, IDBI Building, Ghantaghar, Katni. PAN:APQPS9550L	Vs.	Jt. C.I.T. Central Circle, Jabalpur.
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In I.T.A. No.21/JAB/2019)  
Assessment Year:2016-17

Shri Naresh Poddar IDBI Building, Ghantaghar, Katni. PAN:ATJPP0521H	Vs.	Dy. C.I.T. Central Circle, Jabalpur.
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C.O.No.24/JAB/2019  
(inI.T.(SS)A. No.21/JAB/2019)  
Assessment Year:2016-17

Shri Naresh Poddar IDBI Building, Ghantaghar, Katni. PAN:ATJPP0521H	Vs.	Dy. C.I.T. Central Circle, Jabalpur.
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I.T.A. No.62/JAB/2019)  
Assessment Year:2016-17

Shri Manish Sarogi, IDBI Building, Ghantaghar, Katni. PAN:APQPS9550L	Vs.	Dy. C.I.T. Central Circle, Jabalpur.
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C.O.No.13/JAB/2019  
(in I.T.A. No.62/JAB/2019)  
Assessment Year:2016-17

Shri Manish Sarogi, IDBI Building, Ghantaghar, Katni. PAN:APQPS9550L	Vs.	Dy. C.I.T. Central Circle, Jabalpur.
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Revenue by	Shri Sarvan Kumar Gotru (Oral adjournment)
Assessee by	Shri DheerajGhai, C.A.
Date of hearing	01/12/2023
Date of pronouncement	01/12/2023

**ORDER**

**PER YOGESH KUMAR U.S.:J.M.**

The appeals in I.T.A.No.39/JAB/2023, 21/JAB/2019 and 62/JAB/2019 filed by the Revenue and Cross Objection Nos. 11/JAB/2023, 24/JAB/2019 and 13/JAB/2019 for the AY 2009-10, 2016-17 and 2016-17 filed by the Assessee challenging the order of the Ld. CIT(A) dated 27/12/2022, 12/06/2019 and 12/06/2019 respectively. The Assessee has challenged the validity of the assessment order on the ground that no notice u/s 143(2) of the Act was issued to the assessee. Since the above appeals and the Cross Objections are emerging out of a search & seizure operation dated 21/03/2016, the appeals and the Cross Objections are clubbed together and heard together and disposed in this consolidated order.

2. The assessee Shri Manish Sarogi, has filed Cross Objection No.11/JAB/2023 in I.T.A.No.39/JAB/2023 by challenging the validity of the assessment order on the ground that no notice u/s 143(2) of the Act was issued to the assessee, wherein there is a delay of 294 days in filing the

C.O. and the learned counsel for the assessee, in support of the application for condonation of delay, submitted that the assessee is suffering cancer and he is taking treatment by often visiting to Mumbai, therefore, prayed for condoning the delay. The assessee has also produced the medical documents in support of the application. We have heard on the application for condonation of delay. For the reasons stated in the application for condonation of delay and also considering the fact that the Assessee has raised the legal issue which goes to the root of the very assessment proceedings, the delay of 294 days in filing the C.O. is condoned.

3. The Ld. Counsel for the Assessee submitted that, the issue of validity of the Assessment Order on the ground that no notice u/s 143(2) of the Act was not issued to the Assessee has been decided in Assessee's own case in I.T.(SS)A. Nos.15 to 20/JAB/2019 (Naresh Poddar) Assessment Years:2010-11 to 2015-16 and in I.T.(SS)A. Nos.8 to 13/JAB/2019 (Manish Sarogi) Assessment Years:2010-11 to 2015-16 vide order dated 30/11/2023 therefore, submitted that the issue involved in the present Appeal/C.O. is fully covered in favour of the Assessee, Accordingly, sought for allowing the C.O.

4. Per contra, the Ld. DR relied on the assessment order and sought for dismissal of the C.O.

5. We have heard the parties perused the material.

6. The Tribunal in Assessee's own case I.T.(SS)A. Nos.15 to 20/JAB/2019 (Naresh Poddar) Assessment Years:2010-11 to 2015-16 and in I.T.(SS)A. Nos.8 to 13/JAB/2019 (Manish Sarogi) Assessment Years:2010-11 to 2015-16 vide order dated 30/11/2023 held that issuance of notice u/s 143(2) is mandatory and non-compliance of the same will

result in nullifying the assessment orders. The relevant portion of the order dated 30/11/2023 in Assessee's own case are as under:-

*"10. It is a specific case of the assessee before the CIT(A) that no notice u/s 143(2) of the Act has been issued to the assessee and assessment orders have been passed without issuing the notice u/s 143(2) of the Act, therefore, the Assessment Orders are null and void. The CIT(A) had called for the Remand Report, the learned Assessing Officer failed to produce any cogent evidence to show that the notice u/s 143(2) has been issued by the Assessing Officer to the assessee. On the other hand the Assessing Officer contended in the Remand Report that 'there is no statutory requirement to issue notice u/s 143(2) of the Act in the proceedings u/s 153A of the Act'. The assessee in its Cross Objections, filed before us, also raised the specific ground regarding non issuance of notice u/s 143(2) of the Act. Even before us the Department has not produced any evidence to show that the notice u/s 143(2) of the Act has been actually issued.*

*11. The learned CIT(A) while rejecting the said ground of non-issuance of notice u/s 143(2) of the Act, relied on the orders of the Delhi ITAT in the case of Roshan Lal Verma vs. DCIT (ITAT Delhi) and Janak Goel vs. DCIT (ITAT Delhi) which are no more good law.*

*12. It is now well settled law that if the notice u/s 143(2) of the Act is not issued to the assessee before completion of the assessment, then the assessment is not sustainable in the eyes of law and deserve to be cancelled as held by the various judgments of the Hon'ble Supreme Court, Hon'ble Jurisdictional High Court, other High Courts and Special Benches decision of the ITAT. The relevant portion of the various judgments of the Hon'ble Courts are reproduced as under:-*

*12.1 ACIT & Anr. vs. Hotel Blue Moon: [(2010) 321 ITR 362 (SC)]*

*Held: "It is mandatory for the AO to issue notice u/s 143 (2). The issuance and service of notice u/s 143 (2) is mandatory and not procedural. If the notice is not served within the prescribed period, the assessment order is invalid Reassessment-----Notice-----Assessee intimating original return be treated as fresh return---Reassessment*

*proceedings completed despite assessee filing affidavit denying serviced of notice under section 143(2)---- Assessing Officer not representing before Commissioner (Appeals) that notice had been issued---- Reassessment order invalid due to want of notice under section 143(2)--- Income-tax Act, 1961, ss. 143, 147, 148(1), prov.-- --ITO v. R.K. GUPTA [308 ITR 49 (Delhi)Tribu.,”*

- 12.2 DIT vs. Society ForWorldwide Interbank Financial Telecommunications in ITA 441 OF 2010 (Delhi High Court) [(2010) 323 ITR 249]

*"The notice u/s 143(2) was issued on 23-03-2000 while the return was filed on 27-03-2000. Even if it was issued on 27-03-2000 without examining the return, it was invalid. The notice was invalid and so was the assessment."*

- 12.3 DCIT vs. Indian Syntans Investments (P) Ltd. [(2007) 107 ITD 457 (Chennai)] Validity of reassessment order - Non-service of notice under s.143(2) –

*"The amended Proviso to s.148 of the Income Tax Act 1961 was not applicable in case where the assessee was not served a notice under s.143(2) of the Act. The reassessment made in such a case was invalid S.143(2) and s.148 of the Income Tax Act 1961."*

- 12.4 CIT vs. M/s Panorama Builders Pvt. Ltd. in Tax Appeal no. 435 of 2011 of Hon'ble Gujarat High Court

Issue Involved:

*"Whether non-issuance of the notice u/s 143(2) within the prescribed time, made the whole block assessment order null and void and bad in law, despite the assessee not having raised any objection before the passing of the assessment order and despite the provisions of section 292BB of the Act? "*

Held:

*"In this case, Hon'ble High Court has held that section 292BB cures the defects in service of notice but section 292BB is 'confined to only service of notice under this Act and this section does not apply to 'Issuance of notice' under the provisions of 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*

*under the law, then such notice shall be deemed to have been issued within time.*

*It has been further held that resort cannot be taken by the Revenue to section 292BH 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."*

*12.5 CIT vs Rajeev Sharma 336 ITR 678, High court of Allahabad.*

*"In view of above submissions and case laws, it has been established that no notice u/s 143(2) was issued in the present case and therefore the impugned assessment is liable to be annulled."*

*12.6 M/s Sapthagiri Finance and Investments vs. ITO: TC(A). No. 159 of 2006 dated 17.07.2012 (Mad HC) [(2013) 90 DTR (Mad) 289] Relevant para reproduced here under:*

*"13. As far as the present case is concerned, the provisions of Section 148 also uses the expression "so far as may be apply accordingly as if such return were a return required to be furnished under Section 139". Thus, understanding this provisions in the background of the decision of the Apex Court, on the facts available, we are of the view that in completing the assessment under Section 148 of the Act, compliance of the procedure laid down under Sections 142 and 143 (2) is mandatory. On the admitted fact that beyond notice under Section 142(1), there was no notice issued under Section 143(2), and in the light of the fact that the very basis of the reassessment was the failure on the part of the assessee in not disclosing the capital gains arising on the transfer of property for assessment and that admittedly the assessee had requested the officer to accept the original return as a return filed in response to Section 148 of the Act, we hold that there was total failure on the part of the Revenue from complying with the procedure laid down under Section 143(2) of the Act, which is mandatory one as held by the Apex Court."*

*12.7 Alpine Electronics Asia Pte Ltd. vs. DGIT &Ors: [(2012) 341 ITR 247 (Del)]*

*Held:*

*"The service of notice u/s 143(2) within the statutory time limit is mandatory and is not an inconsequential procedural requirement.*

*Omission to issue notice u/s 143 (2) is not curable and the requirement cannot be dispensed with. S. 143(2) is applicable to proceedings u/s 147 & 148."*

12.8 *CIT vs. Pawan Gupta &Ors. [(2009) 318 ITR 322 (Del) Hon'ble Delhi High Court held in Para 38 of the order observed as under:-*

*"Thus, we are of the clear view that where the assessing officer is not inclined to accept the return of undisclosed assessment filed by the assessee issuance of a notice under section 143(2) is a prerequisite for framing the block assessment order under chapter XIV B of the Income Tax Act, 1961. We are also of the view that if an assessment order is passed in such a situation without complying with section 143(2), it would be invalid and not be merely irregular."*

13. *Considering the above facts and circumstances and the judicial precedents and in the background of aforesaid discussions, we are of the considered opinion that the issuance of notice u/s 143(2) is mandatory and non-compliance of the same will result in nullifying the assessment orders impugned before us.*

14. *The learned D.R. contended that the action of the Assessing Officer is protected u/s 292BB of the Act as the assessee had appeared and participated in the assessment proceedings, therefore, assessee cannot raise a ground that the assessee has not been issued with the notice u/s 143(2) of the Act. We do not find merit in the submissions of learned D.R. as the Section 292BB of the Act is in respect of (a) non service of notice (b) non service of notice in time (c) service of notice in an improper manner- but in the present case the issue is regarding non-issuance of notice itself and the Department is not able to prove that the notice u/s 143(2) of the Act has been issued by the Assessing Officer. Therefore, in our considered opinion, the protection under section 292BB of the Act is not available to the Department in the case on hand.*

15. *Considering the fact that the Department has not produced any evidence to show that the notice u/s 143(2) of the Act has been issued to the assessee, the assessment orders passed for the assessment years 2010-11 to 2015-16 are hereby quashed. The Revenue is given liberty to file M.A.*

*for recalling this order if in case the Revenue is able to produce the evidence regarding the issuance of notice u/s 143(2) of the Act to the assessee. Accordingly, we allow the ground No. 1 of Cross Objection No. 7/JAB/2019 to C.O. No.12/JAB/2019 and quash the assessment orders for assessment years 2010-11 to 2015-16. The other grounds of Cross Objections are not adjudicated in view of allowing the ground No. 1 and quashing the assessment orders. In the result, Cross Objection No. 7/JAB/2019 to C.O. No.12/JAB/2019 are partly allowed.”*

7. By respectfully following the orders of the Tribunal in Assessee's own case dated 30/11/2023 in I.T.(SS)A. Nos.15 to 20/JAB/2019 (Naresh Poddar) Assessment Years:2010-11 to 2015-16 and in I.T.(SS)A. Nos.8 to 13/JAB/2019 (Manish Sarogi) Assessment Years:2010-11 to 2015-16, the impugned assessment orders passed for the assessment years 2009-10 & 2016-17 are hereby quashed. The Revenue is given liberty to file M.A. for recalling this order if in case the Revenue is able to produce the evidence regarding the issuance of notice u/s 143(2) of the Act to the assessee. Accordingly, we allow the ground No. 1 of Cross Objection No. 11/JAB/2023, 24/JAB/2019 and 13/JAB/2019 and quash the assessment orders for assessment years 2009-10 & 2016-17 of the respective parties.

8. In view of deciding the Cross Objections for the assessment years 2009-10 & 2016-17 of the respective Assessee's by setting aside the assessment orders, the appeals filed by the Revenue for the assessment years 2009-10 & 2016-17 have rendered the stage of in-fructuous. Accordingly, the appeals in I.T.A.No.39/JAB/2023, 21/JAB/2019 and 62/JAB/2019 of the Revenue are dismissed for having become in-fructuous. (Order pronounced in the open court on 01/12/2023)

**Sd/-**  
**(DR. B.R.R. KUMAR)**  
**Accountant Member**

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**Judicial Member**

Dated: 01/12/2023  
\*Singh Sr. P.S

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R.,

Asstt. Registrar