

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.967/SRT/2024

Assessment Year: (2012-13)

(Hybrid hearing)

|   |              |  |
|---|--------------|--|
| Madhuben Narottambhai Patel<br>C/o Modern Furniture,<br>Brahman Faliya, Khergam<br>Road, Chikhli, Navsari-396 521 | बनाम/<br>Vs. | Income Tax Officer, Ward-3,<br>Navsari, Room No.206, Income<br>Tax Officer, Char Pool, Awabaug,<br>Navsari-396 445 |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No: BSPPP 1158 N  |              |  |
| (अपीलार्थी/Appellant)   |              | (प्रत्यर्थी/Respondent)  |

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|---|--------------------------|
| निर्धारिती की ओर से /Appellant by       | Shri Rajesh Upadhyay, AR |
| राजस्व की ओर से /Respondent by          | Shri Mukesh Jain, Sr-DR  |
| सुनवाई की तारीख/Date of Hearing         | 27/02/2025               |
| उद्घोषणा की तारीख/Date of Pronouncement | 28/02/2025               |

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by assessee emanates from the order dated 07.08.2024, passed by the Learned Addl./JT-Commissioner of Income-tax(Appeals)-5, Mumbai u/s 250 of the Income-tax Act, 1961 (for short, 'the Act') for assessment year (AY) 2012-13, which in turn arises out of assessment order passed by Assessing Officer (AO for short) u/s 143(3) r.w.s. 147 of the Act dated 03.12.2019. Grounds of appeal raise by the assessee are as under:

- "1. Ld. Addl./JCIT[A]-5, Mumbai has erred in law and on fact to upheld AO's order for reopening of assessment u/s 147 and issue of notice u/s 148 of the Act.*
- 2. Ld.Addl./JCIT[A]-5, Mumbai has erred in law and on fact to uphold AO's addition of Rs.3,38,820/- being entire credit side of appellant's bank account with Bank of India, Chikhli Branch, Valsad ignoring the fact that the appellant is a senior citizen, having only agriculture income.*

2. Facts in brief are that assessee is a senior citizen and deposited cash of Rs.2,79,842/- in her bank account during the year under consideration. The AO issued notice u/s 148 of the Act on 29.03.2019. In response thereto, assessee filed her return on 27.04.2019. Thereafter, a show cause notice was issued on 27.11.2019 regarding deposit of said amount in bank. The assessee submitted the bank statement and stated that said amount was received out of agricultural income of HUF of the family. The assessee did not furnish From-7/12, bills, vouchers etc. Therefore, AO made addition of Rs.3,38,449/- and total income was determined at Rs.3,38,320/- against returned income of Rs.370/-. The AO also initiated penalty proceedings u/s 271(1)(c) of the Act.

3. Aggrieved by the order of AO, assessee filed appeal before CIT(A). Before the CIT(A), assessee submitted that reopening is made only on the basis of information about the deposits made in her bank account. The assessee had not filed her return of income but had deposited cash of Rs.2,79,842/- in her bank account. After considering submission of the assessee, the CIT(A) confirmed the addition made by the AO and dismissed the appeal of the appellant. Further aggrieved, appellant filed present appeal before the Tribunal.

4. The Ld. AR for the assessee has strongly argued against the reopening and filed paper book. The Ld. AR argued that the order passed by the AO is liable to be quashed because mandatory requirement of issue of notice u/s 143(2) of the Act was not fulfilled during re-assessment proceedings. He has

submitted details of notices issued during re-assessment proceedings which are as under:

| Sr.No. | Section | Date of issue | Din                                     |
|--------|---------|---------------|---|
| 01     | 148     | 29/3/2019     | ITBA/AST/S/148/2018-19/1015507934(1)    |
| 02     | 148     | 29/3/2019     | ITBA/AST/S/148/2018-19/1015507934(2)    |
| 03     | 142[1]  | 26/8/2019     | ITBA/AST/F/142(1)/2019-20/1017571706(1) |
| 04     | LETTER  | 17/11/2019    | ITBA/AST/F/17/2019-20/1020583116(1)     |
| 05     | SCN     | 27/11/2019    | ITBA/AST/F/17/2019-20/1021142880(1)     |
| 06     | ORDER   | 03/12/2019    | 20121078107                             |

4.1 The Ld. AR of the assessee relied on the decision of Hon'ble Supreme Court in the case of Asstt. CIT vs. Hotel Blue Moon (2010) 321 ITR 362/188 Taxman 113 (SC) and the decisions of Hon'ble jurisdictional High Court in the cases of (i) CIT vs. Panorama Builders Pvt. Ltd. 45 taxmann.com 159 (Guj); (ii) ITO vs. Smt. Sukhini P. Modi 367 ITR 682 (Guj) and (iii) PCIT vs. Marck Biosciences Ltd. 106 taxmann.com 399 (Guj) and the ITAT decision in DCIT vs. Specific Ceramic Ltd. ITA No.121/Ahd/2019 dated 28.06.2021.

5. On the other hand, Ld. Senior DR for the Revenue supported the order of lower authorities.

6. We have heard both the parties and perused the materials on record. We have also deliberated on the decisions relied upon by the Ld. AR of the assessee. The Ld. AR raised jurisdictional issue that the order is invalid because no notice u/s 143(2) was issued by the AO. The Ld. Sr-DR could not controvert the above fact. It is clear from the table at para-4 that after issue of notice u/s 148 of the Act and filing of return by the assessee on 27.04.2019, the AO has not issued any notice u/s 143(2) of the Act. He has issued notice u/s 142(1), letter dated 17.11.2019 and show cause notice dated 27.11.2019 before passing the order u/s 143(3) r.w.s. 147 of the Act on 03.12.2019. The Hon'ble

Supreme Court in the case of Hotel Blue Moon (supra) did not accept submission of Revenue that requirement of notice u/s 143(2) can be dispensed with because it is a mere procedural irregularity. The AO has necessarily to follow provisions of Section 142 and sub-sections (2) and (3) of Section 143 of the Act. The Hon'ble jurisdictional High Court in cases of Panorama Builders Pvt. Ltd.(supra); Smt. Sukhini P. Modi (supra) and Marck Biosciences Ltd. (supra) has decided similar issue in favour of assessee due to lack of notice u/s 143(2) of the Act. The ITAT Ahmedabad Benches in case of Specific Ceramic Ltd. (supra), after considering various decisions of Hon'ble Supreme Court and Hon'ble jurisdictional High Court, held that it was mandatory to issue the statutory notice u/s 143(2) within the prescribed time limit and such defect cannot be cured u/s 292BB of the Act. Hence, in absence of the said statutory notice, assessment framed u/s 143(3) r.w.s. 147 of the Act is not sustainable. The ground raised by the assessee is, accordingly, allowed.

6. Since we have held that the order passed by AO is not sustainable in the eyes of law, the other grounds are academic in nature and do not require separate adjudication.

7. In the result, appeal of the assessee is allowed.

Order is pronounced on 28/02/2025 in the open court.

Sd/-  
(SIDDHARTHA NAUTIYAL)  
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-  
(BIJAYANANDA PRUSETH)  
लेखा सदस्य/ ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 28/02/2025

Dkp Outsourcing Sr.P.S\*

आदेश की प्रतिलिपि अद्योषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

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By order/आदेश से,

सहायक पंजीकार

आयकर अपीलीय अधिकरण, सूरत