

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
and
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.3902/DEL/2024
(Assessment Year: 2015-16)**

**ITA No.3923/DEL/2024
(Assessment Year: 2016-17)**

**ITA No.3925/DEL/2024
(Assessment Year: 2017-18)**

Mukesh Khurana,
B – 7/100, Extension,
Safdarjung Enclave, South West Delhi,
New Delhi – 110 029.
(PAN : AMYPK1514B)

vs.

DCIT/ACIT,
Central Circle II,
Noida.

**ITA No.3906/DEL/2024
(Assessment Year: 2015-16)**

**ITA No.3905/DEL/2024
(Assessment Year: 2016-17)**

**ITA No.3904/DEL/2024
(Assessment Year: 2017-18)**

DCIT/ACIT,
Central Circle II,
Noida.

vs.

Mukesh Khurana,
B – 7/100, Extension,
Safdarjung Enclave, South West Delhi,
New Delhi – 110 029.
(PAN : AMYPK1514B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rohit Kapoor, Advocate
Shri Vir Sain Aggarwal, Advocate
REVENUE BY : Ms. Baljeet Kaur, CIT DR

Date of Hearing : 29.01.2025
Date of Order : .03.2025

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. These cross appeals filed by the assessee and Revenue are directed against the orders of the Id. Commissioner of Income Tax (Appeals)-3, Noida [“Id. CIT(A)”, for short] dated 27.06.2024 for the AYs 2015-16, 2016-17 & 2017-18.
2. Since the issues are common and the appeals are connected, therefore, the same are heard together and being disposed off by this common order. First we take up ITA No.3902/Del/2024 for AY 2015-16 as the lead case and the assessee has taken the following grounds of appeal in Assessment Year 2015-16 :-

“1. That the order passed under Section 250(6) of the Income Tax Act, 1961, by the Learned Commissioner of Income Tax (Appeals), Kanpur, is contrary to law and facts, and the Ld. CIT(A) has erred in upholding the action of the Learned Assessing Officer in making an addition of Rs.5,54,50,000/- in respect of unsecured loans received, under Section 68 of the Income Tax Act, 1961.

2. That the assessment framed under section 147 is bad in law as the notice under section 148 was issued on 01.04.2021 without adhering to the new procedure applicable from 01.04.2021, specifically without complying with the provisions of section 148A.

3. That the Ld. CIT(A) has erred in not appreciating that the reasons recorded were based upon STR even though, the STR was in the name of AR Land crafts LLP and not in the name of Mukesh

Khurana, the appellant. That the CIT(A) has further erred in not appreciating that there is wrong assumption of facts on the part of the AO while mentioning the figure of escaped income of Rs. 80 crores in the reasons recorded which is without any basis and as such, there was complete non application of mind on part of the AO.

4. That on the facts and the circumstances of the case, the CIT(A) has erred in upholding the addition made by the A.O. to the tune of Rs.5,54,50,000/- u/s 68 without appreciating the fact that there was no proper service of notice under section 148.

5. That on the facts and in the circumstances of the case, the CIT(A) has erred in holding that there was no borrowed satisfaction on the part of the Assessing Officer. The CIT(A) failed to appreciate that the reopening under section 148 was initiated solely based on information received from the Investigation Wing, without any independent application of mind by the Assessing Officer. That the observations in the reasons recorded with regard to deposits of Rs. 80 crore being undisclosed income are based upon suspicion without there being any material on record.

5.1 That the CIT (A) has erred in law in not appreciating that the investigation report or relevant excerpts on the basis of which reasons were recorded were never provided to the assessee which is against the judicial precedents.

6. That on the facts and in the circumstances of the case, the CIT(A) has erred in confirming the addition of ~ 4.81 crore pertaining to the unsecured loan received from the sister concern, M/s AR Land Craft LLP who in turn had received funds from alleged paper entity M/s Evergreen Synfab Pvt Ltd. That the CIT(A) further erred in ignoring the fact that the assessee had duly discharged its onus under Section 68 of the Income Tax Act, 1961, by proving the identity, creditworthiness, and genuineness of the unsecured loan raised from M/s AR Land Craft LLP.

6.1 That the Ld. CIT(A) has erred in sustaining the addition of Rs.4.81 crore in respect of the unsecured loan, disregarding the crucial fact that the assessment in the case of M/s AR Land Craft had already been 'completed, and the investment made by them had been duly accepted.

7. That the CIT(Appeals) erred in sustaining the addition of Rs. 4.81 crores on the basis that the immediate source of the unsecured loan was Evergreen Synfab Pvt. Ltd., a company whose name had been struck off from the Registrar of Companies (ROC). The CIT(A) failed to recognize that the provisions regarding the 'source of the source' for unsecured loans under Section 68 of the Income Tax Act, 1961, apply only from Assessment Year 2023-24 onwards.

8. That the assessment made under Section 147 is legally flawed, as the approval granted under Section 151 was done in a mechanical manner without proper consideration. That the Commissioner of Income Tax (Appeals) failed to recognize that the approval for 56 cases was granted on the same day, 28.03.21, which suggests a lack of application of mind.

9. That there is wrong assumption of facts in the reasons recorded under Section 147, since, in paragraph 3 of reasons recorded there is reference to the fact that the assessee has not disclosed the true nature of this transaction meaning thereby that the assessing officer has resorted to proviso 1 to section 147. That the said proviso and explanation has wrongly been invoked as the same is applicable if the original assessment has been completed u/s 143(3) which is against the facts of the case.

10. That the Ld. CIT{A} has erred in changing the charging section from 69A as invoked by the AO to section 68 and as such, the findings of the CIT{A} are contrary to the legal position.

10.1 Without prejudice to the ~foresaid grounds, the action of the CIT(A) in changing the charging section from 69A to section 68 without giving any opportunity to the appellant is against the principles of natural justice.

11. That the assessment conducted under Section 147 is legally flawed as the reasons recorded, the sanction granted under Section 151, and the notice issued under Section 156 have all been completed without a Document Identification Number (DIN) which is contrary to circular dated 19/2019 dated 01/10.2019.”

3. At the time of hearing, ld. AR of the assessee pressed the jurisdictional issue in reopening the assessment under section 148 of the Income-tax Act, 1961 (for short 'the Act') raised in ground number 2 of the grounds of appeal. All other grounds raised by the assessee are kept open at this stage. We proceeded to adjudicate the above said ground on the issue of jurisdiction.
4. The relevant facts relating to above said ground are, a search and seizure operation under section 132 of the Act was conducted on 09.10.2013 on the premises of the assessee comprising Shubhkamna Buildtech Private Limited, group cases. During the course of search and seizure operation, certain information/documents belonging to the assessee were also found. The assessee has filed his original return of income on 31.10.2015 declaring an income of Rs.16,76,160/-.
5. The assessing officer received an STR in the case of M/s AR Landcraft LLP from the O/o DDIT(Inv), Unit-II, Noida. The same was reproduced by the Assessing Officer at pages 1 to 18 of the assessment order. The AO observed that credible information was received from the DDIT(inv.), Unit 2, Noida through insight portal. On perusal of the information, it is found that the assessee has unexplained bank credits/ transactions from different entities to the tune of Rs 80,00,00,000/-. The nature of information was through above mentioned STR – 10264275 in

the case of AR Landcraft LLP. The Assessing Officer, after recording satisfaction, took proper approval from the competent authority and issued notice under section 148 of the Act and served upon the assessee on 31.03.2021. In response to the notice, the assessee had filed his reply stating that return of income had already been filed on 31.10.2015 declaring total income of Rs.16,76,160/-. Subsequently, notices under section 142(1) of the Act along with questionnaires were issued through ITBA portal and he observed that no compliance was made by the assessee.

6. After perusal of the bank account of the assessee, he noticed that total credit entries from all the bank accounts of the assessee were found to be Rs.159,32,96,364/-. Hence, a show cause notice dated 25.03.2022 through ITBA portal was issued and assessee was asked to submit explanation regarding identity, creditworthiness and genuineness of the credit transactions in all bank accounts to the extent of above mentioned amount. The AO reproduced the list of credit entries in the assessment order at page 19 of the order. The AO observed that there is prima facie internal rotation of funds and business rationale is unclear. Vide notices u/s 142(1) dated 14.01.22, 24.02.22 and 21.03.22, the assessee failed to explain despite considerable time have passed, the assessee had submitted only partial compliances with no explanation regarding identity,

creditworthiness and genuineness of these credits. In compliance to notice issued on 26.03.2022, no complete and satisfactory submissions were made by the due date, accordingly, he proceeded to make the above said amount as income of the assessee u/s 69A of the Act.

7. Aggrieved with the above order, the assessee preferred an appeal before Ld CIT(A) and filed detailed submissions along with the submissions that the assessee had filed the relevant information as called for by the AO, the relevant compliance date set for 4.00 pm on 26.03.1022 and the assessee has sought one day adjournment and filed the relevant information through the ITBA portal before closure date of portal mentioned as 29.03.2022. The above pleading was made before the Ld CIT(A) and submitted the relevant details of furnishing the relevant details. The Ld CIT(A) has sought remand report from the AO. In remand report, AO has rejected the same with the observation that this is nothing but additional evidences filed after completion of the assessment order. The assessee had filed rejoinder to the remand report and also filed application for admitting the same as additional evidence. Further Ld CIT(A) had called for the further information on the remand report from the AO. In response, the AO had submitted that the additional evidences are afterthought and sufficient opportunities had already been provided to the assessee, therefore, it should be entertained.

8. After considering the assessment order, remand report and reply of the assessee, he admitted the additional evidence filed by the assessee and verified the details submitted by the assessee in detail and allowed partial relief to the assessee and sustained the addition to the extent of Rs.5,54,50,000/-.
9. We noticed that the assessee has raised specific Grounds 1a, 1b in form 35 before Ld CIT(A) and Ld CIT(A) had adjudicated the issues involving grounds 1 to 3, on the issue of notice issued u/s 147 beyond jurisdiction , notice was issued on the borrowed satisfaction and assessment was completed without satisfying the requirement of section 147 of the Act. Ld CIT(A) has not adjudicated the issuance of notice on 01.04.2021.
10. Aggrieved with the above order, the assessee is in appeal before us. At the time of hearing, Ld AR specifically submitted on the issue of notice issued on 01.04.2021 and amended provisions with effect from 1.4.2021 in Section 148, 148A as under:

- 15.1 It is an admitted position on the facts that impugned notice u/s 148 dated 31.03.2021 was dispatched by ITBA on 01.04.2021. It is a settled law that notices are said to have been issued on the date of its dispatch and not on the date on which the notice is drawn up. **The relevant snapshot regarding the issuance of notice as per the online portal is enclosed at page no 10 of the PB and also reproduced as under**

Notice/ Communication Reference ID : 100033652101			
148 Notice u/s	ITBA/AST/S/148/2020-21/1032089590(1) Document reference ID	Description: [ITBA]Notice under section 148 of the Income Tax Act, 1961 Issued On: 01-Apr-2021	View Response Notice/Letter Pdf
< Back			
 india.gov.in सर्वोच्च प्रशासन		Feedback Website Policies Accessibility Statement Site Map Browser Support CoBrowse Help Last reviewed and updated on: 24-Jan-2025 This site is best viewed in 1024 * 768 resolution with latest version of Chrome, Firefox, Safari and Internet Explorer. Copyright © Income Tax Department, Ministry of Finance, Government of India. All Rights Reserved	

- 15.2 That the email was delivered to the assessee on 01.04.2021 at 8.27 AM and the relevant screen shot for the same is produced for your ready reference

From: <NOIDA.DCIT.CEN.CIR2@INCOMETAX.GOV.IN>
Date: Thursday 1 April 2021 8:27 AM
To: mukesh khurana <mukesh@rudrabuildwell.com>
Subject: [ITBA]Notice under section 148 of the Income Tax Act, 1961

Dear MUKESH KHURANA,

Please find attached the Notice u/s 148 for PAN:AMYPK1514B and AY:2015-16.

Please quote your PAN in all future correspondences.

Note:

- This communication is computer generated and may not contain signature.
- This communication may be treated as compliant with the requirements of Income Tax Rules 127 and 127A.
- Signed copy may be sent separately if not already digitally signed.
- Please quote your PAN in all communications.
- Income Tax Department does not seek any taxpayer information like user name, password, details of ATM, credit cards, etc. Taxpayers are advised not to part with such information on the basis of emails.

- 15.3 That dispatch is an essential condition to complete the act of issuance which has been complied with on 01.04.2021 i.e. after the introduction of new provisions of income tax act, 1961. That the notice u/s 148 was without complying with the procedure as per the amended act as substituted by Finance act 2021 which requires the issuance of show cause notice u/s 148A(b) and thereafter passing the order u/s 148A(d). Such an exercise has not been done by the AO and completion of assessment without following such a procedure is bad in law.

15.4 That the provisions of section 282 and 282A along with the provisions of section 13 of Information technology act, 2000 and meaning of the word 'Issue', it is mandatory for the AO to firstly sign the notice and then it has to be issued either in paper form or be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by the modes provided by section 282 which includes transmitting in the form of electronic record. Section 13(1) of the information technology act 2000 provides that unless otherwise agreed, the dispatch of the electronic record occurs when it enters into the computer resources and outside the control of the originator. Therefore, mere digitally signing of the notice is not enough and requirement is issuance of notice. In the present case the notice has been issued on 01.04.2021 and as such, governed by substituted provisions which have not been followed by the AO.

15.5 The copy of the order sheet generated from the E-proceedings platform, enclosed at page no.11 of the Paper Book (PB), clearly indicates that the date of dispatch for the notice is 01.04.2021. This evidence confirms that the notice was dispatched on the mentioned date.

15.6 This issue is clearly covered by judgments of various high courts and tribunal and the same are produced as under: -

- a) The Madhya Pradesh High Court Yuvraj v. ITO in [W.P.(C) No. 28293 of 2021, dated 3-3-2022], similarly dealt with a case of a section 148 Notice dated 31-3-2021, which was sent by-mail to the assessee on 16-4-2021. The High Court held that the Notice was issued on 16-4-2021 and quashed the same reserving liberty to the department to issue a fresh notice under section 148A in accordance with law. The grounds for challenging the impugned notice in the said case were same as have been raised herein for challenging the impugned notices falling under categories 'A' and 'B'.
- b) Sharad Garg vs. Income-tax Officer [~022] 136 taxmann.com 360 (Delhi)/[2022] 287 Taxman 207 (Delhi)[24-03-2022]

Section 148, read with section 149, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Validity of E-notices) - Petitioners challenged validity of e-notices issued under section 148 which were received by petitioners on or after 1-4-2021 - Said notices were dated 31-3-2021 or before and were also digitally signed on or before 31-3-2021 - It was noted that Allahabad High Court in case Daujee Abhushan Bhandar (P.) Ltd v. UOI [2022]136 taxmann.com 246, held that point of time when a digitally signed notice in form of electronic record would be entered in computer resources outside control of originator i.e. Assessing Officer, that shall be date and time of issuance of notice under section 148 read with section 149 - Whether, therefore, following said judgment mere digitally signing of notice would not be issuance of notice and impugned notices would be said to be digitally issued on date when same were e-mailed to petitioner - Held, yes -

- c) The judgment of the Allahabad High Court in Daujee Abhushan Bhandar v. UOI [2022] 136 taxmann.com 246/286 Taxman 623/444 ITR 41, was earliest to hold that drawing up a Notice on 31-3-2021, and digitally signing the same, in the absence of dispatch, does not amount to issuance of Notice within the meaning of section 149. The High Court after elaborately discussing the provisions of sections 282 and 282A, and the provisions of section 13 of the Act of 2000, held that, since the impugned Notice therein though dated 31-3-2021, was issued through e-mail on 6-4-2021, the same was time barred and therefore liable to be quashed.
- d) The case of the appellant is further squarely covered by the judgment of the Delhi High Court in Suman Jeet Agarwal v. Income-tax Officer reported in [2022] 143 taxman.com 11 (Delhi) in which it was held as under: --

Section 149, read with section 148, of the Income-tax Act, 1961 and section 13 of the Information Technology Act, 2000 - Income escaping assessment - Time limit for issuance of notice (Validity of notice) - Assessment years 2013-14 to 2017-18 - Sections 147, 148, 149 and 151 were amended vide Finance Act of 2021, with effect from 1-4-2021 - Since

there was a regime change with respect to law of limitation coming into effect from 1-4-2021, which curtailed time limit for reopening of assessment from 6 years to 3 years, revenue, with a view to avail limitation prescribed under unamended section 149, generated reassessment notices under section 148 dated 31-3-2021, but same were dispatched on or after 1.4.2021 - Assessee challenged validity of notices issued under section 148 - Whether function of generation of notice on ITBA portal and digital signing of notice is executed by Assessing Officer while function of drafting of e-mail to which notice is attached and triggering e-mail to assessee is performed by ITBA e-mail software system - Held, yes - Whether thus, mere generation of notice under section 148 on ITBA software cannot in fact or in law constitute issue of notice, it is only upon due dispatch that notice can be said to have been 'issued' - Held, yes - Whether 'dispatch' as per section 13 of Act of 2000 is sine qua non for issuance of Notice through electronic mail for purpose of section 149 - Held, yes - Whether in case of paper form, notice must be dispatched by post on or before 31-3-2021 and for communication in electronic form e-mail should have been despatched on or before 31-3-2021 - Held, yes - Whether since in instant case, dispatch of notice by post and e-mail was carried out on or after 1-4-2021, it was to be held that, impugned notices dated 31-3-2021 would not meet test of 'issued' under section 149 and would be time barred - Held, yes [Paras 25.12 , 25.13, 25.23 and 26] [Partly in favour of assessee]

- e) In the case of Delhi Development Authority (DDA) v. H.C. Khurana [1993] 3 SCC 196, the Supreme Court emphatically laid down that despatch is an essential condition to complete the act of issuance. The Court clarified that service on the recipient was not a condition precedent for satisfying the act of issuance.
- f) In the case of R.K. Upadhyaya v. Shanabhai P. Patel [1987] 3 SCC 96 also the Supreme Court held that the service of notice is not a condition precedent for satisfying the condition of 'issued'. The date of despatch of the notice was taken into consideration by the Supreme Court as the

relevant date for determining that the notice has been validly issued for the purpose of section 149.

- g) In the case of the judgment of Gujarat High Court in Kanubhai M. Patel (HUF) v. Hiren Bhatt or his successors[2011] 12 taxmann.com 198/202 Taxman 99 (Mag.)/334 ITR 251, it was held as under: -

Section 149, read with section 148, of the Income-tax Act, 1961 - Income escaping assessment - Time limit for issuance of notice - Assessment year 2003-04 - For relevant assessment year, Assessing Officer signed notices under section 148 seeking to reopen assessment on 31-3-2010 - However, said notices were sent for booking to speed post centre on 7-4-2010 - Assessee received notices on 8-4-2010 - Assessee thus filed instant petitions contending that since impugned notices were issued beyond time limit prescribed under section 149, same were barred by limitation - Whether merely signing notices on 31-3-2010 could not be equated with issuance of notice as contemplated under section 149 - Held, yes - Whether date of issue would be date on which same were handed over for service to proper officer, which in facts of case would be date on which said notices were actually handed over to post office for purpose of effecting service on assessee - Held, yes - Whether in circumstances, impugned notices having been issued on 7-4-2010 which was clearly beyond period of six years from end of relevant assessment year, were clearly barred by limitation and as such, could not be sustained - Held, yes

- h) The Madras High Court in Smt. Parveen Amin Bhathara (supra), after approving the dicta of Kanubhai Patel (supra) and considering section 282 and rule 127 of IT Rules, categorically rejected the submission of the department that signing of Notice, without despatch, would amount to issuance of Notice as contemplated under section 149.”

11. On the other hand, Ld DR vehemently argued in support of the findings of Ld CIT(A) on the issue of jurisdiction u/s 147 of the Act and submitted

that the assessee has not submitted the relevant information during the assessment and Ld CIT(A) has already given clear findings on the jurisdiction issues. Therefore, she heavily relied on the findings of Ld. CIT(A).

12. Considered the rival submissions and material placed on record. We observed from the record submitted before us that the AO has issued the notice u/s 148 only on 1st April, 2021 as per the communication reference ID 100033652101 and also the relevant notice was delivered to the assessee through the email dated 01.04.2021 at 8.27 AM. Therefore, it is clear from the above information that the AO has generated the document only on 01.04.2021 and there is no other counter submissions made by the Revenue. Therefore, based on the evidence brought on record, it is proved beyond doubt that the notice u/s 148 was issued by the AO only on 01.04.2021.
13. We noticed that sections 148 was amended and introduced new provisions 148A, 148B in the Finance Act 2021. The above provisions are applicable with effect from 01.04.2021. As held in the case of Daujee Abhushan Bhandar P. Ltd (supra), the date of issuance of notice is the date on which the digitally signed as well as were emailed to the assessee is the date of issue of notice. Therefore, as per the above decision, the notice was emailed to the assessee only on 06.04.2021 even though the

same was dated 31.03.2021, the same was held to be time barred. It is settled position of law as far as issuance of notice is concerned, it is the date of issue of notice relevant for the provisions of section 147/148 of the Act. The various courts have rejected the submissions of the Revenue that signing of notice without despatch would not amount to issue of notice. In this case, the issue raised by the assessee is that the notice was issued on 01.04.2021 but the same was dated 31.03.2021. The issue of notice has to be treated as issued only on 01.04.2021 and relevant amended provisions and new provisions applicable from 01.04.2021 are applicable and the AO has not followed the due procedure as per new provisions which are applicable from 01.04.2021.

14. After careful consideration of facts on record, we noticed that the claim of the assessee is proper and justified and the AO must have followed the new provisions with effect from 01.04.2021. As per which, (a) he should have conducted enquiries, (b) should have provided opportunities to the assessee to respond within 7 days or may extent further period depending upon the requirements and (c) considered the response or reply of the assessee before coming to decide the issue of escapement of income. The AO has proceeded to complete the assessment without resorting to the new provisions. It is fact on record that the notice u/s 148 was issued only on 01.04.2021 and he cannot proceed to apply the old provisions to

complete the assessment. From the record, we observed that the AO has proceeded to complete the assessment in hurry without even waiting for information from the assessee considering the limitation period based on the old provisions. The fact brought on record shows that the AO merely satisfied the information received from the investigation wing on receipt of STR without proper investigation on his part and after collecting partial information from the assessee and proceeded to complete the assessment with the incomplete information and without giving any opportunity, also not shared the information to the assessee and also not considered the information filed by the assessee.

15. In our considered view, the AO should have followed the amended and new provisions with effect from 01.04.2021 based on the fact that the notice was actually issued only on 01.04.2021 and even AO was aware of the fact that the notice was only issued on 01.04.2021 and also, he was aware of the fact that new provisions are applicable with effect from 01.04.2021. Therefore, the assessment passed u/s 147 is without adhering to the new procedure applicable from 01.04.2021 and it is beyond jurisdiction and bad in law. Hence, we are inclined to set aside the order passed u/s 147 of the Act. In the result, ground no.2 raised by the assessee is allowed.
16. All the other grounds raised by the assessee are kept open at this stage.

17. In the result, appeal filed by the assessee is partly allowed.
18. With regard to other appeals filed by the assessee, we observed that the facts with regard to reopening of the appeals are concerned, the same STR information was used to issue the notice u/s 148 of the Act in both the assessment years under consideration. In these assessment years, the assessee has raised specific ground no 5 on the jurisdictional issue of non issue of notice u/s 143(2) of the Act. In this regard Ld AR of the assessee submitted as under:

“18.1 Your Honor, it is very much necessary to deal with the legal ground as it goes to the root of the case before discussing the matter on merits. That the appellant has filed the return in response to notice issued u/s 148 on 08.02.2022 [Copy of return enclosed at page no.2] Furthermore, the assessment has been completed u/s 143(3) r.w.s 147 vide order dated 28.03.2022. In the given case no notice u/s 143(2) was not issued within the prescribed time of 6 months from the end of the month in which the return is furnished. Hence, the assessment framed u/s 147 r.w.s 143(3) is illegal and bad in law.

18.2 That the assessment completed u/s 143(3) r.w.s 147 is required to be quashed as the same have been completed without issuing the notice u/s 143(2). Therefore, it is very much necessary to understand the provisions of section 143(2) which clearly state that 143(2) is a statutory notice and is required to be furnished in a case where a return is furnished u/s 139(1) or in response to notice u/s 142(1). The relevant text of the section is being reproduced hereunder: -

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 six months from the end of the financial year in which the return is furnished.

18.3 That your honor's kind attention is drawn towards the AY 2015-16 where the notice u/s 148 was issued on the same date and the department has issued the notice u/s 143(@) or the said year: However, the department has failed to issue the notice u/s 143(2) for the AY 2016-17. The relevant summary of notices issued is being produced hereunder :-

Return Filed	AY 2015-16	AY 2016-17	AY 2017-18
Return of Income originally filed	31.10.2015	05.08.2017	28.03.2018
Notice issued u/s 148	01.04.2021	31.03.2021	31.03.2021
Return of Income in response to Section 148	08.02.2022	08.02.2022	08.02.2022
Notice issued u/s 143(2)	28.02.2022	NOT ISSUED	NOTE ISSUED

18.4 That the CIT(A) at internal page no 45-46 has rejected this ground by mentioning the fact that there was no requirement to issue notice u/s 143(2) as the appellant has not filed the return in response to notice issued u/s 148 within the due date mentioned in the notice. The said finding of the CIT(A) is inaccurate particularly in view of the fact that the AO has passed the order u/s 143(3) r,w,s 147 and not u/s 144. That the return filed beyond the specified period as contemplated in section 148 shall still qualify to be the return of income as the same is evident from the section 234A(3) which clearly contemplates that return of income filed after the expiry of stipulated period still continue to be the return of income filed by the assessee pursuant to notice u/s 148. In this regard, reliance is being placed upon the following case laws in which it has been held that the return filed after the period as prescribed in the notice issued u/s 148 shall not be treated as non-est: -

- a) [2017] 86 taxmann.com 160 (Mumbai - Trib.)IN THE ITAT MUMBAI BENCH 'A' Smt. Amina Ismil Rangari v. Income Tax Officer, Ward 17(2)4

Though a statutory obligation is cast upon the assessee to comply with the notice issued under section 148 and file the 'return of income' in compliance thereto within the stipulated time period of 30 days, however, in case the same is filed by the assessee beyond the stipulated time period, then merely for the reason that some delay is involved in filing of the said 'return of income' would not render the same as invalid and non-est. A 'return of income' filed by an assessee beyond the specified time period contemplated in the notice issued under section 148, would though lead to characterizing the same as a 'return of income' filed beyond the stipulated time period, but however, the same would not cease to be a 'return of income' filed pursuant to the notice issued under section 148, though involving some delay. The aforesaid view is supported from the very fact that as per section 234A(3), where the 'return of income' in compliance to a notice under section 148 is filed beyond the stipulated time period, then interest under the said statutory provision is imposed on the assessee till the date of furnishing of the same. Clause (a) of section 234A(3) clearly contemplates that a 'return of income' filed after the expiry of the stipulated time period shall still continue to be a 'return of income' filed by the assessee pursuant to the notice under section 148. The aforesaid view also stands fortified from the very fact that after the assessee had filed the 'return of income' pursuant to the notice under section 148, the same was acted upon by the Assessing Officer and a Notice under section 143(2) was issued to the assessee, followed by culmination of the same into an assessment under section 143(3) read with section 147. Thus, now when issuance of a notice under section 143(2) presupposes the availability of a 'return of income' of the assessee on record, and when in the instant case the Assessing Officer acted upon the 'return of income' filed by the assessee, and issued a notice under section 143(2), which thereafter had culminated into an assessment under section 147 read with section 143(3), therefore, it would not be permissible on the part of the revenue to turnaround and claim that no valid 'return of income' was filed by the assessee.[Para 8]

- b) Delhi Kalyan Samiti, New Delhi vs Assessee on 4 March, 2015
ITA No. 1770/De112010, 1771/Del/2010 and 1772/Del/2010.”

19. On the other hand, Ld DR objected to the above submissions and relied on the findings of Ld CIT(A) and AO.

20. Considered the rival submissions and material placed on record. We observed that the AO has issued notice u/s 148 of the Act and the assessee has filed the return of income in response to the notice issued u/s 148 on 08.02.2022. The AO completed the assessment merely on the basis of STR and notice issued u/s 142(1) of the Act. He proceeded to complete the assessment by observing that the assessee has not submitted complete and satisfactory submissions in response to the notice issued u/s 142(1) of the notice. It is fact on record that no notice was issued u/s 143(2) of the Act and various courts have held that once the assessee files the return of income in response to the notice issued u/s 148, the AO has to complete the assessment by drawing proper jurisdiction by issue of notice u/s 143(2), since the notice u/s 143(2) is the key to complete the assessment. On careful consideration, it is fact on record that the AO has failed to issue any notice u/s 143(2) for both the assessment years under consideration i.e., AY 2016-17 and AY 2017-18. Therefore, the completion of assessment without issuing notice u/s 143(2) is bad in law and also invalid in the eyes of settled position of law. Even the provisions of section 292BB of the Act will not come to rescue for non-issue of notice u/s 143(2) of the Act, the provision u/s 292BB is only to cure infirmities in the manner of service of notice and it is not intended to cure the complete absence of the notice itself, as held in the case of Laxman

Das Khandelwal (supra). Hence, we are inclined to treat the assessment completed without issue of statutory notice u/s 143(2) is bad in law and deserves to be quashed as void ab initio. In the result, ground no 5 raised by the assessee is allowed.

21. The other grounds raised by the assessee are kept open at this stage.
22. In the result, appeals filed by the assessee in AY 2016-17 & AY 2017-18 are partly allowed.
23. In summary, all the appeals filed by the assessee are partly allowed.
24. The Revenue has filed cross appeals in all the three assessment years i.e. 2015-16, 2016-17 & 2017-18. Since we have allowed the jurisdictional issues raised by the assessee in their appeals, all the Department's appeals are dismissed.
25. To sum up : all the appeals filed by the assessee are partly allowed and all the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on this 21ST day of March, 2025.

SD/-

SD/-

**(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

**(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated : 21.03.2025
TS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI