

IN THE INCOME TAX APPELLATE TRIBUNAL "A(SMC)" BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, AM

ITA No.688/KOL/2024

(Assessment Year:2017-18)

Shri Abhinaw Singh
70, Salkia School Road Salkia
Bandhaghat, Howrah-711106

Vs.

ITO Ward-47(6), Kolkata
3, Govt.Place (West),
Kolkata-700001

(Appellant)

(Respondent)

PAN No. AZSPS7092K

Assessee by : Shri Abhishek Bansal, AR
Revenue by : Shri Archana Gupta, DR

Date of hearing: 27.03.2025
Date of pronouncement : 01.04.2025

ORDER

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 05.02.2024 for the AY 2017-18.

02. At the time of hearing the assessee raised legal issue challenging the assessment framed u/s 143(3) of the Act dated 23.11.2019, which was based upon the notice issued u/s 143(2) dated 10.08.2018, which was not in the prescribed format as prescribed by the CBDT in CBDT instruction no. F. No. 225/157/2017/ITA-II Dated 23-06-2017. We find that the issue goes to the root of the assessment and is a purely legal issue and assessee is within its right to raise the issue in the appellate proceedings. Accordingly, the issue is admitted for adjudication by following the decision of Hon'ble Apex Court in the case of i) Jute Corporation of India Ltd. Vs CIT in 187 ITR 688 , ii) National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383 and also by the decision of Hon'ble Calcutta High Court in PCIT vs. Britannia Industries Ltd. [2017] 396 ITR 677 (Cal).

03. The Id. Counsel for the assessee at the outset submitted that the notice u/s 143(2) dated 10.08.2018, has been issued in violation of CBDT instruction as cited above and therefore, consequential proceedings including the assessment framed are invalid and bad in law. The Id. AR in defense of his argument relied on the decision of this tribunal in case of Sajal Biswas Vs. ITO in ITA No. 1244/KOL/2023 vide order dated 26.03.2025. Therefore the notice as well as the assessment framed consequentially may be quashed.
04. The Id. DR on the other hand submitted that the notice was generated online and therefore, assessee cannot find fault with the said format in which the notice was issued and prayed that the legal issue may be dismissed.
05. After hearing the rival contentions and perusing the materials available on record, we find that admittedly, the notice has been issued in violation of CBDT instruction no. F. No. 225/157/2017/ITA-II Dated 23-06-2017 and therefore, we find merit in the contention of the assessee that the assessment framed in consequent to the said notice is also invalid and is to be quashed. We note that the notice u/s 143(2) has to be mandatorily issued in either of any of the three formats namely; (1) limited scrutiny or (2) Completed scrutiny or (3) compulsory manual scrutiny. However, the said notice was not issued in either of the formats prescribed by CBDT. The case of the assessee is squarely covered by the decision of Sajal Biswas Vs. ITO (supra). The operative part is reproduced as under:-

"9. After hearing the rival contentions and perusing the materials available on record, we find that undisputedly the notice issued u/s 143(2) of the Act dated 10.08.2018, specifies only computer aided scrutiny selection which neither mentioned it either to be a limited or a complete scrutiny nor compulsory manual scrutiny. Thus, the said notice has been issued in violation of the instruction issued by CBDT as noted above. In our opinion, the revenue authorities have to follow the instruction issued by

CBDT and violation thereto would certainly render the notice as invalid with the result all the consequential proceeding would also be invalid. The case of the assessee find support from the decision of the co-ordinate Bench in the case of Tapas Kumar Das Vs. ITO (supra), wherein a similar issue has been decided in favour of the assessee. The operative part of the same is extracted below:-

"After hearing the rival contentions and perusing the materials available on record, we find that particularly the notice was issued u/s 143(2) of the Act, a copy of which is available at page no. 25 of the Paper Book. We note that the said notice has not been issued in consonance with the CBDT Instruction F No. 225/157/2017/ITA-II Dated 23.06.2017. The said notice is extracted below for the sake of ready reference:-

"" आमकर अधिनियम 1961 की धारा 143(2) के अधीन नोटिस
Notice under section 143(2) of the Income-tax Act, 1961
संवीक्षा (कंप्यूटर आधारित संवीक्षा चयन Scrutiny (Computer Aided Scrutiny Selection)
महोदय/महोदया/ भेसर्स,
Sir/Madam/ M/s,

आपको सूचित किया जाता है कि निर्धारण वर्ष 2017-18 के पावती संख्या 269322761301017 के अनुसार आपके द्वारा दिनांक 30/10/2017 को दाखिल की गई आयकर विवरणी को संवीक्षा के लिए चुना गया है।

This is for your kind information that the return of income filed by you for assessment year 2017-18 vide ack, no. 269322761301017 on 30/10/2017 has been selected for Scrutiny.

2. इस संबंध में, आपको दिनांक 16/11/2018 को 01:00 PM तक साक्ष्य प्रस्तुत करने अथवा साक्ष्य प्रस्तुत कराने का अवसर प्रदान किया जा रहा है जिस पर आप उक्त आयकर विवरणी के समर्थन में निर्भर हैं/ रहेंगे।

2. In this regard, an opportunity is being given to you to produce or cause to produce any evidence on which you may like to rely in support of the said return of income by 16/11/2018 at 01:00 PM.

3. उपर्युक्त निर्दिष्ट प्रमाण / सूचना को आपको ऑनलाइन माध्यम से इलेक्ट्रॉनिक रूप में Incometaxindiaefiling.gov.in पर अपने ई-फाइलिंग खाता द्वारा प्रस्तुत किया जाना है। बाद की निर्धारण कार्यवाही भी आयकर विभाग की 'ई-कार्यवाही' सुविधा द्वारा की जायेगी। 'ई-कार्यवाही' पर एक संक्षिप्त नोट आपके संदर्भ के लिए संलग्न है।

3. The evidence/information specified above has to be furnished online electronically through your E-filing account in incometaxindiaefiling.gov.in. Subsequent assessment proceedings shall also be conducted electronically through the 'E-Proceeding' facility of Income-tax Department. A brief note on 'E-Proceeding' is enclosed for your kind reference.

4. निर्धारण कार्यवाही के दौरान, यदि आवश्यक होगा तो सूचना / दस्तावेज हेतु विशेष प्रश्नावली (याँ) या अधियाचना (याँ) को बाद में जारी किया जाएगा।

4. In course of assessment proceedings, if required, specific questionnaire(s) or requisition(s) for information/document shall be issued subsequently.

5. कृपया ध्यान दें कि यदि आपके पास ई-फाइलिंग खाता है तो आपके लिए पैरा 3 लागू है। आपके द्वारा स्वयं अपना खाता न बना लेने तक निर्धारण कार्य वाही आपके द्वारा वर्णित की गई ई-मे

is created by you, assessment proceedings shall be carried out either through your specified e-mail account or manually (if e-mail is not available).

संलग्नक : यचौधरि

Enclosure as above"

7. In our opinion, the notice issued u/s 143(2) of the Act which is not in the prescribed format as provided under the Act is an invalid notice and accordingly, all the subsequent proceedings thereto would be invalid and void ab initio. The case of the assessee find support from the decision of Shib Nath Ghosh Vs. ITO in ITA No. 1812/KOL/2024 for A.Y. 2018-19 vide order dated 29.11.2024, wherein the co-ordinate Bench has held as under:-

"10. After hearing both the sides and the materials available on record, we find that the notice issued u/s 143(2) dated 9th August, 2017 was not in any of the formats as provided in the CBDT instruction F.No.225/157/2017/ITA-II dated 23.06.2017. We have examined the notice, copy of which is available at page no.1 of the Paper Book and find that the same is not as per the format of CBDT Instruction F.No. 225/157/2017/ITA-II dated 23.06.2017 as stated above. In our opinion, the instruction issued by the CBDT are mandatory and binding on the Income tax authorities failing which the proceedings would be rendered as invalid. Hon'ble Apex Court in case of UCO Bank (supra) held that the circular issued by CBDT in exercise of its statutory powers u/s 119 of the Act, are binding on the authorities. The Hon'ble Apex court held as under:-

"The Central Board of Direct Taxes under section 119 of the Income-tax Act, 1961, has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Act which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases Which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by Issuing circulars binding on the taxing authorities.

In order to aid proper determination of the income of money lenders and banks, the Central Board of Direct Taxes issued a circular dated October 6, 1952, providing that where interest accruing on doubtful debts is credited to a suspense account, It need not be included in the assessee's taxable income, provided the Income-tax Officer is satisfied that recovery is practically improbable. Twenty-six years later, on June 20, 1978, in view of the judgment of the Kerala High Court In STATE BANK OF TRAVANCORE v. CIT [1977] 110 ITR 336, the Board by another circular, withdrew with immediate effect the earlier circular. However, by circular dated October 9, 1984, the Board decided that Interest in respect of doubtful debts credited to suspense account by banking companies would be subjected to tax but Interest charged in an account where there has been no recovery for three consecutive accounting years would not be subjected to tax in the fourth year and onwards. The circular also stated that if there is any recovery in the fourth year or later, the actual amount recovered only would be subjected to tax in the respective years. This procedure would apply to assessment year 1979-80 and onwards."

8. *Considering the facts of the instant case in the light of the decision of the co-ordinate bench, we are inclined to hold that notice issued u/s 143(2) of the Act is invalid notice and accordingly, the assessment framed consequentially to that is also invalid and is hereby quashed."*

10. *Since the facts of the assessee's case are similar to one as decided by the co-ordinate Bench, we therefore, respectfully following the same hold that the notice issued u/s 143(2) of the Act is invalid notice and accordingly, the assessment framed consequentially is also invalid and is hereby quashed. The additional ground raised by the assessee is allowed."*

06. Since, the facts of the case before us are materially same, therefore, we respectfully following the above decision, hold that the notice issued u/s 143(2) is invalid and accordingly the assessment framed consequentially is also invalid and is hereby quashed.

07. In the result, the appeal of the assessee allowed.

Order pronounced in the open court on 01.04.2025.

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)



Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata