

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA Nos. 608 & 610/KOL/2024
(Assessment Years:2012-13 & 2017-18)**

**Hind Ceramics Pvt. Ltd.,
147, Nilganj Road, Belghoria,
Kolkata, West Bengal, 700056**

Vs.

**DCIT, Circle - 10(1)
Aayakar Bhawan, P-7,
Chowringhee Square, Kolkata,
West Bengal, 700069**

(Appellant)

(Respondent)

PAN No. AAACH7998D

Assessee by : Shri Soumitra Choudhury &
Shri Pranabesh Sarkar, ARs
Revenue by : Shri Huidrom Robindro Singh, DR

Date of hearing: 09.04.2025
Date of pronouncement : 06.05.2025

ORDER

Per Rajesh Kumar, AM:

These are appeals preferred by the assessee against the orders of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated even dated 30.01.2024 for the AYs 2012-13 & 2017-18.

ITA No.608/KOL/2024 for A.Y. 2012-13

02. The issue raised in ground no.1 is general in nature and needs no specific adjudication.
03. The issue raised in ground nos.2,3,4, is against the order of Id. CIT (A) confirming the disallowance as made by the Id. AO by rejecting the

deduction claimed by the assessee from house property income at the rate of 30% which comes to ₹70,08,412/-.

04. The facts in brief are that the assessee filed the return of income on 27.09.2012, declaring total income at ₹1,61,53,220/-. The case of the assessee was selected for scrutiny and statutory notices were duly issued along with questionnaire and served upon the assessee. During the course of assessment proceedings, the Id. AO noticed that the assessee has offered total license fees of ₹2,37,32,969/- from various shop keepers/ showroom owners to whom these premises were licensed in shopping complex cum mall, under the head income from house property and claimed standard deduction at the rate of 30% of ₹70,08,214/-. According to the Id. AO the said income should be assessed under the head income from business or profession instead of house property on the ground that assessee's business activity is tenancy/ logistic of godown/warehouse. The AO while doing so disregarded the fact that in all the proceeding of assessment years, the income has been accepted as income from house property and statutory deduction of 30% was allowed towards statutory allowance.
05. The Id. CIT (A) in the appellate proceedings, affirmed the order of the Id. Assessing Officer
06. After hearing the rival contentions and perusing the materials available on record, we find that assessee has been receiving the license fees from various shop owners to whom the premises were leased out in commercial spaces in its mall/ warehouse from which the assessee has received license fees of ₹2,37,32,969/-. The assessee in return of income has shown the said income under the head of house property and accordingly claimed standard deduction at the rate of 30% amounting to ₹70,08,412/- u/s 24(1) of the Act. We note that the said

treatment of income under the head house property was consistently followed since the earlier assessment years, wherein the said income has been accepted as house property income and standard allowances at the rate of 30% was also allowed as is apparent from assessment order for A.Y. 2014-15, which is available at page no. 82 to 85 of the Paper Book. In our opinion, the said action of the AO as well as the appellate order passed by the Id. CIT (A) is against the ratio laid down by the Hon'ble Apex Court in the case of Radha Soami Satsang Vs CIT (1992) 193 ITR 321 (SC), wherein it was held that though the doctrine of res judicata does not apply to Income Tax proceedings, it would not be appropriate to allow the position to be changed in a subsequent year, where a fundamental aspect permeating through different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order for the said years. Accordingly, we set aside the order of the Id. CIT (A) and direct the Id. AO to assess the income under the head house property and delete the addition made to the total income. The ground no. 2,3 and 4 are allowed.

07. The issue raised in ground no.6, is against the charging of interest u/s 234B of the Act which are consequential and are not required to be adjudicated at this stage.

ITA No.610/KOL/2024 for A.Y. 2017-18

08. The counsel of the assessee pointed out that the assessee has filed additional grounds of appeal vide letter dated 9.04.2025 which are extracted below:

"1. For that on the facts of the case, the Assessing Officer issuing the notice u/s 143(2) of the IT Act, 1961 on 09.08.2018 did not have jurisdiction over the case of the assessee, as there was no mention of the type of scrutiny under which the case of the

assessee has been selected, hence the notice is bad-in-law and the assessment order passed on the basis of such notice is baseless and should not be quashed.

2. *For that on the facts of the case, the A.O. was wrong in issuing notice u/s. 143(2) on 09.08.2018 without complying to the CBDT Instruction f.No.225/157/2017/ITA-II dated 23.06.2017 and so the notice issued u/s. 143(2) is not valid as per Provisions of Act.*

3. *For that the appellate reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal."*

09. The Id. Counsel for the assessee submitted that the said ground is purely a legal issue and the assessee is within its legal right to raise the same before any of the appellate authority at any stage whatsoever. The Id. Counsel for the assessee submitted that the notice u/s 143(2) of the Act has been issued in an invalid format in violation to the CBDT instruction no. F. No. 225/157/2017/ITA-II Dated 23-06-2017 and accordingly, the assessment order passed consequently is void ab initio, ultra virus and nullity in the eyes of law. The Id. Counsel for the assessee submitted that since the issue raised is legal issue which goes to the root of the assessment and since no further verification of facts is required to be done from any quarter whatsoever, the legal ground raised by the assessee may kindly be admitted for adjudication. In defense of his arguments the Id. AR relied on the decisions of the 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).

010. The Id. DR on the other hand submitted that the issue was not raised before any of the authorities below and therefore, may kindly be restored to the file of any of the authorities below for adjudication.

011. After hearing the rival contentions and perusing the material on record, we find that the assessee has raised an additional grounds of appeal

challenging the validity of the notice issued u/s 143(2) of the Act being in an invalid format and in our opinion the issued raised in the additional grounds is a purely a legal issue qua which all the facts are available in the appeal folder and no further verification of facts is required from any quarter whatsoever. In our considered view the assessee is at liberty to raise any legal issue before any appellate authority for the first time even when the same has not been raised before the lower authorities. The case of the assessee is squarely covered by the decisions of the Apex court in the case of i) Jute Corporation of India Ltd. Vs CIT (supra) ii) National Thermal Power Co. Ltd v. CIT (supra) and also by the decision of Hon'ble Calcutta High Court in PCIT vs. Britannia Industries Ltd. (supra). Therefore, we are inclined to admit the same for adjudication.

012. The Id. AR vehemently submitted that the notice u/s 143(2) of the Act issued to the assessee did not specify whether it was a limited scrutiny or a complete scrutiny or a compulsory manual scrutiny. The Id. AR submitted that the CBDT has issued specifically provided vide instruction no. F. No. 225/157/2017/ITA-II Dated 23-06-2017, that the notice u/s 143(2) can be issued in one of the three format which have specifically prescribed but the present notice issued is not in accordance with such said instruction and therefore, the assessment framed consequently is invalid and void ab initio.

013. The Id. DR on the other hand submitted that this is a computer-generated notice and the non-mentioning of the fact of either limited or complete scrutiny or compulsory manual scrutiny would not render the issuance of notice u/s 143(2) of the Act as invalid. Therefore, additional ground raised by the assessee may kindly be dismissed.

014. 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 09.08.2018, 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:-

"6. 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 दिनीक 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 (यों) या अधियाचना (यों) 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 कार्यवाही 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.*
9. *The other grounds raised on merit are not being decided at this stage and are being left open to be decided if need arises for the same at later stage.*
10. *In the result, the appeal of the assessee is allowed."*

015. 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.

016. Since, we have allowed the appeal of the assessee on legal issue, the other grounds raised on merit are not being adjudicated at this stage and are being left open to be decided at the later stage if need arises for the same.

017. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 06.05.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 06.05.2025

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,

True Copy//

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