



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.761/RJT/2024

निर्धारणवर्ष / Assessment Year: (2013-14)

(Hybrid Hearing)

Amana Gafar Madakiya Ghela Patel Delo, Head Post Office, Ghachiwad, Jamnagar-361001	Vs.	ITO, Ward – 2(10), Jamnagar, Aaykar Bhawan, Nr Subhas Bridge, Jamnagar Rajkot Highway, Jamnagar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BYLPM2878L		
(Assessee)		(Respondent)

Assessee by

: Shri Dushyant Maharshi, Ld. AR

Respondent by

: Shri Abhimanyu Singh Yadav, Ld. Sr. (DR)

Date of Hearing

: 05/03/2025

Date of Pronouncement

: 29/05/2025

आदेश / ORDER

PER A. L. SAINI, AM;

Captioned appeal filed by the assessee, pertaining to assessment year 2013-14, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), dated 07.08.2024, which in turn arises out of an order passed by the Assessing Officer, dated 30/03/2022, u/s 147 r.w.s. 144 and 144B of the Income Tax Act, 1961.

2. The Grounds of appeals raised by the assessee are as follows:



“All the below mentioned grounds of appeal are independent and without prejudices to each other.

1. Hon'ble CIT (Appeals) has grossly erred in law as well as in facts by alleging that assessee as non-filer of return within due date and intentionally surpassing transaction from the department eyes.

2. Hon'ble CIT (Appeals) has erred in law as well as in facts by settling AO's act of treating the return of income as non-est due to the not filing of return of income on time without considering the assessee justification.

3. Hon'ble CIT (Appeals) has erred in law as well as in facts by confirming AO's act of non-production of the reasons recorded along with the satisfaction u/s 151, post filing the return of income against Notice u/s. 148.

4. Hon'ble CIT (Appeals) has erred in law as well as in facts by stating that the assessee claim as infructuous wherein the assessee has claimed that AO has not enquired about the transaction u/s. 133(6), which tantamount to that reopening of assessment u/s. 147 is invalid as it was solely based on the "reason to suspect" and not "reason to believe".

5. Hon'ble CIT (Appeals) has erred in law by accepting the AO's action of non-issuance of notice u/s. 143(2) which is sine qua non for assessment.

6. Hon'ble CIT (Appeals) has grossly erred in law as well as in facts by not considering the provision of Section 55A(a) wherein it has been clearly mentioned that w.e.f. 01.07.2012, pursuant to amendment in Section 55A(a) made by the Finance Act 2012, the valuation officer can be referred only if AO is of opinion the value so claimed is less than its FMV as on April 1, 1981 whereas in present case there is no such issue.

7. Hon'ble CIT (Appeals) has erred in law as well as in facts by determining the value of the cost of asset under consideration as on 01.04.1991 without due application of mind.

8. Hon'ble CIT (Appeals) has erred in law as well as in facts by not considering the valuation done by the Govt. approved Value by simply stating it as an "unreliable document without pointing out the incongruities and contending that the assessee has inflated the cost of acquisition.”

3. At the outset, Learned Counsel for the assessee, informs the Bench that assessee does not wish to press ground Nos. 1, 3, 4 and 7, therefore, we dismiss these grounds, as not pressed.

4. Succinctly, the factual panorama of the case is that assessee before us is an Individual. The assessee's case for the assessment year 2013-14 was reopened under section 147 of the Income-tax Act 1961 (hereinafter referred to as “Act” in short) for scrutiny on the following reasons:



"The following information in respect of sale of immovable property (on the issue of 50C of the Income-tax Act, 1961) was received:

REGISTRATION VALUE RS.	STAMP DUTY RS.	RG NO	MARKET VALUE RS.	DATE	REGESTER
2,09,00,000/- 17/04/2012	35,70,000/- SRO, JAMNAGAR-2	3986/2012	7,28,53,600/-		

During the year under consideration, the assessee alongwith 24 co-owners has sold an immovable property for a sale consideration of Rs. 2,09,00,000/-However, the market value/Jantri value of the property is Rs.7,28,53,600/-. The share of assessee in the aforesaid property is 11%. The assessee was required to show sale consideration of Rs. 80,13,896/- (11% of Rs.7,28,53,600/-), in her return of income (ROI) for theassessment year (A.Y.) 2013-14. However, the assessee failed to file herreturn of income,(ROI) and offer the due capital gain arising out of the above sale transaction. In view of above facts, I have reason to believe that capital gain on the aforesaid immovable property transaction to the tune of Rs. 80,13,896/-, has escaped assessment in this case, for which the case of the assessee for A.Y.2013-14, needs to be re-opened within the meaning of section u/s 147 of the Act."

5. Consequently, the notice u/s 148 of the Act, was issued on 31/03/2021 through ITBA System and duly served upon the assessee. In response to notice u/s 148 of the Act, dated 31.03.2021 of Act, she has filed her ITR on 10.03.2022, which was not within the due date, as specified in the notice u/s 148 of the Act, thus, the same was treated as non-est by the Assessing Officer. Consequently, notice u/s 142(1) of the Act, 1961 along with query letters were issued through ITBA assessment module on 27.11.2021, 02.02.2022 & 17.03.2022 fixing the date of hearing on 13.12.2021, 14.02.2022 & 20.03.2022. All the aforesaid statutory notices were duly delivered upon the assessee on the same day in its email id hamirkait@gmail.com. A show cause notice was also issued dated 07.03.2022 fixing date of hearing on 16.03.2022.

6. In response to the aforesaid notices, the assessee uploaded her reply on 10.03.2022 & 19.03.2022, in which she uploaded documents like computation of income, sale deed, purchase deeds in support of claim of deduction u/s 54B of the Act, valuation report, etc.



7. The assessing officer noticed that as per information available with the Department, it is revealed that the assessee has sold following immovable property:

REGISTRATION VALUE RS.	STAMP DUTY RS.	RG NO	MARKET VALUE RS.	DATE	SUB REGISTER
2,09,00,000/- JAMNAGAR-2	35,70,000/-	3986/2012	7,28,53,600/-	17/04/2012	SRO,

On verification of details available on records, it was noted by the assessing officer that assessee has jointly sold a property vide deed no. 3986/2012, on 17/04/2012, along-with 24 other co-owners at Nagar Sim, R S No. 1155, Paiki 2 at a sale consideration of Rs.2,09,00,000/-. Where stamp duty of Rs.35,70,000/- is paid. In the case, the market value or the Jantri value of the said property as determined by the sub-registrar, Zone-2, Jamnagar, is at Rs.7,28,53,600/-. The share of assessee in the aforesaid property is 11%. Thus, the assessee was required to show sale consideration of Rs. 80,13,896/- (11% of Rs.7,28,53,600/-) in her ROI for the A.Y.2013-14 in view of provisions of section 50C of the Income tax Act, 1961. The Assessing Officer, after considering the summation of the assessee, the LTCG arising out of sale of immovable property, was worked out as under, subject to rectification according to the valuation report of DVO whenever it is obtained.

Add: Sale consideration (assessee share)	Rs. 80,13,896/-
Less :- cost of acquisition	Nil
Less: deduction u/s 54B (property 1)	Rs. 5,19,710/-
Less: deduction u/s 54B (property 2)	Rs. 18,28,720/-
Net	Rs 56,65,466/-

Therefore, the assessing officer made addition to the tune of Rs.56,65,466/-.



8. Aggrieved by the order of the assessing officer, the assessee, carried the matter in appeal, before the learned CIT(A), who has confirmed the action of the assessing officer, on merit. Apart from this, the Id. CIT(A) has also adjudicated the issue relating to non-issuance of notice, under section 143(3) of the Act, observing as follows:

“Ground No.3:

The assessee claimed in this ground that notice u/s 143(2) of the I.T. Act was not issued before the completion of the assessment. However, it is discussed in detail in the previous paragraphs that the AO treated the return of income filed on 10.03.2022 as non-est. Once the return of income was treated as non-est, issue of notice u/s 143(2) of the I.T. Act does not arise. Hence, Ground No.3 is not maintainable and dismissed.”

9. Aggrieved by the order of the learned CIT(A), the assessee is in further appeal before us.

10. Learned Counsel for the assessee, argued that ground No. 5, raised by the assessee, in appeal memo, alongwith Form No. 36 should be adjudicated first and on priority basis. In ground No.5, the assessee has stated that during the assessment proceedings, the assessing officer has not issued notice, under section 143(2) of the Act, which goes to the root of the matter. The Learned Counsel submitted that during the assessment proceedings, the assessee has submitted his return of income. Once the assessee has submitted its return of income, then it was the duty of the assessing officer, to issue the notice under section 143(2) of the Act to do the assessment on the income of the assessee and to frame the assessment order. The assessing officer simply stated that the assessee`s appeal was treated, as *non-est* in the eye of law, therefore, it was not necessary for the assessing officer to issue the notice under section 143(2) of the Act. Learned Counsel for the assessee, however submitted that it is mandatory for the assessing officer, to issue the notice under section 143(2) of the Act, to acquire the jurisdiction to frame the assessment order. The notice under section 143(2) of the Act, is a statutory notice and it must be issued by the assessing



officer, since the assessing officer has not issued the notice under section 143(2) of the Act, hence the assessment order may be quashed, on this score only.

11. On the other hand, learned DR for the revenue submitted that it was not necessary for the assessing officer, to issue the notice under section 143(2) of the Act, because the assessing officer has treated the return of income, filed by the assessee, as invalid, therefore, once the assessing officer has treated the return of income filed by the assessee, as invalid, then, it is not necessary to issue the notice by the assessing officer, under section 143(2) of the Act. That is, the AO treated the return of income filed on 10.03.2022, by the assessee, as non-est, therefore, issue of notice u/s 143(2) of the Act, does not arise.

12. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id. CIT(A) and other materials brought on record. We note that ground No. 5 raised by the assessee, states that the notice u/s 143(2) of the Act, was not issued by the assessing officer. The Id. CIT(A) held that the AO treated the return of income filed on 10.03.2022, as non-est and once the return of income was treated as non-est, the issue of notice u/s 143(2) of the Act does not arise.

13. We do not agree with the above statement of the learned CIT(A) to the effect that once the return of income was treated as non-est, the issue of notice u/s 143(2) of the Act does not arise. We note that **Hon'ble Delhi High Court in its decision in the case of Pr. CIT v/s Shri Jai Shiv Shankar Traders (P) Ltd. (383ITR 448)** has held that failure of assessing officer to issue notice u/s 143(2) is fatal to order of reassessment and such failure cannot be condoned by referring to section 292BB of the Act. We note that Ld. Counsel of the Assessee



had referred plethora of judgments laid down by Hon'ble High courts following the judgment of the Apex court where in the facts were similar to case at hand and it was held that for completing the assessment under section 148 of the Act, compliance with the procedure of issue of notice under Section 143 (2) was mandatory. This position of law has been clarified by Delhi high Court in the case of **Alpine Electronics Asia Pvt. Ltd. v/s. DCIT (2012) 341 ITR 247 (Del)**. It has been also contended by Id. DR that assessee attended the assessment proceeding appellate proceedings, regularly and never objected regarding issue and service of notice u/s143(2) so the default can be treated as procedural irregularity u/s 292BB of the Act. As per the provision of section 292BB where an assessee had appeared in any proceedings or cooperated in any enquiry relating to an assessment or re-assessment, it shall be deemed that any notice under any provision of this Act which is required to be served upon him, has been duly served upon him in time in accordance with the provision of this Act. The provision of section 292BB clearly laid down the circumstances / conditions under which the deeming fiction has to come into force. These conditions have been stated to be as (a), (b) and (c) which talks about the situation where: (a) notice was not served upon the assessee, (b) not served upon him in time, and (c) served upon him in an improper manner respectively. **Therefore, section 292BB talks about only the situation where the assessee raises the issue of non-service of notice and still co-operates with the Department.** The issuance of statutory notice cannot be dispensed with by the co-operation of the assessee. Since this notice 143(2) forms the basis for the Assessing Officer to assume jurisdiction under respective sections. To support this proposition, we rely on the decision of P & H High Court in the case of **CIT v/s. Cebon India Ltd (2012) 347 ITR 583** wherein it has been categorically held that absence of a statutory notice cannot be held to be curable u/s 292BB of the Act.



14. We note that it shall be incumbent to send a notice under section 143(2) of the Act, to the assessee. The provisions contained in sub-section (2) of section 143 is mandatory. During the year under consideration, the assessee has received a notice u/s 148 of the Income tax Act, 1961, dated 31.03.2021. However, due to technical glitch on income tax portal, notice u/s. 148 was not reflected on Portal and hence, assessee was not able to file return of income in response to notice u/s 148 within the time prescribed in the notice. However, the return of income, in response to notice u/s. 148 of the Act was submitted by the assessee, before the assessing officer, on 10/03/2022.

15. Thereafter, various notices u/s 142(1) of the Act, along with the query letters issued through ITBA assessment module has been issued to the assessee, by the assessing officer. In response, the assessee had filed reply on 10.03.2022 & 19.03.2022 along with explanation and supporting documents, before the assessing officer. Accordingly, order u/s 147 r.w.s. 144B dated 30.03.2022, was passed by the AO and made an addition in relation to the sale of plot as long-term capital gain wherein cost of acquisition claimed by assessee was not allowed. However, we note that during the assessment proceedings AO had not issued the notice u/s 143(2) of the Act, and without which, the assessment cannot be completed, that is, the assessing officer does not get power to frame the assessment order, on the assessee. In this regard, it is useful to go through the provisions of section 143(2) of the Act, which reads as follows:

“Section 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”



16. We note that Hon'ble Apex Court in case of ACIT vs. Hotel Blue Moon [2010] 188 Taxman 113 (SC), held that the issuance and service of notice u/s 143 (2) is mandatory and not procedural. The Hon'ble Supreme Court has further held that omission on the part of the assessing authority to issue notice under Section 143(2) of the Act cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with. Considering these facts and circumstances, we quash assessment order and allow the appeal of the assessee.

17. As the assessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

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

Order pronounced in the open court on 29/05/2025.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Rajkot

दिनांक/ Date: 29/05/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

TRUE COPY

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot