

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA**

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

**ITA No. 197/KOL/2025  
(Assessment Year: 2021-22)**

**Ankur Dealcom Private Limited**  
Room No. 302 & 303, Sikkim  
Commerce House, 4/1, Middleton  
Street, Kolkata-700071,  
West Bengal

**(Appellant)**

**Vs.**

**PCIT,**  
Aaykar Bhavan, P-7,  
Chowringhee Square,  
Kolkata-700069, West Bengal

**(Respondent)**

**PAN No. AAHCA2847F**

**Assessee by** : Shri Somnath Ghosh, AR  
**Revenue by** : Shri Ruchika Sharma, DR

**Date of hearing:** 21.05.2025  
**Date of pronouncement:** 18.07.2025

**ORDER**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Pr. Commissioner of Income Tax, Kolkata-2 (hereinafter referred to as the "Ld. PCIT"] dated 24.12.2024 for the AY 2021-22.

02. At the time of hearing, the Id. Counsel pressed the ground no.3, which is extracted as under: -

*"For that the Id. Principal Commissioner of Income Tax (PCIT) erred in law and on facts in invoking Section 263 of the Income Tax Act, 1961, to revise the assessment order passed u/s 143(3) dt. 23.12.2022, which is unlawful and illegal ab-initio."*

03. Brief facts of the case are that the assessee filed the return of income on 23.02.222, declaring total income of ₹9,35,020/-. The return was processed u/s 143(1) of the Act and thereafter the case was selected

for scrutiny through Computer Assisted Scrutiny Selection (CASS) to verify the transactions of assessee with another company whose registration had been cancelled by the Ministry of corporate Affairs. The Scrutiny assessment was completed u/s 143(3) read with section 144B of the Act on 23.12.2022 by NFAC, assessing the total income of ₹8,60,49,114/-. Thereafter, the Id. PCIT issued show cause notice u/s 263 of the Act on 25.09.2024 on the ground of that order passed u/s 143(3) of the Act is erroneous and prejudicial to the interest of the Revenue for the reason that the Id. AO has not considered the disallowance of ₹10,38,102/- in respect of interest charges under the head of other expenses which was paid on bogus and unexplained unsecured loans amounting to ₹2,09,00,000/-, which were already added u/s 68 of the Act in the impugned assessment order and accordingly, directed the Id. AO to modify the assessment by making the addition of ₹10,38,102/-, after affording reasonable opportunity of hearing to the assessee.

04. The Id. AR vehemently submitted before us that in the original assessment preceding notice u/s 143(2) dated 28.06.2022 was issued , which is not in conformity with the C.B.D.T. Instruction F. No. 225/157/2017/ITA-II Dated 23-06-2017 and therefore, the assessment framed based on the said invalid notice was also invalid and bad in law. The Id. AR contended that it has been decided in a series of decisions namely Hind Ceramics Pvt. Ltd. Vs. DCIT in ITA Nos. 608 & 610/KOL/2024 for A.Y. 2012-13 & 17-18, M/s Durga Automotives Pvt. Ltd. Vs. DCIT in ITA No. 675/KOL/2024 for A.Y. 2017-18, Sajal Biswas Vs. ITO in ITA No. 1244/KOL/2023 for A.Y. 2017-18. The Id. AR further submitted that the present revisionary order passed u/s 263 of the Act was passed revising the assessment framed u/s 143(3) of the Act in consequence to invalid notice u/s 143(2) of the Act and therefore, the

revisionary order passed u/s 263 of the Act is itself invalid and bad in law as no invalid assessment order could be revised u/s 263 of the Act. The Id. AR submitted that the assessee is within its legitimate and lawful rights to challenge the validity of the assessment order in the collateral proceeding. Therefore, the revisionary order may kindly be quashed to be invalid and nullity in the eyes of the law. The Id. AR also relied on the decision of this Tribunal in case of Nadia District Central Co-operative Bank Ltd. Vs. PCIT, in ITA No. 763/KOL/2024 for A.Y. 2018-19 vide order dated 15.01.2025.

05. The Id. DR on the other hand submitted that the assessee has not challenged the validity of the assessment order either before the Id. CIT (A) or before the Tribunal and it is for the first time the validity of the order is being challenged. The Id. DR therefore prayed that the argument of the Id. Counsel of the assessee is not maintainable and may be brushed aside.
06. After hearing the rival contentions and perusing the materials available on record, we find that the assessment has been framed in this case u/s 143(3) vide order dated 23.12.2022 by NFAC, assessing the income of the assessee at ₹8,60,49,114/- as against the returned income of ₹9,35,020/-. We note that in this case the notice u/s 143(2) of the Act was issued on 26.08.2022, which apparently is not in accordance with the C.B.D.T. Instruction F. No. 225/157/2017/ITA-II Dated 23-06-2017. We note that in terms of the above CBDT instruction, the notice u/s 143(2) has to be in any of the three formats namely; (i) Limited Scrutiny (Computer Aided Scrutiny Selection) (ii) Complete Scrutiny (computer Aided Scrutiny Selection) and (iii) Compulsory Manual Scrutiny. Since, the notice has been issued in an invalid format which is obviously invalid and therefore, any assessment based on the said

notice is also invalid and bad in law. We note that the assessee has not challenged the assessment proceedings on this issue before any higher appellate forum, however, the assessee is within its legitimate and legal right to challenge the validity of the assessment in the collateral proceedings meaning thereby even during the appeal proceedings before the Tribunal against the revisionary order passed u/s 263 of the Act by the Id. PCIT, the validity of the assessment passed u/s 143(3) could be challenged. Therefore, we hold that the assessment passed u/s 143(3) is invalid and nullity in the eyes of law. Further, we also hold that the revisionary proceedings based upon an invalid order is also invalid and bad in law. The case of the assessee find support from the decision of this Tribunal in case of Nadia District Central Co-operative Bank Ltd. Vs. PCIT (supra), wherein the co-ordinate Bench has held as under: -

*"After hearing the rival contentions and perusing the materials available on record, we find that though the appeal filed before us is against the revisionary order as passed by the Id. PCIT u/s 263 of the Act whereby the PCIT set aside the order of assessment framed u/s 143(3) dated 10.04.2021 for two reasons (i) provision for bad and doubtful debts made by the assessee were in fact inadmissible to the tune of ₹4,32,92,508/- and (ii) the excess addition to fixed assets by ₹65,69,270/- which remained unexplained and resulted into under assessment of income to that extent. The assessee has raised additional ground claiming therein that the assessment framed u/s 143(3) dated 10.04.2021, was framed consequent to issuance of notice u/s 143(2) read with section 12E of the Income Tax rules, 1962, dated 22.02.2019, which was not issued in accordance with the CBDT Instruction F.no. 225/157/2017/ITA-II dated 23.06.2017 which for ready reference is extracted the CBDT instruction:-*

*"F.No.225/157/2017/1TA.11*

*Government of India*

*Ministry of Finance*

*Department of Revenue (CBDT)*

*North Block, New Delhi, dated the 23rd of June, 2017*

*To*

*All Pr. CCsIT/Pr. CCIT(International-tax)/CCIT(Exemptions)/Pr. DsGIT*

Sir/Madam

*Subject: - Issue of notices under section 143(2) of Income-tax Act, 1961 in revised format-regd.-*

*With reference to the above, I am directed to state that Central Board of Direct Taxes has decided to modify format of notice(s) issued under section 143(2) of the Income-tax Act which intimate the concerned assessee about selection of his/her case for scrutiny. This has become necessary in view of Board's decision to utilise 'E-Proceeding' facility for electronic conduct of assessment proceedings in a widespread manner from this financial year.*

*The three formats of notice(s) are:*

*Limited Scrutiny (Computer Aided Scrutiny Selection)*

*Complete Scrutiny (Computer Aided Scrutiny Selection)*

*Compulsory Manual Scrutiny*

*The revised format of 143(2) notice(s) with a note on benefits & Procedures of 'EProceeding' facility are enclosed for information of the field authorities.*

*I am further directed to state that all scrutiny notices under section 143 (2) of the Act, shall henceforth, be issued in these revised formats only. The Systems Directorate is effecting necessary changes in the IT BA module in this regard.*

*The above may be brought to the notice of all for necessary compliance.*

*Enclosures(s): as above*

*Sd/-*

*(Rohit Garg)*

*Director-ITA.II,"*

*After hearing the rival contentions and perusing the materials available on record including the above instruction, we find that the post 23.06.2017, the notice u/s 143(2) of the Act was required to be issued in any of the three formats mentioned in the said instructions above. We further note that in para 3 of the said instruction it is stated that all notice u/s 143(2) of the Act shall henceforth be issued in this revised format only. Therefore, we find merit in the contentions of the Id. AR that the notice dated 22.02.2019, issued u/s 143(2) of the Act is not conforming to the formats of notices as prescribed in the above said instruction. For the sake of ready reference the said notice is also extracted below: -*



भारत सरकार / GOVERNMENT OF INDIA  
 विच मंत्रालय / MINISTRY OF FINANCE  
 आयकर विभाग / INCOME TAX DEPARTMENT  
 विहित आयकर प्राधिकारी का कार्यालय / Office of the Prescribed Income-Tax Authority

सेवा में/ To, JAZ222455014N NADIA DISTRICT CENTRAL CO OPERATIVE BANK LIMITED M M GHOSH STREET SAMABAY BUILDING KRISHNAGAR KRISHNAGAR NADIA 741101, West Bengal India			
स्वामी लेखा संख्या/ PAN: AAALN0139M	निर्धारण वर्ष/ AY: 2018-19	नोटिस संख्या / Notice No.: ITBA/AST/S/143(2)/2019- 20/1018203929(1)	दिनांक/ Dated: 22/09/2019

आयकर नियम 1962 के नियम 12 के साथ पठित आयकर अधिनियम 1961 की धारा 143 (2) के अधीन नोटिस  
Notice under section 143(2) of the Income-tax Act, 1961 read with Rule 12 E of Income Tax Rules, 1962  
 संवीक्षा (जांच) (कंप्यूटर आधारित संवीक्षा चयन)  
Scrutiny (Computer Aided Scrutiny Selection)

प्रिय करदाता,  
 Dear Taxpayer,

आपके द्वारा निर्धारण वर्ष 2018-19 के लिए दिनांक, 13/09/2018 को पावती सं. 290988871130918 के तहत भासकर विवरणी दाखिल करने के लिए आपको धन्यवाद।  
 Thank you for filing your return of income for Assessment Year 2018-19 vide Ack. no. 290988871130918 on 13/09/2018.

2. विवरणिका को तैयार करने में आपके ध्यान एवं परिश्रम को स्वीकार करते हुए, कुछ मुद्दों पर और स्पष्टीकरण की आवश्यकता है, जिनके कारण आपकी आय विवरणिका को संवीक्षा (जांच) के लिए चुना गया है, ये मुद्दे प्रारंभ में निम्नानुसार हैं:  
 2. While acknowledging the care and diligence you may have taken in preparing the return, there are certain issues which need further clarification, for which your return of income has been selected for scrutiny and such issues initially are as under:

S. No.	Issues
i.	Refund Claim
ii.	Expenses incurred for Earning Exempt Income
iii.	Large Turnover/Receipts of Development Authority

3. उपरोक्त को ध्यान में रखते हुए उल्लेखित मुद्दों के उत्तर आप संबंधित दस्तावेजों (यदि कोई हों) सहित निर्धारण अधिकारी को ई-कार्यालयी सुविधा में अपने ई-फाइलिंग नेटवर्क के माध्यम से (www.incometaxindiaefiling.gov.in) अपनी सुविधानुसार,

Therefore considering the defect in the issuance of notice , we are of the considered view that the assessment framed on the basis of said notice is invalid and so is the revisionary proceeding based on the said assessment framed. The case of the assessee find support from the decision of the co-ordinate Bench in the case of **Srimanta Kumar Shit (supra)** as we referred to above. For the sake of ready reference, the operative part is reproduced below:-

"12. A perusal of the above format would indicate that though in the heading, it exhibits limited scrutiny (Computer Aided Scrutiny Selection) but thereafter in the first paragraph, it only talks of scrutiny and then in second paragraph, it talks upon the opportunity being provided to the assessee what he wants to say in support of the return. It is pertinent to observe that in para one, the Id. AO has to identify the issues for examination. If this proforma is being read with the first paragraph of the assessment order, then, it would reveal that in the third line of the first paragraph, Id. Assessing Officer has used the expression "this return was selected for scrutiny in "CASH" on the issue of cash deposits during demonetization period". It would indicate that the case was selected for scrutiny but for the issue of cash deposit during demonetization, this mention of the issue would indicate that it was for a limited purpose of scrutinizing the cash deposits during demonetization. Its scope for making other additions would only be

enlarged by following due procedure laid down by the CBDT vide its Instruction No. 5 (reproduced supra).

13. The Hon'ble Jurisdictional High Court had an occasion to consider an identical situation in the case of Weilburger Coatings (India) (P.) Limited (supra), wherein Tribunal has followed the CBDT's Instruction bearing No. 5 of 2016. The questions before the Hon'ble High Court were –

(a) whether in the facts and circumstances of the case and in law, the Id. Tribunal has committed substantial error in law in deleting the disallowance of carry forward of losses of earlier years?

(b) whether the Learned Tribunal has substantially erred in law in holding that the Assessing Officer exceeded his jurisdiction in enquiring into those issues which were beyond the scope of limited scrutiny, without taking into consideration the fact that the claim of the assessee pertaining to carried forward losses was inadmissible since the beginning itself and therefore the Assessing Officer was justified in disallowing the same without converting the case into complete scrutiny?

These questions have been decided in favour of the assessee and against the revenue. The Hon'ble High Court concurred with the ITAT that due procedure was not followed while converting limited scrutiny case to a full scrutiny.

14. Similarly, the order of the ITAT, Visakhapatnam Bench in the case of Vudatha Vani Rao -vs.- Income Tax Officer reported in [2024] 159 taxmann.com 1394 (Visakhapatnam) was relied upon by the Id. Counsel for the assessee. This 'SMC' order of the ITAT is also in the line of Hon'ble High Court's decision. The Id. Assessing

Officer has not made any addition of cash deposit during demonetization period. The assessee has deposited small amounts, which have been accepted by the Id. Assessing Officer. Therefore, the assessment order itself is not sustainable because it has been passed by the Id. Assessing Officer by exceeding his limited powers. The Id. Assessing Officer ought to have followed the procedure contemplated in CBDT Instruction bearing No. 5 of 2016 for converting a limited scrutiny assessment into a full scrutiny. Accordingly, we quash the assessment order. Since we have quashed the assessment order, therefore, we do not deem it necessary to adjudicate the other issues on merit because they become academic in nature. Accordingly, we allow the appeal of the assessee."

Similarly in the case of **Shib Nath Ghosh Vs. ITO (supra)**, the co-ordinate Bench has decided the issue in favour of the assessee by observing and holding as under:-

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."*

*Similarly, Hon'ble Calcutta High Court in case of Amal Kumar Ghosh (supra), held as under:-*

*"Held, allowing the appeal, (1) that even assuming that the intention of the Central Board of Direct Taxes was to restrict the time for selection of the cases for scrutiny to a period of three months, It could not be said that the selection in the case of the assessee was made within the period. The return was filed on October 29, 2004, and the case was selected for scrutiny on July 6, 2005. By any process of reasoning, it was not open to the Tribunal to come to a finding that the Department acted within the four corners of Circulars Nos. 9 and 10 Issued by the Central Board of Direct Taxes The circulars were evidently violated. The circulars were binding upon the Department under section 119."*

*Therefore, case of the assessee is therefore squarely covered by the ratio laid down in the above decisions and respectfully following the same , we are inclined to hold the assessment as invalid being based on the invalid issue of notice u/s 143(2) of the Act. The first additional ground raised by the assessee is allowed.*

*Since we have held the notice issued u/s 143(2) as invalid and so the consequential assessment framed, we are not adjudicating second legal issue raised in the additional*

ground no.2 as well the grounds in the memorandum of appeal and are left open to be adjudicated in future if the need arises for the same.

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

*Therefore, in view of the above decisions and considering the facts of the assessee's case, we are inclined to hold that the assessment framed u/s 143(3) is invalid and so is the consequent revisionary proceedings u/s 263 of the Act. The appeal of the assessee is allowed by quashing the order passed u/s 263 of the Act as invalid and without jurisdiction.*

*In the result, the appeal of the assessee is allowed."*

07. Considering the facts of the assessee's case and the reasons cited before us, we are inclined to held that the revisionary proceedings u/s 263 of the Act is invalid and accordingly, the order passed u/s 263 of the Act is quashed.

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

Order pronounced in the open court on 18.07.2025.

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

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 18.07.2025

*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