

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.253/RJT/2025
निर्धारणवर्ष /Assessment Year: 2017-18

Bhavishaben Hareshbhai Rathod Shop No. 7, Hairline Unisex Salon Amin Marg, Gujarat Housing Board Rajkot Gujarat 360001 PAN : AESPR4119R (अपीलार्थी/Appellant)	बनाम Vs.	The ITO, Ward-2(1)(2) Rajkot (प्रत्यर्थी/Respondent)
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निर्धारिती की ओर से/Assessee by : Shri Kalpesh Doshi, Id.AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Sr-DR

सुनवाई की तारीख/Date of Hearing : 08/07/2025

घोषणा की तारीख/Date of Pronouncement : 21/07/2025

ORDER

Per Dr. Arjun Lal Saini, Accountant Member:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the separate order passed by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi[in short 'Ld.CIT(A)/NFAC'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 27.02.2025, which in turn arises out of an assessment order passed by the Assessing Officer u/s 144 of the Act.

2. The grounds of appeal raised by the assessee are as follows:

1. That, the Ld. CIT(A) has wrongly confirmed the order passed without serving the statutory notice u/s 143(2) of the I.T. Act, 1961.

2. That, the Ld. CIT(A) has wrongly confirmed the order passed u/s 144(1)(b) of the I.T. Act, 1961.



3. That, the Ld. CIT(A) has wrongly confirmed addition of Rs. 10,00,000/- on account of unexplained cash deposited in the bank account u/s 69A of the I. T. Act, 1961.

4. That, the Ld. CIT(A) has wrongly confirmed applicability of provisions of section 115BBE of the I.T. Act, 1961.

5. That, Ld. CIT(A) has wrongly confirmed the initiation of penalty proceedings u/s. 271AAC of the I.T. Act, 1961.

6. That, the Ld. CIT(A) has wrongly confirmed the levy of interest u/s 234A, 234B, 234C and 234D of the I.T. Act, 1961.

7. That, the findings of the Ld. CIT(A) are not justified and are bad-in-law.

3. At the outset, Ld. Counsel for the assessee, has pressed the ground no.1 raised by the assessee, which relates to passing order by assessing officer without serving the statutory notice u/s 143(2) of the I.T. Act, 1961. The ld. Counsel, pointed out, that in assessee's case, the assessment order was framed without issuing notice u/s. 143(2) of the Income Tax Act, 1961. Therefore, order passed by the Assessing Officer is null and void. For the Ld. Counsel for the assessee relied on the judgment of the Co-ordinate Bench of ITAT- Rajkot in ITA No.115/Rjt/2025, for Assessment Year 2017-18, in the case of Shri Haresh J. Rathod, vide order dated 21-05-2025.

4. On the other hand, Ld. D.R. for the Revenue relied on the findings of the assessing officer.

5. We have heard both the parties and perused the material available on record. We find that Ground No. 1 raised by the assessee is squarely covered by the judgment of the Co-ordinate Bench of ITAT Rajkot in the case of Haresh J Rathod (supra) wherein the Hon'ble Bench has held as follows:

"16. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee with the able assistance of Shri Kalpesh Doshi, representing the assessee and Shri Abhimanyu Singh Yadav, Learned Sr-(DR), representing the Revenue. We find that one key issue arises for our apt adjudication in the instant lis, which is, whether it is necessary to issue notice u/s 143(2) of the Act, when the assessee has filed the Return of Income, in response to notice under section 142(1) of the Act, before the assessing officer. We



find that in response to notice, u/s 142(1) of the Act, the assessee has filed Return of Income for A.Y 2017-18, on 03.06.2019, before the assessing officer, declaring the income at Rs.5,64,690/- in Income Tax Return (ITR) Form No.3. However, the assessing officer noticed that the assessee has filed said return of income beyond the time limit of notice u/s 142(1) of the Act. We note that time limit stated by the assessing officer, as per his own whim, or desire, in the notice u/s 142(1) of the Act, is not a LAXMAN REKHA, (that is, expiry date), on which the assessee should have filed the return of income, before the assessing officer. Some assessing officers, may allow the time in notice u/s 142(1) of the Act, one month to the assessee, to file Return of Income before him, some assessing officers may allow time, to file return of income, in notice u/s 142(1) of the Act, for two Months/three Months, therefore it is only administrative and individual decision of the assessing officer, to allow the time limit to the assessee, to file the return of income, in response to the notice u/s 142(1) of the Act. However, once the assessee has filed the Return of Income, in response to notice, u/s 142(1) of the Act, (although it is late, as compare to the date mentioned in the notice u/s 142(1) of the Act), then it would be mandatory for the assessing officer, in order to acquire the jurisdiction, to make the assessment on the assessee, to issue the notice u/s 143(2) of the Act. Without issue of notice u/s 143(2) of the Act, the assessing officer does not get jurisdiction to make the assessment on the assessee.

17. *We also noticed that assessing officer framed the assessment order u/s 144 of the Act, wrongly, without considering the fact that assessee has submitted during the assessment proceedings, all the details and documents required by the assessing officer. As we have noted earlier, that during the assessment proceedings, in response to notice u/s 142(1) of the Act, the assessee filed copies of accounts, copy of ITR-V, computation of income for A.Ys. 2015-16 to 2017-18, before the assessing officer. The assessee also filed, before the assessing officer, the bank statements for the A.Y 2017-18, of all bank accounts. Further details have been called for from all the banks u/s 133(6) of the Act, by the assessing officer, and all the said details have been received by the assessing officer, therefore, assessment order ought to have been framed by the assessing officer u/s 143(3) of the Act, instead of u/s 144 of the Act. Therefore, action of the assessing officer, in quoting the section 144 of the Act, on the face of the assessment order and to frame the assessment order u/s 144 of the Act is bad in law, as the assessee has submitted entire details and evidences before the assessing officer, during the assessment proceedings and nothing was remained on the part of the assessee to submit further details before the assessing officer.*

18. *As we have noted above that in para no.4, vide page number 3 of the order of the ld. CIT(A), the ld. CIT(A) mentioned that assessee has submitted written submission before him, and these written submissions have been considered by the ld. CIT(A). The ld. CIT(A) after taking into account, the written submission of the assessee and the documents filed before him, stated that assessing officer has correctly framed the assessment order u/s 144 of the Act, whereas all the details and evidences filed by the assessee, during the assessment proceedings, before the assessing officer, were on the file of the ld. CIT(A), along with written submission of the assessee. Not only that the order passed by the assessing officer u/s 144 of the Act, dated 30.07.2019 was set aside by ld CIT(A) for making fresh assessment, de-novo, after taking into account the written submissions filed by the assessee. We find that in the assessment year 2017-18, the ld CIT(A) did not have power to set aside the assessment order and to remit the assessment order back to the file of the assessing*



officer to pass the fresh assessment order. Moreover, in the assessee's case under consideration, the assessment order is framed u/s 143(3) of the Act, as we explained above, therefore ld CIT(A) ought to have adjudicated the appeal of the assessee, on merit, (as all the documents and evidences, including written submission of the assessee, were on record) rather than to remit the issue back to the file of the assessing officer for fresh assessment.

19. We find that notice u/s 142(1) of the Act has been issued by the assessing officer, requiring assessee to file return of income. The assessee has duly filed return of income in response to the said notice issued u/s 142(1) of the Act, declaring total income at Rs.5,64,690/-. The assessment has been completed by passing an order u/s 144(1)(b) of the Act. The assessing officer has duly acknowledged the return of income filed by the assessee. The assessing officer, while passing assessment order has duly considered the return of income, filed by the assessee, in response to the notice issued u/s 142(1) of the Act, dated 03.06.2019 and addition was made after due consideration of income reflected in the return of income. The relevant extract of para No.6 of the assessment order, reflecting assessed income, is as follows:

“6. Considering the details available on record and after due verification, the income is assessed as under:

Income as per return of income (filed on 3/6/2019	Rs. 5,64,690/-
Add: Addition as per para-5 above	Rs.33,95,000/-
Assessed income	Rs.39,59,690/-“

Thus, the assessment order was finalized on the basis of return of income filed by the assessee and the assessing officer has nowhere discarded the return of income, as invalid return in the entire assessment proceedings. Therefore, the return filed by the assessee is valid.

20. Once the return of income is filed by the assessee and the assessing officer has duly considered the said return of income, then the assessing officer shall issue notice u/s 143(2) of the Act, for the further assessment proceedings. The notice u/s 143(2) of the Act is the starting point of assessment proceedings whereby assessing officer seeks documents / evidences from the assessee to support the claims made in the return of income. By way of issuing notice u/s 143(2) of the Act, the assessing officer gets the jurisdiction to make the assessment on the assessee by examining the details, documents and evidences submitted by the assessee. After receipt of the return of income filed in response to notice u/s 142(1), it is mandatory for the Assessing Officer to serve a notice, under sub-section (2) of section 143 of the Act. The return of income has been filed beyond the stipulated time frame specified in the notice u/s 142(1) of the Act, for filing such return of income. Nonetheless, the assessing officer has duly considered the said return of income and therefore, once the return of income is accepted by the assessing officer, he is bound to issue notice u/s 143(2) of the Act for the furtherance of the proceedings. Therefore, even though filed belatedly, the return filed in response to notice u/s 142(1) would still qualify, as a valid return furnished. Therefore, the assessing officer is required to issue notice u/s 143(2) of the Act before passing order u/s 143(3) of the Act, for that, reliance is placed on the judgement in the case of CIT v. Nagendra Prasad (Patna HC) (156 taxmann.com 19) where notice was issued by Assessing Officer under section 148, requiring assessee to file a return within thirty days but return was filed after eight and a half months, since return was filed by assessee in response to said notice though delayed, there should have been a



notice issued under section 143(2) of the Act, as requirement to issue notice could not be dispensed with.

21. *We find that the return of income filed by the assessee has been duly acknowledged by the assessing officer. Nowhere, in the assessment order or show cause notice, or proceedings, the assessing officer has stated that return filed by the assessee is invalid or non-est. The assessing officer has not discarded such return but still initiated the proceedings on the basis of return filed by the assessee. Since, the return filed by assessee is belated return and the same is not discarded, as invalid, by the assessing officer, in such a case, if assessing officer wants to frame assessment at higher income, on the assessee, then in that circumstances, the assessing officer is bound to issue a notice u/s 143(2) of the Act and a reasonable opportunity of hearing should be given to the assessee, for that we rely on the judgement of the jurisdictional Gujarat High Court in the case of Devendranath G Chaturvedi,[2017] 83 taxmann.com 141 (Guj-HC), wherein it was held as follows:*

“IT: Where return for block period fled by assessee belatedly was not discarded as invalid, in such a case, if Assessing Officer wanted to frame assessment at higher income, he was bound to issue a notice under section 143(2)

Section 143, read with section 158BC, of the Income-tax, Act, 1961 - Assessment (issue of notice u/s 143(2) – Block assessment period 1990 to 2001 – Whether where assessee, in response to notice issued under section 158BC, filed a return after long delay, however, said return was not discarded as invalid, in such a case, if Assessing Office wanted to frame assessment at higher income, he was bound to issue a notice under section 143(2) – Held, yes [para 6] [in favour of assessee]

6. In the present case, however, the assessee did file the return, though belatedly. The Assessing Officer did not discard such return but proceeded on the basis of such return and framed an assessment assessing the income higher than the returned income. under the circumstances, before rejecting such income, notice under Section 143(2) of the Act was necessary. Such notice not having been issued, the Tribunal correctly upheld the judgment of the CIT(Appeals). Tax Appeal is dismissed.”

22. *An analysis of section 143(2) of the Act, indicates that after the return is filed, this sub- section enables the Assessing Officer to complete the assessment by following the procedures, like issue of notice u/s 142(1) of the Act and complete the assessment. When the assessing officer is in repudiation of the return filed by the assessee, then, the assessing officer has to proceeds to make an enquiry, and he should necessarily to follow the provisions of section 142(1) and provisions of sub-section (2) and (3) of section 143 of the Act. The notice u/s 143(2) is mandatory if the return filed is not accepted and subsequently an assessment order is to be made at variance with the return filed by the assessee. It is also to be evident that the issue is not limited to block assessment but would apply to every case where a notice u/s 143(2) is necessary. Therefore, even if the assessing officer repudiates the return of income filed by assessee, still the assessing officer is bound to issue notice u/s 143(2) of the Act. Therefore, the omission on the part of the assessing authority to issue notice u/s 143(2) of the Act is not curable, and therefore, the requirement of notice u/s*



143(2) cannot be dispensed with. In the assessee's case under consideration, the assessing officer did not issue the notice u/s 143(2) of the Act, therefore we quash the assessment order framed by the assessing officer, and allow the appeal of the assessee.

23. In view of the reasons set out above, as also bearing in mind entirety of the case, we, have quashed the assessment proceedings. As the assessment itself has been quashed, therefore, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.24. In the result, appeal of assessee is allowed.”

6. We have heard both the parties. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in the case of Haresh J Rathod (supra). We have examined this fact from the assessment records and noticed that assessing officer has not issued notice under section 143(2) of the Act. Therefore, we find that since the assessing officer has not issued the notice u/s. 143(2) of the Act, which is statutory notice, which should be issued by the assessing officer, invariably to acquire the jurisdiction to frame the assessment order. Since, no notice has been issued to the assessee u/s. 143(2) of the Act, therefore respectfully following the binding precedents of the Co-ordinate Bench of ITAT Rajkot in the case of Haresh J Rahtod (supra), we allow the appeal of the assessee.

7. Since we have adjudicated the assessee's appeal on technical ground No.1 on the issue of non-issuance of notice u/s. 143(2) of the Act, therefore other grounds raised by the assessee on merit have become infructuous and therefore, do not require adjudication.

9. In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 21/07/2025

**Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER**

**Sd/-
(DR.ARJUN LAL SAINI)
ACCOUNTANT MEMBER**

राजकोट /Rajkot

दिनांक/ Date: 21/07/2025



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आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)/(NFAC), Delhi.
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

// True Copy //

Assistant Registrar/Sr. PS/PS

ITAT, Rajkot