

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

**BEFORE SHRI DUVVURU RL REDDY, VP
AND
SHRI RAJESH KUMAR, AM**

**ITA No.470/KOL/2025
(Assessment Year: 2010-11)**

Manaksia Limited
Turner Morrison Building,
6, Lyons Range, Kolkata-700001

Vs.

**Dy. Commissioner of Income
Tax, Circle-4(1)**
Aaykar Bhavan, P-7,
Chowringhee Square,
Kolkata-700069, West Bengal

(Appellant)

(Respondent)

PAN No. AAACH6882J

Assessee by : Shri S.K. Tulsiyan &
Ms. Lata Goel, ARs
Revenue by : Shri Pradeep Dung Dung, DR

Date of hearing: 30.06.2025
Date of pronouncement : 22.07.2025

ORDER

Per Rajesh Kumar, AM:

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 17.01.2025 for the AY 2010-11.

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

"3. That, the Ld. CIT(A) further erred in law in sending the reassessment order back to the A.O. without considering that the said reassessment order suffered from technical deficiencies for not having issued notice u/s 143(2) of the Act and hence the reassessment order set aside by the Ld. CIT(A) was void ab initio for want of valid jurisdiction, as decided in the case of ACIT vs. Hotel Bluemoon (2010) 321 ITR 362 (SC)."

03. The facts in brief are that the assessee filed the return of income on 22.06.2017, declaring total income of ₹ 66,06,603/- as per the normal provision and ₹31,01,78,541/- in terms of Section 115JB of the Act. The case of the assessee was selected for scrutiny u/s 143(3) of the Act and the assessment was concluded vide order dated 20.03.2014, passed u/s 143(3) of the Act. Thereafter, the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 31.03.2017, copy of which is available at page no.97 of the Paper Book. The assessee complied with the said notice while filing the return of income on 28.04.2017, copy of acknowledgement is available at page no. 98 of the Paper Book. The AO thereafter issued notice u/s 142(1) of the Act, which was duly served on the assessee and also complied with by the assessee by attending proceeding before the Id. AO through authorized representative. The assessee requested the Id. AO to supply the reasons recorded u/s 148(2) of the Act, which were finally supplied. Thereafter, the assessee again filed a letter dated 28.06.2017, requesting the Id. AO to provide the copy of reasons record, copy of which is available at page no.98 of the Paper Book. On 29.06.2017, the assessee received the assessment order framed u/s 144 read with section 147 of the Act dated 22.06.2017, making an addition of ₹4,14,45,729/- on account of undisclosed interest of loan from M/s Euro Asian Ventures FZE, an associated enterprise of the assessee. The Id. AO provided the reasons on 04.07.2017 to the assessee after passing the order.
04. The assessee challenged the said assessment before the Id. CIT (A), however, the Id. CIT (A) without considering the submission of the assessee restored the appeal back to the file of the Id. AO for fresh adjudication on the ground that the Id. AO passed the ex-parte order without considering the merit.

05. Aggrieved, the assessee preferred the appeal before us. The Id. AR vehemently submitted before us that the order passed by the Id. CIT (A) upholding the assessment framed u/s 144 read with section 147 of the Act dated 22.06.2017, is invalid as the AO did not issue any notice u/s 143(2) of the Act, which is a mandatory requirement under law. The Id. AR submitted that the assessee filed the return of income u/s 148 of the Act on 28.04.2017, in response to the notice u/s 148 of the Act. The Id. AR submitted that in order to assume the jurisdiction thereafter, the Id. AO has to issue the mandatory notice u/s 143(2) of the Act and only then, the Id. AO could proceed with the assessment proceedings and however the AO framed the assessment sans notice u/s 143(2) of the Act. The Id. AR submitted that the Id. AO has not made any reference to notice u/s 143(2) of the Act either in the order sheet entries or in the assessment order. The Id. AR submitted that the Id. AO straightway issued notice u/s 142(1) of the Act without issuing notice u/s 143(2) of the Act which rendered the assessment so framed as invalid and nullity. The Id. AR also referred to the provisions of Section 143(2) of the Act as applicable during A.Y. 2017-18 and submitted that notice u/s 143(2) of the Act is mandatory precondition for conducting the proceedings and for framing the assessment of the assessee where the return of income has been filed and AO does not agree with the income/ loss, so offered/ claimed in the return of income. The Id. AR submitted that the non-issuance of notice u/s 143(2) of the Act is not a procedural irregularity, which could be cured or overlooked. Therefore, the non-issuance of notice u/s 143(2) of the Act vitiates proceedings and hence, the order passed u/s 147 read with section 144 of the Act is bad in law and may be quashed. In defense of his argument, the Id. AR relied on the decision of ACIT vs. Hotel Blue Moon (2010) 321 ITR 362 (SC), wherein the similar issue

has been decided in favour of the assessee. The Id. AR also relied on the decision of PCIT Vs. Oberoi Hotels (P.) Ltd. (2018) 409 ITR 132 (Calcutta), PCIT Vs. Shri Shiv Shankar Traders P. Ltd (2016) 383 ITR 448 (Delhi). Therefore, the Id. AR prayed before the Bench that the assessment framed by the Id. AO sans notice u/s 143(2) being invalid and may kindly be quashed.

06. The Id. DR on the other hand relied on the order of the authorities below.
07. After hearing the rival contentions and perusing the materials available on record, we find that the assessee filed the original return of income on 13.10.2010, declaring total income of ₹66,06,603/-. The case of the assessee was selected for scrutiny and the assessment was accordingly framed u/s 143(2) of the Act on 20.03.2014, accepting the return of income. The case of the assessee was subsequently reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 31.03.2017, which was complied with by filing the return of income on 28.04.2017, declaring total income of ₹66,06,606/-, copy of which is available at page no. 97 of the Paper Book. We note that the assessee addressed vide letter dated 23.01.2017 to Dy. Commissioner of Income Tax, Circle 4(2), P-7, Chowringhee Square, Kolkata, wherein the assessee specifically stated that the assessee has filed the return of income in response to notice u/s 148 of the Act and requested the Id. AO to make available or supply the reasons recorded u/s 148 (2) of the Act. However, the Id. AO has not supplied any reasons. We even note that the assessment was framed vide order dated 22.06.2017, u/s 144 read with section 147 of the Act and only thereafter supplied the reasons to the assessee on 04.04.2017. We have also perused the assessment order and confronted this issue to

the DR whether any notice u/s 143(2) of the Act has been issued to the assessee. The Id. DR relied on the assessment order and appellate order. We note that there is no mention of any notice having been issued u/s 143(2) of the Act either in the order sheet or in the assessment order. Therefore, it is noted that the notice u/s 142(1) of the Act dated 29.05.2017, was issued without issuing notice u/s 143(2) of the Act and therefore, this is a vital mistake on the part of the Id. AO. Consequently, assessment framed u/s 144/147 of the Act dated 22.06.2017 is bad in law and cannot be sustained as the non issuance of notice u/s 143(2) is not a curable defect but a lapse which goes to the root of the assessment. The case of the assessee finds support from the decision of the Hon'ble Apex Court in the case of ACIT Vs. Hotel Blue Moon (*supra*), wherein the Hon'ble Apex Court has held as under: -

"15. We may now revert back to Section 158 BC(b) which is the material provision which requires our consideration. Section 158 BC(b) provides for enquiry and assessment. The said provision reads "that the assessing officer shall proceed to determine the undisclosed income of the Block period in the manner laid down in Section 158 BB and the provisions of Section 142, sub-section (2) and (3) of Section 143, Section 144 and Section 145 shall, so far as may be, apply." An analysis of this sub section indicates that, after the return is filed, this clause enables the assessing officer to complete the assessment by following the procedure like issue of notice under Sections 143(2)/142 and complete the assessment under Section 143(3). This Section does not provide for accepting the return as provided under Section 143(i)(a). The assessing officer has to complete the assessment under Section 143(3) only. In case of default in not filing the return or not complying with the notice under Sections 143(2)/142, the assessing officer is authorized to complete the assessment ex-parte under Section 144. Clause (b) of Section 158 BC by referring to Section 143(2) and (3) would appear to imply that the provisions of Section 143(1) are excluded. But Section 143(2) itself becomes necessary only where it becomes necessary to check the return, so that where block return conforms to the undisclosed income inferred by the authorities, there is no reason, why the authorities should issue notice under Section 143(2). However, if an assessment is to be completed under Section 143(3) read with Section 158-BC, notice under Section 143(2) should be issued within one year from the date of filing of block return. Omission on the part of the assessing authority to issue notice under Section 143(2) 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. The other important feature that requires to be noticed is that the Section 158 BC(b) specifically refers to some of the provisions of the Act which

requires to be followed by the assessing officer while completing the block assessments under Chapter XIV-B of the Act. This legislation is by incorporation. This Section even speaks of subsections which are to be followed by the assessing officer. Had the intention of the legislature was to exclude the provisions of Chapter XIV of the Act, the legislature would have or could have indicated that also. A reading of the provision would clearly indicate. In our opinion, if the assessing officer, if for any reason, repudiates the return filed by the assessee in response to notice under Section 158 BC(a), the assessing officer must necessarily issue notice under Section 143(2) of the Act within the time prescribed in the proviso to Section 143(2) of the Act. Where the legislature intended to exclude certain provisions from the ambit of Section 158 BC(b) it has done so specifically. Thus, when Section 158 BC(b) specifically refers to applicability of the proviso thereto cannot be excluded. We may also notice here itself that the clarification given by CBDT in its circular No.717 dated 14 August, 1995, has a binding effect on the department, but not on the Court. This circular clarifies the requirement of law in respect of service of notice under sub-section (2) of Section 143 of the Act. Accordingly, we conclude even for the purpose of Chapter XIV-B of the Act, for the determination of undisclosed income for a block period under the provisions of Section 158 BC, the provisions of Section 142 and sub-sections (2) and (3) of Section 143 are applicable and no assessment could be made without issuing notice under Section 143(2) of the Act. However, it is contended by Sri Shekhar, learned counsel for the department that in view of the expression "So far as may be" in Section 153 BC(b), the issue of notice is not mandatory but optional and are to be applied to the extent practicable. In support of that contention, the learned counsel has relied on the observation made by this Court in Dr. Pratap Singh's case [1985] 155 ITR 166 (SC). In this case, the Court has observed that Section 37(2) provides that "the provisions of the Code relating to searches, shall so far as may be, apply to searches directed under Section 37(2). Reading the two sections together it merely means that the methodology prescribed for carrying out the search provided in Section 165 has to be generally followed. The expression "so far as may be" has always been construed to mean that those provisions may be generally followed to the extent possible. The learned counsel for the respondent has brought to our notice the observations made by this Court in the case of Maganlal Vs. Jaiswal Industries, Neemach and Ors., [(1989) 4 SCC 344], wherein this Court while dealing with the scope and import of the expression "as far as practicable" has stated "without anything more the expression as far as possible' will mean that the manner provided in the code for attachment or sale of property in execution of a decree shall be applicable in its entirety except such provision therein which may not be practicable to be applied."

08. Similarly, in the case of PCIT Vs. Oberoi Hotels (P.) Ltd. (*supra*), the Hon'ble Court has held as under: -

"7. Section 148 of the Act permits the issuance of a notice in certain circumstances when it is discovered that income has escaped assessment and sub-section (1) thereof mandates a return to be filed upon an assessee being served a notice under such provision, whereupon "the provisions of this Act, shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139."

8. Section 143 of the Act pertains to assessment and in its opening words refers to a return being made under Section 139 of the Act or in response to a notice under Section 142 (1) of the Act. At the time relevant for the assessment that was undertaken by the Assessing Officer after a notice under Section 148 of the Act had been issued, Section 143(2) in its then form had two clauses and a proviso after Clause (ii) that precluded a notice under Clause (ii) being served beyond a particular period. Further, Section 153 (2) of the Act directs an order of assessment, reassessment or re-computation to be made under Section 147 of the Act within a particular period. The relevant periods, both in terms of the proviso to Section 143(2) of the Act and in terms of Section 153 thereof, have expired. As noticed by the Supreme Court in *Hotel Blue Moon (supra)* and is quoted above, the time is of some significance and notices can no longer be issued after the expiry of the period mandated therefor nor can proceedings be continued after the time limit set therefor by the statute.

9. In the light of the above discussion, particularly taking into consideration the law laid down by the Supreme Court in *Hotel Blue Moon (supra)*, it is inescapable that the issuance of a notice under Section 143(2) of the Act is mandatory if the Assessing Officer seeks not to accept any part of the return as furnished by the assessee or make an assessment order contrary thereto and, even in course of reassessment proceedings, such notice cannot be dispensed with.

10. One of the arguments put forth on behalf of the Revenue is that in course of reassessment proceedings once a notice is issued under Section 148 of the Act, the assessee is made aware of what part of the income or on what count the assessee's income is perceived to have escaped attention. It is submitted that in such a scenario, the requirement of a notice under Section 143(2) may be somewhat diluted, if not unnecessary. Apart from the fact that such argument cannot be countenanced in the light of the dictum in *Hotel Blue Moon (supra)*, it is evident that an assessment under Section 143(3) of the Act is consequent upon a hearing and the production of evidence on such points on which the Assessing Officer may harbour doubts and are indicated in his notice under Section 143(2) of the Act. Section 143(3) of the Act contemplates an assessment undertaken by the Assessing Officer upon material being produced by the assessee on grounds which are indicated by the Assessing Officer in his notice under Section 143(2) of the Act in respect whereof the Assessing Officer may have misgivings or may disagree with the return filed by the assessee. Implicit in the wording of Section 143(3) of the Act is the indispensability of a notice under Section 143(2) thereof."

09. Similar issue has been laid down by the Hon'ble Delhi High Court in case of *PCIT Vs. Shri Shiv Shankar Traders P. Ltd*, as under: -

"12. The narration of facts as noted above by the Court makes it clear that no notice under Section 143(2) of the Act was issued to the Assessee after 16th December 2010, the date on which the Assessee informed the AO that the return originally filed should be treated as the return filed pursuant to the notice under Section 148 of the Act.

13. In *DIT v. Society for Worldwide Interbank Financial Telecommunications [2010] 323 ITR 249 (Delhi)*, this Court invalidated an reassessment proceedings after noting

that the notice under Section 143(2) of the Act was not issued to the Assessee pursuant to the filing of the return. In other words, it was held mandatory to serve the notice under Section 143(2) of the Act only after the return filed by the Assessee is actually scrutinised by the AO

14. The interplay of Sections 143 (2) and 148 of the Act formed the subject matter of at least two decisions of the Allahabad High Court. In *CIT v. Rajeesh Sharma* [2011] 336 ITR 678/[2010] 192 Taxman 197 (All) it was held that a plain reading of Section 148 of the Act reveals that within the statutory period specified therein, it shall be incumbent to send a notice under Section 143(2) of the Act. It was observed:

"the provisions contained in sub-Section (2) of Section 143 is mandatory and the legislature in their wisdom by using the word 'reason to believe' had cast a duty on the Assessing Officer to apply mind to the material on record and after being satisfied with regard to escaped liability, shall serve notice specifying particulars of such claim, In view of the above, after receipt of return in response to notice under Section 148, it shall be mandatory for the AO to serve a notice under sub-Section (2) of Section 143 assigning reason therein. In absence of any notice issued under sub Section (2) of Section 143 after receipt of fresh return submitted by the Assessee in response to notice under Section, the entire procedure adopted for escaped assessment, shall not be valid."

15. In a subsequent judgment in *CIT v. Salarpur Cold Storage (P.) Ltd.* (2014) 50 taxmann.com 105/[2015] 228 Taxman 48 (All.) (Mag.) it was held as under

"10. Section 292 BB of the Act was inserted by the Finance Act, 2008 with effect from 1 April 2008, Section 292 BB of the Act provides a deeming fiction. The deeming fiction is to the effect that once the assessee has appeared in any proceeding or cooperated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice under the provisions of the Act, which is required to be served on the assessee, has been duly served upon him in time in accordance with the provisions of the Act. The assessee is precluded from taking any objection in any proceeding or enquiry that the notice was (1) not served upon him; or (ii) not served upon him in time; or (iii) served upon him in an improper manner. In other words, once the deeming fiction comes into operation, the assessee is precluded from raising a challenge about the service of a notice, service within time or service in an improper manner. The proviso to Section 292 BB of the Act, however, carves out an exception to the effect that the Section shall not apply where the assessee has raised an objection before the completion of the assessment or reassessment. Section 292 BB of the Act cannot obviate the requirement of complying with a jurisdictional condition. For the Assessing Officer to make an order of assessment under Section 143 (3) of the Act. it is necessary to issue a notice under Section 143 (2) of the Act and in the absence of a notice under Section 143 (2) of the Act, the assumption of jurisdiction itself would be invalid."

16. In the same decision in *Salarpur Cold Storage (P.) Ltd.* (supra), the Allahabad High Court noticed that the decision of the Supreme Court in *Hotel Blue Moon* (supra) where in relation to block assessment, the Supreme Court held that the requirement to issue notice under Section 143(2) was mandatory. It was not "a procedural irregularity and

the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with."

17. The Madras High Court held likewise in Sapthagiri Finance & Investments v. ITO [2012] 25 taxmann.com 341/210 Taxman 78 (Mad.) (Mag). The facts of that case were that a notice under Section 148 of the Act was issued to the Assessee seeking to reopen the assessment for AY 2000-01. However, the Assessee did not file a return and therefore a notice was issued to it under Section 142 (1) of the Act. Pursuant thereto, the Assessee appeared before the AO and stated that the original return filed should be treated as a return filed in response to the notice under Section 148 of the Act. The High Court observed that if thereafter, the AO found that there were problems with the return which required explanation by the Assessee then the AO ought to have followed up with a notice under Section 143(2) of the Act. It was observed that:

"Merely because the matter was discussed with the Assessee and the signature is affixed it does not mean the rest of the procedure of notice under Section 143(2) of the Act was complied with or that on placing the objection the Assessee had waived the notice for further processing of the reassessment proceedings. The fact that on the notice issued w/s 143(2) of the Act, the assessee had placed its objection and reiterated its earlier return filed as one filed in response to the notice issued u/s 148 of the Act and the Officer had also noted that the same would be considered for completing of assessment, would show that the AO has the duty of issuing the notice under Section 143(3) to lead on to the passing of the assessment. In the circumstances, with no notice issued u/s 143(3) and there being no waiver, there is no justifiable ground to accept the view of the Tribunal that there was a waiver of right of notice to be issued u/s 143(2) of the Act.

18. As already noticed, the decision of this Court in Vision Inc. (supra) proceeded on a different set of facts. In that case, there was a clear finding of the Court that service of the notice had been effected on the Assessee under Section 143 (2) of the Act. As already further noticed, the legal position regarding Section 292BB has already been made explicit in the aforementioned decisions of the Allahabad High Court. That provision would apply insofar as failure of "service" of notice was concerned and not with regard to failure to "issue" notice. In other words, the failure of the AO, in reassessment proceedings, to issue notice under Section 143(2) of the Act, prior to finalising the re-assessment order, cannot be condoned by referring to Section 292BB of the Act.

19. The resultant position is that as far as the present case is concerned the failure by the AO to issue a notice to the Assessee under Section 143(2) of the Act subsequent to 16th December 2010 when the Assessee made a statement before the AO to the effect that the original return filed should be treated as a return pursuant to a notice under Section 148 of the Act, is fatal to the order of re-assessment."

010. Considering the facts of the case in the light of the above decisions, we are of the considered opinion that the assessment framed by the Id. AO without issuing notice u/s 143(2) of the Act is invalid and is to

be quashed. Accordingly, we quash the assessment and allow the ground no.3 raised by the assessee.

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

Order pronounced in the open court on 22.07.2025.

Sd/-
(DUVVURU RL REDDY)
(VICE PRESIDENT)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 22.07.2025

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