

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.2594/Del/2024  
निर्धारणवर्ष/Assessment Year: 2016-17

ANIL AGARWAL HUF F-71,Second Floor, Main Green Park, New Delhi. PAN No.AAHHA2179P	<u>बनाम</u> Vs.	INCOME TAX OFFICER, Ward-28(1), New Delhi.
अपीलार्थी <b>Appellant</b>		प्रत्यर्थी/ <b>Respondent</b>

<b>Assessee by</b>	Dr. Rakesh Gupta, Adv. Shri Deepesh Garg, Adv. & Ms. Silpa Gupta, CA
<b>Revenue by</b>	Shri Narpat Singh, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	27.06.2025
उद्घोषणाकीतारीख/Pronouncement on	30.07.2025

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the Assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi dated 14.05.2024 for the AY 2016-17. The assessee has raised the following grounds:

1. "That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in passing the ex-parte order and that too without appreciating the facts and circumstances of the case and without providing the opportunity of being heard and in violation of principles of natural justice and Ld. CIT(A) has further

*erred in holding that there has not been any compliance to the notices issued on 14-06-2023, 10-04-2024 and 18-04-2024 whereas these notices were not served upon the appellant.*

- 2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned reassessment order and that too without assuming jurisdiction as per law and without complying with mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.*
- 3. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in passing the impugned reassessment order u/s 147/144B, is illegal, bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.*
- 4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.83,63,200/- by treating it as alleged unaccounted and unexplained income u/s 69 and that too by recording incorrect facts and findings and without observing the principles of natural justice and without considering/appreciating the facts and circumstances of the case.*
- 5. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.83,63,200/- by treating it as alleged unaccounted and unexplained income u/s 69, is bad in law and against the facts and circumstances of the case.*
- 6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the double addition of Rs.83,63,200/- made by Ld. AO.*

7. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not allowing the benefit of carry forward of losses as claimed by the assessee.*
8. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the finding of Ld. AO in treating the return filed u/s 148 as invalid return.”*

2. The assessee also filed the following additional ground in the petition for admission of additional ground under Rule 11 of the Income Tax Appellate Tribunal Rules:

1. *“That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned re-assessment order and that too without issuing the mandatory notice u/s 143(2) within the statutory time and in accordance with law.”*

3. The Ld. Counsel for the assessee submits that the ground raised by the assessee is purely legal and does not require fresh facts to be investigated and goes to the root of the matter and therefore prayed that the additional ground be admitted in view of the decision of the Hon’ble Supreme Court in the case of NTPC Ltd. vs. CIT 229 ITR 383.

4. Heard rival contentions. The additional ground raised by the assessee goes to the root of the very validity of the assessment

framed by the Assessing Officer u/s 144B r.w.s. 147 of the Act and is a purely legal ground and thus the same is admitted for adjudication.

5. The Ld. Counsel for the assessee submitted that assessee has filed return on 28.10.2021 in response to notice issued u/s 148 dated 30.03.2021. However, the Assessing Officer did not issue notice u/s 143(2) of the Act. Ld. Counsel invited our attention to 21 to 22 of the PB which contains the notice issued u/s 148 dated 30.03.2021 and a copy of return filed on 28.10.2021 in response to the notice issued u/s 148 of the Act. Therefore, the Ld. Counsel submitted that non issuance of notice u/s 143(2) makes the impugned assessment order as bad in law. Reliance is placed on the following decisions in support of his contentions:

1. *CIT vs. Laxman Das Khandewal* 417 ITR 325 (SC);
2. *Rajender Kumar Sehgal vs. ITO* 414 ITR 286 (Del.);
3. *PCIT vs. Paramount Biotech Industries Ltd.* 398 ITR 701 (Del);
4. *PCIT vs. Jai Shiv Shankar Trading P. Ltd.* 388 ITR 448 (Del.);
5. *CIT vs. Rajiv Sharma* 336 ITR 678 (All.);
6. *PCIT vs. Staunch Marketing Pvt. Ltd.* 404 ITR 299 (Del).

6. On the other hand, the Ld. DR submitted that the assessee did not file return within the time specified in the notice issued u/s 148 of the Act and therefore the Assessing Officer treated the return as invalid return and since the return was treated as invalid the Assessing Officer need not issue notice u/s 143(2) before completion of assessment.

7. In rebuttal the Ld. Counsel for the assessee submitted that the Hon'ble Jurisdictional High Court in the case of PCIT vs. Staunch Marketing Pvt. Ltd. (supra) held that even in *ex parte* assessment when once return is filed by the assessee in response to notice issued u/s 148 of the Act issuance of notice u/s 143(2) is mandatory even though the assessee failed to furnish return u/s 139 of the Act. Ld. Counsel submits that the Hon'ble High Court held that once return is filed in response to notice u/s 148 of the Act even *ex parte* assessment cannot be made without issue of notice u/s 143(2) of the Act.

8. Heard rival contentions, perused the orders of the authorities below and the case laws relied on by the assessee. In this case, the assessee filed return on 28.10.2021 in response to notice issued u/s 148 of the Act dated 30.03.2021. The Assessing Officer completed the assessment on 30.03.2022 u/s 144 r.w.s. 147 of the Act determining

the income of the assessee at Rs.84,32,240/-. While computing the income the Assessing Officer started with the income declared by the assessee in the return of income of Rs.69,040/- declared by the assessee in the return in response to notice issued u/s 148 of the Act, whereby the Assessing Officer acted upon the return filed by the assessee. The Assessing Officer before completion of assessment u/s 144B r.w.s. 147 of the Act appears to have not issued any mandatory notice u/s 143(2) of the Act. The Revenue also could not show that the Assessing Officer had issued any notice u/s 143(2) of the Act for the assessment year under consideration. Therefore, the question now to be adjudicated this appeal is whether the assessment framed u/s 14B r.w.s. 147 of the Act is a valid assessment in the absence of issue of notice u/s 143(2) of the Act.

9. The Hon'ble Jurisdictional High Court in the case of PCIT vs. Staunch Marketing Pvt. Ltd. (supra) considered almost an identical situation examined "whether the Tribunal fell into error in holding that the assessment for the concerned year was not effective because of lack of notice u/s 143(2) of the Income Tax Act in the given facts of the case" the Hon'ble Jurisdictional High Court decline to answer the question on an appeal filed by the Revenue. The

Hon'ble High Court further affirming the order of the Tribunal held as under:

*“14. In any event, factually the Assessee filed a return pursuant to notice issued u/s 148 of the Act, notwithstanding that it may not have filed a return in the first place u/s 139 of the Act for the assessment year in question. Once a return is filed notice u/s 143(2) of the Act to the assessee is mandatory prior to framing an assessment. The question of framing an assessment ex parte without even issuing a notice u/s 143(2) of the Act did not arise. The mandatory nature of that requirement is settled not only by the decision of the Supreme Court in the case of ACIT Vs. Hotel Blue Moon (supra) but also by a decision of this court in Commissioner of Income Tax-08 vs. Jai Shiv Shankar Traders Pvt. Ltd. (2016) 388 ITR 448 Del.*

*15. For all the aforementioned reasons, the question framed does not arise in the present appeal and is declined to be answered. In any event, the court does not find any substantial question of law arise from the impugned order. The appeal is, accordingly, dismissed.”*

10. In all the case laws relied on by the Ld. Counsel for the assessee which are referred to above, it was held that assessment/reassessment finalized without issue of notice u/s 143(2) of the Act is not a valid assessment/reassessment. Thus, respectfully following the above decisions, we hold that the assessment framed by the AO u/s 144B r.w.s. 147 of the Act for the AY 2016-17 without issue of notice u/s 143(2) is bad in law and *void ab initio* and consequently the same is hereby quashed.

11. Since we have quashed the reassessment allowing the additional ground of appeal filed by the assessee, all other grounds are not adjudicated as they become only academic at this stage.

12. In the result, appeal of the Assessee is partly allowed as indicated above.

Order pronounced in the open court on 30.07.2025

**Sd/-  
(S RIFAUH RAHMAN)  
ACCOUNTANT MEMBER**

**Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER**

Dated: 30.07.2025

*\*Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**