

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.35/RPR/2025  
निर्धारण वर्ष / Assessment Year : 2017-18

Abu Bakar Dhada  
Proprietor of Hasam Usman Basna,  
Main Road, Basna,  
Mahasamund-493 554 (C.G.)  
PAN: AAQPH7130J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-3(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.37/RPR/2025  
निर्धारण वर्ष / Assessment Year : 2017-18

The Deputy Commissioner of Income Tax,  
Circle-1, Raipur (C.G.)

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Abu Bakar Dhada  
Proprietor of Hasam Usman Basna,  
Main Road, Basna,  
Mahasamund-493 554 (C.G.)  
PAN: AAQPH7130J

.....प्रत्यर्थी / Respondent

Assessee by : Shri Veekaas S Sharma, CA  
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 17.07.2025

घोषणा की तारीख / Date of Pronouncement : 07.08.2025

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM:**

The captioned cross-appeals preferred by the assessee and the revenue emanates from the order of the Ld.CIT(Appeals)/NFAC, dated 13.11.2024 for the assessment year 2017-18 as per the grounds of appeal on record.

First we shall take up the appeal filed by the assessee in ITA No. 35/RPR/2025 for A.Y.2017-18 for adjudication.

2. In this case, the Ld. CIT(Appeals)/NFAC had provided relief to the assessee on the ground that as per the remand report, notice u/s. 143(2) of the Income Tax Act, 1961 ( for short 'the Act') has not been issued by

the A.O to the assessee before completion of reassessment order u/s. 143(3) r.w.s. 147 of the Act. In this regard, question was put forth to the Ld. Counsel for the assessee that once the reassessment order has been quashed on the legal validity since notice u/s. 143(2) of the Act has not been served on the assessee before completion of assessment u/s. 143(3) r.w.s 147 of the Act then what else remains for the assessee to be aggrieved before this bench of the Tribunal. The Ld. Counsel answered that just for abundant precaution, he had filed the appeal before the Tribunal.

3. Having heard the submissions of the Ld. Counsel, we are of the considered view that once already relief has been provided by the Ld. CIT(Appeals)/NFAC to the assessee by quashing the reassessment order for non-issuance of notice u/s.143(2) of the Act, therefore, no grievance remains for the assessee, hence, the appeal of the assessee is dismissed as infructuous.

4. In the result, appeal of the assessee in ITA No.35/RPR/2025 for A.Y.2017-18 is dismissed.

**ITA No.37/RPR/2025**  
**A.Y.2017-18**

5. Coming to the appeal of the revenue on the said issue, it would be relevant to extract the relevant findings of the Ld. CIT(Appeals)/NFAC which reads as follows:

“I have considered the rival submissions, perused the material available on record and judicial pronouncements relied upon by the assessee as well as by the assessing officer. In the present case the admitted facts are that the assessee's case was reopened u/s. 147/148 on 20.03.2019 by issuing of notice as per the provisions of the Act and served through post by the Income Tax Officer, Mahasamund. Subsequently, the case was transfer in this office of ACIT-3(1), Raipur on 30.08.2019. In compliance to notice u/s 148 of the Act, assessee filed his return of income through e-filing on 07.08.2019. However, Ld. AO has acted upon the said return and completed the assessment u/s.147 r.w.s. 143(3). But as per remand report notice u/s.143(2) has not been issued by the assessing officer. The assessment order u/s 147 r.w.s. 143(3), the principle of law laid down by Hon'ble Apex Court in various cases based on which coordinate bench of ITAT, Raipur has taken a view in the case of Shri Dev Narayan Sahu (supra) wherein it has been decided that, issuance of notice u/s 143(2) is a sine-qua-non for framing of an assessment u/s 143(3) of the Act, this view is well supported by the judgment of Hon'ble Apex Court in the case of ACIT vs M/s Hotel Blue Moon (2010) 321 ITR 362 (SC), wherein Hon'ble Apex Court has held that issuing of notice u/s 143(2) of the Act is mandatory and not a procedural mistake, if the notice is not served within the prescribed period then assessment order would be invalid. In view of such observations we are of the considered opinion that the order passed u/s 147 r.w.s. 143(3) in the present case was invalid on account of non-issuance of notice u/s 143(2). Thus, in terms of our aforesaid observations the assessment order framed by the Assessing Officer u/s 143(3)/148 of the Act dated 29.12.2019 being devoid and bereft of any force of law is hereby quashed.”

6. The issue involved in the present appeal is no more *res-integra*. The issuance and service of notice u/s. 143(2) is sine-qua-non for framing of assessment u/s. 143(3) of the Act. In this case, notice u/s. 143(2) of the Act has not been served to the assessee by the department. The Ld. Sr. DR could not produce any evidence on record which suggests anything contrary which was already there on record. In other words, the

department could not demonstrate the issuance and service of notice u/s. 143(2) of the Act to the assessee.

7. Considering the totality of the facts and circumstances and judicial pronouncements enshrined in the order of the Ld. CIT(Appeals)/NFAC, we do not find any infirmity in the findings and the relief given by the Ld. CIT(Appeals)/NFAC to the assessee and the same is upheld.

8. As per the above terms grounds of appeal of the revenue are dismissed.

9. In the result, appeal of the revenue in ITA No.37/RPR/2025 for A.Y.2017-18 is dismissed.

10. In the combined result, both the appeal of the assessee and the revenue are dismissed.

Order pronounced in the open court on 7<sup>th</sup> day of August, 2025.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 07<sup>th</sup> August, 2025.

SB, Sr. PS

**आदेश की प्रतिलिपि अग्रहित / Copy of the Order forwarded to :**

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी /The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)

4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.