

IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 26/GTY/2025
Assessment Year: 2015-16

Rajulhoubienuo Angami,

House No. 149, Ward-3, Block-2,

Chumukedima, S.O, Dimapur,

Nagaland - 797103

[PAN: AQKPA9706D]

.....**Appellant**

vs.

National Faceless Assessment

Centre, Delhi

..... **Respondent**

Appearances by:

Assessee represented by : Smriti Sahay, FCA

Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 05.08.2025

Date of pronouncing the order : 11.08.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. In this case, there is a delay of 166 days, which has been requested to be condoned as under:

"1. The Appellant has preferred the present appeal before this Hon'ble Tribunal assailing the order dated 24.06.2024 passed by the Learned Commissioner of Income Tax (Appeals) ["Ld. CIT(A)"]. That the due date for filing the appeal was 24th August, 2024. However, there has been an unintentional delay of 166 days (upto 13th February, 2025), in filing the present appeal, for which the Appellant, with utmost humility, seeks the indulgence of this Hon'ble Tribunal for condonation of the said delay on the grounds set forth herein.

2. It is submitted that the Mr. Shivendu Maharaj is the accountant of the Appellant who looks after the tax portal and email updates. The accountant also forwards the needful to the Chartered Accountant, Mr. Ajit Jain, to take necessary action in response to any notice that is received.

3. It is submitted that, the Ld. CIT(A) issued notices dated 29.04.2024; 15.05.2024 and 24.05.2024 for adjudication of proceedings

4. However, the Appellant was neither informed by the said Accountant regarding the notices nor forwarded the notices to Mr. Ajit Jain, Chartered Accountant for further action. Consequently, the appeal before the Ld. CIT(A) was dismissed for non-prosecution on 24.06.2024, a fact that came to the Appellant's knowledge only upon random checking of the income tax portal.

5. Upon learning of the dismissal, the Appellant, with due diligence, sought professional assistance for the appellate proceedings before the Hon'ble Income Tax Appellate Tribunal. It is further submitted that Mr. Ajit Jain did not handle Tribunal matters, the Appellant had to engage another professional competent in handling appellate litigation at this level.

6. Subsequently, Mr. Ajit facilitated the Appellant in securing the services of a lawyer in Delhi, who regularly practices before the Income Tax Appellate Tribunal and High Court, for representing the Appellant before this Hon'ble Tribunal.

7. It is humbly submitted that the delay in filing the present appeal is neither intentional nor attributable to any negligence on the part of the Appellant but is solely due to the aforementioned genuine and unavoidable circumstances. That the appellant has a meritorious case on merits and that the same ought not be dismissed on the grounds of bona fide delay. The Appellant has, at all times, acted with bona fide intent and exhibited due diligence in pursuing her legal remedies.

8. It is a well-settled principle of law that procedural technicalities should not impede the dispensation of substantive justice. Further, the Hon'ble Courts have consistently taken liberal and pragmatic approach in condoning the delays, where, sufficient cause has been demonstrated to the satisfaction of the Hon'ble Court(s)/Tribunal.

9. In view of the foregoing circumstances, the Appellant most humbly prays that this Hon'ble Tribunal may be pleased to condone the delay of 166 days, in filing the present appeal and permit its adjudication on merits, in the interest of justice, equity, and fair play.

PRAYER

In light of the foregoing, the Appellant most respectfully prays that this Hon'ble Tribunal may be pleased to:

a) Condone the delay of 166 days, in filing the appeal against the order of the Ld. CIT(A); and

b) Grant such further and other reliefs as this Hon'ble Tribunal may deem just, proper, and necessary in the facts and circumstances of the present case.”

1.1 Considering the reasons given in the said petition, the delay is hereby condoned and the appeal is admitted for adjudication.

2. The present appeal emanates from the order under Section 250 of Income Tax Act, 1961 (hereafter “the Act”) passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)”], dated 24.06.2024.

2.1 In this case, reassessment proceedings under Section 147 of the Act were finalised on 29.03.2022, after making an addition of Rs. 77,99,220/- under Section 69A of the Act. Admittedly, the assessee belongs to Naga Tribes covered under the provision of section 10(26) of the Act. A reading of the Ld. AO's order reveals that neither was any return of income filed by the assessee nor did the assessee comply with any of the notices issued fixing the case for hearing. A similar situation prevailed at the level of Ld. CIT(A) where it is recorded in para 5.1 at page 3 of the impugned order that three notices given from his office were not complied with and thereafter the Ld. CIT(A), also passed an exparte order.

2.2 Aggrieved with this action of the Ld. CIT(A), the assessee has filed the present appeal with the following grounds:

“1. That in the facts and circumstances of the case, the impugned final assessment order dated 29.03.2022 passed by Ld. AO under section 147 r.w.s. 144 r.w.s. 144B of the Act of the Income Tax Act, 1961 (the Act) is without jurisdiction, non-est, illegal and bad in law.

2. That in the facts and circumstances of the case and in law, the impugned order dated 24.06.2024 passed by Ld. CIT(A), bearing DIN & Order No. ITBA/NFAC/S/250/2024-25/1065976207(1) is in violation to the principal of natural justice as the same was passed without providing any opportunity of being heard to the Appellant.

3. That in the facts and circumstances of the case and in law, the mandatory issuance of notice under section 143(2) of the Act has not been complied in the present case. Therefore, the entire re-opening proceedings under section 147 r.w.s. 148 of the Act as well as the impugned order dated 24.06.2024 is invalid, non-est and without merits.

4. That in the facts and circumstances of the case and in law, the non-sharing of "reason to believe" make the entire reassessment proceedings negatory and without jurisdiction. Therefore, the impugned reopening notice under section 148

as well as the consequential proceedings under section 147 of the Act must be quashed.

5. That in the facts and circumstances of the case and in law, the impugned addition of INR 77,99,220 made under section 69A of the Act is grossly untenable, without merits and lacks proper jurisdiction. Therefore, the addition of INR 77,99,220/- must be deleted.

6. Without prejudice to the above, that in the facts and circumstances of the case and in law, the Ld. AO and the Ld. CIT(A) grossly failed to consider the submission of the Appellant that the cash deposit is the daily collection from the business of petrol pump & stone crusher unit of the Appellant. The Appellant is doing the business under the name & style of M/s Rashmi Filing Station and M/s R. Angami Stone Crusher, respectively.

7. That in the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the impugned order dated 29.03.2022 passed by Ld. AO under section 147 r.w.s. 148 is in violation to the SOP dated 03.08.2022, bearing no. NFAC/Delhi/CIT-1/2022-23/112/92, issued by CIT-1, National Faceless Assessment Centre

8. Without prejudice to above, the Ld. AO as well as Ld. CTT(A) failed to appreciate that the Appellant is a Schedule Tribe under clause (25) of Article 366 of the Constitution of India and that her income is exempted from tax by virtue of section 10(26) of the Act. Therefore, the addition of INR 77,99,220/- made by Ld. AO under section 69A of the Act is unwarranted.

9. That in the facts and circumstances of the case and in law, the prior approval of La PCIT under section 151 of the Act is mechanical, arbitrary and without application of mind. Furthermore, the Ld. AO grossly failed to share the copy of prior approval accorded under section 151 by the PCIT. Consequently, the entire proceedings under section 147 r.w.s. 148 of the Act is invalid and without jurisdiction of law.

10. The appellant craves leave to add, alter, amend and/or delete all or any of the ground of appeal.”

3. Before us, the Ld. AR vehemently argued that opportunities provided by the Ld. CIT(A) were only over a period of one month as is clear from the fact that the first notice was issued on 29.04.2024 and the last notice was issued on 24.05.2024. The Ld. AR argued that the Ld. AO's order was bad in law since no notice under Section 143(2) of the Act was given even though in response to notice under Section 148 of the Act an ITR was filed on 19.01.2022. The Ld. AR drew our attention to the relevant recording of fact by the Ld. AO as under:

“The assessee was required to file ROI within one month of receipt of notice. But, the assessee has filed ITR only on 19.01.2022 in response to notice u/s 148 of the Act.

*Since the ROI is filed after 11 months of issue of notice, the return is treated as **non-est** (emphasis added) and the assessment is completed u/s.144 of the Act. The income disclosed in the ITR filed is taken for the computation of income.”*

3.1 The Ld. AR thereafter argued with respect to Ground Nos. 3 and 4 by stating that the entire proceedings were vitiated since the notice under Section 143(2) of the Act was not issued. The Ld. AR relied on the case of Hotel Blue Moon reported in 321 ITR 362 (SC), to canvass the point that without a notice under Section 143(2) of the Act, the Ld. AO could not have passed an order of re-assessment.

3.2 The Ld. DR, on the other hand, pointed out that the assessee was non-compliant throughout and these issues could have been threshed out at the first appellate stage since the facts were involved. The Ld. DR accordingly relied on the orders of the authorities below.

4. We have carefully considered the rival submissions and have perused the records before us. We have also gone through the cases relied upon by the Ld. AR and we have reviewed the judicial literature on the subject of issuance of notice under Section 143(2) of the Act in case any assessment has to be completed under Section 147 of the Act. It is seen that in the case of Broadway Shoe Co. reported in 99 taxmann.com 83 (Jammu & Kashmir), the following paragraphs are illuminating:

“6. We have considered the submissions made by the learned counsel for the Revenue and have perused the record. Section 148 of the Act permits issuance of 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 assessee being served a notice under such provisions, whereupon the provisions of this Act shall, so far as it may be, apply accordingly as if such return were a return required to be furnished under Section 139 of the Act. Section 143 of the Act pertains to an assessment and its opening words referred to "a return being made under Section 139 of the Act or in response to a notice under Section 142(1) of the Act. Thus plain reading of Section 143(2) of the Act, which talks about issuance of notice where return has been furnished and Section 148(1) of the Act, which talks about return filed in response to notice being treated as return under Section 139, makes it clear that the procedure prescribed in Section 143(2) becomes applicable only when a return has been furnished.

7. The Supreme Court in the case of Hotel Blue Moon (supra) in paragraph 15 held as under:—

"Paragraph 15 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 the 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."

Thus, it is evident that ratio laid down by the Supreme Court in the aforesaid decision is that a notice under Section 143(2) is mandatory, if the return as filed is not accepted and an assessment order is to be made at variance with the return filed by the assessee. The aforesaid decision would not apply to a case where no return is filed by the assessee as would be axiomatic from plain reading of Section 143(2) of the Act also. It is also pertinent to mention here that in Madhya Bharat Energy Corpn. Ltd. and Vision Inc. (supra) the assessee had filed the original return in response to the notice under Section 148 of the Act. Therefore, the aforesaid decisions have no application to the obtaining factual matrix of the case where assessee admittedly did not file the return."

4.1 Furthermore, in the case of Padinjarekara Agencies (P.) Ltd. reported in 85 taxmann.com 129 (Kolkata) the following is recorded:

"9. Section 147 of the Income Tax Act provides for assessment of income escaping assessment. Such assessment has to be in terms of Section 148, which provides for recording of reasons and issue of notice where income has escaped assessment. This Section, inter alia, provide that before making an assessment, reassessment or re-computation under Section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish a return of his income which is assessable under the Act during the previous year corresponding to the relevant assessment year and that the provisions of the Act shall so far as may be applied accordingly as if such a return where such a return required to be furnished under Section 139. In the context of the assessment under Section 147 courts have taken the view that notice under Section 147(2) is required to be issued to the assessee. See in this connection, the judgment of the Delhi High Court in Alpine Electronics Asia Pte Ltd. v. DGIT [2012] 341 ITR 247/205 Taxman 190/18 taxmann.com 246 vide paragraph 24 thereof.

10. Section 143(2) shows that the purpose of issuing a notice thereunder is to require the assessee to produce, or cause to be produced, any evidence on which the assessee may rely, in support of the return filed by him. That a notice under Section 143(2) is a mandatory requirement and is not an empty formality has been clarified by the Apex Court in its judgment in Hotel Blue Moon's case (supra) and that judgment has been followed by this court in the judgment in Travancore Diagnostics (P.) Ltd. case (supra).

11. However, insofar as this case is concerned, question to be considered is whether the omission to mention Section 143(2) literally in any one of the notices issued to the assessee would invalidate the assessment order. While in this context, it is relevant to take note of the Division Bench judgment of this court in K. J. Thomas v. CIT [2008] 301 ITR 301, where a Division Bench of this court has held thus:

The appellant himself had produced annexure A-I which is the reply filed by him pursuant to the details called for by the Assessing Officer. It is seen from annexure A-I that the entire questions raised and considered in the reassessment was answered by the assessee. However, the assessee has written in paragraph 7 of the said reply that he was not issued any notice under Section 143(2) of the Act. In the normal course, a detailed reply in this nature is furnished only after issuing a notice under section 143(2) of the Act. In any case, we find that after the assessee filed annexure A I reply, no further notice is required, because reply was already filed by the appellant. The procedure under Section 143(2) of the Act is to ensure that an adverse order is issued only after proper opportunity is given to the assessee. In this case, it is conceded that the assessee got opportunity to file reply and detailed reply was in fact filed and the reassessment notice and the final order were also issued within the time limit prescribed under the Act.

12. From the above, it is obvious that the procedure under Section 143(2) is intended to ensure that an adverse order is passed against the assessee only after affording the assessee a proper opportunity. Therefore, the question to be considered is whether the assessee in this case had such an opportunity. It is in this context, the notices that were issued to the assessee assumes importance. Reading of the reasons recorded and communicated to the assessee, Annexure E notice posting the case, and Annexure I notice, show that the assessee was put on notice the inadmissibility of the reduction from the total income made by it and the assessee by its Annexure C objections, F reply and the reply filed by it to Annexure I notice had justified the deduction made by it. Further before Annexure K assessment order was passed, the assessee was afforded an opportunity of hearing also. Evidently, therefore, the assessee had ample notice of the case it had to answer and the assessee availed of those opportunities by answering the case against it. In such a situation, we are not prepared to think that there was absence of notice under Section 143(2) or that any prejudice was caused to the assessee in defending the case against it. We are not, therefore, prepared to think that the assessment order is invalid on the ground contended by the assessee.”

4.2 In both the cases, the Hon'ble High Courts have considered the case of Hotel Blue Moon (supra) and have given a clear finding that the notice under Section 143(2) of the Act, clearly spelling out the said provision either may not be necessary in case other opportunities of being heard have been provided or may not be necessary in case an invalid return has been filed. In this case, the Ld. AO has clearly recorded in para 5 at page 2 of his order that he is treating the belatedly filed return as “**non-est**”. In light of these case laws and the peculiar facts of this case, we are of the prima facie view that the assessment per se would not be vitiated in terms of the claim of the assessee with respect to Ground No. 3. However, we are also conscious of the fact that either adequate opportunity was not

provided to the assessee or the opportunity provided was not availed of by the assessee. Accordingly, we deem it fit to set aside the impugned order and remand this matter back to the file of Ld. CIT(A) for fresh adjudication on both the legal issues and the factual issues. This is required because it is seen that before the Ld. CIT(A) no legal grounds were taken and thus consequently the first appellate authority had no opportunity to adjudicate the same. Thus, even at the expense of repetition, it deserves to be held that the Ld. CIT(A) would dispose of the legal issues in the light of case laws relied upon by the assessee and the case laws mentioned in paras 4 and 4.1 (supra). Thereafter, the Ld. CIT(A) would also dispose of the case on merits, even if a remand report is to be called from the Ld. AO.

5. With these remarks, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 11.08.2025

Sd/-
[Manomohan Das]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 11.08.2025

AK, Sr. PS

Copy of the order forwarded to:

1. The Appellant
2. The Respondent
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches