

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE MS SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.143/SRT/2025

Assessment Year: (2012-13)

(Hybrid hearing)

Pramodbhai Bhikhubhai Desai, Desaiwad, Palsana, Udwada RS Udwada, Valsad - 396210	Vs.	The ITO, Ward – 7, Vapi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ATPPD1828D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Rajesh Upadhyay, AR
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	15/07/2025
Date of Pronouncement	19/08/2025

**आदेश / O R D E R**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 28.01.2025 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2012-132.

2. Grounds of appeal raised by the assessee are as under:

*"1. On the facts and circumstances of the case, as well as law on the subject, the Learned Assessing Officer has erred in re-opening the assessment u/s 148.*

*2. On the facts and circumstances of the case, as well as law on the subject, the Learned Assessing Officer has erred in making addition of Rs. 3,34,000/- on the ground of cash deposit in bank account.*

*3. On the facts and circumstances of the case, as well as law on the subject, the Learned Assessing Officer has erred in making addition of Rs. 22,332/-.*

*4. That the assessing officer erred in charging interest u/s 234 of the Act.*

*5. The Appellant prays for granting such other relief as may be deemed just and proper by Your Honour considering the factual and legal aspects of the case of the appellant.*

*6. The Appellant craves leave to add, alter, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal on or before the final hearing, if necessity so arises.”*

3. The facts of the case in brief are that the assessee had filed his return of income, declaring total income at Rs.1,30,000/-. It was seen that the assessee had invested Rs.5,00,000/- in mutual fund. The Assessing Officer (in short, 'AO') observed that the case was within Explanation 2(b) of section 147 of the Act. After recording the reasons and taking approval from appropriate authority, notice u/s 148 of the Act was issued on 29.03.2019. In response, the assessee e-filed the return of income on 30.04.2019, declaring total income of Rs.1,07,670/-. The AO supplied reasons for re-opening. He observed that assessee had not completed the verification process and hence, no notice could be generated u/s 143(2) of the Act. Thereafter, he issued notice u/s 142(1) and show cause notice and completed the assessment u/s 144 r.w.s. 147 of the Act on 20.10.2019 by adding Rs.3,34,400/- and Rs.22,232/-. The total income was determined at Rs.4,64,000/- as against returned income of Rs.1,07,667/-.

4. Aggrieved by the order of AO, the assessee filed appeal before CIT(A). The CIT(A) dismissed the grounds raised by the appellant on validity of the re-opening of assessment by issue of notice u/s 148 as well as the merits of the addition.

5. Aggrieved by the order of CIT(A), the assessee filed the present appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee filed a paper book, which includes various details and submissions made before the lower authorities. The Id. AR also relied on the decision of ITAT, Delhi in case of Shri Dheer Singh vs. ACIT, in ITA No.3861 to 3865/Del/2013, dated 30.05.2014. The Id. AR submitted that no notice u/s 143(2) of the Act was issued by the AO and hence, the order passed u/s 144 r.w.s 147 of the Act is bad in law.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) of the revenue submitted that assessee had originally filed return of income on 29.03.2014, declaring total income of Rs.1,30,000/-. Subsequently, he filed a return u/s 148 of the Act on 30.04.2019, declaring income of Rs.1,07,670/-. Since return was not verified, notice u/s 143(2) of the Act could not be generated. Hence, the order has been rightly made u/s 144 r.w.s. 147 of the Act.

7. We have heard both the parties and perused the materials available on record. We have also deliberated on the decision relied upon by the Id. AR. It is seen that assessee had filed original return of income on 29.03.2014, declaring total income of Rs.1,30,000/-. Pursuant to the notice issued u/s 148 of the Act, he filed return on 30.04.2019, declaring income of Rs.1,07,670/-. Thereafter, notice u/s 142(1) of the Act and show cause notice were issued by the AO. However, no notice u/s 143(2) of the Act was issued. After considering reply of the assessee, the AO completed the assessment u/s 144 r.w.s. 147 of the Act,

determined total income of Rs.4,64,00/-. The Id. Sr. DR submitted that notice u/s 143(2) of the Act could not be issued since the return filed u/s 148 of the Act was not verified and, therefore, the return remained non-est. However, we find that the AO himself has taken the total income as per the return at Rs.1,07,668/- while computing the total income at para 10 of the impugned order. Therefore, the income declared in the e-filed return u/s 148 of the Act on 30.04.2019 has been taken as the base for making the assessment. Hence, the AO was required to issue notice u/s 143(2) of the Act or making a valid assessment. The Hon'ble Supreme Court in the case of ACIT vs. Hotel Blue Moon, 321 ITR 362 (SC) held that omission on part of AO to issue notice u/s 143(2) cannot be a procedural irregularity and is not curable. It has also been held that service of notice u/s 143(2) within the period prescribed is mandatory in nature and not an empty formality; in the absence of which, assessment proceedings will come to an end. Reference may be made to the decisions in cases of Harsingar Gutka Pvt. Ltd. vs. CIT, 22 taxmann.com 713 (All.) and Padinjarekara Agencies Pvt. Ltd. vs. CIT, 85 taxmann.com 129 (Ker.). Since notice u/s 143(2) of the Act was undisputedly not issued in this case, respectfully following the decisions cited supra, we hold that the order passed by the AO is not valid in the eyes of law and, hence, it is liable to be set aside. Accordingly, the ground is allowed.

8. The assessee has raised various other grounds challenging the additions made in the order of re-assessment. Since we have already set aside the order of re-assessment, these grounds do not survive for adjudication.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on

19/08/2025

Sd/-  
(SUCHITRA R. KAMBLE)  
JUDICIAL MEMBER

Sd/-  
(BIJAYANANDA PRUSETH)  
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 19/08/2025

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

**// TRUE COPY //**

Assistant Registrar/Sr. PS/PS  
ITAT, Surat