

**IN THE INCOME TAX APPELLATE TRIBUNAL 'DB' BENCH, GUWAHATI  
(Virtual hearing at Kolkata)**

**BEFORE SHRI RAJESH KUMAR, AM  
AND  
SHRI MANOMOHAN DAS, JM**

**ITA No. 139/GTY/2025  
(Assessment Year:2017-18)**

**John Chhetri**

C/o S.N. Ghosh & Associates,  
Advocates 2, Garstin Place, 2<sup>nd</sup>  
Floor, Suite No.203, Off hare  
street, Kolkata-700001,  
West Bengal

**(Appellant)**

**Vs.**

**ITO, Ward 1(2), Ghy**  
Aayakar Bhavan, Guwahati,  
G.S. road, Christian Basti,  
Guwahati, Assam-781005

**(Respondent)**

**PAN No. AWJPC4246K**

**Assessee by** : Shri Somnath Ghosh, AR  
**Revenue by** : Shri Kausik Ray, DR

**Date of hearing:** 02.09.2025  
**Date of pronouncement:** 02.09.2025

**ORDER**

**Per Rajesh Kumar, AM:**

This appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 29.03.2025 for the A.Y. 2017-18.

02. At the time of hearing, the Id. Counsel for the assessee raised an additional ground before us, challenging the validity of assessment framed u/s 147 read with section 144 of the Act dated 28.03.2022.
03. After hearing the rival contentions and perusing the material on record, we find that the assessee has raised an additional ground of appeal challenging the jurisdiction of the AO to make addition. In our opinion the issued raised in the additional ground is a purely a legal issue qua

which all the facts are available in the appeal folder and no further verification of facts are required from any quarter whatsoever. In our considered view the assessee is at liberty to raise any legal issue before any appellate authority for the first time even when the same has not been raised before the lower authorities. The case of the assessee is squarely covered by the decisions of the Apex court in the case of i) Jute Corporation of India Ltd. Vs CIT in 187 ITR 688, ii) National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383 and also by the decision of Hon'ble Calcutta High Court in PCIT vs. Britannia Industries Ltd. [2017] 396 ITR 677 (Cal). Therefore, we are inclined to admit the same for adjudication.

04. The facts in brief are that the notice u/s 148 of the Act was issued on 24.03.2021, by ITO Ward-1(2), Guwahati. The assessee complied with the said notice by filing the return of income on 20.12.2021. Thereafter, notice u/s 142(1) of the Act dated 02.11.2021 along with questionnaire was issued to the assessee by ITO Ward 1(2), Guwahati. Notice u/s 143(2) read with section 147 of the Act was issued by the Id. AO, National faceless assessment center (Delhi), on 21.02.2022. Thereafter, the show cause notice was issued on 18.03.2022 by national faceless assessment center calling for various details and information from the assessee. Finally, the assessment was framed by the Id. AO vide order dated 28.03.2022, passed u/s 147 read with section 144 / 144B of the Act.
05. The Id. AR vehemently submitted before us that the order passed by the NFAC is without jurisdiction as though the provisions dealing with the faceless assessment of income escaping the assessment u/s 151A of the Act was brought on statute book by taxation and other law (relaxation and amendment of certain provisions) Act, 2020, with effect from 01.11.2020, however, the counsel of the assessee vehemently

submitted before us that though the provisions of Section 151A of the Act came on the statute book on 01.11.2020 but the same were notified on 29.03.2022 vide notification no. 18/2022 on e-assessment of income escaping income of 2022. Therefore, the Id. Counsel for the assessee submitted that the assumption of jurisdiction by the National faceless assessment center was without valid jurisdiction as the provisions of Section 151A of the Act had not come into operation on that date and therefore, the whole of assessment is without jurisdiction and not sustainable in law.

06. The Id. DR on the other hand submitted that the assessment have been framed by the NFAC after notice u/s 143(2) of the Act and show cause notice were issued as the Provisions of Section 151A of the Act was brought on the statute book with effect from 1.11.2020. Therefore, the legal issue raised by the assessee may kindly be dismissed.
07. After hearing the rival contentions and perusing the materials available on record, we find that the Section 151A of the Act deals with the faceless assessment or income escaping assessment and was brought on the statute book by taxation and other law (relaxation and amendment of certain provisions) Act, 2020, with effect from 01.11.2020 which was notified on 29.03.2022 vide notification no.18/2022/F. No. 370142/16/2022-TPL(Part)]. Therefore, the issuance of notice u/s 143(2) of the Act and show cause notice and thereafter framing of assessment by the NFAC, in our opinion, is without jurisdiction as the Provisions of Section 151A of the Act were with effect from 29.03.2022. In considered opinion the assessment framed is without jurisdiction and cannot be sustained. The case of the assessee is squarely covered by the decision of the co-ordinate in case of MD Mahimud SK Vs. ITO in ITA no. 2230 & 2229/KOL/2024 vide order dated

04.03.2025, wherein the co-ordinate Bench has decided the issue by observing and holding as under: -

"11. We have perused the section of Section 151A of the Act, which deals with the faceless assessment of income escaping assessment and was brought on the statute book by taxation and other law (realization and amendment of certain provisions) Act, 2020, with effect from 01.11.2020 which was notified on 29.03.2022 vide notification no.18/2022/F. No. 370142/16/2022-TPL(Part)]. Therefore, the assessment proceedings were taken by the National Faceless Assessment Centre, Delhi by issuing notice u/s 142(1) dated 09.02.2022 and thereafter the assessment was framed accordingly after issuing show cause notice which in our opinion is without jurisdiction. The provisionw of Section 151A of the Act were brought on the statute book with effect from 01.11.2020. However, the same were made effective and applicable with effect from 29.03.2022 vide notification no. when the CBDT notified the new scheme for assessment of income escaping assessment scheme, 2022. In our considered view the assessment framed is without jurisdiction and cannot be sustained. The case of the assessee find force from the decision of Nabiul Industrial Metal Pvt. Ltd., Paschim Medinipur VS. I.T.O., in ITA no. 1328/KOL/2024 for A.Y. 2017-18, the order dated 15.10.2024, wherein a similar issue has been decided in favor of the assessee. For the sake of ready reference, the notice issued u/s 142(1) dated 09.02.2022 and show cause notice dated 17.03.2022, are extracted below:-



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
National Faceless Assessment Centre  
Delhi



To, MD MAHIMUD SK S/O ABDUL RAJJAK VILL-KISMAT NARAYANPUR,PO- SRIRAMPUR SD-ENGLISHBAZAR MALDA 732216,West Bengal	
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PAN: BQYPS8209L	Assessment Year: 2015-16	Date: 09/02/2022	DIN: ITBA/AST/F/142(1)/2021- 22/1039573181(1)
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Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

Dear Taxpayer,

Kindly refer to ongoing assessment proceedings in your case for A.Y. 2015-16 under Faceless Assessment Scheme, 2019.

2. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year 2015-16.
3. You are requested and required to kindly furnish or cause to be furnished on or before 12/02/2022 by 04:47 PM, the accounts and documents specified in the Annexure to this notice.
4. The accounts or documents, as mentioned above, are required to be submitted online electronically in 'E-proceedings' facility through your account in e-Filing website ([www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in))

Yours faithfully,

Additional / Joint / Deputy / Assistant Commissioner of Income Tax,  
National Faceless Assessment Centre,  
Delhi



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
National Faceless Assessment Centre  
Delhi



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To,  
MD MAHIMUD SK  
S/O ABDUL RAJJAK VILL-KISMAT  
NARAYANPUR ,PO-SRIRAMPUR SD-  
ENGLISHBAZAR  
MALDA 732216 ,West Bengal  
India

PAN: BQYPS8209L	Assessment Year: 2015-16	Date: 17/03/2022	DIN: ITBA/AST/F/147(SCN)/2021- 22/1040949460(1)
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**Show cause Notice as to why the proposed variation should not be made**

Ms/ Mr/ M/s,

1. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year **2015-16**.
2. The variations as per the draft assessment order may be seen which are proposed to be made in your case:-

Credible information had been received for the FY 2014-15 relevant to AY 2015-16, that the assessee had aggregated credit turnover is Rs. 16.99 lacs and debit turnover is 16.99 lacs during the period 01.04.2014 to 31.03.2015 in the bank accounted maintained in Bank of Baroda bearing a/c no. 39920100006975. Prima facie there was reason to believe that the assessee had total credit/deposit in bank account during the FY 2014-15 relevant to AY 2015-16 is Rs. 38,65,557/-, which has escaped assessment within the meaning of section 147 of the Act. Assessment proceedings u/s 147 were initiated after recording reasons and seeking prior approval of Pr. Commissioner of Income-tax. Accordingly, statutory notice U/s 148 of the Act was issued & sent to the assessee by DIN & Document No. ITBA/AST/S/148/2020-21/1032066973(1) dated 31.03.2021 through E-mail requiring the assessee to file his Income Tax Return for the A.Y 2015-16 within 30 days of service of the said notice. In compliance of notice u/s 148, the assessee filed her return of income vide acknowledgement No. 345878730280421 dated 28.04.2021 declaring an income of Rs. 2,25,800/-. During the year under consideration the assessee earned income under the Head Income from Business and Income from other Sources. Statutory notices u/s 143(2), 142(1) alongwith questionnaire were issued to assessee.

2. During the course of assessment proceedings it has been noticed that assessee had deposited cash in Bank of Baroda bearing a/c no. 39920100006975 and in State Bank of India bearing A/c No. 31561107456. In response to notice u/s 143(2) dated 29.06.2021, assessee submitted his reply dated 11.08.2021 stating that he has filed his return of Income for the AY 2015-16 showing a turnover of Rs. 25,46,080/- and Net Profit u/s 44AD of Rs. 2,25,780/- besides this assessee receives S/B interest of Rs. 3,280/- during the A.Y. 2015-16. He is doing mainly labour Contract business on the different part

of the country and sometimes in local basis. He receives cash from different contractee and paid to the daily workers on cash basis. Whenever, he does not receive any contract he deposited the cash in the bank accounts and later on he again withdraws cash from Bank and pay the daily workers if he receive any contract work. Notice u/s 142(1) dated 29.12.2021 was issued to the assessee to furnish detailed computation of income, brief note indicating the nature of business/professional activities carried out by him and explain the source of cash deposit in the above said accounts. In response to notice u/s 142(1) dated 29.12.2021, assessee did not submit his reply. After that, again a notice u/s 142(1) dated 09.02.2022 was issued to furnish detailed computation of income, copy of cash flow statement, details of contract made with documentary evidence and details of payment to the labour with documentary evidence. But, assessee again did not submit his reply.

3. A final show cause notice u/s 144 of the I.T Act, 1961 was issued to the assessee on 23.02.2022 for the sake of natural justice and providing one more and last opportunity to explain requesting him to furnish the requisite details on or before 25.02.2022. The assessee again failed to furnish any reply.

4. It is a part of record that during the course of assessment proceedings sufficient opportunity and reasonable time was granted to the assessee but he did not bother to comply with the notices and to provide the vital information /documents so as to enable the assessing officer to complete the assessment. Needless to mention here that when a statutory notice has been issued, it is the duty of the assessee to respond and to furnish the required information. Further, while scrutinizing the case it would be of great importance to have an idea about assessee's intention behind the non co-operation. The immediate idea that can be formed is that the assessee might have taken it beneficial to evade the proceedings rather than to co-operate in furnishing the information to avoid further investigation in the matter. Therefore, in the absence of relevant reply from the assessee, the matter is being decided as per the record available.

5. After pursuing the reply of the assessee and the return of the income filed u/s 148 that the assessee is deriving income from the business and income from other sources. After considering the reply of the assessee, the reply is not found tenable because the assessee has not produced proper books of account coupled with non-production of documentary evidence of contract business. Hence, cash deposited in Bank of Baroda bearing a/c no. 39920100006975 amounting to Rs. 16,96,682/- and in State Bank of India bearing A/c No. 31561107456 amounting to Rs. 4,09,500/- totaling to Rs. 21,06,182/- is treated as unexplained credit entries in book of the assessee and accordingly, addition of Rs. 21,06,182/- is proposed to be added back to the income of the assessee u/s 69A r.w.s. 115BBE of the Income Tax Act, 1961 Penalty proceedings u/s 271(1)(c) of the Income tax act, 1961 for inaccurate particulars of the income are initiated separately.

Returned Income	Rs. 2,25,800/-
Add:- as per para 5	Rs. 21,06,182/-
Assessed Income	Rs. 23,31,982/-

Issue Penalty notice u/s 271(1)(c) and 271(1)(b) of the Income Tax Act, 1961.

Assessed issue requisite documents to the assessee.

This order is being passed u/s 147/143(3) r.w.s. 144B of the I.T. Act, 1961.

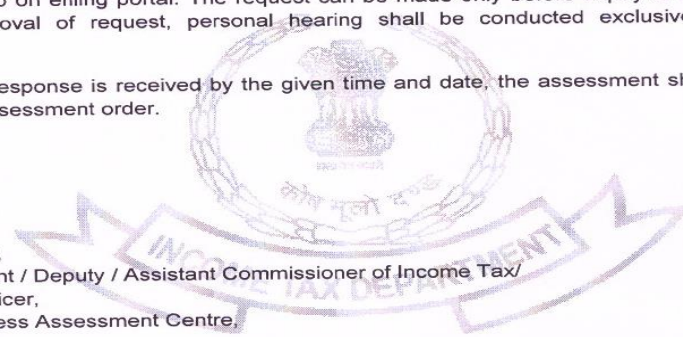
You are hereby given an opportunity to show cause why proposed variation should not be made and the assessment should not be completed accordingly.

3. Kindly submit your response through your registered e-filing account at [www.incometax.gov.in](http://www.incometax.gov.in) by 23:59 hours of 21/03/2022, whereby you may either:-

- a. accept the proposed variation; or
- b. file your written reply objecting to the proposed variation; or
- c. If required, after filing written reply you may request for personal hearing so as to make oral submissions or present your case. The request **can only be** made by clicking the Seek Video Conferencing button available against the SCN, in the view notices of this proceeding in the e-proceedings tab on e-filing portal. The request can be made only before expiry of compliance date & time. On approval of request, personal hearing shall be conducted exclusively through video conference.

4. In case no response is received by the given time and date, the assessment shall be finalized as per the draft assessment order.

Yours faithfully,  
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/  
Income-tax Officer,  
National Faceless Assessment Centre,  
Delhi



12. *Considering the above facts and legal position, we are of the considered opinion that the order passed by the NFAC, Delhi is without jurisdiction and is hereby quashed. The appeal of the assessee is allowed.*

13. *The additional ground raised in ITA No. 2230/Kol/2024 A.Y.2017-18 is similar to one as decided by us in ITA No. 2229/Kol/2024 A.Y. 2015-16. Therefore, our decision would, mutatis mutandis, apply to this appeal as well. The appeal of the assessee is allowed.*

14. *In the result, the appeal of the assessee is allowed."*

08. In view of the above facts and circumstances, we are inclined to quash the assessment framed by the Id. AO/ NFAC.

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

Order pronounced in the open court on 02.09.2025.

Sd/-  
(MANOMOHAN DAS)  
(JUDICIAL MEMBER)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 02.09.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

True Copy//

BY ORDER,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Guwahati