

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA No. 2204/Del/2025
Assessment Year: 2018-19**

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| Pooja Goel, D-13, A/6, Model Town-III, New Delhi. PAN: AGYPG 8307 L | <u>Vs</u> | Income Tax Officer, Ward-35(1), Delhi. |
| APPELLANT | | RESPONDENT |
| Assessee represented by | Shri Suresh Gupta, CA | |
| Department represented by | Shri Rajesh Mahajan, Sr. DR | |
| Date of hearing | 28.08.2025 | |
| Date of pronouncement | 28.08.2025 | |

ORDER

PER SATBEER SINGH GODARA, J.M:

This assessee's appeal for assessment year 2018-19 arises against National Faceless Appeal Centre (NFAC) Delhi's order dated 24.02.2025 [DIN & Order No. ITBA/NFAC/S/250/2024-25/1073630403(1)] in proceedings u/s 147 r.w.s. 144 of the Income-tax Act, 1961, hereinafter referred to as the 'Act'.

Heard both the parties. Case file perused.

2. It transpires at the outset that the assessee/appellant herein challenges the validity of the impugned section 147 r.w.s. 144 r.w.s. 144B assessment dated 23.03.2023 itself for want of issuance of section 143(2) notice which has been held as mandatory in hon'ble apex court's landmark decision in ACIT vs. M/s Hotel Blue Moon (2010) 321 ITR 362 (SC). There is further no dispute between the

parties that learned assessing authority had issued notice u/s 148, dated 29.03.2022, requiring the assessee to file return in response thereof. There is again no quarrel that the assessee chose to file the return on 30.04.2022 followed by the above assessment getting framed in her case on 23.03.2023.

It is in this factual backdrop that the assessee's vehement contention before us is that the impugned assessment is not sustainable in the eyes of law as the assessing authority had never issued its section 143(2) notice before framing the same. The Revenue, on the other hand, vehemently argues that gives the fact that the assessee's return was beyond its stipulated time of 30 days in the Assessing Officer's 148 notice, no such compliance is mandatory any more as per learned lower authorities' respective findings.

3. We have given our thoughtful consideration to the foregoing rival submissions. The first and foremost issue herein is the validity of the impugned assessment for want of issue of section 143(2) notice (supra). We note that the very issue arose recently before the learned coordinate bench in ITO v. Artistic Finance Pvt. Ltd. ITA No. 2781/Del/2023 dated 08.05.2025 which stands decided in the assessee's favour as follows:

“3. The assessee on the other hand, filed application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 (“the Rules”) to contend that the assessment order framed under s. 144 r.w.s. 147 r.w.s. 148 of the Act for the AY 2012-13 is nonest and bad in law at the threshold due to non-issuance of notice under s. 143(2) of the Act subsequent to issuance of notice under s. 148 of the Act.

4. At the time of hearing, the Ld. Counsel for the assessee referred to application made under Rule 27 of the Rules and submitted that it is an admitted position that while initiating re-assessment proceedings by issuance of notice under s. 148 of the Act for assumption of jurisdiction under s. 147 of the Act, no notice under s. 143(2) of the Act has been issued. This fact could also be verified. There is no mention of issuance of notice

under s. 143(2) of the Act in para 2 of the assessment order where details of notices issued under s. 148 & 142(1) of the Act are tabulated. The issuance of notice under s. 143(2) is conspicuously absent. The 'Screenshot of e-proceedings portal' further supports the case made out towards non-issuance of mandatory notice under s. 143(2) of the Act. The notices issued for e-proceedings merely demonstrate notice issued under s. 148 and 142(1) of the Act. The assessee, in the instant case, e-filed return of income on 23.05.2018 for AY 2012-13 consequent upon issuance of notice dated 31.03.2018 under s. 148 of the Act to re-open the assessment. Income tax acknowledgement in this regard is placed on record. The Ld. Counsel for the assessee thus submitted that it is wholly incorrect to say that the assessee has not filed any return of income in pursuance of notice issued under s. 148 of the Act and therefore the requirement of issuance of notice under s. 143(2) of the Act could not be dispensed with. For the proposition that it is incumbent upon the AO to issue notice under s. 143(2) of the Act for framing the re-assessment order, the Ld. Counsel for the assessee relied upon the judgement rendered in the case of PCIT vs Dart Infrabuild (P.) Ltd. [2023] 118 CCH 174 (Delhi High Court) judgment dated 17.11.2023. The Ld. Counsel thus submitted that the re-assessment order itself, which has given rise to the present appeal, requires to be struck down and quashed on this ground alone.

4.1. The Ld. Counsel also contended that the Pr.CIT has committed breach of s.151 of the Act by granting ritualistic approval without any application of mind to the facts of the case. A reference to the judgement rendered in the case of PCIT-7 vs Pioneer Tower Planners Pvt. Ltd. in ITA No.91/2019 dated 20.02.2024 was referred to buttress the proposition.

4.2. The Ld. Counsel also raised other legal and factual discrepancies committed by the AO. On merits, the Ld. Counsel relied upon the findings of the CIT(A).

5. The Ld. Sr. DR for the Revenue, on the other hand, submitted that in the instant case, the assessee has failed to file the ROI within stipulated time limit of 30 days from the date of notice issued under s. 148 of the Act. The AO thus was entitled to proceed with the re-assessment proceedings in terms of jurisdiction assumed under s. 148 r.w.s. 147 of the Act and the requirement of issuance of notice under s. 143(2) in such belated filing of return of income stands dispensed more so having regard to s. 292BB of the Act. On merits, the Ld. Sr. DR for the Revenue pointed out that CIT(A) has reversed the additions without any justifiable reasons.

6. We have carefully considered the rival submissions and perused the material available on record. To begin with, the preliminary issue raised on behalf of the assessee in terms of application under Rule 27 of the Rules calls for primary in adjudication. As per the aforesaid application, it is the case of the assessee that the re-assessment order framed without issuance of notice under s. 143(2) is a nullity. The completion of assessment without issuance of jurisdictional notice under s. 143(2) is an incurable defect which vitiates the assessment and renders it invalid in law.

6.1. It will be apt to refer to the judgement rendered in the case of *PCIT vs Dart Infrabuild (P.) Ltd.* (supra) wherein the identical controversy has been addressed as extracted hereunder:-

13.2 “Since the objection was taken before the completion of the assessment/reassessment proceedings, in our opinion, the provision of Section 292BB would have no application.

14. Although we may note that submissions based on Section 292BB were not advanced on behalf of the appellant/revenue before the Tribunal, in our opinion, since it was a pure legal submission, that by itself, cannot come in the way of the appellant/revenue. However, in this case, the provision can have no applicability as the respondent/assessee objected to the notice under Section 148 not being directed to the correct address.

15. This brings us to the second aspect of the matter, i.e., the consequences of the failure of the appellant/revenue to issue notice under Section 143(2) of the Act before framing the assessment order. Concededly, the appellant/revenue did not issue a notice under Section 143(2) of the Act, although it had on record the ROI filed by the respondent/assessee for the AY in issue, i.e., 2010-11. The return was, concededly, filed on 04.12.2015. This return was considered while framing the assessment under Section 147/144 of the Act. The only reason furnished for not issuing a notice under Section 143(2) of the Act is that the ROI was not filed within the thirty (30) days provided via the notice dated 30.03.2015 issued under Section 148. This argument does not impress us because if we were to hold [as we have], that the said notice was directed towards the wrong address, the respondent/assessee could have not adhered to the timeline provided in the said notice.

15.1 *The respondent/assessee became aware of the Section 148 notice being issued after it received the notice dated 12.06.2015 under Section 142(1) of the Act. The fact that the respondent/assessee had filed an ROI on 04.12.2015 is not disputed. The fact that this ROI, as noticed above, was taken into account is also not in dispute. Therefore, in our opinion, before framing an assessment order, the AO ought to have issued a notice under Section 143(2) of the Act. The submission advanced on behalf of the appellant/revenue that, while it could consider the invalid return while framing the assessment order, it was not obliged to issue a notice under Section 143(2) of the Act because it was not filed within the timeframe given in the Section 148 notice is untenable in law, since the ROI, which was belated, was considered by the AO while carrying out the assessment.*

15.2 *The absence of notice, under Section 143(2), impregnates the proceedings with a jurisdictional defect and, hence, renders it invalid in the eyes of the law. This position is no longer res integra, as demonstrated by the observations made in Principal Commissioner of Income-tax v. Shri Jai Shiv Shankar Traders (P.) Ltd. (2015) 64 taxmann.com 220 (Delhi):*

"12. The narration of facts as noted above by the court makes it clear that no notice under section 143(2) of the Act was issued to the assessee after December 16, 2010, the date on which the assessee informed the Assessing Officer that the return originally filed should be treated as the return filed pursuant to the notice under section 148 of the Act.

13. In DIT v. Society for Worldwide Interbank Financial Telecommunications [2010] 323 ITR 249 (Delhi), this court invalidated a reassessment proceeding after noting that the notice under section 143(2) of the Act was not issued to the assessee pursuant to the filing of the return. In other words, it was held mandatory to serve the notice under section 143(2) of the Act only after the return filed by the assessee is actually scrutinised by the Assessing Officer.

14. The interplay of sections 143 (2) and 148 of the Act formed the subject matter of at least two decisions of the Allahabad High Court in CIT v. Rajeev Sharma [2011] 336 ITR 678 (All) it was held that a plain reading of section 148 of the Act reveals

that within the statutory period specified therein, it shall be incumbent to send a notice under section 143(2) of the Act. It was observed (page 687):

"The provisions contained in sub-section (2) of section 143 of the Act is mandatory and the Legislature in its wisdom by using the word 'reason to believe' had cast a duty on the Assessing Officer to apply mind to the material on record and after being satisfied with regard to escaped liability, shall serve notice specifying particulars of such claim.

In view of the above, after receipt of return in response to notice under section 148, it shall be mandatory for the Assessing Officer to serve a notice under sub-section (2) of Section 143 assigning reason therein . . .

In absence of any notice issued under sub-section (2) of section 143 after receipt of fresh return submitted by the assessee in response to notice under section 148, the, entire procedure adopted for escaped assessment, shall not be valid."

15. In a subsequent judgment in CIT v. Salarpur Cold Storage (P.) Ltd. [2014] 50 taxmann.com 105 (All), it was held as under:

"10. Section 292BB of the Act was inserted by the Finance Act, 2008 with effect from April 1, 2008. Section 282BB of the Act provides a deeming fiction. The deeming fiction is to the effect that once the assessee has appeared in any proceeding or cooperated In any enquiry relating to an assessment or reassessment, it shall be deemed that any notice under the provisions of the Act, which is required to be served on the assessee, has been duly served upon him in time in accordance with the provisions of the Act The assessee is precluded from taking any objection in any proceeding or enquiry that the notice was (i) not served upon him ; or ii) not served upon him in time ; or (iii) served upon him in an improper manner. IN other words, once the deeming fiction comes into operation, the assessee is precluded from raising a challenge about the

service of a notice, service within time or service in an improper manner. The proviso to section 292BB of the Act, however, carves out an exception to the effect that the section shall not apply where the assessee has raised an objection before the completion of the assessment or reassessment. Section 292BB of the Act cannot obviate the requirement or complying with a jurisdictional condition. For the Assessing Officer to make an order of assessment under section 143(3) of the Act, it is necessary to issue a notice under section 143(2) of the Act and in the absence of a notice under section 143(2) of the Act, the assumption of jurisdiction itself would be invalid."

16. In the same decision in Salarpur Cold Storage (P.) Ltd. (supra), the Allahabad High Court noticed that the decision of the Supreme Court in Hotel Blue Moon (supra) where in relation to block assessment, the Supreme Court held that the requirement to issue notice under Section 143(2) was mandatory. It was not "a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with."

17. The Madras High Court held likewise in Sapthagiri Finance & Investments v. ITO [2012] 25 taxmann.com 341/210 Taxman 78 (Mad.) (Mag.). The facts of that case were that a notice under Section 148 of the Act was issued to the Assessee seeking to reopen the assessment for AY 2000-01. However, the Assessee did not file a return and therefore a notice was issued to it under Section 142 (1) of the Act. Pursuant thereto, the Assessee appeared before the AO and stated that the original return filed should be treated as a return filed in response to the notice under Section 148 of the Act. The High Court observed that if thereafter, the AO found that there were problems with the return which required explanation by the Assessee then the AO ought to have followed up with a notice under Section 143(2) of the Act. It was observed that:

"Merely because the matter was discussed with the Assessee and the signature is affixed it does not mean the rest of the procedure of notice under Section 143(2) of the Act was complied with or that on placing the objection the Assessee had waived the notice for further

processing of the reassessment proceedings. The fact that on the notice issued u/s 143(2) of the Act, the assessee had placed its objection and reiterated its earlier return filed as one filed in response to the notice issued u/s 148 of the Act and the Officer had also noted that the same would be considered for completing of assessment, would show that the AO has the duty of issuing the notice under Section 143(3) to lead on to the passing of the assessment. In the circumstances, with no notice issued u/s 143(3) and there being no waiver, there is no justifiable ground to accept the view of the Tribunal that there was a waiver of right of notice to be issued u/s 143(2) of the Act."

18. As already noticed, the decision of this Court in Vision Inc. (supra) proceeded on a different set of facts. In that case, there was a clear finding of the Court that service of the notice had been effected on the Assessee under Section 143 (2) of the Act. As already further noticed, the legal position regarding Section 292BB has already been made explicit in the aforementioned decisions of the Allahabad High Court. That provision would apply insofar as failure of "service" of notice was concerned and not with regard to failure to "issue" notice. In other words, the failure of the AO, in re-assessment proceedings, to issue notice under Section 143(2) of the Act, prior to finalising the re-assessment order, cannot be condoned by referring to Section 292BB of the Act.

19. The resultant position is that as far as the present case is concerned the failure by the AO to issue a notice to the Assessee under Section 143(2) of the Act subsequent to 16th December 2010 when the Assessee made a statement before the AO to the effect that the original return filed should be treated as a return pursuant to a notice under Section 148 of the Act, is fatal to the order of reassessment." [Emphasis is ours]

6.2. In the light of judgement rendered by the Jurisdictional High Court, the AO has committed a fatal lapse in not issuing notice under

s. 143(2) of the Act despite the availability of return of income filed in pursuance of notice issued under s. 148 of the Act. The re-assessment order framed without issuance of notice under s. 143(2) of the Act stands vitiated in law and hence nullity in law. Such re-assessment order having no standing in the eyes of law is thus liable to be quashed at the threshold.”

4. We adopt the learned coordinate bench’s detailed discussion mutatis mutandis herein to conclude that the impugned assessment dated 23.03.2023 is non est in the eye of law for want of a section 143(2) notice issued by the Assessing Officer in very term. Ordered accordingly.

All other pleadings between the parties stand rendered academic.

5. This assessee’s appeal ITA No. 2204/Del/2025 is allowed.

Order pronounced in open court on 28.08.2025.

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 09.09.2025.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI