

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No. 1147/KOL/2025
(Assessment Year: 2018-19)**

Somnath Gupta
C/o S.N. Ghosh & Associates,
Advocates 2, Garstin Place,
2nd Floor, Suite No.203, Off hare
Street, Kolkata-700001,
West Bengal

(Appellant)

ACIT, C.C 2(1),
Aaykar Bhawan Poorva,
110, Shanti Pally, 5th Floor,
Eastern metropolitan By pass,
Kolkata-700107,
West Bengal

(Respondent)

PAN No. ADWPG8240K

Assessee by : Shri Somnath Ghosh, AR
Revenue by : Shri S.B. Chakraborty, DR

Date of hearing: 02.09.2025
Date of pronouncement: 10.09.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income-tax (Appeals) (hereinafter referred to as the "Ld. CIT(A)") dated 26/03/2025 for the AY 2018-19.

02. The issue raised in ground no.1 is against the order of the Id. CIT (A) upholding the assessment order u/s 144 of the Income-tax Act, 1961 (the Act), *de hors* any valid notice u/s 143(2) of the Act and therefore, the assessment framed dated 26.04.2021 is void ab initio, ultra virus and ex-facio, null and void. Besides the assessee challenged the assessment framed based on notice issued u/s 143(2) of the Act

which is not in accordance with instruction no. F. No. 225/157/2017/ITA-II Dated 23-06-2017, issued by the CBDT.

03. The facts in brief are that the assessee filed the return of income on 12.10.2018, declaring total income at ₹66,79,45/-, which was processed u/s 143(1) of the Act. The assessee was covered under survey u/s 133A of the Act on 15.03.2018, during which certain documents were impounded. Accordingly, notice u/s 143(2) and 142(1) of the Act were issued along with questionnaire. Finally, the Id. AO assessed the income at ₹2,81,08,352/- as against the return income of ₹66,79,450/- vide order dated 26th April, 2021, passed u/s 144 of the Act.

04. In the appellate proceedings, the appeal of the assessee was dismissed by the appellate authority confirming all the additions, when the assessee failed to make any submission before the appellate authority. Thus, the Id. CIT (A) decided the appeal on merit but dismissed all the grounds raised by the assessee.

05. At the outset, the Id. Counsel for the assessee submitted that the assessment framed u/s 144 of the Act dated 26.04.2021, is invalid and ex-facie, null and void as the same is passed in consequence to invalid notice u/s 143(2) of the Act dated 20.09.2019, which is not as per the CBDT Instruction no. F. No. 225/157/2017/ITA-II Dated 23-06-2017 and accordingly, the assessment order passed consequently is void ab initio, ultra virus and nullity in the eyes of law.

06. The Id. AR vehemently submitted that the notice u/s 143(2) of the Act, does not specify whether it is a limited scrutiny or a complete scrutiny or a compulsory manual scrutiny. The Id. AR submitted that the CBDT has issued specific instruction vide instruction no. F. No.

225/157/2017/ITA-II Dated 23-06-2017, that the notice u/s 143(2) shall be issued in one of the three formats which are specifically mentioned and prescribed but the present notice issued is not in accordance with such said instruction and therefore, the assessment framed consequently is invalid and void ab initio. The Id. AR in defense of his arguments relied on the decisions of Tapas Kumar Das Vs. ITO in ITA No. 1660/KOL/2024 vide order dated 11.03.2025 for A.Y. 2017-18 and Ashok Kumar Agarwal and others HUF Vs ACIT Cir 34 ITA No. 1/Kol/2025 A.Y. 2017-18, wherein similar issue has been decided in favour of the assessee. The Id. AR therefore prayed that the additional ground raised by the assessee may kindly be allowed.

07. The Id. DR on the other hand submitted that this is a computer-generated notice and the non-mentioning of the fact of either limited or complete scrutiny or compulsory manual scrutiny would not render the issuance of notice u/s 143(2) of the Act as invalid. Therefore, additional ground raised by the assessee may kindly be dismissed.

08. After hearing the rival contentions and perusing the materials available on record, we find that undisputedly the notice issued u/s 143(2) of the Act dated 20.09.2019, specifies only computer aided scrutiny selection which neither mentioned it either to be a limited or a complete scrutiny nor compulsory manual scrutiny. Thus, the said notice has been issued in violation of the instruction issued by CBDT as noted above. In our opinion, the revenue authorities have to follow the instruction issued by CBDT and violation thereto would certainly render the notice as invalid with the result all the consequential proceedings would also be invalid. The case of the assessee find support from the decision of the co-ordinate Bench in the case of Tapas Kumar Das Vs.

ITO (supra), wherein a similar issue has been decided in favour of the assessee. The operative part of the same is extracted below: -

"After hearing the rival contentions and perusing the materials available on record, we find that particularly the notice was issued u/s 143(2) of the Act, a copy of which is available at page no. 25 of the Paper Book. We note that the said notice has not been issued in consonance with the CBDT Instruction F No. 225/157/2017/ITA-II Dated 23.06.2017. The said notice is extracted below for the sake of ready reference:-

"" आमकरअधिनियम 1961 कीधारा 143(2) केअधीननोटिस
Notice under section 143(2) of the Income-tax Act, 1961
संवीक्षा (कंप्यूटरआधारितसंवीक्षाचयन Scrutiny (Computer Aided Scrutiny Selection)

महोदय/महोदया/ भेसर्स,

Sir/Madam/ M/s,

आपकोसूचितकियाजाताहैकिनिर्धारणवर्ष 2017-18 केपावतीसंख्या 269322761301017 केअनुसारआपकेद्वारादिनांक 30/10/2017 कोदाखिलकीगईआयकरविवरणीकोसंवीक्षाकेलिएचुनागयाहै।

This is for your kind information that the return of income filed by you for assessment year 2017-18 vide ack, no. 269322761301017 on 30/10/2017 has been selected for Scrutiny.

2. इससंबंधमें, आपकोदिनीक 16/11/2018 को 01:00 PM तकसाक्ष्यप्रस्तुतकरनेअथवासाक्ष्यप्रस्तुतकरानेकाअवसरप्रदानकियाजारहाहैजिसपरआपउक्तआयकरविवरणी केसमर्थनमेंनिर्भरहैं/ रहेंगे।

2. In this regard, an opportunity is being given to you to produce or cause to produce any evidence on which you may like to rely in support of the said return of income by 16/11/2018 at 01:00 PM.

3. उपर्युक्तनिर्दिष्टप्रमाण / सूचनाकोआपकोऑनलाइनमाध्यमसेइलेक्ट्रॉनिकरूपमें Incometaxindiaefiling.gov.in परअपनेई-फाईलिंगखाताद्वाराप्रस्तुतकियाजानाहै।बादकीनिर्धारणकार्यवाहीभीआयकरविभागकी 'ई-कार्यवाही' सुविधाद्वाराकीजायेगी। 'ई-कार्यवाही' परएकसंक्षिप्तनोटआपकेसंदर्भकेलिएसंलग्नहै।

3. The evidence/information specified above has to be furnished online electronically through your E-filing account in incometaxindiaefiling.gov.in. Subsequent assessment proceedings shall also be conducted electronically through the 'E-Proceeding' facility of Income-tax Department. A brief note on 'E-Proceeding' is enclosed for your kind reference.

4. निर्धारणकार्यवाहीकेदौरान, यदिआवश्यकहोगातोसूचना / दस्तावेजहेतुविशेषप्रश्नावली (याँ) याअधियाचना (याँ) कोबादमेंजारीकियाजाएगा।

4. In course of assessment proceedings, if required, specific questionnaire(s) or requisition(s) for information/document shall be issued subsequently.

5. कृपयाध्यानदेँकियदिआपकेपासई-फाइलिंगखाताहैतोआपकेलिएपैरा 3 लागूहै।आपकेद्वारास्वयंअपनाखातानबनालेनेतकनिर्धारणकार्यवाहीआपकेद्वारावर्णितकीगईई-मे

is created by you, assessment proceedings shall be carried out either through your specified e-mail account or manually (if e-mail is not available).

संलग्नक : यचौधरि

Enclosure as above

"7. In our opinion, the notice issued u/s 143(2) of the Act which is not in the prescribed format as provided under the Act is an invalid notice and accordingly, all the subsequent proceedings thereto would be invalid and void ab initio. The case of the assessee find support from the decision of Shib Nath Ghosh Vs. ITO in ITA No. 1812/KOL/2024 for A.Y. 2018-19 vide order dated 29.11.2024, wherein the co-ordinate Bench has held as under:-

"10. After hearing both the sides and the materials available on record, we find that the notice issued u/s 143(2) dated 9th August, 2017 was not in any of the formats as provided in the CBDT instruction F.No.225/157/2017/ITA-II dated 23.06.2017. We have examined the notice, copy of which is available at page no.1 of the Paper Book and find that the same is not as per the format of CBDT Instruction F.No. 225/157/2017/ITA-II dated 23.06.2017 as stated above. In our opinion, the instruction issued by the CBDT are mandatory and binding on the Income tax authorities failing which the proceedings would be rendered as invalid. Hon'ble Apex Court in case of UCO Bank (supra) held that the circular issued by CBDT in exercise of its statutory powers u/s 119 of the Act, are binding on the authorities. The Hon'ble Apex court held as under:-

"The Central Board of Direct Taxes under section 119 of the Income-tax Act, 1961, has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Act which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases Which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by Issuing circulars binding on the taxing authorities.

In order to aid proper determination of the income of money lenders and banks, the Central Board of Direct Taxes issued a circular dated October 6, 1952, providing that where interest accruing on doubtful debts is credited to a suspense account, It need not be included in the assessee's taxable income, provided the Income-tax Officer is satisfied that recovery is practically improbable. Twenty-six years later, on June 20, 1978, in view of the judgment of the Kerala High Court In STATE BANK OF TRAVANCORE v. CIT [1977] 110 ITR 336, the Board by another circular, withdrew with immediate effect the earlier circular. However, by circular dated October 9, 1984, the Board decided that Interest in respect of doubtful debts credited to suspense account by banking companies would be subjected to tax but Interest charged in an account where there has been no recovery for three consecutive accounting years would not be subjected to tax in the fourth year and onwards. The circular also stated that if there is any recovery in the fourth year or later, the actual amount recovered only would be subjected to tax in the respective years. This procedure would apply to assessment year 1979-80 and onwards."

8. *Considering the facts of the instant case in the light of the decision of the co-ordinate bench, we are inclined to hold that notice issued u/s 143(2) of the Act is invalid notice and accordingly, the assessment framed consequentially to that is also invalid and is hereby quashed."*

09. Since the facts of the assessee's case are similar to one as decided by the co-ordinate Bench, we therefore, respectfully following the same hold that the notice issued u/s 143(2) of the Act is invalid notice and accordingly, the assessment framed consequentially is also invalid and is hereby quashed.

010. Even, we find merit in the second limb of the argument of the Id. AR that notice u/s 143(2) of the Act dated 20.09.2019, was issued by the ITO, Ward 33(4), Kolkata, which is in violation of pecuniary jurisdiction of the CBDT instruction No.1/2011 (F. No. 187/12/2010-IT(A-1), Dated 31.01.2011. According to the said instruction, the ITO has pecuniary jurisdiction where the income is upto 20 lacs in the Metro Cities and upto 15 lacs in Mofussil areas whereas the DC/AC have jurisdiction above 20 lacs in Metro cities and above 15 lacs in the Mofussil areas. In the present case, the assessee filed the return of income u/s 139(1) of the Act before the ITO 33(4), Kolkata on

12.10.2018, disclosing total income of ₹66,79,450/-. We note that notice u/s 143(2) was issued on 20.09.2019 by ITO ward 33(4), Kolkata which is in violation of the CBDT Instruction No.1/2011 (F. No. 187/12/2010-IT(A-1), Dated 31.01.2011. Therefore, the said notice has been issued by non-jurisdictional AO while the assessment was framed u/s 143(3) of the Act dehors the mandatory notice u/s 143(2) of the Act by ACIT Central Circle-2(1) Kolkata lwhich is invalid and cannot be sustained. The case of the assessee find support from the decision of the Hon'ble Calcutta High Court in the case of PCIT vs. M/s Shree Shoppers Ltd. in ITAT 39/2023, IA No. GA/1/2023, dated 15.03.2023, wherein the Hon'ble Court has decided the issue in favour of the assessee by upholding the order of the Tribunal. The Tribunal in ITA No. 865/KOL/2018 for A.Y. 2012-13 in case of M/s Shree Shoppers Ltd. Vs. DCIT has held that notice issued by ITO, Ward 39(4), Kolkata, u/s 143(2) of the Act was without valid jurisdiction and therefore the consequent assessment framed by the DCIT, circle 9(2), Kolkata is invalid. The Hon'ble Tribunal followed the decision of jurisdictional High Court in case of PCIT vs. Nopany & Sons (2022) 136 taxmann.com 414 (Cal), while passing the order. Therefore, even on this count the assessment framed by the ACIT, Circle 2(1) , Kolkata is bad in law as no notice u/s 143(2) was issued by the said authority.

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

Order pronounced in the open court on 10.09.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 10.09.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

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