

**IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR "SMC" BENCH :: NAGPUR**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No. 418/NAG/2022
(Assessment Year : 2014-15)**

Syed Yunus Syed Rasul, Gawalipura, Chandani Chowk, Amravati - 444601. PAN: BKAPR 1095 K	Vs.	ITO, Ward-4, Amravati.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhavesh Moryani, Ld. Advocate

Revenue by : Shri Surjit Kumar Saha, Ld. Sr.D.R.

Date of Hearing : 25.06.2025

Date of Pronouncement : 23.09.2025

O R D E R

This appeal has been preferred by the Assessee against the order dated 14/10/2022 impugned herein passed by the National Faceless Appeal Centre (NFAC)/Commissioner of Income Tax (Appeals), Delhi (in short, 'Ld. Commissioner') u/sec. 250 of the Income Tax Act, 1961 (in short, 'Act') for the A.Y. 2014-15.

2. In instant case, the Assessee has filed an application for modification of the ground and/or raised additional ground of appeal which reads as under:-

"The learned Assessing Officer failed to issue notice u/sec. 143(2) of the Income Tax Act, 1961, therefore, the assessment framed u/sec. 147 of the Act is illegal, invalid and bad in law".

3. The aforesaid additional ground is legal in nature and does not require independent material for adjudication. Thus, in view of the judgment of Hon'ble Apex Court in the case of *NTPC vs. CIT* [1998] 229 ITR 383 (SC), the additional ground raised by the Assessee, is allowed to be raised.

4. Coming to the merits of the legal ground raised by the Assessee, it is observed that during the course of hearing on 25/07/2025 and/or vide *zimini* order dated 25/07/2025, learned Departmental Representative (DR) specifically requested this Court for grant of one week time to verify the fact and file proper report with regard to legal issue raised by the Assessee to the effect that no notice u/sec. 143(2) of the Act has been issued by the Ld. AO, while processing return filed by the Assessee in response to the notice issued u/sec. 148 of the Act and/or while making the assessment in pursuance to the return of income filed in response to the notice u/sec. 148 of the Act. However, no such report of

verification has been filed by the Revenue-Department, despite of giving proper time, as sought for by the Ld. DR. Therefore, this Court is inclined to decide this appeal on the basis of material available on record.

5. It appears from the assessment order that though the Assessee filed his return of income on dated 03/04/2019 showing total income at Rs. 2,27,000/-, however, has not disclosed the capital gain on sale of land for a consideration of Rs. 51,00,000/- in which the Assessee had 1/4th share, which resulted into earning of short term capital gain of Rs.8,81,300/- on sale of the said land in the hands of Assessee. Consequently, the reasons for reopening of the case were recorded and the case of the Assessee was reopened by issuing notice dated 25/03/2019 u/sec. 148 of the Act. Thereafter, a notice u/sec. 142(1) of the Act along with questionnaire was issued on 27/08/2019. In response to which, the Assessee furnished the required information/documents, as called for. It appears from the assessment order that thereafter, the AO by considering the peculiar facts and circumstances of the case, ultimately, made the addition of Rs. 8,85,000/- being short term capital gain without issuing any further notice/s. Therefore, the Assessee has raised the issue that without issuing notice u/sec. 143(2) of the Act, the assessment passed is liable to be quashed, specifically in view of the judgment passed by the Hon'ble Apex

Court in the case of *CIT vs. Laxman Das Khandelwal* [2019] 417 ITR 325 (SC) wherein the Hon'ble Apex Court while relying on the judgment of the Hon'ble Apex Court in the case of *ACIT vs. Hotel Blue Moon* [2010] 3 SCC 259 wherein the Hon'ble Apex Court has held that notice u/sec. 143(2) would be mandatory for making of assessment u/sec. 143(3) of the Act and also considering the provision of section 292BB of the Act, ultimately held "*that in absence of notice u/sec. 143(2) which is mandatory for the purpose of making assessment u/sec. 143(3) of the Act, the assessment to be quashed or stand vitiated lacks jurisdiction and section 292BB does not save complete absence of notice*".

6. This Court further observed that the Coordinate Bench of the Tribunal in the case of *Shri Raj Kumar, Prop. M/s. Raj Cotton & Oil Mills vs. DCIT* in ITA No.4080/Del/2024, decided on 04/04/2025 has also considered the aforesaid facts specifically assessment order passed u/sec. 147 of the Act and while relying on the aforesaid judgment of the Hon'ble Apex Court, ultimately declared the assessment framed in absence of notice u/sec. 143(2) of the Act, as invalid.

7. Thus, on the aforesaid reasoning, this Court is inclined to quash assessment order itself, being lacks jurisdiction. Thus, the assessment order is quashed.

8. In the result, Assessee's appeal is allowed.

Order pronounced in open court on 23.09.2025 as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rules, 1963.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

vr/-

Copy to: The Appellant
The Respondent
The CIT, Concerned, Nagpur
The DR Concerned Bench

//True Copy//

By Order

Senior Private Secretary
ITAT, Nagpur.