

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.125/NAG/2025
(Assessment Year: 2013-14)**

Pandurang Daulatrao Korde, Pande Layout, Khamla, Nagpur. PAN: ACMPK 9991 L	Vs.	ITO, Ward-5(1), Nagpur
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhavesh Moriyani, Ld. Adv.
Revenue by : Shri Surjit Kumar Saha, Ld. Sr.D.R.

Date of Hearing : 27.06.2025
Date of Pronouncement : 27.06.2025

ORDER

This appeal has been preferred by the Assessee against the order dated 24/12/2024 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. 2013-14.

2. At the outset, it is observed that Assessee has raised additional ground of appeal, including challenging the assessment on the ground that without issuing any notice u/sec. 143(2) of the Act re-assessment has been framed by the Ld. AO.

3. As the issue raised by the Assessee is legal in nature and goes to the root of the case, thus, the same is allowed to be raised, as adjudication of the same does not require specific material.

4. The Assessee has submitted that the case of the Assessee was reopened u/sec. 147 of the Act by issuing notice u/sec. 148 of the Act on dated 31/03/2021 and thereafter, various statutory notices except u/s 143(2) of the Act, were issued which remained un-complied with and therefore the AO issued last show-cause notice dated 07/03/202, in response to which, the Assessee made compliance. Thereafter, the Ld. AO issued draft assessment order dated 15/03/2022 afforded opportunity to the Assessee, against which the Assessee filed its reply. Thereafter, the Ld. AO finally as per the facts available on record in the income tax portal, observed that the Assessee has invested Rs. 27,05,000/- with M/s. Wasankar Wealth Management Ltd. and but offered the total income of Rs. 6,66,741/- { Rs. 4,04,241/- as pension income and Rs. 2,62,500/- as contractual receipt}. Therefore, the AO, after deducting the amount of Rs. 6,66,741/-, ultimately made the addition of the remaining amount investment of Rs. 20,38,259/- u/sec. 69 of the Act and added to the income of the Assessee.

5. The Assessee thus has mainly challenged the assessment order on the pretext that before passing the assessment order, the Ld.AO has not issued any notice u/sec. 143(2) of the Act, and therefore, in view of judgment by Apex Court in the case of *ACIT*

vs. Hotel Blue Moon [2010] 3 SCC 259, the assessment order is unsustainable and therefore, is liable to be quashed.

6. On the contrary, learned Departmental Representative refuted the claim of the Assessee by submitting that while passing the order u/sec. 147 r.w.s. 148 of the Act, there is no necessity to issue notice u/sec. 143(2) of the Act.

7. This Court by giving thoughtful consideration to the peculiar facts and circumstances of the case, rival contentions of the parties and perusing the judgements relied on by the parties, observe that an identical issue has also been dealt with 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, by holding as under:

"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".

8. This Court further observe 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. Hence the contention of the Ld. DR to the effects that while passing the order u/sec. 147 r.w.s. 148 of the Act, there is no necessity to issue notice u/sec. 143(2) of the Act, is not tenable.

9. Admittedly the Assessing officer in this case failed to issue any notice under section 143(2) of the Act before passing the Assessment Order and even otherwise nothing has been proved by the Revenue against the contention raised by the Assessee to the effect that no notice u/s 143(2) of the Act, has ever been issued before passing the assessment order and thus, on the aforesaid reasoning, this Court is inclined to quash assessment order itself, sans lacks jurisdiction. Thus, the assessment order is quashed.

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

Order pronounced in open court on 27.06.2025 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.