आयकर अपीलीय अधिकरण, विशाखापटणम पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench, Visakhapatnam

Before Shri Ravish Sood, Judicial Member
and
Shri Balakrishnan S., Accountant Member

आ.अपी.सं /**ITA No.199/Viz/2023**
(निर्धारण वर्ष/Assessment Year: 2017-18)

Sri Ksheera Ramalingeswara Swamy Temple, Palakol. PAN: AAKAS5615E	Vs.	Income Tax Officer (Exemptions), Rajahmundry.
(Appellant)		(Respondent)

निर्धारिती द्वारा/Assessee by:	Sri GVN Hari, Advocate
राजस्व द्वारा/Revenue by:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख/Date of Hearing:	24/09/2025
घोषणा की तारीख/Date of Pronouncement:	30/09/2025

आदेश / **ORDER**

PER. RAVISH SOOD, JM :

The present appeal filed by the assessee society is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 15/05/2023, which in turn arises from the order passed by the Assessing Officer under Section 144 of the Income Tax Act, 1961 (for short, “Act”), dated 28/12/2019 for A.Y. 2017-18.

2. The assessee society has assailed the impugned order on the following grounds of appeal before us:

1. "The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.
2. The Ld. CIT(A) is not justified in holding that the appellant is not eligible for exemption U/s. 10(23BBA) of the Act.
3. Without prejudice to the above, the Ld.CIT(A) ought to have held that the income of the appellant is eligible for exemption U/s. 11 of the Act.
4. Without prejudice to the Ground No.2 and Ground No.3, the AO is not justified in computing the total income of appellant at Rs. 59,85,734/-.
5. Any other ground that may be urged at the time of appeal hearing."

3. Apart from that, the assessee society has raised an additional ground of appeal, which, reads as under:

1. "The assessment order passed without issue of notice U/s. 143(2) of the Act is invalid."

4. Succinctly stated, the A.O. issued notice u/s 142(1) of the Act, dated 01/12/2017, wherein the assessee society was called upon to file its return of income for the subject year, i.e., A.Y 2017-18. In response, the assessee society had filed its return of income for AY 2017-18 on 31/03/2019, declaring NIL income after claiming exemption U/s. 10(23BB) of the Act. Subsequently, the case of the assessee society was selected for "Complete scrutiny" under CASS

and a notice U/s. 143(2) of the Act, dated 22/09/2019 was issued by the A.O.

5. During the course of the assessment proceedings, the AO, based on the fact that the assessee society had failed to file its return of income in response to notice issued u/s 142(1) of the Act, dated 01/12/2017 within the time period allowed in the said notice, and had filed the same belatedly, i.e., on 31/03/2019, therefore, held a conviction that the said return of income was an invalid return. Accordingly, the AO, considering the fact that the assessee society had failed to file a valid return of income withdrew the notice that was issued by him under 143(2) of the Act, dated 22/09/2019.

6. Thereafter, the AO, taking cognizance of the fact that the assessee society was registered U/s. 12A of the Act w.e.f 17/07/2017, i.e., from the AY 2018-19 only and was not holding the said registration during the subject year, i.e., AY 2017-18, thus, declined its claim for exemption U/s. 11 of the Act. Accordingly, the AO, vide his order passed U/s. 144 of the Act, dated 28/12/2019, determined the income of the assessee society at Rs. 59,85,734/-.

7. Aggrieved, the assessee society carried the matter in appeal before the CIT(A), but without success.

8. The assessee society, being aggrieved by the order of the CIT(A) has carried the matter in appeal before us.

9. Sri GVN Hari, Advocate, learned Authorized Representative (for short "Ld.AR") for the assessee society, at the threshold of hearing of the appeal, submitted that the assessee society, by way of an additional ground of appeal has assailed the validity of the assessment framed by the AO vide his order passed U/s. 144 of the Act, dated 28/12/2019. Elaborating on his contention, the Ld. AR submitted that as the assessee society had, in response to the notice issued by the AO U/s. 142(1) of the Act, dated 01/12/2017, filed its return of income on 31/03/2019, i.e., much prior to the culmination of the assessment proceedings, therefore, the AO had grossly erred in not issuing a notice U/s. 143(2) of the Act and framed the assessment vide his order passed U/s. 144 of the Act, dated 28/12/2019. The Ld. AR submitted that as the return of income filed by the assessee society in response to the notice

issued by the AO under Section 142(1) of the Act, dated 01/12/2017 was much prior to the framing of the assessment on 28/12/2019, therefore, there was no justification on his part to have discarded the said return of income and framed the assessment U/s. 144 of the Act.

10. Per Contra, the Ld. DR , submitted that as the assessee society had failed to file its return of income in compliance to the notice issued by the A.O. u/s 142(1) of the Act, dated 01.12.2017 within the prescribed period provided in the said notice, therefore, the return of income that it had filed on 31.03.2019 was beyond the prescribed time limit and, thus, was not a valid return of income. The Ld. DR, submitted that as the assessee society had failed to file its return of income in compliance to the notice issued u/s 142(1) of the Act, dated 01.12.2017 within the prescribed period, therefore, the A.O. by not taking cognizance of the said return of income had rightly withdrawn the notice u/s 143(2) of the Act, dated 22.09.2019 that was earlier issued by him. The Ld. D.R., on being queried by the Bench that, now when it was a matter of fact borne from the record that the assessee society had filed its return of

income in response to the notice issued u/s 142(1) of the Act, dated 01.12.2017 on 31.03.2019 i.e., during the pendency of the assessment proceedings, then how the issuance of notice under Section 143(2) of the Act was done away with, submitted that as the impugned return of income was filed beyond the time period permitted by the said notice, therefore, the same was invalid and non-est in the eyes of law and no notice u/s 143(2) of the Act was required to be issued by acting on the same.

11. We have heard the learned authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. A.R to drive home his contentions.

12. The controversy involved in the present appeal lies in a narrow compass, i.e., as to whether or not the AO is right in law and facts of the case in treating the “return of income” that was belatedly filed by the assessee society in response to the notice issued u/s 142(1) of the Act, dated 01.12.2017 on 31.03.2019, as invalid, and

framing the assessment, vide his order passed u/s 144 of the Act dated 28.12.2019, dispensing with the issuance of a notice u/s 143(2) of the Act?

13. We shall first deal with the Ld. AR's contention that though the assessee society had delayed the filing of its return of income in compliance to the notice issued under Section 142(1) of the Act, dated 01.12.2017, and had filed the same on 31.03.2019, i.e., beyond the period provided in the notice, but before the passing of the assessment order, therefore, the A.O. was obligated to have issued a notice u/s 143(2) of the Act, and could not have summarily dispensed with the said statutory obligation cast upon him.

14. It is a matter of fact borne from the record that the assessee society in response to the notice u/s 142(1) of the Act, dated 01.12.2017, had filed its "return of income" beyond the period provided in the notice. Admittedly, the A.O. in his order passed u/s 144 of the Act, dated 28.12.2019, had not only observed that the assesse society in response to notice issued u/s 142(1) of the Act, dated 01.12.2017 filed its return of income on 31.03.2019, but in

fact had initially issued a notice u/s 143(2) of the Act, dated 22.09.2019, which, was thereafter withdrawn by him on the ground that the aforesaid return of income filed by the assessee society beyond the time period allowed by the notice u/s 142(1) of the Act was an invalid return of income and thus, could not be acted upon.

15. We are of the firm conviction, that merely for the reason that the assessee society had delayed the filing of its “return of income” in compliance to the notice u/s. 142(1) of the Act, dated 01.12.2017, and had filed the same belatedly on 31.03.2019, i.e. after the lapse of the time period allowed in the aforesaid notice, the same could by no means form a basis for treating the said “return of income” as invalid. Our aforesaid conviction is fortified by the fact that in case of a delay involved in filing the “return of income” in compliance to the notice under Section 142(1) of the Act, i.e., furnishing of the same after the lapse of the time period allowed in the notice, the assessee is visited with the levy of interest for the delayed period u/s. 234A of the Act. On a bare perusal of Section 234A(1) of the Act, it transpires that though the said statutory provision contemplates that the delay involved in the

filing of a “return of income” in response to the notice under Section 142(1), i.e., furnished after the lapse of the time period allowed in the notice is to be subjected to levy of interest, but the same nowhere provides that the “return of income” so filed is to be held as invalid. Our aforesaid view is fortified by an analogy that can safely be drawn from the order of the **ITAT, Mumbai** in the case of **Smt. Amina Ismil Rangari Vs. ITO, Ward-17(2)(4), ITA No.6261/Mum/2013 dated 15.09.2017**. In the aforesaid case, the assessee's claim for deduction u/s. 54F of the Act was declined by the A.O., for the reason that the same was raised in the “return of income” that was filed u/s. 148 of the Act beyond the specified period. The A.O. was of the view that as the “return of income” filed in response to the notice u/s. 148 of the Act was not a valid "return of income", thus, the assessee was not entitled to the claim of deduction u/s. 54F of the Act as was raised by her. On appeal, the aforesaid view of the A.O. was vacated by the Tribunal. It was observed that the “return of income” filed by the assessee beyond the specified period contemplated in the notice u/s. 148 of the Act would though lead to characterizing the same as a “return of

income" filed beyond the prescribed period, but the same would not cease to be a "return of income" filed in response to the notice u/s. 148 of the Act. Also, we find that our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Kerala** in the case of **The Chirakkal Service Co-operative Bank Ltd. Vs. The Commissioner of Income Tax, (2016) 384 ITR 490 (Ker).** The indulgence of the Hon'ble High Court was, *inter alia,* sought for adjudicating the following substantial question of law.

> **"Whether the return filed by the assessee beyond the period stipulated u/s 139(1)/139(4) or Section 142(1)/148 can be held as non-est in the eyes of law and has invalidated for the purpose of deciding exemption u/s 80P of the Income Tax Act, 1961?"**
>
> **(emphasis supplied by us)**

The Hon'ble High Court answered the aforesaid issue, and held, that the "return of income" filed by the assessee beyond the period stipulated under Section 139(1) or Section 139(4) or Section 142(1) or Section 148 can also be accepted and acted upon provided further proceedings in relation to such assessment are pending in the statutory hierarchy of adjudication in terms of the provisions of the Income-tax Act. As in the present case before us, the "return of

income" filed by the assessee society in response to the notice issued under Section 142(1) of the Act, dated 01.12.2017 was filed on 31.03.2019, i.e., during the pendency of the assessment proceedings which had thereafter culminated vide order passed by the A.O under Section 144 of the Act, dated 28.12.2019, therefore, we are of a firm conviction that there was no justification for the A.O. to have held the said "return of income" as invalid and non-est in the eyes of law. Also, support is drawn from the judgment of the **Hon'ble High Court of Patna** in the case of **CIT Vs. Nagendra Prasad, (2023) 156 Taxmann.com 191 (Patna).** The Hon'ble High Court, had observed that where the notice was issued by the A.O. u/s 148 requiring the assessee to file his return of income within thirty days but the said return was filed after eight and a half months, since the return was filed by assessee in response to the said notice, though delayed, there should have been a notice issued under Section 143(2) as the requirement to issue notice could not be dispensed with. Also, we find that the issue involved in the present appeal, i.e., as to whether or not the A.O. could have dispensed with the statutory obligation cast upon him to issue

notice u/s 143(2) of the Act, for the reason that the assessee society had delayed the filing of the return of income in compliance to the notice issued u/s 142(1) of the Act is squarely covered by the order passed by the Tribunal in the case of **KVRECPL-INFRATECH (JV) Vs. The ACIT, Circle 2(1), Vijaywada, ITA No. 373/Viz/2025, dated 08/08/2025**. Accordingly, based on our aforesaid observations, we are of the view that the "return of income" filed by the assessee society on 31.03.2019, i.e., in response to the notice u/s. 142(1) of the Act, dated 01.12.2017, though delayed, did not cease to be a "return of income" in the eyes of the law.

16. We shall now deal with the second facet of the controversy involved in the present appeal, i.e., as to whether or not the A.O. who had before him the return of income filed by the assessee society in response to notice issued u/s 142(1) of the Act, dated 01.12.2017, was right in law and facts of the case in framing the assessment vide an order passed by him u/s 144 of the Act, dated 31.12.2019, i.e., dispensing with the issuance of a notice u/s. 143(2) of the Act?

17. Apropos the validity of the assessment framed by the A.O. vide his order passed u/s 144 of the Act, dated 28.12.2019, we find that the A.O. despite taking cognizance of the “return of income” filed by the assessee on 31.03.2019 in response to the notice issued under Section 142(1) of the Act, dated 01.12.2017 (which has been held by us hereinabove to be a valid return of income), had withdrawn the notice u/s 143(2) of the Act, dated 22.09.2019 that was initially issued by him by treating the said “return of income” as invalid. Accordingly, the A.O had thereafter dispensed with the statutory requirement of issuing a notice u/s 143(2) of the Act and framed the assessment vide his order passed u/s 144 of the Act, dated 28.12.2019.

18. We find that the issue regarding the validity of an assessment framed in absence of a notice u/s 143(2) of the Act is covered by the judgments of the **Hon'ble Supreme Court** in the cases of **ACIT and Anr. Vs. Hotel Blue Moon (2010) 321 ITR 362 (SC)** and **CIT Vs. Laxman Das Khandelwal (2019) 417 ITR 325 (SC)** and is no more *res integra.* The Hon'ble Apex Court in its aforesaid judicial pronouncements, had held, that the A.O. pursuant to the return of

income filed by the assessee remains under the statutory obligation to issue notice u/s 143(2) of the Act for framing the assessment.

19. Our aforesaid view is further fortified by the judgment of the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Shri Jai Shiv Shankar Traders (P) Ltd. (2016) 3783 ITR 488 (Del).** The Hon'ble High Court had held that the absence of notice u/s.143(2) of the Act impregnates the proceeding with a jurisdictional defect, and hence, renders it as invalid in the eyes of law. The aforesaid view had thereafter been reiterated by the Hon'ble High Court in the case of **Pr. CIT Vs. Dart Infrabuild (P) Ltd., (2024) 166 taxmann.com 4 (Del).** Also, the **Hon'ble High Court of Allahabad** in the case of **CIT Vs. Salarpur Cold Storage (P) Ltd. (2015) 228 Taxman 48 (Allahabad)** had after relying upon the judgment of the Hon'ble Apex Court in the case of CIT Vs. Hotel Blue Moon (supra), held that the requirement of issuance of notice u/s.143(2) of the Act was mandatory and cannot be brought within the meaning of a procedural irregularity. **The Hon'ble High Court of Madras** in the case of **Sapthagiri Finance & Investments Vs. ITO, (2012) 25**

taxmann.com 341 (Mad), has held that where the A.O found that there was a problem in the "return of income" filed by the assessee u/s.148 of the Act, which required an explanation, then he ought to have followed up by a notice u/s.143(2) of the Act. **The Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. S.G Portfolio (P) Ltd. (2023) 454 ITR 761 (Del.)** has, inter alia, held that where the assessee has filed a "return of income" in response to notice u/s. 148 of the Act, the A.O. was required to issue notice u/s.143(2) of the Act for framing the assessment. We further find that **Hon'ble High Court of Madras** in the case of **Amec Foster Wheeler Iberia SLU-India Project Office Vs. DCIT, (2023) 148 taxmann.com 124 (Mad)**, has held that where the A.O did not issue notice u/s.143(2) of the Act upon the assessee, then the initiation of reassessment proceedings; order rejecting the assessee's objection against the assumption of jurisdiction for reopening and also the reference to the TPO were to be quashed.

20. Apropos the Ld. DR's claim that as the assessee in the course of the proceedings before the A.O had not objected to the assumption of the jurisdiction by him, and on the contrary

participated in the assessment proceedings, therefore, the non-issuance of the notice u/s 142(1) of the Act will be saved by the provisions of Section 292BB of the Act, we are unable to concur with the same. We say so, for the reason that the deeming provisions of the said statutory provision only cure the infirmities in the manner of service of notice and is not intended to cure the complete absence of notice itself. Our aforesaid view is supported by the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Laxman Das Khandelwal (2019) 417 ITR 325 (SC)**. The Hon'ble Apex Court relying on its earlier order in the case of ACIT Vs. Hotel Blue Moon (supra), has held that the failure to issue a notice under Section 143(2) renders the assessment order void even if the assessee had participated in the proceedings.

21. We thus, based on our aforesaid deliberations conclude as under:

(a). the "return of income" filed by the assessee society on 31.03.2019 in response to the notice issued by the A.O. under Section 142(1) of the Act, dated 01.12.2017, having been filed during the pendency of the assessment proceedings which had

culminated vide the impugned order of assessment passed by him u/s 144 of the Act, dated 28.12.2019, is a valid “return of income” though involving a delay.

(b). the A.O by treating the “return of income” filed by the assessee society on 31.03.2019 in response to notice issued u/s 142(1), dated 01.12.2017 as invalid and non-est, had wrongly withdrawn the notice u/s 143(2) of the Act, dated 22.09.2019 that was initially issued by him.

(c). that the A.O by dispensing with the statutory obligation cast upon him to issue notice u/s 143(2) of the Act, had wrongly framed the impugned assessment vide his order passed u/s 144 of the Act, dated 21.12.2019; AND

(d). that as the deeming provisions of Section 292BB of the Act only cure the infirmities in the manner of service of notice and is not intended to cure the complete absence of notice itself, therefore, the absence of the notice u/s 143(2) of the Act, despite the fact that the A.O had before him the return of income that was filed by the assessee society in response to notice issued u/s

142(1) of the Act, dated 01.12.2017, i.e., on 31.03.2019 will not be saved by the deeming provisions of the said statutory provision.

22. Accordingly, we are of the view that as the A.O in the present case before us, had erroneously held the “return of income” filed by the assessee society on 31.03.2019, i.e., in response to the notice u/s 142(1) of the Act, dated 01.12.2017 as invalid and non-est, and thereafter had on the said wrong premises dispensed with the statutory requirement of issuing the notice u/s 143(2) of the Act and framed the impugned assessment vide his order passed under Section 144 of the Act, dated 28.12.2019, therefore, the assessment order so passed by him cannot be sustained and is liable to be quashed for want of valid assumption of jurisdiction.

23. As we have quashed the assessment framed by the A.O. for want of valid assumption of jurisdiction, therefore, we refrain from adverting to and therein adjudicating the other issues, based on which, the impugned assessment has been assailed before us on the other grounds of appeal which, thus, are left open.

24. Resultantly, the appeal filed by the assessee society is allowed in terms of our aforesaid observations.

Order pronounced U/Rule 34(4) of the Appellate Tribunal Rules, 1963 on 30th September, 2025.

Sd/- **(BALAKRISHNAN S.)** **ACCOUNTANT MEMBER**	**Sd/-** **(RAVISH SOOD)** **JUDICIAL MEMBER**

Hyderabad,
Dated 30th September, 2025
OKK / SPS

Copy to:

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2	Income Tax Officer (Exemptions), O/o. ITO, Aayakar Bhavan, Kambala Cheruvu, Veerabhadrapuram, Rajahmundry, Andhra Pradesh – 533105.
3	The Pr.CIT, Visakhapatnam

4	The DR, ITAT Visakhapatnam Benches
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