

IN THE INCOME TAX APPELLATE TRIBUNAL "B(SMC)" BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, AM

ITA No.1574/KOL/2025

(Assessment Year:2017-18)

Gautam Kumar Sadhu
Mahakalitala, P.O. Bansberia,
Hooghly-712502, West Bengal

Vs.

ACIT, 24(1), Hooghly,
Aaykar Bhawan, Khadina More,
Chinsurah, Hooghly-712102,
West Bengal

(Appellant)

(Respondent)

PAN No. ATFPS6692E

Assessee by : Shri Soumitra Choudhury, AR

Revenue by : Shri Kallol Mistry, DR

Date of hearing: 22.09.2025

Date of pronouncement: 15.10.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 17.05.2024 for the AY 2017-18.

02. At the outset, I note that the appeal of the assessee is barred by limitation by 352 days, for which condonation petition along with affidavit of the assessee is filed.

03. After hearing the rival contentions and perusing the materials available on record. I find that the reasons for delay as explained by Id. Authorized Representative is that the CIT (A) did not issue notices in registered e-mail and assessee only came to know when he enquired about the matter to the Id. AO. Due to this, there was an unavoidable delay of 352 days in filing the appeal. The Id. Authorized

Representative requested to condone the delay emphasizing that the delay is due to genuine and reasonable cause beyond the control of the assessee and no mala fide intention was involved for delay in filing the appeal. The Id. Authorized Representative prayed that the delay being condoned in the interest of justice, so the assessee's case can be heard on merits. In our opinion, the delay is for bonafide and genuine reason, hence, I condone the delay and adjudicate the appeal.

04. The assessee has challenged the assessment framed by the Id. AO on the ground that no notice u/s 143(2) of the Act has been issued by the jurisdictional Assessing Officer. Besides, the assessee has challenged the assessment on the ground that the notice u/s 143(2) of the Act was not in conformity with the instruction issued by CBDT instruction No.1/2011 (F. No. 187/12/2010-IT(A-1), Dated 31.01.2011.

05. The facts in brief are that the assessee filed the return of income on 30.03.2018, declaring total income at ₹10,41,590/-. The case of the assessee was selected for scrutiny through Computer Assisted Scrutiny Selection (CASS). The statutory notices including other notices and questionnaires were issued and served upon the assessee. The assessee is engaged in the business as trading in the name and style of Ma Mahakali suppliers. The notice u/s 143(2) of the Act was issued by ITO Ward 24(3), Hooghly, Kolkata, whereas the assessment was framed by the ACIT, Circle 24(1), Kolkata who did not issue any notice u/s 143(2) of the Act. The Id. ITO 24(3), Hooghly, Kolkata also issued notice u/s 142(1) of the Act along with questionnaire called for the information/ details from the assessee which was not compiled by

the assessee. The Id. AO ACIT, Circle 24(1), Kolkata finally framed the assessment ex-parte by making the addition of ₹32,52,000/- for cash deposit during demonetization period.

06. In the appellate proceedings, the Id. CIT (A) affirmed the order of the Id. Assessing Officer.

07. After hearing the rival contentions and perusing the materials available on record, I find that in this case the notice u/s 143(2) of the Act dated 14.09.2018, a copy of which is available at page no. 36 of the Paper Book, 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 in ITA No. 1660/KOL/2024 for A.Y. 2017-18, 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 Alded Scrutiny Selection)

महोदय/महोदया/ भेसर्स,

Sir/Madam/ M/s,

आपको सूचित किया जाता है कि निर्धारण वर्ष 2017-18 के पावती संख्या 269322761301017 के अनुसार आपके द्वारा दिनांक 30/10/2017 को दाखिल की गई आयकर विवरणी को संवीक्षा के लिए चुना गया है।

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. इस संबंध में, आपको दिनांक 16/11/2018 को 01:00 PM तक साक्ष्य प्रस्तुत करने अथवा साक्ष्य प्रस्तुत कराने का अवसर प्रदान किया जा रहा है जिस पर आप उक्त आयकर विवरणी के समर्थन में निर्भर हैं/ 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. उपर्युक्त निर्दिष्ट प्रमाण / सूचना को आपको ऑनलाइन माध्यम से इलेक्ट्रॉनिक रूप में Incometaxindiaefiling.gov.in पर अपने ई-फाइलिंग खाता द्वारा प्रस्तुत किया जाना है। बाद की निर्धारण कार्यवाही भी आयकर विभाग की 'ई-कार्यवाही' सुविधा द्वारा की जायेगी। 'ई-कार्यवाही' पर एक संक्षिप्त नोट आपके संदर्भ के लिए संलग्न है।

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. निर्धारण कार्यवाही के दौरान, यदि आवश्यक हो गा तो सूचना / दस्तावेज हेतु विशेष प्रश्नावली (याँ) या अध्याचना (याँ) को बाद में जारी किया जाएगा।

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

5. कृपया ध्यान दें कि यदि आपके पास ई-फाइलिंग खाता है तो आपके लिए पैरा 3 लागू है। आपके द्वारा स्वयं अपना खाता न बना लेने तक निर्धारण कार्यवाही आपके द्वारा वर्णित की गई ई-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 coordinate 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."*

08. Since the facts of the assessee's case are similar to one as decided by the co-ordinate Bench, I 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.

09. Even, I find merit in the second limb of the arguments of the Id. AR that notice u/s 143(2) of the Act dated 14.09.2018, was issued by the ITO, Ward 24(3), Hoogly, Kolkata, whereas the assessment was framed by the ACIT Circle-241) Hoogly, 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 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 on 30.3.2018, disclosing total income of ₹10,41,590/-. I note that notice u/s 143(2) was issued on 24.09.2018 by ITO ward 34(2), Kolkata which is in violation of the CBDT Instruction No.1/2011 (F. No. 187/12/2010-IT(A-1), Dated 31.01.2011.

010. Therefore, though the assessment was framed by the ACIT de hors issuance of notice u/s 143(2) of the Act is bad in law. The case of the assessee find support from the decision of RaghvendraMohta Vs. ACIT in ITA no. 2416/KOL/2017 for A.Y. 2014-15, which was affirmed by the Hon'ble Jurisdictional High Court in case of PCIT Vs. RaghvendraMohta in ITAT/51/2025 in IA no. GA/1/2025, GA/2/2025, wherein the Hon'ble High Court has held as under: -

"We have heard Mr. PrithuDudhoria, learned advocate for the appellant and Mr. AbhratoshMazumder, learned senior counsel assisted by Mr. Avra Mazumder, learned advocate for the respondent.

The assessee preferred appeal before the learned Tribunal challenging the order passed by the Commissioner of Income Tax (Appeals)-10, Kolkata (CIT(A)] dated 26.9.2017. One of the grounds urged before the learned Tribunal was that the Assessing Officer, who passed the assessment order did not have jurisdiction over the case of the assessee and, therefore, the notice as well as the assessment order are bad in law. The learned Tribunal took note of the facts and circumstances of the case and found that the assessee filed its return of income declaring the income to be nil. Subsequently, notice under section 143(2) was issued on 10.9.2015 and notice under section 142(1) dated 13.6.2016 was issued along with the questionnaire. The assessee contended that the notices were without jurisdiction and relied upon section 120 of the Act. In this regard, the assessee referred to the notification issued by the CBDT in Instruction No.1 of 2011. The learned Tribunal took into consideration the facts of the case and found that the assessment has been framed by the Assessing Officer, who inherently lacks jurisdiction to do so.

The learned Tribunal took note of the decision of a Co-ordinate Bench of the learned Tribunal in the case of Bhagyalaxmi Conclave (P) Ltd. us. DCIT dated 3.2.2021. Apart from other decisions and allowed the assessee's appeal, the revenue had challenged the order passed in the case of Bhagyalaxmi Conclave (P) Ltd. before this court in ITAT/221/2022 etc. and by a judgment reported in 2022 (12) TMI 1514, the appeal filed by the department was dismissed wherein one of the questions framed is identical to the substantial questions of law suggested by the revenue in the instant case. Thus, we find that the learned Tribunal was right in allowing the assessee' appeal and setting aside the order passed by the Assessing Officer on the ground of lack of inherent jurisdiction.

For the above reason, the appeal is dismissed and the substantial questions of law are answered against the revenue."

011. Therefore, following the decision of the Hon'ble Apex Court, I quash the assessment framed by the learned AO on the ground of lack of inheritance jurisdiction. The ground no.1 of the assessee is allowed.

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

Order pronounced in the open court on 15.10.2025.

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated:15.10.2025

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