

**INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "SMC": AGRA
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
(Through virtual hearing)**

**ITA No. 452/AGR/2024
(Assessment Year: 2017-18)**

Sarvesh Kumar, Okharu Khanpur, Farrukhabad, Fatehgarh, HO 209601 (Appellant) PAN: DSQPK3348G	Vs.	ITO, Ward-4(2)(2), Farrukhabad (Respondent)
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Assessee by :	Shri Swaran Singh, CA Shri Shailesh Gupta, CA
Revenue by:	Shri Anil Kumar, Sr. DR
Date of Hearing	18/08/2025
Date of pronouncement	18/11/2025

ORDER

1. The appeal in ITA No. 452/AGR/2024 for AY 2017-18, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'ld. NFAC', in short] dated 28.08.2024 against the order of assessment passed u/s 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.11.2019 by the AO, ITO, Ward-4(2)(2), Farrukhabad (hereinafter referred to as 'ld. AO').
2. Though the assessee has raised various grounds, I find that the preliminary legal ground raised by the assessee is that the impugned assessment ought to have been framed u/s 147 of the Act after reopening the assessment instead of assessment u/s 144 of the Act. This goes to the root of the matter and hence, I deem it fit to address the same first.
3. I have heard the rival submissions and perused the material available on record. During the period, the assessee deposited cash of ₹ 2,30,000/- in Bank

Account No. 08280100020119 and ₹11,00,000/- in A/c No. 08280400000468 maintained with Bank of Baroda, Allahaganj, Shahjahanpur. Notice u/s 142(1) stood issued to the assessee. In pursuance to the said notice, the assessee filed return on 24.09.2019 declaring income of ₹3,53,760/- being the income offered on presumptive basis u/s 44AD of the Act along with interest income of ₹2,32,585/-. Thus the gross total income of the assessee was ₹5,86,345/-. The assessment stood completed u/s 144 of the act on 28.11.2019, determining the total income of ₹19,13,560/- wherein an addition of ₹13,30,000/- was made u/s 69A read with section 115BBE of the Act on account of cash deposits made during demonetization period in specified bank notes for want of non-compliance to the show cause notice issued u/s 142(1) of the Act by the Id AO.

4. The following facts are not in dispute. Notice u/s 142(1) of the Act originally stood issued to the assessee on 29.03.2018 which is unsigned. The said notice is enclosed at page 1 of the paper book. The said notice u/s 142(1) was received on 31.03.2018 vide Speed Post No. EU797177633IN. This fact is also confirmed in the RTI information enclosed in page 423 of the paper book by the Id AO. No return of income was filed by the assessee u/s 139(1) of the Act for AY 2007-08. Based on the unsigned notice u/s 142(1) of the Act dated 29.03.2018, which stood served on the assessee on 31.03.2018, return of income was filed by the assessee on 24.09.2019 for AY 2007-08. It is pertinent to note that the return filed on 24.09.2019 is beyond the time limit prescribed u/s 139(4) of the Act. Hence, the provisions of Explanation 2(a) of Section 147 of the Act kicks in. Accordingly, in order to frame any assessment, the Id AO should have issued notice u/s 148 of the Act on the assessee in the manner known to law, then proceed to frame the reassessment u/s 143(3)/ 144 r.w.s. Section 147 of the Act. I find this issue was subject matter of adjudication by the coordinate bench of Hyderabad Tribunal in the case of Dr Vijay Kumar

Datla Vs. ACIT reported in 1996 (3) TMI 176 dated 28.03.1996. The relevant operative portion of the said order is as under:-

"In all these appeals, the assessment year involved in 1991-00. The returns for this year were to be filed voluntarily under section 139 of the income-tax Act, 1961 before the due dates varying between 30th June, 1991 and 21st October, 1991. They were not filed. The Assessing Officer issued notices under section 142(1)(c) of the Income-tax Act in all these cases on 26-5-1992. The assesseees did not file any return in pursuance thereof. Another notice under section 142(1)(c) on 20-5-1993. The assesseees filed returns on 22-12-1993. These returns were treated as invalid returns by the Assessing Officer as they were filed beyond one year from the end of the assessment year, i. e. 31-3 1991. The assessments were completed under section 144 of the Income-tax Act by ignoring the returns.

2. The main contention of the assesseees is that it was a case of income escaping assessment and, therefore, the initiation of assessment proceedings without the issue of notice under section 148 in each case was invalid. Reference to Explanation 2(a) to section 147 was also made wherein income chargeable to tax is deemed to have escaped assessment if no return was furnished by the assessee. According to the assesseees, the provisions of section 148, being special provisions, would override the general provisions of section 142(1). It was further contended that the notices under section 142(1) were issued after the end of the assessment year and were, therefore, invalid and in that context our attention was invited to the provisions of section 139(2) before their deletion by Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, requiring such a notice to be issued before the end of the assessment year. As the notice under section 142(1) is a substitution of the requirement under section 139(2), the time limit for its issuance in the assessment year is inbuilt.

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8. Explanation 2(a) to section 147 of the Income-tax Act includes non-filing of return in the expression "escaped assessment. The said Explanation reads

"Explanation 2: For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;"

The scope of this Explanation, in our opinion, has to be restricted to the failure of the assessee to file a return suo moto or a voluntary return under section 139(1) or section 139(4) within the prescribed time limit and not to cases where a notice under section 142(1) requiring the assessee to file return has already been issued. Say, for example, an assessee is obliged to file a return on or before 31-12-1991 under section 139(1), or before 31-3-1992 under section 139(4). Can it be said that before expiry of either of the periods, notice under section 148 is to be issued? The requirement of "where no return of income has been furnished by the assessee" as appearing in the Explanation, for treating it as a case of "Income escaping assessment, has to be seen on the expiry of the period within which the assessee can file the return. Otherwise, even on the first day of the assessment year, ie, on 1-4-1991, itself the Assessing Officer can issue notice under section 148 when the process of assessment itself has not yet come into being. It would thus be too wide a proposition to be accepted.

9. As regards the outer limit of issuing notice under section 142(1)(i), we may state that there is apparently no time limit prescribed, but if one reads the other provisions, it can be deduced therefrom. Section 139(4) reads as under

"Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier"

A reading of this provision gives an impression that the outer limit is one year from the end of the assessment year. Otherwise, the assessee's failure to submit the return under section 142(1) would not entitle him to file the return thereafter. Therefore, it has to be before that period, Le 31-3-1992 in these cases. Once that time limit is over and the assessee has not filed any return, it becomes a case of income escaping assessment and for that issuance of notice under section 148 is a must."

5. Since in the instant case, the assessment has been framed u/s 144 of the Act on 28.11.2019 based on unsigned notice u/s 142(1) notice dated

29.03.2018, and no reassessment u/s 147 of the Act has been framed, the entire assessment becomes void ab initio and accordingly requires to be quashed. Accordingly grounds were raised by the assessee are allowed.

6. Since the entire assessment is quashed in the above mentioned terms, the adjudication of other grounds become academic in nature and they are left open.

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

Order pronounced in the open court on 18/11/2025.

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 18/11/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi