

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

ITA No. 433/AGR/2024
(Assessment Year: 2012-13)

Radhika Garg, 14/100, Kambhu Tola Hospital Road, Hathras, UP	Vs.	Income Tax Officer, Ward-2(1)(3), Agra
(Appellant)		(Respondent)
PAN:AFEPG2999H		

Assessee by :	Shri Anurag Sinha, Adv
Revenue by:	Shri Anil Kumar, Sr. DR
Date of Hearing	17/09/2025
Date of pronouncement	19/11/2025

ORDER

1. The appeal in ITA No. 433/AGR/2024 for AY 2012-13, arises out of the order of the AddL/ JCIT(A)-5, Mumbai [hereinafter referred to as 'Id. ADDL/ JCIT(A)', in short] dated 24.06.2024 against the order of assessment passed u/s 144/147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.11.2019 by the Assessing Officer, ITO, Ward-2(1)(3), Agra (hereinafter referred to as 'Id. AO').

2. At the outset, I find that there is a delay in filing of appeal by the assessee before this Tribunal by 68 days. Considering the reasons adduced in the condonation petition, I am inclined to condone the delay and admit the appeal of the assessee for adjudication in the interest of substantial justice.

3. I find that the assessee vide ground number 5 had raised a preliminary ground stating that the statutory notice under section 143(2) of the Act was not issued in the instant case by the learned AO which becomes fatal to the

entire assessment proceedings per se. Since this goes to the root of the matter, I deem it fit to address the same first.

4. I have heard the rival submissions and perused the materials available on record. The learned AO received information that assessee had deposited cash of Rs. 12,32,000/- in the Savings Bank maintained with State Bank of India in Account Number 10114169760. Pursuant to this information, notice under section 148 of the Act stood issued to the assessee on 31-03-2019. In response to the said notice, the return of income was filed by the assessee on 22-11-2019. The learned AO proceeded to complete the reassessment proceedings under section 144 read with section 147 of the Act after issuing show-cause notice under section 142(1) of the Act due to non-cooperative attitude of the assessee during the course of reassessment proceedings. Ultimately, the reassessment stood completed on 29-11-2019. It is pertinent to note that even though the assessee has filed the return belatedly on 22-11-2019, post the filing of return by the assessee on 22-11-2019, admittedly no notice under section 143(2) of the Act stood issued to the assessee by the learned AO. Now, the short question that arises for our consideration is as to whether non-issuance of notice under section 143(2) of the Act for a belated return filed by the assessee would become fatal to the assessment proceedings or not. The case of the assessee falls under the jurisdiction of Hon'ble Allahabad High Court. This issue has been decided in favour of the assessee by the Hon'ble Jurisdictional Allahabad High Court in the case of CIT Lucknow vs Rajiv Sharma reported in 336 ITR 678(All) wherein in the reassessment proceedings, an addition on account of unexplained gift was sought to be examined and made. In the said reassessment proceedings, notice under section 148 of the Act was issued by the assessing officer on 26-12-2000. The assessee responded to the notice under section 148 of the Act by duly filing the return of income. Thereafter, no notice under section 143(2) of the Act stood

issued to the assessee. The Hon'ble Jurisdictional Allahabad High Court held that in the absence of any notice issued under section 143(2) of the Act after receipt of fresh return submitted by the assessee in response to notice under section 148 of the Act, the entire procedure adopted for escaped assessment shall not be valid as the requirement of notice under section 143(2) of the Act is mandatory and cannot be dispensed with. Similarly, the Hon'ble Supreme Court in the case of ACIT vs Hotel Blue Moon reported in 321 ITR 362 (SC) also held that issuance of statutory mandatory notice under section 143(2) of the Act cannot be dispensed with and non-issuance of the same would become fatal to the entire search assessment proceedings. Further the Hon'ble Supreme Court in the case of CIT vs Laxman Das Khandelwal reported in 266 Taxman 171 (SC) had held that non-issuance of notice under section 143(2) of the Act would not be cured by the provisions of section 292BB of the Act by holding that for section 292BB of the Act to apply, section 143(2) notice must have emanated from department and it is only infirmities in manner of service of notice that section seeks to cure and it is not intended to cure complete absence of notice itself.

5. In the instant case, even though the assessee had filed the return just 7 days before the completion of reassessment proceedings, the learned AO had taken due cognizance of the said belated return while completing the re-assessment, which is evident from the fact that the learned AO while computing the income in the final page of the assessment order starts with the returned income of the assessee of Rs 1,91,590/- and thereafter proceeds to make an addition of Rs 12,32,000/-. Hence the learned AO having taken due cognizance of the belated return filed by the assessee ought to have issued the mandatory notice under section 143(2) of the Act and then proceeded to frame the re-assessment. Hence in the light of the aforesaid decisions, the entire

reassessment proceedings deserve to be quashed as void abinitio. Accordingly, the Ground No. 5 raised by the assessee is allowed.

6. Since the entire reassessment proceeding is quashed on the aforesaid preliminary legal issue, the adjudication of other grounds raised by the assessee become academic in nature and hence they are left open.

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

Order pronounced in the open court on 19/11/2025.

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 19/11/2025
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi