आयकर अपीलीय अधिकरण,राजकोट न्यायपीठ, राजकोट।

IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"
RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No.877 & 878/RJT/2024

निर्धारणवर्ष / Assessment Year: (2017-2018)

Govabhai Lakhabhai Rabari Ajana Vas Near Panchayat, Varsamedi Anjar Kutch Kutch-370110, Gujrat	Vs.	Income Tax Officer ITO Ward (1) Gandhidham – 370203, Gujrat
स्थायीलेखासं./जीआइआरसं./**PAN/GIR No.: ASOPR4725M**		
(Assessee)		**(Respondent)**

Assessee by : Shri Kalepesh Doshi, Ld. AR

Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

Date of Hearing : 04/09/2025
Date of Pronouncement : 01/12/2025

आदेश / O R D E R

Per, Dr. Arjun Lal Saini, AM

Captioned two appeals filed by the assessee, pertaining to Assessment Year 2017-18, is directed against the separate orders passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), dated 18/09/2024, which in turn arise out of separate orders passed by the Assessing Officer.

2. First, I shall take assessee`s quantum appeal in ITA No.877/RJT/2024, for assessment year 2017–18. Grounds of appeal raised by the assessee, in ITA No.877/RJT/2024, are as follows:

> *1. That, the Ld. CIT(A) has wrongly confirmed the order passed without serving the statutory notice u/s 143(2) of the I.T. Act, 1961.*
>
> *2. That, the Ld. CIT(A) has wrongly confirmed the order passed u/s 144 of the I.T. Act, 1961 without giving proper opportunity of being heard.*
>
> *3. That, the Ld. CIT(A) has wrongly dismissed the appeal by applying provision of section 249(4)(b) of the I.T. Act.*
>
> *4. That, the Ld. CIT(A) has wrongly confirmed addition of Rs. 12,41,000/- on account of unexplained money in the bank account u/s 69A of the I.T. Act, 1961.*
>
> *5. That, the Ld. CIT(A) has wrongly confirmed addition of Rs. 28,22,558/- on account of estimated the gross profit at the rate of 8 percent of the total turnover by applying provisions of section 44AD of the I.T. Act 1961.*
>
> *6. That, the Ld. CIT(A) has wrongly confirmed applicability of provisions of section 115BBE of the I.T. Act, 1961.*
>
> *7. That, Ld. CIT(A) has wrongly confirmed the initiation of penalty proceedings u/s 274 r.w.s. 271AAC, 270A, 271F, 272A(1)(d) and 271B of the I.T. Act, 1961.*
>
> *8. That, the Ld. CIT(A) has wrongly confirmed the levy of interest u/s 234A, 234B and 234C of the I.T. Act, 1961.*
>
> *9. That, the findings of the Ld. CIT(A) are not justified and are bad-in-law.*
>
> *10.The assessee craves to add, amend, alter or delete any of the above grounds of appeals.*

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual.In assessee`s case, the proceeding u/s 142(1) of the Act was initiated and accordingly notice u/s 142(1) of the Act was issued electronically on 13.03.2018, requiring the assessee to file return of income for A.Y. 2017-18. On verification of the records, it was noted by the assessing officer that assessee,

during the period of demonetization, that is, from 09/11/2016 to 31/12/2016, deposited cash amounting to Rs.12,41,000/-, with Bank of Baroda - A/c No.3642020000005, HDFC Bank Ltd. -A/c No.30981530000287 and State Bank of India - A/c No.33934375033, respectively during demonetization period. Aggregating cash deposit during demonetization period comes to Rs.12,41,000/-. Therefore, the assessee was requested to file return of income for assessment year (A.Y.) 2017-18, by issuing notice u/s 142(1) of the Act. The assessing officer noticed that during the year, the assessee had deposited cash Rs.12,41,000/-, during the demonetization period. Therefore, after considering the facts of the case and material available on record, a show -cause notice was issued on 15.12.2019, upon the assessee.

4. In response to the show- cause notice, the assessee has filed reply before assessing officer along with documentary evidences, on 17/12/2019. The reply of the assessee, is reproduced below:

> *"Previously, I had not filed by I.T. return for the AY 2017-18 as my total income for the said assessment year is below exemption limit and as per section 139(1) if the total income is less than the exemption limit then it is not necessary to file the Income-tax return.*
>
> *During the year under consideration i.e. AY 2017-18, I had income from sale manufacturing/ trading business, cattle income and I had also earned commission income. The cash deposit of Rs. 12,41,000/- has been made out of my business income of salt trading which is majorly through cash and the cash available on hand due to my previous savings.*
>
> *All the cash deposits have been made out of my own capital funds and I have also filed by Income Tax return for AY 2017-18 showing my total income of Rs.2,59,630/-, as well as the cash deposit have been also been reflected in my income tax return.*
>
> *I have already submitted details of cash related summary in the Annexure-10 of my submission dated 27.09.2019 and I am again submitting herewith the Annexure in much more detailed manner so that the all the cash related transactions can be easily summarized up and understand in a better way.*

I am also enclosing herewith the copy of my cash books for the demonetization period i.e. 9.11.2016 to 30.12.2016 for your ready reference.

So, I humbly request you that for not making a sort of addition related to the cash deposits in my bank account as all these deposits are out of my hard earned money which I have earned and saved from the past few years.

5. However, the assessing officer, rejected the above contention of the assessee and held that the assessee has not submitted any satisfactory explanation in respect of source of such fund deposited in his bank account during the year under consideration. As such the total fund deposited during the year under consideration of Rs.12,41,000/- remains unexplained money, therefore, assessing officer made addition under the provisions of section 69A and 115BBE of the I.T. Act.

6. The assessing officer also noticed that during the year, the assessee having huge turnover, but failed to audit his books of accounts. On verification of bank statement of assessee for financial year (FY) 2016-17, it was noticed that the total credit (including the demonetization period) made by the assessee in the above mentioned bank accounts for the FY 2016-17 were comes to Rs.3,65,22,977/-. The assessee's turn over exceeding more than Rs.2.00 crores, but no return of income was filed or books of accounts are not audited u/s 44AB of the Act. Therefore, a show cause notice was issued to the assessee on 15/12/2019, as to why assessee`s books profits should not be estimated 8% on the basis of turnover determined.

7. In response to the above show- cause notice, the assessee has filed reply on 17/12/2019, before the assessing officer, along with necessary documentary evidences, which is reproduced below:

"Firstly I want to explain regarding the activities carried out by me during the assessment year under consideration. I had earned the commission income during the

year through recharges in the fleet cards for earning cash back points rewards / commission for payment to IOCL Fleet cards on behalf of various truck driver/truck owners.I had certain contacts with the petrol pump employees and even I was earning commission income from transportation business also so I was in touch with various truck drivers/truck owners. So use to inform the truck drivers / truck owners regarding the benefits of the fleet card & the cash bank rewards also. So I had convinced them that instead of refilling in cash, give the cash to the petrol pump employee and he will swipe the fleet card at the petrol pump and offer the drivers to take the commission which is earned inform of cash back points in the fleet card.

So, there is no loss of revenue to the petrol pump as instead of cash sale of diesel, sale of diesel by fleet card will be booked by the petrol pump dealer and for these sales against the fleet card the payment/credit is given by IOCL to the petrol pump dealer.

In this regard, I want to inform you that during the financial year under consideration i.e. AY 2017-18, I have made on-behalf payment of Rs.3,31,87,560/- to the Indian Oil Corporation Limited (IOCL) for the recharges to be done in the fleet cards issued by the Indian Oil Corporation Limited (IOCL). For the purpose of making the payment to IOCL I have deposited cash in my account which was received from random various truck drivers/truck owners at the petrol pump who use to come to refill the diesel.

This fleet card can be obtained by any individual on the basis of the KYC documents to be provided and a simple form to be filled which is readily available on the website of IOCL. At that point of time, it was newly introduced and many documents were also not required so I had opened 2-3 customer ID with IOCL in which I have made the payments of recharges so that it can be used at the petrol pump.

There was no relation between me and the drivers/truck owners. It was just that whenever random person came to fill up the petrol/diesel in cash and they use offered the commission of certain % of the cash back point was received in the fleet card used and I use to keep very nominal of cash as a commission.

The customer ID used by me is as mentioned below:

- For the period of 01.04.2016 to 08.11.2016

Sr. no.	Customer ID	Amount of recharge
1	1000586216	11800000/-
2	1000976586	10800000/-
3	1000387044	9500000/-
4	1000586217	500000/-
5	Direct payment	87560/-
	Total payment to IOCL (A)	32687560/-

- For the period of 09.11.2016 to 30.12.2016

Sr. no.	Customer ID	Amount of recharge
1	1000586216	NIL
2	1000976586	NIL
3	1000387044	NIL
4	1000586217	NIL
	Total payment to IOCL (B)	NIL

- For the period of 31.12.2016 to 31.03.2017

Sr. no.	Customer ID	Amount of recharge
1	1000586216	500000/-
2	1000976586	NIL
3	1000387044	NIL
4	1000586217	NIL
	Total payment to IOCL (C)	500000/-

- For the period of 01.04.2016 to 31.03.2017 (FY 2016-17)

Sr. no.	Customer ID	Amount of recharge
1	1000586216	12300000/-
2	1000976586	10800000/-
3	1000387044	9500000/-
4	1000586217	500000/-
5	Direct payment	87560/-
	Total payment to IOCL (A+B+C)	33187560/-

I am enclosing herewith the following:

- Ledger of IOCL

- *List of payment to IOCL customer ID wise*
- *Customer ID with the list of recharge and sale.*

Therefore, all the cash deposit in my account has been made out of this on behalf cash received for the recharge in the fleet cards from the random truck drivers/truck owners who visited the petrol pump. At that point of time people were unaware of the benefits of fleet card so I convinced them to allow the use of fleet card and the daily cash received has been deposited in my account.

Clarification for total receipts in banks.

(i)First of all, the total receipts in bank of Rs.3,65,22,977/- contains the receipt for my salt trading business, amount recd back due to cancellation of cheque, the cash deposits made for the on-behalf payment to IOCL and even out of cash earned from salt sale, cattle income etc.

(ii)The payments to IOCL have been made only for the fleet card recharge on behalf of various drivers/truck owner. There was no other reason for which payments have been made on daily basis. I have never entered any purchase/sale transaction with any one or any other sort of trading business of diesel/petrol.

(iii)I have maintained books of accounts for the same and I have made a total payment of Rs.3,31,87,560/- for the FY 2016-17 to Indian Oil Corporation Limited. If you see the payment made to IOCL I have made a highest payment of Rs.14,00,000/- on dated 24.06.2016. So maximum cash flow available with me was of Rs.14 lakhs and even this Rs. 14 lakhs contains the amount received on the same day from various drivers and truck owners also.

(vi)I never had so huge capital in my life. It was only the rotation of this cash flow which has led to a total payment of Rs.3,31,87,560/- Daily I use to collect the amount in cash and deposit the same in my bank account for the payment to IOCL for fleet card recharge. Hence my maximum capital which was invested in these transactions was approx of 10-12 lakhs only.

(v)The cash back rewards were received as 1% of the total points redeemed. If you see the cash back rewards earned, it is 1% of the total recharge amount. Hence the real commission was 1% of Rs.3,31,87,560/- le. Rs.3,31,876/-. Hence my total turnover of commission is Rs.3,31,876/- and out of the total commission received I had offered the truck driver/truck owners 80% of this amount and balance 20% i.e. 66,375/-I have already declared as my commission income which is included in my total commission income of Rs.1,17,800/-.

(vi)I am enclosing herewith the sample copy of cash book rewards points redeem from customer ID to show that on redemption of cash back points 1% of that points is available as free cash back balance point

(vii)So, I humbly request you to not proceed for any type of such a huge addition of income as I have earned a very nominal amount of commission for the cash deposits in my account i.e. Rs.66,200/-

(viii)My total capital is only Rs.20.33 lakhs and in case of such a huge addition I won't be able to pay those dues to the government as I am not capable enough to pay.So, keep in view the Human justice please do not take such transactions of addition as I have earned a very nominal amount from those transactions and the maximum amount of cash utilized is just Rs. 14 lakh and the rotation had led to such a higher amount. My total capital is only Rs.20,33,309/-".

8. However, the assessing officer rejected the above reply of the assessee and observed that in the prevailing situation, similar trade are being executed by the assessee, during the year, it was found by the assessing officer that in such kind of trade, in earlier years, wherein return filed without audits and disclosed profits u/s 44AD of the Act. Thus, during the year profits has to be invoked u/s 44AD of the Act @8%. Therefore, the remaining amount other than demonetization period, the cash/credit made by the assessee during the F.Y. 2016-17 comes to Rs.3,52,81,977/- may be treated as assessee business transaction/turnover. In absence of any supporting documentary evidences the tax to be proposed on amount of Rs.3,52,81,977/- in the hand of the assessee, as business receipts. Therefore, assessing officer noticed that above deposits pertain to his sale proceeds/business transaction and the sale proceeds deposits in bank accounts and the assessee`s turn over exceeding Rs.2.00 crores and above. Considering the overall facts and circumstances of the cases, the assessee has not audited his books of accounts, therefore, the assessee has compulsorily required to offer presumptive income u/s 44AD of the Act. Therefore, assessing officer determined income @ 8% which comes to Rs.28,22,558/- (8% of Rs.3,52,81,977) in the hands of the assessee.

9. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the learned CIT(A) who has dismissed the appeal of the assessee, therefore, the assessee is in appeal before this Tribunal. I have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. Shri Kalepesh Doshi, learned Counsel for the assessee, on technical issue, (ground No.1 raised by the assessee), vehemently argued that in assessee`s case, statutory notice under section 143(2) of the Act, had not been issued by the assessing officer, therefore, assessment order framed by the assessing officer is bad in law, therefore, assessment order should be quashed. On the other hand, learned DR for the revenue submitted that since the assessee has participated in the assessment proceedings, therefore, this technical issue cannot be raised by the assessee.

10. I have considered submissions of both the parties and observed that assessing officer framed the assessment order, in the assessee`s case, without serving the statutory notice u/s 143(2) of the I.T. Act, 1961. I note that the assessee is an individual and earning income from sale of salt, cattle income and commission income from Truck Owner for Fleet Card Scheme introduced by Indian Oil Corporation Limited (IOCL).The notice u/s 142(1) of the Act was issued on 13/03/2018, by the assessing officer, requiring assessee to file return of income. The return of income for the year under consideration in response to the said notice has been duly filed declaring a total income at Rs. 2,59,630/-. The return of income filed by the assessee is through e- procedure and therefore it is duly available on the Income Tax Portal. Further, during the assessment proceedings, the assessee

has duly filed his reply in response to the said show -cause notice, issued within time specified on 17/12/2019, along with the copy of return of income filed as an annexure to the show-cause reply. The assessing officer has duly acknowledged the return of income filed by the assessee. The copy of acknowledgement of Show-cause reply, reflecting return of income is filed by the assessee, before the Bench. During the assessment proceedings, the assessee submitted its reply before the assessing officer on two occasions with necessary documentary evidences, however, despite of this fact, the assessing officer framed the assessment order u/s 144 of the Act, vide order dated 26/12/2019. The said assessment order has been passed, by the assessing officer, without issuing statutory notice u/s 143(2) of the Act.

11. I note that the assessee has duly filed return of income in response to the notice u/s 142(1) of the Act. The fact that assessee has filed return of income in response to notice u/s 142(1) of the Act, is duly mentioned, by the assessee, in the reply to the show cause notice. The said copy of return of income has been furnished by the assessee before the Bench.Whereas, even after due filing of return of income, the assessing officer has finalized assessment order, without fulfilling the statutory provisions of section 143(2) of the Act.I also find that assessing officer has nowhere discarded the return of income, as invalid return in the entire assessment proceedings. Therefore, the return filed by the assessee is valid.I note that the notice u/s 143(2) of the Act is the starting point of assessment proceedings, whereby assessing officer seeks documents/ evidences from the assessee to support the claims made in the return of income. On perusal of provisions contained in sub-section (2) of section 143 of the Act, it is stated that the provisions are mandatory in nature and Legislature has cast duty upon the assessing officer to apply mind to

the material on record and after being satisfied with regard to escaped income is required to serve notice specifying particulars of such claim.Therefore, after receipt of return of income in response to notice u/s 142(1) of the Act, it is mandatory for the Assessing Officer to serve a notice, under sub-section (2) of section 143 of the Act.

12. I find that the return of income filed by the assessee is duly forming part of the reply filed in response to the show -cause notice and the same is duly accepted by the assessing officer. Therefore, once the return of income is accepted by the assessing officer, the assessing officer is bound to issue notice u/s 143(2) of the Act, for the furtherance of the proceedings. Considering these facts, I note that issue under consideration is squirely covered in favour of the assessee by the judgement of the Jurisdictional Income Tax Appellate Tribunal, Rajkot, in the case of Shri Haresh Jayantibhai Rathod, vide ITA NO: 115/RJT/2025 for AY 2017-18. The findings of the Income Tax Appellate Tribunal, is reproduced below:

> *16.We find that one key issue arises for our apt adjudication in the instant lis, which is, whether it is necessary to issue notice u/s 143(2) of the Act, when the assessee has filed the Return of Income, in response to notice under section 142(1) of the Act, before the assessing officer. We find that in response to notice, u/s 142(1) of the Act, the assessee has filed Return of Income for A.Y 2017-18, on 03.06.2019, before the assessing officer, declaring the income at Rs.5,64,690/- in Income Tax Return (ITR) Form No.3. However, the assessing officer noticed that the assessee has filed said return of income beyond the time limit of notice u/s 142(1) of the Act. We note that time limit stated by the assessing officer, as per his own whim, or desire, in the notice u/s 142(1) of the Act, is not a LAXMAN REKHA, (that is, expiry date), on which the assessee should have filed the return of income, before the assessing officer. Some assessing officers, may allow the time in notice u/s 142(1) of the Act, one month to the assessee, to file Return of Income before him, some assessing officers may allow time, to file return of income, in notice u/s 142(1) of the Act, for two Months/three Months, therefore it is only administrative and individual decision of the assessing officer, to allow the time limit to the assessee, to file the return of income, in response to the notice u/s 142(1) of the Act. However, once the assessee has filed the Return of Income, in response to notice, u/s 142(1) of the Act, (although it is late, as compare to the date mentioned in the notice u/s 142(1) of the Act),*

then it would be mandatory for the assessing officer, in order to acquire the jurisdiction, to make the assessment on the assessee, to issue the notice u/s 143(2) of the Act. Without issue of notice u/s 143(2) of the Act, the assessing officer does not get jurisdiction to make the assessment on the assessee.

.....

22An analysis of section 143(2) of the Act, indicates that after the return is filed, this sub-section enables the Assessing Officer to complete the assessment by following the procedures, like issue of notice u/s 142(1) of the Act and complete the assessment. When the assessing officer is in repudiation of the return filed by the assessee, then, the assessing officer has to proceeds to make an enquiry, and he should necessarily to follow the provisions of section 142(1) and provisions of sub-section (2) and (3) of section 143 of the Act. The notice u/s 143(2) is mandatory if the return filed is not accepted and subsequently an assessment order is to be made at variance with the return filed by the assessee. It is also to be evident that the issue is not limited to block assessment but would apply to every case where a notice u/s 143(2) is necessary. Therefore, even if the assessing officer repudiates the return of income filed by assessee, still the assessing officer is bound to issue notice u/s 143(2) of the Act. Therefore, the omission on the part of the assessing authority to issue notice u/s 143(2) of the Act is not curable, and therefore, the requirement of notice u/s 143(2) cannot be dispensed with. In the assessee's case under consideration, the assessing officer did not issue the notice u/s 143(2) of the Act, therefore we quash the assessment order framed by the assessing officer, and allow the appeal of the assessee.

13.Therefore, I find that since the assessing officer has not issued the notice u/s. 143(2) of the Act, which is statutory notice, which should be issued by the assessing officer, invariably to acquire the jurisdiction to frame the assessment order. Since, no notice has been issued to the assessee u/s. 143(2) of the Act, therefore respectfully following the binding precedents of the Co-ordinate Bench of ITAT Rajkot in the case of Haresh J Rahtod (supra), I allow the appeal of the assessee.

14.Since I have adjudicated the assessee's appeal on technical ground No. 1 on the issue of non-issuance of notice u/s. 143(2) of the Act, therefore other grounds raised by the assessee on merit/technical issues have become infructuous and therefore, do not require adjudication.

15. In the result, the appeal filed by the assessee is allowed.

16. Now, I shall take assessee`s appeal in ITA No.878/RJT/2024, for same assessment year 2017-18, which relates to penalty imposed by the assessing officer under section 271B of the Act, as the assessee failed to get his accounts audited under section 44AB of the Act. Since, I have quashed the assessment framed by the assessing officer for assessment year 2017-18, as noted above, therefore, penalty imposed by the assessing officer does not have leg to stand. Once the foundation fails, the superstructure also fails, that is, the penalty under section 271B of the Act, also is to be deleted. In this regard, I rely on the legal maxim *"Sublato fundamento cadit opus"* (meaning thereby that foundation being removed, structure /work falls). Hence the initial action of the assessing officer (in making the assessment without issuing notice u/s 143(2) of the Act) itself is not in consonance with law, then all the subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. Hence, I delete the penalty under section 271B of the Act and allow the appeal of the assessee.

17. In the result, appeal filed by the assessee, in ITA No. 878/RJT/2024, is allowed.

18. In the combined result, both appeals filed by the assessee are allowed.

Order pronounced in the open court on 01/12/ 2025.

Sd/-
(Dr. Arjun Lal Saini)
Accountant Member

Rajkot
दिनांक/ Date: 01/12/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot