

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM**

(HYBRID HEARING)

**श्री रवीश सूद, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.478/VIZ/2024
(निर्धारण वर्ष/ Assessment Year:2018-19)**

ISR INFRA PRIVATE LIMITED 50-96-4/7, Flat No. 2B Sai Ratneswara Residency Seethammadhara – 530013 Andhra Pradesh [PAN: AACCI4323D]	Vs.	ACIT – CIRCLE – 3 Infinity Towers, Santhipuram Sankaramattam Road – 530016 Andhra Pradesh
---	------------	---

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri I. Kama Sastry, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	30.10.2025
घोषणा की तारीख/Date of Pronouncement	:	03.12.2025

आदेश /ORDER

PER SHRI S. BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short "Ld.CIT(A)"] vide DIN & Order No.

ITBA/NFAC/S/250/2024-25/1068776989(1) dated 18.09.2024 arising out of order passed under section 144 of Income Tax Act, 1961 (in short 'Act') dated 27.04.2021.

2. Brief facts of the case are that, assessee being a Private Limited Company filed its return of income for the A.Y.2018-19 declaring total loss of Rs.152/-. Subsequently, the case was selected for scrutiny under CASS and various statutory notices under section 142(1) of the Act were issued and served on the assessee. Assessee has not complied with any of the notices including the show-cause notice. Thereafter, a letter dated 24.03.2021 was issued to the assessee electronically calling for details of copy of financials, nature of business activity, details of payments made under section 194C, details of unsecured loans, details of expenses and TDS deducted etc. The assessee failed to respond to the letter dated 24.03.2021. Thereafter, the Ld. Assessing Officer [hereinafter in short "Ld.AO"] proceeded to complete the assessment as per the provisions of section 144 of the Act and determined the total income of the assessee at Rs.13,33,62,630/- and raised tax demand of Rs.14,43,23,580/-.

3. On being aggrieved by the order of the Ld. AO, assessee filed an appeal before the Ld. CIT(A). Ld. CIT(A) partly allowed the appeal of the assessee.

4. On being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising seven grounds as under: -

“1. The assessment order passed under section 144 r.w.s. 144B is null and void as notice under section 143(2) has not been issued. Ground

2. The Ld. CIT(Appeals), National Faceless Appeal Centre is not justified in confirming disallowance of Rs.2,98,026/- under section 40(a)(ia).Ground

3. The Ld. CIT(Appeals), National Faceless Appeal Centre is not justified in confirming the treatment of Rs.34,14,944/- as unexplained expenditure under section 69C.Ground

4. The Ld. CIT(Appeals), National Faceless Appeal Centre is not justified in confirming the treatment of Rs.45,30,000/- as unexplained cash credit under section 68. Ground

5. The Ld. CIT(Appeals), National Faceless Appeal Centre is not justified in confirming the treatment of Rs.1,00,00,000/- as unexplained expenditure under section 69C on the basis of entry in form 26AS when the transaction is relevant to the assessment year 2017-18Ground

6. All the above grounds of appeal are mutually exclusive and without prejudice to one another. Ground

7. The appellant craves leave to add to; alter; amend; modify or delete all or any of the above grounds of appeal. Ground

5. Additionally, assessee also filed additional grounds as follows:-

“1. The assessment order passed under section 144 r.w.s. 144B is null and void as notice under section 143(2) has not been issued.

2. The Id. AO erred in issuing notice u/s 143(2) of the Act dated 22.09.2019 without complying with the CBDT Instruction F.No.225/157/2017/TA-II dated 23.06.2017 and so the notice issued u/s 143(2) is not valid as per law and hence the entire assessment proceedings u/s 143(3) of the Act are without jurisdiction and liable to be quashed.

3. The additions to the returned income/loss made by the Assessment National Faceless Assessment Centre is beyond the scope of the issues for which the case of the assessee is selected for scrutiny.”

6. Since the additional grounds are legal in nature, we admit the same and proceed to adjudicate the additional ground at first.

7. On this issue, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the assessee was sent an E-Mail regarding the notice under section 143(2) of the Act, however, no attachment was made to the E-Mail appending the notice under section 143(2) of the Act. He referred to Page No. 5 of the paper book-I wherein the E-Mail was sent by the Income Tax Officer but no attachment was appended to the E-Mail. Ld.AR submitted that since no notice was received, assessee could not participate in the assessment proceedings and therefore the assessment was framed under section 144 of the Act. He prayed that since no notice under section 143(2) of the Act has been issued and served on the assessee the scrutiny assessment proceedings initiated by the Ld. AO is not valid in law and *void abinitio*.

8. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that E-Mail indicated the notice has been attached and appended to the E-Mail. She also reiterated that assessee is aware of the issuance of notice under section 143(2) of the Act and he could have approached to the Jurisdictional Assessing Officer to obtain the copy of the same. She therefore pleaded that the assessment cannot be invalidated on the ground that no notice under section 143(2) of the Act was issued to the assessee.

9. Countering the arguments of the Ld. DR, Ld.AR submitted that the Revenue is duty bound to ensure the issuance and service of notice to the assessee before proceeding with the scrutiny assessment proceedings. Ld.AR

submitted that various judicial precedents have held that service of notice to the assessee is mandatory.

10. We have heard both the sides and perused the material available on record. It is an undisputed fact that the Ld. AO has sent an E-Mail mentioning the body of the E-Mail that notice under section 143(2) of the Act is attached, however, screenshot of the E-Mail furnished by the assessee in the Page No. 5 of the paper book-1 clearly indicates that no attachment is appended to the E-Mail. The bench directed the Ld. DR to produce an affidavit from the Ld.AO regarding the serving of the notice under section 143(2) of the Act. Ld. DR submitted that the affidavit received from DCIT-Circle -3(1), Visakhapatnam as follows: -

“1. That I am the Assessing Officer in the case of M/s ISRINFRA PVT. LTD (PAN:AACCI4323D) for the Assessment Year 2018-19 and I am duly authorized and competent to swear this affidavit.

2. That in compliance with the directions issued by the Hon'ble Income Tax Appellate Tribunal, Visakhapatnam Bench, during the proceedings held on 07/07/2025 in ITA No. 478/VIZ/2024, I hereby submit the following clarifications:

(i) Proof of Service of Notices:

a. Notice under section 143(2) of the Income-tax Act, 1961 was issued to the assessee on 22/09/2019 vide DIN: ITBA/AST/S/143(2)/2019-20/1018148174(1).

b. Another notice under section 143(2) was subsequently issued on 29/09/2019 vide DIN: ITBA/AST/S/143(2)/2019-20/1018465221(1).

c. As verified from the ITBA system, both notices were successfully delivered to the assessee's registered e-filing account. Further, system-

generated alerts were sent to the assessee's registered email address as follows:

- For the notice dated 22/09/2019, email alert was sent on 23/09/2019 at 10:59:29 PM.
- For the notice dated 29/09/2019, email alert was sent on 29/09/2019 at 04:42:18 PM.

d. Importantly, the alert emails sent to the assessee on the above-mentioned dates explicitly stated, "Please find attached the notice u/s. 143(2)," thereby confirming that the notices were enclosed as attachments to the respective emails. This

substantiates that the notices were duly communicated and made available to the assessee through both the e-filing portal and the registered email. Relevant ITBA system screenshots capturing the email delivery timestamps and content of the alert messages are enclosed herewith for reference as Annexure 1.

(ii) Clarification on Non-availability of Notices on the Assessee's e-Filing Portal:

To the best of my knowledge and as per verification from the records, both notices were uploaded and made available through the assessee's e-filing account at the time of issuance. The reason why the said notices are presently not appearing on the portal may be due to subsequent archival, portal migration, or technical issues at the backend of the e-filing system. This aspect is beyond the control of the Assessing Officer and pertains to the system architecture managed by the Directorate of Systems, CBDT.

(iii) Explanation on Issuance of Multiple Notices:

The first notice under section 143(2) was issued on 22/09/2019 within the statutory time limit. However, due to inadvertence and oversight during initial system workflow configuration or due to procedural caution, a second notice under the same section was issued on 29/09/2019. Both notices pertain to the same assessment year and are based on the same return of income. No prejudice was caused to the assessee due to the issuance of two notices. The assessment was carried forward based on the proceedings initiated in pursuance of the validly issued notice within the time prescribed under law."

11. On perusal of the affidavit, we notice that Ld. AO attached the screenshot of the same E-Mail as provided by the assessee stating that the notice is attached. However, no such attachment is appended to the E-Mail. Further the bench also directed the Ld. DR to obtain records from the Technical Department regarding the service of the notice under section 143(2) of the Act from archived records. However, the Revenue Authorities could not obtain the same and categorically establish that the notice under section 143(2) of the Act has been attached to the E-Mail sent to the assessee. Given these circumstances, we are of the opinion that there is no proper service of notice under section 143(2) of the Act and hence consequent assessment proceedings could not be sustained and void-ab-initio. Thus, we allow the legal ground raised by the assessee.

12. Since the legal ground is adjudicated in favour of the assessee, other grounds raised on merits are left open.

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

Order pronounced in the open court on 03rd December, 2025.

Sd/-
(रवीश सूद)

(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 03.12.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **ISR INFRA PRIVATE LIMITED**
50-96-4/7, Flat No. 2B
Sai Ratneswara Residency
Seethammadhara – 530013
Andhra Pradesh
2. राजस्व/ The Revenue : **ACIT – CIRCLE – 3**
Infinity Towers, Santhipuram
Sankaramattam Road – 530016
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam