IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.1902/PUN/2025
Assessment year : 2012-13

Bharat Kantilal Chengede 4, Budhwar Peth, Bajirao Road, Near Vitthal Mandir, Pune – 411002	**Vs.**	ITO, Ward 6(3), Pune
PAN: AAUPC5241M		
(Appellant)		**(Respondent)**

Assessee by	**:**	Shri Suhas Bora, Sampada Ingale, CA and Riya Oswal, CA
Department by	**:**	Shri Basavaraj Hiremath, Addl.CIT
Date of hearing	**:**	08-01-2026
Date of pronouncement	**:**	-01-2026

O R D E R

PER R.K. PANDA, V.P:

This appeal filed by the assessee is directed against the order dated 03.07.2025 of the Ld. CIT(A) / NFAC, Delhi relating to assessment year 2012-13.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the Ld. CIT(A) / NFAC in upholding the validity of re-assessment proceedings in absence of issue of notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and thereby sustaining the addition of Rs.57,05,787/- made by the Assessing Officer on account of long term capital gain by denying the exemption u/s 54F of the Act.

3. Facts of the case, in brief, are that the assessee is an individual and a partner in the partnership firm M/s. Milan Plastic Industry. He derives income from share in the partnership firm, income from capital gain and income from other sources. The case of the assessee was reopened u/s 147 of the Act by issue of notice u/s 148 of the Act on 25.03.2019 which was duly served on the assessee. The assessee in response to the notice issued u/s 148 of the Act filed his return of income on 11.12.2019 declaring total income of Rs.3,76,494/-. The Assessing Officer thereafter issued notice u/s 142(1) of the Act. Rejecting the various explanations given by the assessee, the Assessing Officer made addition of Rs.57,05,787/- on account of long term capital gain and also made addition of Rs.75,84,125/- being the difference between total fixed deposits declared by the assessee at Rs.25,68,457/- and information obtained from the bank u/s 133(6) of the Act at Rs.1,01,52,582/-.

4. Before the Ld. CIT(A) / NFAC the assessee, apart from challenging the addition on merit, challenged the validity of re-assessment proceedings on the ground that no notice u/s 143(2) of the Act was issued to the assessee after filing the return of income on 11.12.2019 in response to notice issued u/s 148 of the Act, therefore, such assessment proceedings completed without issue of notice u/s 143(2) of the Act makes the assessment nullity. However, the Ld. CIT(A) / NFAC was not satisfied with the arguments advanced by the assessee and upheld the validity of re-assessment proceedings on the ground that the same are saved by

section 292BB of the Act. The relevant observations of the Ld. CIT(A) / NFAC on this issue read as under:

Ground Relating to Non-Issuance of Notice Under Section 143(2)

The appellant contends that no notice under section 143(2) was issued after filing of return on 11.12.2019 in response to notice under section 148, rendering the reassessment void.

On a careful consideration of the assessment records and the provisions of law, it is evident that even assuming there was any defect or procedural lapse in issuance or timing of the notice under section 143(2), the assessment proceedings are saved by section 292BB of the Act. As envisaged in the section 292BB, when an assessee participates in the reassessment proceedings without raising an objection at the earliest possible stage, he shall be deemed to have waived the objection related to non-service or improper service of notice.

The "substance over form" doctrine underlying section 292BB has been repeatedly upheld. In the present case, the appellant not only filed a return in response to notice under section 148 but also actively participated in the proceedings and made detailed submissions. There is no evidence of any confusion or prejudice caused to the appellant. In such a scenario, procedural irregularities in the issuance or non-issuance of notice under section 143(2) do not vitiate the assessment. This is in line with the rationale discussed in the CBDT circular dated 30.09.1975 and affirmed in various judicial precedents such as Chief Forest Conservator v. Collector (2003) and Prime Securities Ltd. v. Varinder Mehta (2009) (Bom HC).

Accordingly, this ground challenging the validity of the assessment proceedings is devoid of merit and stands rejected.

5. So far as the merit of the case is concerned, he dismissed the arguments made by the assessee and upheld both the additions.

6. Aggrieved with such order of the Ld. CIT(A) / NFAC, the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for the assessee at the outset submitted that the Assessing Officer issued a notice u/s 148 of the Act on 25.03.2019, copy of which is placed at page 1 of the paper book. He submitted that the assessee in response to the same filed his return of income on 11.12.2019, copy of which is placed at page 2 of the paper book. He submitted that after the return was filed no notice u/s 143(2) of the Act was issued by the Assessing Officer.

8. Referring to the decisions of Hon'ble Delhi High Court in the case of PCIT vs. Staunch Marketing (P.) Ltd. reported in (2017) 81 taxmann.com 482 (Del), PCIT vs. Shri Jai Shiv Shankar Traders (P.) Ltd. reported in (2015) 64 taxmann.com 220 (Del), PCIT vs. Draft Infrabuild (P.) Ltd. reported in (2023) 166 taxmann.com 4 (Del) and the decision of Hon'ble Patna High Court in the case of CIT vs. Nagendra Prasad reported in (2023) 156 taxmann.com 19 (Patna), he submitted that the Hon'ble High Courts have held that even where the return was filed belatedly if the Assessing Officer considers such return while framing the assessment, notice u/s 143(2) of the Act is mandatory.

9. Referring to the decisions in the following cases, he submitted that similar view has been taken holding that once the return is filed in response to the notice u/s 148 of the Act, issue of notice u/s 143(2) of the Act is mandatory:

i) Raja Bashumiya Maniyar vs. ITO vide ITA No.455/PUN/2025 order dated 27.05.2025 for assessment year 2010-11

ii) CIT vs. Nagendra Prasad reported in (2023) 156 taxmann.com 19 (Patna)

iii) ACIT vs. Logic Control Pvt. Ltd. vide ITA No.3974/DEL/2025 order dated 21.11.2025 for assessment year 2011-12

iv) Bababhai Sardarbhai Shaikh vs. ITO vide ITA No.144/PUN/2025 order dated 23.10.2025 for assessment year 2015-16

10. He also relied on the following decisions:

i) ACIT vs. Hotel Blue Moon reported in (2010) 188 Taxman 113 (SC)

ii) CIT vs. Laxman Das Khandelwal reported in (2019) 108 taxmann.com 183 (SC)

11. He submitted that since the Assessing Officer in the instant case has admittedly not issued any notice u/s 143(2) of the Act after the assessee filed his return of income in response to the notice u/s 148 of the Act, such assessment proceedings are liable to be quashed for non-issue of notice u/s 143(2) of the Act. He submitted that the provisions of section 292BB of the Act cannot come to the rescue of the department. He accordingly submitted that on this preliminary ground the order of the Ld. CIT(A) / NFAC is liable to be set aside and the grounds raised by the assessee should be allowed.

12. The Ld. DR on the other hand referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Madhya Bharat Energy Corporation Ltd. vide ITA No.950/2008 order dated 22.07.2011 submitted that when the assessee filed its return of income in response to the notice u/s 148 of the Act, non issue of notice u/s 143(2) of the Act thereafter will not invalidate the assessment proceedings.

13. The Ld. Counsel for the assessee in his rejoinder submitted that the decision relied on by the Ld. DR is dated 11.07.2011 and the assessment years involved in that case were 1999-2000 to 2003-04. However, the Hon'ble Delhi High Court in the subsequent decisions has held that the failure to issue notice u/s 143(2) of the Act after filing of the return in response to the notice u/s 148 of the Act is fatal to the order of re-assessment proceedings. He submitted that in any case when two views are possible, the view which is in favour of the assessee has to be accepted.

14. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case issued notice u/s 148 of the Act on 25.03.2019. We find the assessee in the instant case filed his return of income on 11.12.2019 which is after the statutory period of 30 days given by the Assessing Officer. It is also an admitted fact that the assessment order was passed on 20.12.2019 and no notice u/s 143(2) of the Act has been issued and served on the assessee before completion of the assessment. Under these circumstances, we have to see as to whether non-issue of notice u/s 143(2) of the Act renders the assessment proceedings invalid when the assessee filed the return in response to the notice issued u/s 148 of the Act belatedly.

15. We find an identical issue had come up before the Hon'ble Delhi High Court in the case of PCIT vs. Draft Infrabuild (P.) Ltd. (supra). We find the Hon'ble High Court, following its earlier order in the case of PCIT vs. Shri Jai Shiv Shankar Traders (P.) Ltd. (supra) and various other decisions, has held that the failure by the Assessing Officer to issue a notice to the assessee u/s 143(2) of the Act after the assessee files his return of income in response to the notice u/s 148 of the Act is fatal to the order of re-assessment proceedings. The relevant observations of Hon'ble High Court read as under:

15. This brings us to the second aspect of the matter, *i.e.*, the consequences of the failure of the appellant/revenue to issue notice under Section 143(2) of the Act before framing the assessment order. Concededly, the appellant/revenue did not issue a notice under Section 143(2) of the Act, although it had on record the ROI filed by the respondent/assessee for the AY in issue, *i.e.*, 2010-11. The return was, concededly, filed on 04.12.2015. This return was considered while framing the assessment under Section 147/144 of the Act. The only reason furnished for not issuing a notice under Section 143(2) of the Act is that the ROI was not filed within the thirty (30) days provided via the notice dated 30.03.2015 issued under Section 148. This argument does not impress us because if we were to hold [as we have], that the said notice was directed towards the wrong address, the respondent/assessee could have not adhered to the timeline provided in the said notice.

15.1 The respondent/assessee became aware of the Section 148 notice being issued after it received the notice dated 12.06.2015 under Section 142(1) of the Act. The fact that the respondent/assessee had filed an ROI on 04.12.2015 is not disputed. The fact that this ROI, as noticed above, was taken into account is also not in dispute. Therefore, in our opinion, before framing an assessment order, the AO ought to have issued a notice under Section 143(2) of the Act. The submission advanced on behalf of the appellant/revenue that, while it could consider the invalid return while framing the assessment order, it was not obliged to issue a notice under Section 143(2) of the Act because it was not filed within the timeframe given in the Section 148 notice is untenable in law, since the ROI, which was belated, was considered by the AO while carrying out the assessment.

15.2 The absence of notice, under Section 143(2), impregnates the proceedings with a jurisdictional defect and, hence, renders it invalid in the eyes of the law. This position is no longer res integra, as demonstrated by the observations made in *Principal Commissioner of Income-tax* v. *Shri Jai Shiv Shankar Traders (P.) Ltd.* [2015] 64 taxmann.com 220/383 ITR 448 (Delhi) :

> "1 2. The narration of facts as noted above by the court makes it clear that no notice under section 143(2) of the Act was issued to the assessee after December 16,2010, the date on which the assessee informed the Assessing Officer that the return originally filed should be treated as the return filed pursuant to the notice under section 148 of the Act.
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> 13. *In DIT* v. *Society for Worldwide Interbank Financial Telecommunications* [2010] 323 ITR 249 (Delhi), this court invalidated a reassessment proceeding after noting that the notice under section 143(2) of the Act was not issued to the assessee pursuant to the filing of the return. In other words, it was held mandatory to serve the notice under section 143(2) of the Act only after the return filed by the assessee is actually scrutinised by the Assessing Officer.
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> 14. The interplay of sections 143 (2) and 148 of the Act formed the subject matter of at least two decisions of the Allahabad High Court in CIT v. Rajeev Sharma [2010] 192 Taxman 197/336 ITR 678

(Allahabad) it was held that a plain reading of section 148 of the Act reveals that within the statutory period specified therein, it shall be incumbent to send a notice under section 143(2) of the Act. It was observed (page 687):

> "The provisions contained in sub-section (2) of section 143 of the Act is mandatory and the Legislature in its wisdom by using the word „reason to believe' had cast a duly on the Assessing Officer to apply mind to the material on record and after being satisfied with regard to escaped liability, shall serve notice specifying particulars of such claim.
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> In view of the above, after receipt of return in response to notice under section 148, it shall be mandatory for the Assessing Officer to serve a notice under sub-section (2) of Section 143 assigning reason therein . . .
>
> in absence of any notice issued under sub-section (2) of section 143 after receipt of fresh return submitted by the assessee in response to notice under section 148, the, entire procedure adopted for escaped assessment, shall not be valid."

15. In a subsequent judgment in CIT v. Salarpur Cold Storage (P.) Ltd. [2014] 50 taxmann.com 105/228 Taxman 48 (Allahabad), it was held as under:

"10. Section 292BB of the Act was inserted by the Finance Act, 2008 with effect from April 1, 2008. Section 282BB of the Act provides a deeming fiction. The deeming fiction is to the effect that once the assessee has appeared in any proceeding or cooperated In any enquiry relating to an assessment or reassessment, it shall be deemed that any notice under the provisions of the Act, which is required to be served on the assessee, has been duly served upon him in time in accordance with the provisions of the Act The assessee is precluded from taking any objection in any proceeding or enquiry that the notice was (*i*) not served upon him ; or (*ii*) not served upon him in time ; or (*iii*) served upon him in an improper manner. IN other words, once the deeming fiction comes into operation, the assessee is precluded from raising a challenge about the service of a notice, service within time or service in an improper manner. The proviso to section 292BB of the Act, however, carves out an exception to the effect that the section shall not apply where the assessee has raised an objection before the completion of the assessment or reassessment. Section 292BB of the Act cannot obviate the requirement or complying with a jurisdictional condition. For the Assessing Officer to make an order of assessment under section 143(3) of the Act, it is necessary to issue a notice under section 143(2) of the Act and in the absence of a notice under section 143(2) of the Act, the assumption of jurisdiction itself would be invalid."

16. In the same decision in Salarpur Cold Storage (P.) Ltd. (*supra*), the Allahabad High Court noticed that the decision of the Supreme Court in Hotel Blue Moon (*supra*) where in relation to block assessment, the Supreme Court held that the requirement to issue notice under Section 143(2) was mandatory. It was not "a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with."

17. The Madras High Court held likewise in Sapthagiri Finance & Investments v. ITO [2012] 25 taxmann.com 341/210 Taxman 78 (Madras) (Mag.). The facts of that case were that a notice under Section 148 of the Act was issued to the Assessee seeking to reopen the assessment for AY 2000-01. However, the Assessee did not file a return and therefore a notice was issued to it under Section 142 (1) of the Act. Pursuant thereto, the Assessee appeared before the AO and stated that the original return filed should be treated as a return filed in response to the notice under Section 148 of the Act. The High Court observed that if thereafter, the AO found that there were problems with the return which required explanation by the Assessee then the AO ought to have followed up with a notice under Section 143(2) of the Act. It was observed that:

> "Merely because the matter was discussed with the Assessee and the signature is affixed it does not mean the rest of the procedure of notice under Section 143(2) of the Act was complied with or that on placing the objection the Assessee had waived the notice for further processing of the reassessment proceedings. The fact that on the notice issued u/s 143(2) of the Act, the assessee had placed its objection and reiterated its earlier return filed as one filed in response to the notice issued u/s 148 of the Act and the Officer had also noted that the same would be considered for completing of assessment, would show that the AO has the duty of issuing the notice under Section 143(3) to lead on to the passing of the assessment. In the circumstances, with no notice issued u/s 143(3) and

there being no waiver, there is no justifiable ground to accept the view of the Tribunal that there was a waiver of right of notice to be issued u/s 143(2) of the Act."

18. As already noticed, the decision of this Court in Vision Inc. (*supra*) proceeded on a different set of facts. In that case, there was a clear finding of the Court that service of the notice had been effected on the Assessee under Section 143 (2) of the Act. As already further noticed, the legal position regarding Section 292BB has already been made explicit in the aforementioned decisions of the Allahabad High Court. That provision would apply insofar as failure of "service" of notice was concerned and not with regard to failure to "issue" notice. In other words, the failure of the AO, in re-assessment proceedings, to issue notice under Section 143(2) of the Act, prior to finalising the re-assessment order, cannot be condoned by referring to Section 292BB of the Act.

19. The resultant position is that as far as the present case is concerned the failure by the AO to issue a notice to the Assessee under Section 143(2) of the Act subsequent to 16th December 2010 when the Assessee made a statement before the AO to the effect that the original return filed should be treated as a return pursuant to a notice under Section 148 of the Act, is fatal to the order of re-assessment. "

[*Emphasis is ours*]

IV. Conclusion:

16. On both aspects, the Tribunal is right. The Tribunal has returned findings of fact on the two issues adverted to hereinabove.

17. Thus, for the foregoing reasons, which are (*i*) that notice under Section 148 of the Act was improperly served, and (*ii*) that notice under Section 143(2) should have been issued before framing of assessment order under Section 147/144 of the Act, we are not inclined to interfere with the impugned order passed by the Tribunal.

18. According to us, no substantial question of law arises for our consideration.

19. The appeal is, accordingly, closed.

16. We find Hon’ble Patna High Court in the case of CIT vs. Nagendra Prasad (supra) has held that where notice was issued by the Assessing Officer under Section 148 requiring the assessee to file a return within thirty days but return was filed after eight and a half months, since return was filed by the assessee in response to said notice though delayed, there should have been a notice issued under section 143(2) as requirement to issue notice could not be dispensed with. The relevant observations of Hon’ble High Court read as under:

> *“4. The only question of law arising in the facts and circumstances of the case is whether notice should have been issued under section 143(2) of the Income-tax Act?*

5. Admittedly, the notice was issued by the Assessing Officer under section 148 of the Act on 14-7-2008 requiring the assessee to file a return within thirty days. A return was filed much later on 31-3-2009, after eight and a half months.

6. On identical facts, in M.A. No. 239 of 2011 titled as Chand Bihari Agrawal v. Commissioner of Income Tax, Central, Patna decided on 25-7-2023, this Court considered the issue and held against the revenue.

7. We find that the question of law has to be answered in favour of the assesee and against the revenue. Hotel Blue Moon (supra) governs the issue which has been followed in Chand Bihari Agrawal (supra).

8. The Miscellaneous Appeal stands dismissed."

17. The various other decisions relied on by the Ld. Counsel for the assessee also supports his case to the proposition that when the assessee files return in response to the notice u/s 148 of the Act, though, belatedly, non-issue of notice u/s 143(2) of the Act makes the re-assessment proceeding a nullity.

18. So far as the decision relied on by the Ld. DR is concerned, no doubt, the Hon'ble Delhi High Court on an earlier occasion has taken a view that non-issue of notice u/s 143(2) of the Act does not make the re-assessment proceedings invalid where the assessee files the return in response to the notice u/s 148 of the Act. However, it is to be noted that subsequent to this decision, the Hon'ble High Court recently in three other decisions has held that when the assessee files return in response to the notice u/s 148 of the Act, though, belatedly, the issue of notice u/s 143(2) of the Act is a mandatory requirement and non-issue of the same makes the re-assessment proceedings invalid. In any case, it is the settled position of law that when two views are possible on an issue, the view which is favourable to the assessee has to be adopted. Since the Assessing Officer in the instant case has

admittedly not issued any notice u/s 143(2) of the Act after the assessee filed the return in response to the notice u/s 148 of the Act, though, belatedly, therefore, respectfully following the decisions cited (supra), we hold that the order passed by the Assessing Officer without following the mandatory requirement of issue of notice u/s 143(2) of the Act makes such re-assessment order a nullity. Since the assessee succeeds on this legal ground, the grounds challenging the addition on merit are not being adjudicated.

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

Order pronounced in the open Court on 13th January, 2026.

Sd/-	**Sd/-**
(ASTHA CHANDRA)	(R. K. PANDA)
JUDICIAL MEMBER	VICE PRESIDENT

पुणे Pune; दिनांक Dated : 13th January, 2026
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण ,पुणे
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1	Draft dictated on	08.01.2026		Sr. PS/PS
2	Draft placed before author	12.01.2026		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
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10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			