

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, DELHI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.234/Del/2025
(Assessment Year:2015-16)**

Deputy Commissioner of Income Tax, AayakarBhawan, Sector-12, Karnal Haryana – 132001	Vs.	Ashutosh Foods KarnalKaithal Road, NissingKarnal, Haryana – 132024
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAVFA2840F		
Appellant	..	Respondent

**C.O. No.228/Del/2025
(Assessment Year:2015-16)**

M/s Ashutosh Foods KarnalKaithal Road, Nisang (34), Karnal Haryana – 132024	Vs.	Deputy Commissioner of Income Tax, Circle Karnal Haryana – 132001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAVFA2840F		
Appellant	..	Respondent

Appellant by :	Dr.Rakesh Gupta, Adv. Sh. Somil Agarwal, Adv. Sh. Saksham Agarwal, Adv.
Respondent by :	Sh. Ajay Kumar Arora, Sr. DR
Date of Hearing	04.11.2025
Date of Pronouncement	14nkb.01.2026

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue and Cross Objection filed by the assessee against the order dated 29.11.2024 of the Ld. National Faceless Appeal Centre (NFAC) (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in DIN & Order No: ITBA/NFAC/S/250/2024-25/1070770950(1) arising out of the order dated 30.03.2022 u/s 147 r.w.s 144 read with section 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the NaFAC for AY: 2015-16.

2. Heard and perused the records. It comes up that the assessee has filed Return of income on 01.10.2015 declaring income at Rs.56,95,570/- for the Assessment Year 2015-16. The assessment order in this case was passed on 29.12.2017 at an income of Rs.56,95,570/-, in this case notice u/s 148 was issued on 31.03.2021. However, the assessee has not filed any return in response to notice u/s 148 of the Act. The assessee has uploaded his reply on 26/1/2022 and submitted that the ROI filed on 1.10.2015 may be treated as Return filed in response to the notice issued u/s 148 of the I.T.Act. Addition was made to the tune of Rs. 9,73,46,250/- on account of doubtful sales and

purchases which have been deleted by the Id. CIT(A) for which revenue is in appeal and cross objection have been filed by the assessee, where one of the grounds is that no jurisdictional notice u/s 143(2) of the Act was issued for which it comes from the assessment order that Id. AO has observed as follows;

“3. However, it is to be noted that the provision of section 148 prescribes filing of Return of income within a period specified in the notice. Such specified period has been prescribed to be 30 days in ITNS 34 for the relevant assessment year. In this case as the assessee had neither filed his ROI nor a reply requesting that the return filed on 1/10/2015 be treated as ROI in response to notice u/s 148 within the 30 days period of issue of notice u/s 148, hence it is held that the assessee has not filed a ROI in response to notice u/s 148 and the assessment will be completed u/s 144 of the Act.”

3. Thus the case of department as per the AO and the Id. DR is that as assessee has not filed ROI in response to the notice u/s 148 of the Act so non compliance of notice 143(2) of the Act is not detrimental. But the law seems to be otherwise settled and extensively discussed in a co-ordinate bench decision in Anil Aggarwal HUF versus ITO, Ward 28(1), New Delhi ITA No. 4594/Del/2024 order dated 30.07.2025, as relied by Id. Counsel and for

completeness and to avoid cost of repetition in laying principles afresh we reproduce the relevant part here below;

“5. The Ld. Counsel for the assessee submitted that assessee has filed return on 28.10.2021 in response to notice issued u/s 148 dated 30.03.2021. However, the Assessing Officer did not issue notice u/s 143(2) of the Act. Ld. Counsel invited our attention to 21 to 22 of the PB which contains the notice issued u/s 148 dated 30.03.2021 and a copy of return filed on 28.10.2021 in response to the notice issued u/s 148 of the Act. Therefore, the Ld. Counsel submitted that non issuance of notice u/s 143(2) makes the impugned assessment order as bad in law. Reliance is placed on the following decisions in support of his contentions:

- 1. CIT vs. Laxman Das Khandewal 417 ITR 325 (SC);*
- 2. Rajender Kumar Sehgal vs. ITO 414 ITR 286 (Del.);*
- 3. PCIT vs. Paramount Biotech Industries Ltd. 398 ITR 701 (Del);*
- 4. PCIT vs. Jai Shiv Shankar Trading P. Ltd. 388 ITR 448 (Del.);*
- 5. CIT vs. Rajiv Sharma 336 ITR 678 (All.);*
- 6. PCIT vs. Staunch Marketing Pvt. Ltd. 404 ITR 299 (Del).*

6. On the other hand, the Ld. DR submitted that the assessee did not file return within the time specified in the notice issued u/s 148 of the Act and therefore the Assessing Officer treated the return as invalid return and since the return was treated as invalid the Assessing Officer need not issue notice u/s 143(2) before completion of assessment.

7. In rebuttal the Ld. Counsel for the assessee submitted that the Hon'ble Jurisdictional High Court in the case of PCIT vs. Staunch Marketing Pvt. Ltd. (supra) held that even in ex parte assessment when once return is filed by the

assessee in response to notice issued u/s 148 of the Act issuance of notice u/s 143(2) is mandatory even though the assessee failed to furnish return u/s 139 of the Act. Ld. Counsel submits that the Hon'ble High Court held that once return is filed in response to notice u/s 148 of the Act even ex parte assessment cannot be made without issue of notice u/s 143(2) of the Act.

8. Heard rival contentions, perused the orders of the authorities below and the case laws relied on by the assessee. In this case, the assessee filed return on 28.10.2021 in response to notice issued u/s 148 of the Act dated 30.03.2021. The Assessing Officer completed the assessment on 30.03.2022 u/s 144 r.w.s. 147 of the Act determining the income of the assessee at Rs.84,32,240/-. While computing the income the Assessing Officer started with the income declared by the assessee in the return of income of Rs.69,040/- declared by the assessee in the return in response to notice issued u/s 148 of the Act, whereby the Assessing Officer acted upon the return filed by the assessee. The Assessing Officer before completion of assessment u/s 144B r.w.s. 147 of the Act appears to have not issued any mandatory notice u/s 143(2) of the Act. The Revenue also could not show that the Assessing Officer had issued any notice u/s 143(2) of the Act for the assessment year under consideration. Therefore, the question now to be adjudicated this appeal is whether the assessment framed u/s 14B r.w.s. 147 of the Act is a valid assessment in the absence of issue of notice u/s 143(2) of the Act.

9. The Hon'ble Jurisdictional High Court in the case of PCIT vs. Staunch Marketing Pvt. Ltd. (supra) considered almost an identical situation examined "whether the Tribunal fell into error in holding that the assessment for the concerned year was not effective because of lack of notice u/s 143(2) of the Income Tax Act in the given facts of the case" the Hon'ble Jurisdictional High

Court decline to answer the question on an appeal filed by the Revenue. The Hon'ble High Court further affirming the order of the Tribunal held as under:

“14. In any event, factually the Assessee filed a return pursuant to notice issued u/s 148 of the Act, notwithstanding that it may not have filed a return in the first place u/s 139 of the Act for the assessment year in question. Once a return is filed notice u/s 143(2) of the Act to the assessee is mandatory prior to framing an assessment. The question of framing an assessment ex parte without even issuing a notice u/s 143(2) of the Act did not arise. The mandatory nature of that requirement is settled not only by the decision of the Supreme Court in the case of ACIT Vs. Hotel Blue Moon (supra) but also by a decision of this court in Commissioner of Income Tax-08 vs. Jai Shiv Shankar Traders Pvt. Ltd. (2016) 388 ITR 448 Del.

15. For all the aforementioned reasons, the question framed does not arise in the present appeal and is declined to be answered. In any event, the court does not find any substantial question of law arise from the impugned order. The appeal is, accordingly, dismissed.”

10. In all the case laws relied on by the Ld. Counsel for the assessee which are referred to above, it was held that assessment/reassessment finalized without issue of notice u/s 143(2) of the Act is not a valid assessment/reassessment. Thus, respectfully following the above decisions, we hold that the assessment framed by the AO u/s 144B r.w.s. 147 of the Act for the AY 2016-17 without issue of notice u/s 143(2) is bad in law and void ab initio and consequently the same is hereby quashed.”

4. Resultantly we sustain the ground no. 3 in cross objections and hold the impugned assessment order to be vitiated. The Cross objections are allowed and appeal of revenue is dismissed.

Order pronounced in the open court on 14.01.2026

Sd/-
(S Rifaur Rahman)
ACCOUNTANT MEMBER

Sd/-
(Anubhav Sharma)
JUDICIAL MEMBER

Dated 14.01.2026
Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI