

आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH KOLKATA

श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं/ITA No.1429/KOL/2025
(निर्धारण वर्ष / Assessment Year :2018-2019)

M/s Dhanbad Minerals Pvt. Ltd., 28, Armenian Street, GPO Kolkata, Kolkata-700001	Vs	ITO, Ward-6(1), Kolkata
PAN No. : AAECD 1789 Q		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri Sunil Surana, AR
राजस्व की ओर से / Revenue by	:	Smt. Sima Das Biswas, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	14/01/2026
घोषणा की तारीख/ Date of Pronouncement	:	14/01/2026


आदेश / O R D E R

This is an appeal filed by the assessee against the order dated 25.01.2025 passed by the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2018-2019.

2. It was submitted by the Id. AR that the notice issued u/s.143(2) of the Act in the case of the assessee on 23.09.2019 is not valid in line with the Instruction issued by the CBDT in Instruction F No. 225/157/2017/ITA-II Dated 23.06.2017. Copy of the notice issued u/s.143(2) of the Act dated 23.09.2019 is reproduced as below :-



भारत सरकार/ GOVERNMENT OF INDIA
 वित्त मंत्रालय/ MINISTRY OF FINANCE
 आयकर विभाग/ INCOME TAX DEPARTMENT
 विहित आयकर प्राधिकारी का कार्यालय / Office of the Prescribed Income-Tax Authority

सेवा में/ To,  JA232491828IN DHANBAD MINERALS PRIVATE LIMITED 28 ,ARMENIAN STREET CANNING STREET KOLKATA 700001 ,West Bengal India	स्थायी लेखा संख्या/ PAN: AAECD1789Q	निर्धारण वर्ष/ AY: 2018-19	नोटिस संख्या / Notice No.: ITBA/AST/S/143(2)/2019- 20/1018229739(1)	दिनांक/ Dated: 23/09/2019
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आयकर नियम 1962 के नियम 12 डू के साथ पठित आयकर अधिनियम 1961 की धारा 143 (2) के अधीन नोटिस
Notice under section 143(2) of the Income-tax Act, 1961 read with Rule 12 E of Income Tax Rules, 1962

संवीक्षा (जांच) (कंप्यूटर आधारित संवीक्षा चयन)
Scrutiny (Computer Aided Scrutiny Selection)

प्रिय करदाता,
 Dear Taxpayer,

आपके द्वारा निर्धारण वर्ष 2018-19 के लिए दिनांक. 27/10/2018 को पावती सं. 350051211271018 के तहत आयकर विवरणी दाखिल करने के लिए आपको धन्यवाद।
 Thank you for filing your return of income for Assessment Year 2018-19 vide Ack. no. 350051211271018 on 27/10/2018.

2. विवरणिका को तैयार करने में आपके ध्यान एवं परिश्रम को स्वीकार करते हुए, कुछ मुद्दों पर और स्पष्टीकरण की आवश्यकता है, जिनके कारण आपकी आय विवरणिका को संवीक्षा (जांच) के लिए चुना गया है, ये मुद्दे प्रारंभ में निम्नानुसार हैं:
 2. While acknowledging the care and diligence you may have taken in preparing the return, there are certain issues which need further clarification, for which your return of Income has been selected for scrutiny and such issues initially are as under:

S. No. Issues
 i. Verification of Transactions

3. उपरोक्त को ध्यान में रखते हुए उल्लेखित मुद्दों के उत्तर आप संबंधित दस्तावेजों (यदि कोई हो) सहित निर्धारण अधिकारी को 'ई-कार्यवाही' सुविधा में अपने ई-फाइलिंग वेबसाइट खाते के जरिए (www.incometaxindiaefiling.gov.in) अपनी सुविधानुसार, दिनांक 08/10/2019 तक या उससे पहले इलेक्ट्रॉनिक माध्यम से प्रस्तुत कर दें।
 3. In view of the above, you may submit your response with supporting documents (if any) on the above mentioned issues to the Assessing Officer electronically in 'e-Proceedings' facility through your account in e-Filing website (www.incometaxindiaefiling.gov.in) at your convenience on or before

Note: If digitally signed, the date of digital signature may be taken as date of document.

1. The Notice/Letter/Order No. mentioned above may be treated as DIN for the purpose of procedure for issuance of Income Tax Notice prescribed by Circular No.19/2019 dt. 14 August 2019.
 2. This notice u/s 143(2) is issued by the Prescribed Income-tax Authority u/s 143(2) of the IT Act, 1961 notified by the CBDT vide notification No. 65/2019 dated 13 September 2019. This office does not have a physical address.

NOTICE NO. 1429/KOL/2025
 DATED 23/09/2019
 OFFICE OF THE PREScribed INCOME-TAX AUTHORITY
 KOLKATA

II. where provision of section 131 of Income-tax Act, 1961 has been invoked; or
 III. where examination of witness is to be made by assessee or Assessing Officer; or
 IV. where a show-cause notice contemplating any adverse view is issued and assessee requests for personal hearing to explain the matter.

5. आयकर अधिनियम 1961 की धारा 143(2) के अधीन नोटिस, आयकर अधिनियम 1961 की धारा 143(2) के अधीन विहित आयकर प्राधिकारी द्वारा जारी किया जाता है जिसे केन्द्रीय प्रत्यक्ष कर बोर्ड के अधिसूचना 65/2019 दिनांक 13/09/2019 द्वारा अधिसूचित किया गया है। जैसा की ऊपर उल्लेख किया गया है, नोटिस का उत्तर निर्धारिती द्वारा 'ई-कार्यवाही' के माध्यम से निर्धारण अधिकारी को प्रस्तुत किया जाना है।

5. The notice u/s 143(2) is issued by the Prescribed Income-tax authority u/s 143(2) of the IT Act, 1961 notified by the CBDT vide notification No. 65/2019 dated 13/09/2019. The response to the notice is to be submitted to the Assessing Officer, by the assessee through 'e-Proceedings' facility, as mentioned above.

6. इस करदाता अनुकूल उपाय ने निर्धारिती के अनुपालन बोझ को बहुत सीमा तक कम कर दिया है। जिन निर्धारितीयों के पास अभी तक कोई ई-फाइलिंग खाता नहीं है उनसे अनुरोध किया जाता है कि वे ई-फाइलिंग खाता रखने के लिए (www.incometaxindiaefiling.gov.in) में दिए गए सरल निर्देशों का पालन करते हुए स्वयं को पंजीकृत करें।

6. This taxpayer friendly measure has substantially reduced the compliance burden for assesseees. The assesseees who do not yet have an e-Filing account, are requested to get themselves registered by following the simple instructions contained in (www.incometaxindiaefiling.gov.in) for having an e-Filing account.

3. Ld. AR relied upon the decision of the coordinate bench of the Tribunal in the case of M/s Durga Automotives Pvt. Ltd. Vs. DCIT, passed in ITA No.675/Kol/2024, vide order dated 22.04.2025, wherein the coordinate bench of the Tribunal in para 6 to 12 has held as follows :-

6. It was submitted by the Ld. AR that the format of the 143(2) notice has been provided by the CBDT along with a note on e-proceeding which are as follows:

"ई-कार्यवाही" पर ध्यान दें
Note on 'E-Proceeding'

1. ई-गवर्नेंस पहल के एक हिस्से के रूप में, इलेक्ट्रॉनिक कार्यवाही ने निर्धारण कार्यवाही के संचालन की सुविधा के लिए, आयकर विभाग ने 'ई-कार्यवाही' सुविधा विकसित की है। निर्धारण कार्यवाही के संचालन के लिए आयकर कार्यालय जाने की आवश्यकता के बिना इलेक्ट्रॉनिक माध्यमों से, परेशानी मुक्त तरीके से विभाग और निर्धारिती के बीच संचार का यह एक आसान तरीका है। यह नई सुविधा पर्यावरण अनुकूल है क्योंकि निर्धारण कार्यवाही अब बिना पेपर की (पेपरलेस) बन गई है।

1. As a part of e-governance initiative, to facilitate conduct of assessment proceedings electronically, Income-tax Department has developed the 'E-Proceeding' facility. It is a simple way of communication between the Department and assessee in a hassle free manner, through electronic means, without the necessity to visit Income-tax Office for conduct of assessment proceedings. This new facility is also environment friendly as assessment proceedings have now become paperless.

2. 'ई-कार्यवाही' कार्यक्षमता के माध्यम से निर्धारण कार्यवाही में, निर्धारिती के ई-फाइलिंग खाते में निर्धारण अधिकारी से पत्र, नोटिस, प्रश्नावली, आदेश इत्यादि का एक निर्बाध प्रवाह है। विभागीय पत्राचार प्राप्त होने के पश्चात् निर्धारिती अपने संलग्नकों के साथ, यदि कोई है, अपनी प्रतिक्रिया ई-फाइलिंग पोर्टल पर अपलोड कर सकेगा। निर्धारिती द्वारा दाखिल किया गया जवाब निर्धारण अधिकारी द्वारा इलेक्ट्रॉनिक रूप से देखा जाता है। इस प्रकार करदाता का बहुमूल्य समय बचाने के अलावा, निर्धारण कार्यवाही के दौरान विभागीय प्रश्नों के जवाब जमा करने के लिए ई-कार्यवाही 24x7 कभी भी / कहीं भी सुविधाजनक सुविधा प्रदान करती है।

2. In assessment proceedings through the 'E-Proceeding' functionality, there is a seamless flow of letters, notices, questionnaires, orders etc. from Assessing Officer to assessee's E-filing account. On receipt of Departmental communication, assessee is able to submit his response along with attachments, if any, by uploading the same on the E-filing portal. The response submitted by the assessee is also viewed by the Assessing Officer electronically. Thus, besides saving precious time of the taxpayer, E-Proceeding' also provides a 24X7 anytime/anywhere convenient facility to submit response to the Departmental queries in course of assessment proceedings.

3. 'ई-कार्यवाही' सुविधा के माध्यम से की गई कार्यवाही के अन्तर्गत, निर्धारिती निर्धारण कार्यवाही के दौरान की गई सभी ई-सबमिशन (प्रस्तुत) की सम्पूर्ण सूचनाएं ई-फाइलिंग खाते में रख सकता है जो संदर्भ और रिकॉर्ड उद्देश्य के लिए बहुत उपयोगी है।

3. In proceedings being carried out through the 'E-Proceeding' facility, assessee retains complete information of all e-submissions made during the course of assessment proceedings in his E-filing account which is very useful for reference & record purposes.

4. 'ई-कार्यवाही' के तहत मामलों में, निम्नलिखित परिस्थितियों में सुनवाई मैन्युअल रूप से आयोजित की जा सकती है :

- i. जहां खातों की पुस्तकों की जांच की जानी चाहिए; या
- ii. जहां आयकर अधिनियम की धारा 131 के प्रावधान, 1961 लागू किया गया है; या
- iii. जहां गवाह से पूछताछ निर्धारिती और निर्धारण अधिकारी द्वारा की जाती है; या
- iv. जहां किसी भी प्रतिकूल दृश्य पर विचार करने वाला एक कारण बताओ नोटिस जारी किया जाता है और मामले की व्याख्या करने के लिए व्यक्तिगत सुनवाई के लिए निर्धारिती अनुरोध करता है।

4. In cases under 'E-Proceeding', hearing may be conducted manually in following situation(s):

- I. where books of accounts have to be examined; or
- II. where provision of section 131 of Income-tax Act, 1961 has been invoked; or
- III. where examination of witness is to be made by assessee or Assessing Officer; or
- IV. where a show-cause notice contemplating any adverse view is issued and assessee requests for personal hearing to explain the matter.

5. इस करदाता अनुकूल उपाय ने निर्धारिती के लिए अनुपालन बोझ को काफी कम कर दिया है। निर्धारिती, जिनका अभी तक ई-फाइलिंग खाता नहीं है उनसे अनुरोध है कि ई-फाइलिंग खाते के लिए www.incometaxindiaefiling.gov.in में निहित सरल निर्देशों का अनुगमन करते हुए खुद को पंजीकृत करें।

5. This taxpayer friendly measure has substantially reduced the compliance burden for assesseees. The assesseees who do not yet have an E-filing account, are requested to get themselves registered by following the simple instructions contained in (www.incometaxindiaefiling.gov.in) for having an E-filing account.

F.No. 225/157/2017/ITA.II
Government of India
Ministry of Finance
Department of Revenue (CBDT)

North Block, New Delhi, dated the 23rd of June, 2017

To
All Pr. CCsIT/Pr. CCIT(International-tax)/CCIT(Exemptions)/Pr. DsGIT

Sir/Madam

Subject: - Issue of notices under section 143(2) of Income-tax Act, 1961 in revised format-regd.-

With reference to the above, I am directed to state that Central Board of Direct Taxes has decided to modify format of notice(s) issued under section 143(2) of the Income-tax Act which intimate the concerned assessee about selection of his/her case for scrutiny. This has become necessary in view of Board's decision to utilise 'E-Proceeding' facility for electronic conduct of assessment proceedings in a widespread manner from this financial year.

2. The three formats of notice(s) are:
- Limited Scrutiny (Computer Aided Scrutiny Selection)
 - Complete Scrutiny (Computer Aided Scrutiny Selection)
 - Compulsory Manual Scrutiny

The revised format of 143(2) notice(s) with a note on benefits & Procedures of 'E-Proceeding' facility are enclosed for information of the field authorities.

3. I am further directed to state that all scrutiny notices under section 143(2) of the Act, shall henceforth, be issued in these revised formats only. The Systems Directorate is effecting necessary changes in the ITBA module in this regard.

4. The above may be brought to the notice of all for necessary compliance.

Enclosures(s): as above



(Rohit Garg)
Director-ITA.II, CBDT

Copy to:

- i. Chairman, CBDT and all Members, CBDT
- ii. Addl. CIT, Data base Cell for uploading on Departmental Website

Limited Scrutiny (Computer Aided Scrutiny Selection)Notice under Section 143(2) of the Income-tax Act, 1961

PAN No:

Dated:

To

Sir/Madam

This is for your kind information that the return of income for Assessment Year..... filed vide ack. no.on..... has been selected for Scrutiny. Following issue(s) have been identified for examination:

2. In view of the above, I would like to give you an opportunity to produce any evidence/information which you feel is necessary in support of the said return of income on or before.....

3. The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in e-Filing website of Income-tax Department. Further proceedings shall also be conducted electronically (*). A brief note on salient features of 'E-Proceeding' is enclosed.

4. In case you do not wish to produce any evidence/information, as mentioned in para 2, you are requested to intimate the same electronically on or before.....

5. Specific questionnaires/requisition of information or documents would be sent subsequently, if required.

6. Para(s) (2) to (4) are applicable if you have an account in e-Filing website of Income-tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).

(*) Subject to exceptions as per the enclosed note

Yours faithfully,

Seal

(Name of the Assessing Officer)
(Designation)
(Telephone No./Fax No.)
(E-mail ID)

Complete Scrutiny (Computer Aided Scrutiny Selection)Notice under Section 143(2) of the Income-tax Act, 1961

PAN No:

Dated:

To

Sir/Madam

This is for your kind information that the return of income for Assessment Year..... filed vide ack. no.on..... has been selected for Complete Scrutiny.

2. In view of the above, I would like to give you an opportunity to produce any evidence/information which you feel is necessary in support of the said return of income on or before.....

3. The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in e-Filing website of Income-tax Department. Further proceedings shall also be conducted electronically (*). A brief note on salient features of 'E-Proceeding' is enclosed.

4. In case you do not wish to produce any evidence/information, as mentioned in para 2, you are requested to intimate the same electronically on or before.....

5. Specific questionnaires/requisition of information or documents would be sent subsequently, if required.

6. Para(s) (2) to (4) are applicable if you have an account in e-Filing website of Income-tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).

(*) Subject to exceptions as per the enclosed note

Yours faithfully,

Seal

(Name of the Assessing Officer)

(Designation)

(Telephone No./Fax No.)

(E-mail ID)

Compulsory Manual SelectionNotice under Section 143(2) of the Income-tax Act, 1961

PAN No:

Dated:

To

Sir/Madam

This is for your kind information that the return of income for Assessment Year..... filed vide ack. no.On..... has been selected for Scrutiny on the basis of parameter at Para 1(.....) of Manual Compulsory Guidelines of CBDT issued vide Instruction No. dated

2. In view of the above, I would like to give you an opportunity to produce any evidence/information which you feel is necessary in support of the said return of income on or before.....

3. The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in e-Filing website of Income-tax Department. Further proceedings shall also be conducted electronically (*). A brief note on salient features of 'E-Proceeding' is enclosed.

4. In case you do not wish to produce any evidence/information, as mentioned in para 2, you are requested to intimate the same electronically on or before.....

5. Specific questionnaires/requisition of information or documents would be sent subsequently, if required.

6. Para(s) (2) to (4) are applicable if you have an account in e-Filing website of Income-tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or manually (if e-mail is not available).

7. In cases where order has to be passed under section 153A/153C of the Income-tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually.

(* Subject to exceptions as per the enclosed note

Yours faithfully,

Seal

(Name of the Assessing Officer)

(Designation)

(Telephone No./Fax No.)

(E-mail ID)

7. It was a submission that as the notice issued u/s. 143(2) in the case of the assessee which has been extracted above is not in conformity with the notice issued u/s. 143(2) as prescribed in the e-proceeding format. The notice u/s. 143(2) is liable to be quashed. It was the submission that consequently the assessment order is also liable to be set aside. The Ld. AR placed reliance on the decision of the Coordinate Bench of this Tribunal in the case of Sajal Biswas Vs. ITO, ITA No. 1244/Kol/2023 dated 26.03.2025 wherein in para 9 and 10 the coordinate bench of this Tribunal has held as under:

09. After hearing the rival contentions and perusing the materials available on record, we find that undisputedly the notice issued u/s 143(2) of the Act dated 10.08.2018, specifies only computer aided scrutiny selection which neither mentioned it either to be a limited or a complete scrutiny nor

compulsory manual scrutiny. Thus, the said notice has been issued in violation of the instruction issued by CBDT as noted above. In our opinion, the revenue authorities have to follow the instruction issued by CBDT and violation thereto would certainly render the notice as invalid with the result all the consequential proceeding would also be invalid. The case of the assessee find support from the decision of the co-ordinate Bench in the case of Tapas Kumar Das Vs. ITO (supra), wherein a similar issue has been decided in favour of the assessee. The operative part of the same is extracted below:-

“After hearing the rival contentions and perusing the materials available on record, we find that particularly the notice was issued u/s 143(2) of the Act, a copy of which is available at page no. 25 of the Paper Book. We note that the said notice has not been issued in consonance with the CBDT Instruction F No. 225/157/2017/ITA-II Dated 23.06.2017. The said notice is extracted below for the sake of ready reference:-

“आमकरअधिनियम 1961 कीधारा 143(2) केअधीननोटिस
Notice under section 143(2) of the Income-tax Act, 1961
संवीक्षा (कंप्यूटरआधारितसंवीक्षाचयन Scrutiny (Computer Aided Scrutiny
Selection)

महोदय/महोदया/ भैसर्स,

Sir/Madam/ M/s,

आपकोसूचितकियाजाताहैकिनिर्धारणवर्ष 2017-18 केपावतीसंख्या
269322761301017 केअनुसारआपकेद्वारादिनांक 30/10/2017
कोदाखिलकीगईआयकरविवरणीकोसंवीक्षाकेलिएचुनागयाहै।

This is for your kind information that the return of income filed by you for assessment year 2017-18 vide ack, no. 269322761301017 on 30/10/2017 has been selected for Scrutiny.

2. इससंबंधमें, आपकोदिनीक 16/11/2018 को 01:00 PM तकसाक्ष्यप्रस्तुतकरनेअथवासाक्ष्यप्रस्तुतकरानेकाअवसरप्रदानकियाजारहाहैजिसपरआपउक्तआयकरविवरणीकेसमर्थनमेंनिर्भरहैं/ रहेंगे।

2. In this regard, an opportunity is being given to you to produce or cause to produce any evidence on which you may like to rely in support of the said return of income by 16/11/2018 at 01:00 PM.

3. उपर्युक्तनिर्दिष्टप्रमाण / सूचनाकोआपकोऑनलाइनमाध्यमसेइलेक्ट्रॉनिकरूपमें
Incometaxindiaefiling.gov.in परअपनेई-
फाईलिंगखाताद्वाराप्रस्तुतकियाजानाहै।बादकीनिर्धारणकार्यवाहीभीआयकरविभागकी
'ई-कार्यवाही' सुविधाद्वाराकीजायेगी। 'ई-कार्यवाही'
परएकसंक्षिप्तनोटआपकेसंदर्भकेलिएसंलग्नहै।

3. The evidence/information specified above has to be furnished online electronically through your E-filing account in incometaxindiaefiling.gov.in. Subsequent assessment proceedings shall also be conducted

electronically through the 'E-Proceeding' facility of Income-tax Department. A brief note on 'E-Proceeding' is enclosed for your kind reference.

4. निर्धारणकार्यवाहीकेदौरान, यदिआवश्यकहोगातोसूचना /
दस्तावेजहेतुविशेषप्रश्नावली (याँ) याअधियाचना (याँ) कोबादमेंजारीकियाजाएगा।

4. In course of assessment proceedings, if required, specific questionnaire(s) or requisition(s) for information/document shall be issued subsequently.

5. कृपयाध्यानदेंकियदिआपकेपासई-फाइलिंगखाताहैतोआपकेलिएपैरा 3
लागूहै।आपकेद्वारास्वयंपनाखातानबनालेनेतकनिर्धारणकार्यवाहीआपकेद्वारावर्णित
कीगईई-मे

is created by you, assessment proceedings shall be carried out either through your specified e-mail account or manually (if e-mail is not available).

संलग्नक: यचौधरि

Enclosure as above

7. In our opinion, the notice issued u/s 143(2) of the Act which is not in the prescribed format as provided under the Act is an invalid notice and accordingly, all the subsequent proceedings thereto would be invalid and void ab initio. The case of the assessee find support from the decision of Shib Nath Ghosh Vs. ITO in ITA No. 1812/KOL/2024 for A.Y. 2018-19 vide order dated 29.11.2024, wherein the co-ordinate Bench has held as under:-

“10. After hearing both the sides and the materials available on record, we find that the notice issued u/s 143(2) dated 9th August, 2017 was not in any of the formats as provided in the CBDT instruction F.No.225/157/2017/ITA-II dated 23.06.2017. We have examined the notice, copy of which is available at page no.1 of the Paper Book and find that the same is not as per the format of CBDT Instruction F.No. 225/157/2017/ITA-II dated 23.06.2017 as stated above. In our opinion, the instruction issued by the CBDT are mandatory and binding on the Income tax authorities failing which the proceedings would be rendered as invalid. Hon'ble Apex Court in case of UCO Bank (supra) held that the circular issued by CBDT in exercise of its statutory powers u/s 119 of the Act, are binding on the authorities. The Hon'ble Apex court held as under:-

“The Central Board of Direct Taxes under section 119 of the Income-tax Act, 1961, has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Act which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein

cannot be adverse to the assessee. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities.

In order to aid proper determination of the income of money lenders and banks, the Central Board of Direct Taxes issued a circular dated October 6, 1952, providing that where interest accruing on doubtful debts is credited to a suspense account, it need not be included in the assessee's taxable income, provided the Income-tax Officer is satisfied that recovery is practically improbable. Twenty-six years later, on June 20, 1978, in view of the judgment of the Kerala High Court in STATE BANK OF TRAVANCORE v. CIT [1977] 110 ITR 336, the Board by another circular, withdrew with immediate effect the earlier circular. However, by circular dated October 9, 1984, the Board decided that interest in respect of doubtful debts credited to suspense account by banking companies would be subjected to tax but interest charged in an account where there has been no recovery for three consecutive accounting years would not be subjected to tax in the fourth year and onwards. The circular also stated that if there is any recovery in the fourth year or later, the actual amount recovered only would be subjected to tax in the respective years. This procedure would apply to assessment year 1979-80 and onwards."

8. Considering the facts of the instant case in the light of the decision of the co-ordinate bench, we are inclined to hold that notice issued u/s 143(2) of the Act is invalid notice and accordingly, the assessment framed consequentially to that is also invalid and is hereby quashed."

10. Since the facts of the assessee's case are similar to one as decided by the co-ordinate Bench, we therefore, respectfully following the same hold that the notice issued u/s 143(2) of the Act is invalid notice and accordingly, the assessment framed consequentially is also invalid and is hereby quashed. The additional ground raised by the assessee is allowed."

8. The Ld. AR also drew our attention to the decision of the Coordinate bench of this Tribunal in the case of Tapas Kr. Das Vs. ITO in ITA No. 1660/Kol/2024 dated 11.03.2025, wherein the coordinate Bench of this Tribunal has held in para 6 to 8 as under:

06. "After hearing the rival contentions and perusing the materials available on record, we find that particularly the

notice was issued u/s 143(2) of the Act, a copy of which is available at page no. 25 of the Paper Book. We note that the said notice has not been issued in consonance with the CBDT Instruction F No. 225/157/2017/ITA-II Dated 23.06.2017. The said notice is extracted below for the sake of ready reference:-

“आमकर अधिनियम 1961 की धारा 143(2) के अधीन नोटिस
Notice under section 143(2) of the Income-tax Act, 1961
संवीक्षा (कंप्यूटर आधारित संवीक्षा चयन Scrutiny (Computer Aided Scrutiny
Selection)

महोदय/महोदया/ भेसर्स,
Sir/Madam/ M/s,

आपको सूचित किया जाता है कि निर्धारण वर्ष 2017-18 के पावती संख्या 269322761301017 के अनुसार आपके द्वारा दिनांक 30/10/2017 को दाखिल की गई आयकर विवरणी को संवीक्षा के लिए चुना गया है।

This is for your kind information that the return of income filed by you for assessment year 2017-18 vide ack, no. 269322761301017 on 30/10/2017 has been selected for Scrutiny.

2. इस संबंध में, आपको दिनांक 16/11/2018 को 01:00 PM तक साक्ष्य प्रस्तुत करने अथवा साक्ष्य प्रस्तुत कराने का अवसर प्रदान किया जा रहा है जिस पर आप उक्त आयकर विवरणी के समर्थन में निर्भर हैं/ रहेंगे।

2. In this regard, an opportunity is being given to you to produce or cause to produce any evidence on which you may like to rely in support of the said return of income by 16/11/2018 at 01:00 PM.

3. उपर्युक्त निर्दिष्ट प्रमाण / सूचना को आपको ऑनलाइन माध्यम से इलेक्ट्रॉनिक रूप में Incometaxindiaefiling.gov.in पर अपने ई-फाइलिंग खाता द्वारा प्रस्तुत किया जाना है। बाद की निर्धारण कार्यवाही भी आयकर विभाग की 'ई-कार्यवाही' सुविधा द्वारा की जायेगी। 'ई-कार्यवाही' पर एक संक्षिप्त नोट आपके संदर्भ के लिए संलग्न है।

3. The evidence/information specified above has to be furnished online electronically through your E-filing account in incometaxindiaefiling.gov.in. Subsequent assessment proceedings shall also be conducted electronically through the 'E-Proceeding' facility of Income-tax Department. A brief note on 'E-Proceeding' is enclosed for your kind reference.

4. निर्धारण कार्यवाही के दौरान, यदि आवश्यक होगा तो सूचना / दस्तावेज हेतु विशेष प्रश्नावली (याँ) या अधियाचना (याँ) को बाद में जारी किया जाएगा।

4. In course of assessment proceedings, if required, specific questionnaire(s) or requisition(s) for information/document shall be issued subsequently.

5. कृपया ध्यान दें कि यदि आपके पास ई-फाइलिंग खाता है तो आपके लिए पैरा 3 लागू है। आपके द्वारा स्वयं अपना खाता न बना लेने तक निर्धारण कार्यवाही आपके द्वारा वर्णित की गई ई-मे

is created by you, assessment proceedings shall be carried out either through your specified e-mail account or manually (if e-mail is not available).

संलग्नक : यचौधरि
Enclosure as above”

07. In our opinion, the notice issued u/s 143(2) of the Act which is not in the prescribed format as provided under the Act is an invalid notice and accordingly, all the subsequent proceedings thereto would be invalid and void ab initio. The case of the assessee find support from the decision of Shib Nath Ghosh Vs. ITO in ITA No. 1812/KOL/2024 for A.Y. 2018-19 vide order dated 29.11.2024, wherein the co-ordinate Bench has held as under:-

“10. After hearing both the sides and the materials available on record, we find that the notice issued u/s 143(2) dated 9th August, 2017 was not in any of the formats as provided in the CBDT instruction F.No.225/157/2017/ITA-II dated 23.06.2017. We have examined the notice, copy of which is available at page no.1 of the Paper Book and find that the same is not as per the format of CBDT Instruction F.No. 225/157/2017/ITA-II dated 23.06.2017 as stated above. In our opinion, the instruction issued by the CBDT are mandatory and binding on the Income tax authorities failing which the proceedings would be rendered as invalid. Hon'ble Apex Court in case of UCO Bank (supra) held that the circular issued by CBDT in exercise of its statutory powers u/s 119 of the Act, are binding on the authorities. The Hon'ble Apex court held as under:-

“The Central Board of Direct Taxes under section 119 of the Income-tax Act, 1961, has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Act which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases Which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by Issuing circulars binding on the taxing authorities.

In order to aid proper determination of the income of money lenders and banks, the Central Board of Direct Taxes issued a circular dated October 6, 1952, providing that where interest accruing on doubtful debts is credited to a suspense account, It need not be included in the assessee's taxable income, provided the Income-tax Officer is satisfied that recovery is practically improbable. Twenty-six years later, on June 20, 1978, in view of the judgment of the Kerala High

Court In STATE BANK OF TRAVANCORE v. CIT [1977] 110 ITR 336, the Board by another circular, withdrew with immediate effect the earlier circular. However, by circular dated October 9, 1984, the Board decided that Interest in respect of doubtful debts credited to suspense account by banking companies would be subjected to tax but Interest charged in an account where there has been no recovery for three consecutive accounting years would not be subjected to tax in the fourth year and onwards. The circular also stated that if there is any recovery in the fourth year or later, the actual amount recovered only would be subjected to tax in the respective years. This procedure would apply to assessment year 1979-80 and onwards.”

08. Considering the facts of the instant case in the light of the decision of the co-ordinate bench, we are inclined to hold that notice issued u/s 143(2) of the Act is invalid notice and accordingly, the assessment framed consequentially to that is also invalid and is hereby quashed.”

9. *It was the submission that in view of the decision of the Coordinate Bench of this Tribunal on the identical issue the notice issued u/s. 143(2) is liable to be quashed and the consequential assessment order is also liable to be quashed.*

10. *In reply, the Id. Sr. DR vehemently supported the orders of the lower authorities. He has further filed a note in regard to the issue of notice u/s. 143(2) as follows:*

Date: 22.04.2025

To,
The Hon'ble Members
C Bench
ITAT Kolkata
225 AJC Bose Road, Kolkata

Respected Sirs,

Sub: Durga Automotives Pvt. Ltd. in ITA-675/Kol/2014; AY 2017-18

1. CBDT vide its internal communication to all the Pr.CCsIT/Pr.CCIT (International-tax)/CCIT (Exemptions)/Pr. DsGITs in F.No. 225/157/2017/ITA-II dated 23.06.2017, had issued directions to issue notices u/s 143(2) of the Act from the date of issue of said communication thereon in the specified revised formats only.

2. However, it is observed from the assessee's additional grounds of appeal and related submissions, the above- mentioned internal communication between the CBDT and the Department is being erroneously referred to as a CBDT Instruction/Circular.

3. On page 10 of the Judgment Paper Book relied on by the assessee, in the case of Rudraprakash Mondal vs. DCIT in ITA No.702/Kol/2024, it is mentioned, *“as directed by CBDT vide Instruction No. F. No. 225/402/2018/ITA.II dated 28.11.2018 and therefore the order passed by the AO is ab-initio void and invalid.”* This is not an Instruction but only an internal communication of the CBDT issuing certain directions to the Department.

4. Similarly, on page 59 of the paper book, in the case of Srimanta Kumar Shit, Purba Medinapore vs A.C.I.T., Circle - 27(2), Haldia dt.19.11.2024 in ITA No. 1911/KOL/2024, it is mentioned as, *“submitted that revised format of issue of notice u/s 143(2) of the Act was provided by the CBDT vide F.NO.225/157/2017/ITA-II dated 23.06.2017. The said circular is enclosed at page 4-8 of paper book. On perusal of said Circular, it shall be evident that the Notice u/s 143(2) of the Act was to be issued as per three formats that are:”* This also is not a Circular but only an internal communication of the CBDT to the Department.

5. Again, in the case of Tapas Kumar Das vs ITO, on page 70 it is mentioned as **Circular F.NO.225/157/2017/ITA-II dated 23.06.2017** and whereas on page 72, it is mentioned as **Instruction No. F. No. 225/402/2018/ITA.II dated 23.06.2017**.

6. On page 77 in the case of Sajal Biswas vs ITO, the same is again mentioned as **Instruction No. F. No. 225/402/2018/ITA.II dated 23.06.2017**.

7. The CBDT issues various instructions and circulars that guide tax administration and policy implementation which are binding for its field formations. However, there are key differences between Instructions/Circulars issued by the CBDT and internal communications issued by the CBDT to the department.

Instructions issued by CBDT:

1. Instructions issued by the CBDT are generally made public and are accessible to taxpayers, practitioners and the general public. They aim to clarify tax laws, outline procedures and provide policy guidelines and often provide clarifications regarding interpretation of tax laws, guidelines for procedures and can have significant implications for tax policies.

2. These instructions apply across all the department's offices and officers and providing a uniform approach to tax administration. These instructions are binding on the department.

Internal Communication of CBDT to its Officers:

1. Internal communications are typically more operational and administrative in nature. They may relate to internal processes, staff management or administrative functions. These communications are directed specifically to the Income Tax Department and may not be intended for public dissemination.

2. While still important for departmental functioning, internal communications do not usually carry the same legal or authoritative weight as formal instructions.

8. In summary, internal communications are meant specifically for officers to facilitate their work and ensure effective implementation of broader policies and instructions.

9. Para 3 of internal communication in F.No. 225/157/2017/ITA-II dated 23.06.2017 states that, *“I am further directed to state that all scrutiny notices under section 143(2) of the Act, shall henceforth, be issued in these revised formats only. The Systems Directorate is effecting necessary changes in the ITBA module in this regard”*. This simply means that all notices u/s 143(2) henceforth, shall be issued online in the revised formats subject to the Directorate of Systems of the CBDT updating the said revised notice functionality in the ITBA.

10. Thereafter, CBDT has issued another **Instruction No.2/2018 dt. 12.02.2018** stating that in accordance with the procedure outlined in revised 143(2) notice(s) for conduct of assessment proceedings electronically, it is directed that except for search related assessments proceedings, in other pending scrutiny assessment, cases **shall be conducted only through the ‘E-Proceeding’ functionality in Income-tax Business Application (ITBA)/e-filing**.

11. However, the Directorate of Systems had not updated the revised format of Notices u/s 143(2) in the relevant functionality of the ITBA module as on the date of issue of Notice u/s 143(2) on 27.09.2018 to the assessee. Therefore, the AO following the said Instruction of the CBDT had no alternative but to issue the notice u/s 143(2) only in the format that was available in the ITBA system on that date and the same was generated and issued to the assessee.

12. Several High Courts have considered the issue of assessments being completed without following prescribed procedure. The Hon’ble High Courts held that non-compliance is only a procedural irregularity and will not render the assessment ab initio void – Direction to ITO to redo assessment after following prescribed procedure is valid.

- **G.R. Steel and Alloys P. Ltd., Vs CIT(Kar) 152 ITR 220**
- **Sarabjit Singh Vs CIT(Del) 234 ITR 641**
- **V. Raju Vs CIT(Mad) 147 ITR 212**
- **M.S. Kimtee Vs CIT(MP) 151 ITR 73.**

13. Omission to allow opportunity of cross-examination – Only a procedural irregularity – Remanded to A.O. **ITO Vs M. Pirai Choodi (SC) 334 ITR 26**: The High Court was satisfied that there was a glaring violation of the principles of natural justice apparent on

the face of the records. Consequently, the impugned assessment order was quashed. On appeal, the Hon'ble Supreme Court observed that the High Court had set aside the order of assessment on the ground that no opportunity to cross-examine was granted, as sought by the assessee. The Supreme Court was of the view that the High Court should not have set aside the entire assessment order. At the most, the High Court should have directed the Assessing Officer to grant an opportunity to the assessee to cross-examine the concerned witness. In the circumstances, the Supreme Court was of the view that the High Court should not have quashed the assessment proceedings vide the impugned order.

14. It was held in **Kailash Moudgil Vs DCIT(ITAT,SB-D) 72 ITD 97, Centurion Investment & International Trading Co. (P) Ltd. Vs ITO (ITAT,Del) 126 ITD 356**, that simply because an opportunity of being heard was not given to the assessee, will not invalidate an assessment order or an addition made therein – It is only a procedural lapse.

15. 292BB. Notice deemed to be valid in certain circumstances.

- Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was-

- (a) not served upon him; or*
- (b) not served upon him in time; or*
- (c) served upon him in an improper manner:***

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.

16. Hon'ble Apex Court in **CIT v. Laxman Das Khandelwal [2019] 108 taxmann.com 183 (SC)** while adjudicating on section 292BB held that;

- According to Section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid, even if there be infractions as detailed in said Section, i.e., the notice was (a) not served; or (b) not served in time; or (c) **served in an improper manner**. Thus, it is only the infirmities in the manner of service of notice that the Section seeks to cure.

- However, Section 292BB does not save, or is intended to cure, complete absence of notice. For applying this section, the notice must have emanated from the department.

17. In **Grindlays Bank Ltd. vs CIT in 193 ITR 457 (Cal)**, the ITAT confirmed the CIT(A) finding that the notice u/s 143(2) was issued by the AO without jurisdiction as the ACIT Circle 30, Kolkata and not by the ITO Ward 37(3), Kolkata who completed the assessment, and that the department did not follow the internal administrative instruction issued by the CBDT. The jurisdictional Calcutta High Court held that *"these provisions are really provisions of administrative convenience and it is not a case of inherent lack of jurisdiction and that in any event it is not one for adjudication by the court. Reference may be made in this connection to the case of Wallace Brothers and Co. Ltd. v. CIT [1945] 13 ITR 39 (FC) at 45, which was followed by the Patna High Court in the case of Raja Bahadur Kamakhya Narain Singh v. Union of India [1964] 51 ITR 596 (Pat.) In the case of Wallace Brother and Co. Ltd. [1945] 13 ITR 39, the Federal Court observed as under (p. 45). :*

"These provisions clearly indicate that the matter is more one of administrative convenience than of jurisdiction and that in any event it is not one for adjudication by the court."

This passage was quoted with approval by the Supreme Court in the case of Pannalal Binraj v. Union of India [1957] 31 ITR 565 (SC) and also in the case of Rai Bahadur Seth Teomal v. CIT [1959] 36 ITR 9 (SC)."

Based on the submission made as above, it is prayed that the assessee's additional ground of appeal may be dismissed and justice may be rendered.

Yours respectfully


Sallong Yaden
Sr.DR, ITAT, Kolkata

11. *It was the submission that the order of the Ld. CIT(A) is liable to be upheld.*

12. *We have considered the rival submissions. A perusal of the facts of the present case clearly shows that the notice u/s. 143(2) is admittedly not in the format as provided under the note on e-assessment proceeding. In these circumstances, respectfully following the decisions of the coordinate bench of this tribunal cited supra, the notice issued u/s. 143(2) dated 27.09.2018 in the case of the assessee is held to be invalid and the same stands set aside. As the notice u/s. 143(2) has been set aside the consequential assessment is also void and stands quashed.*

4. It was the submission that as the notice u/s.143(2) of the Act is not in the prescribed format, the assessment order on this ground based on the invalid notice is liable to be quashed.

5. In reply, Id. Sr. DR vehemently supported the orders of the Id. Assessing Officer and Id.CIT(A).

6. I have considered the rival submissions. As it is noticed that the notice issued u/s.143(2) of the Act is not in line with the Circular issued by the CBDT in respect of e-notice. This being so, respectfully following the

decision of the coordinate bench of the Tribunal in the case of M/s Durga Automotives Pvt. Ltd., referred to supra, the notice is found to be invalid and consequently the same stands quashed. Since there is no valid notice issued u/s.143(2) of the Act to the assessee before completion of the assessment u/s.143(3) of the Act, the consequential assessment order passed by the Assessing Officer also stands quashed.

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

Order dictated and pronounced in the open court on 14/01/2026.

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता Kolkata; दिनांक Dated 14/01/2026

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR,
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

Income Tax Appellate Tribunal, Kolkata