



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.467/LKW/2025
Assessment Year: 2011-12

Dhirendra Pratap A-16/1052, Sector 15 Near Vasundhra Complex Indira Nagar, Lucknow (U.P)	v.	The Income Tax Officer Ward 3(2) Hardoi
TAN/PAN:AYEPP3148C		
(Applicant)		(Respondent)

Applicant by:	Shri Rakesh Garg, Advocate
Respondent by:	Shri R.R.N. Shukla, D.R.

ORDER

This appeal has been preferred by the Assessee against the order dated 19.12.2024, passed by the National Faceless Appeal Centre, Delhi (NFAC) for Assessment Year 2011-12.

2.0 The brief facts of the case are that the assessee filed his return of income for the year under consideration on 06.11.2018 declaring a total income of Rs.1,75,750/-. The Income Tax Department was in possession of information that the assessee had deposited cash to the tune of Rs.19,81,000/- in his bank account. The Assessing Officer (AO) issued a query letter under section 133(6) of the Income Tax Act, 1961 (hereinafter called "the Act") on 04.01.2018, requiring the assessee to furnish the source of cash deposits along with other evidentiary proof, in response to which the assessee filed reply on 07.02.2018. Since

the AO was not satisfied with the reply furnished by the assessee, he reopened the case of the assessee under section 147 of the Act after issuing notice under section 148 of the Act to the assessee. In response to the notice under section 148 of the Act, no return was filed by the assessee. Thereafter, the AO issued notices under section 142(1) of the Act and proceeded to complete the assessment under section 144 read with section 147 of the Act, treating the cash deposits of Rs.19,81,000/- as the undisclosed income of the assessee. The AO completed the assessment under section 144 read with section 147 of the Act, assessing the total income of the assessee at Rs.21,56,750/-.

2.1 The AO also initiated penalty proceedings under section 271(1)(c) of the Act, separately.

2.2 Aggrieved, the Assessee preferred an appeal before the NFAC, which set aside the order of the AO and restored the matter to the file of the AO for making a fresh assessment, vide order dated 19.12.2024, observing as under:

“2.4. I find that the AO in his assessment order completely ignored the explanation of the assessee already in his possession and harped on the non-compliance of the assessee against the statutory notices issued during the scrutiny proceedings.

2.4. Under the circumstances to be fair to the assessee and for natural justice, I remit the case back to the file of the AO for making a fresh assessment in this case, where the

submission of the assessee as already in the file, must be cross-examined and a final decision may be taken by the AO before concluding the assessment. The assessee is also directed to produce the individuals from whom he claimed to have received gifts for examination by the AO. Under such direction, the assessment is set aside in terms of proviso below Sec. 251.

3. The case is, therefore, set aside for statistical purpose.”

2.3 Against the impugned order of the NFAC dated 19.12.2024, the assessee filed a rectification application under section 154 of the Act, dated 27.12.2024, raising a ground that the grounds raised by the assessee, challenging the initiation of assessment proceedings by sending the notice under section 148 of the Act dated 29.03.2018 have not been dealt with by the Id. CIT(A). The NFAC dismissed the application dated 27.12.2024 moved by the assessee under section 154 of the Act and confirmed its order dated 19.12.2024 setting aside the order of the AO and restoring the matter to the file of the AO for making a fresh assessment, vide order dated 02.01.2025.

2.4 Now, the assessee has approached this Tribunal challenging the orders of the NFAC, by raising the following grounds of appeal:

1. The Learned CIT(A) has erred in law and on facts in confirming the assumption of jurisdiction to initiate the reassessment proceedings by the Assessing officer u/s 148

of the Income Tax Act 1961, on baseless grounds and reasons which are scanty, vague and incoherent.

2. The Learned CIT(A) has erred in law and on facts in confirming the assumption of jurisdiction to initiate the reassessment proceedings by the Assessing officer u/s 148 of the Income Tax Act 1961, which are solely based on cash deposited in bank accounts, and thus violative of the principle laid down by various tribunals and courts across the country.

3. The entire action of the Learned CIT(A) in setting aside the Assessment back to the file of the Assessing officer is illegal.

4. The assessee reserves its right to add, amend, alter or delete any ground of appeal at the time of hearing.

3.0 The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted that there is a delay of 95 days in filing the appeal before the Tribunal. He further submitted that the assessee had filed an application dated Nil for condonation of delay, duly supported by an Affidavit, stating therein that the appeal before the Tribunal could not be filed within the stipulated period on the advice of the Counsel of the assessee, Shri Gurdev Singh that the only recourse available with the assessee was to go back to the AO in the set aside proceedings. However, on the second opinion from another Counsel, Shri Sunny Agarwal, the assessee realized that the assessee could file an appeal before the Tribunal and, thereafter, he filed the appeal before the Tribunal with a delay of 95 days. The prayer of the Ld. A.R. was that the

delay caused in filing the appeal was not deliberate and that it was beyond the control of the assessee, which may please be condoned and the appeal be heard on merits.

3.1 The Ld. Sr. D.R. objected to the delay being condoned.

3.2 In view of the prayer made by the Ld. A.R., I condone the delay in filing of the appeal and admit the appeal for hearing.

4.0 During the course of hearing, the main contention of the Ld. A.R. before me was that notice under section 143(2) of the Act was not issued subsequent to issuance of notice under section 148 of the Act by the AO and, therefore, the assessment framed subsequent thereto is liable to be annulled. He placed reliance on the cases of Hon'ble Jurisdictional High Court in the case of CIT vs Rajeev Sharma 336 ITR 678 (Alld) and the Hon'ble High Court of Delhi in the case of Director of Income-tax vs. Society for worldwide Inter Bank financial, Telecommunications, 323 ITR 249 (Delhi).

5.0 The Ld. Sr. D.R. submitted that the order of the NFAC may be set aside and restored back to the file of the AO for removing the defect of non-issuance of notice under section 143(2) of the Act.

6.0 I have heard the rival submissions and have also perused the material on record. It is noticed that in the present case, the AO had not issued notice under section 143(2) of the

Act after issuance of notice under section 148 of the Act. The issuance and service of notice under section 143 (2) of the Act is mandatory and not procedural. The Ld. Sr. D.R. could not controvert the fact that notice under section 143(2) of the Act had not been issued and the same is also not mentioned in the assessment order. The Hon'ble Jurisdictional High Court in the case of CIT vs. Rajeev Sharma (supra) has held that where no notice under section 143(2) of the Act is issued, such assessment is liable to be annulled. In this view of the matter and respectfully following the dicta laid down by the Hon'ble Jurisdictional High Court, I hold that the assumption of jurisdiction without issuance of notice under section 143(2) of the Act is bad in law and accordingly I annul the assessment order passed by the AO under section 144 read with 147 of the Act.

7.0 In the result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 07/01/2026.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:07/01/2026

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar/DDO