

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.4788/Mum/2025 (Assessment year: 2013-14)

ITA No.4789/Mum/2025 (Assessment year: 2014-15)

<b>Kabel Metal Power Cables Ltd</b> Flat No.902, Opp. J.K. Singhaniya School, Anmol Residency, Thane, Maharashtra-400606 <b>PAN:AAECK1357M</b>	vs	<b>The Deputy Commissioner of Income Tax, Circle 5(2)(1), Mumbai</b> Room No.571, 5 <sup>th</sup> floor, Aayakar Bhavan, M.K. Road, Mumbai- 400020
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by :Shri Prakash Jhujhunwala a/w Shri Saiprasad Ghosh

Respondent by :Shri Ritesh Misra (CIT DR)

Date of hearing : 02/02/2026

Date of pronouncement : 10/02/2026

**ORDER**

**Per Bench:**

Both the appeals of the assessee filed against the separate orders of NFAC, Delhi [for brevity 'the Ld. CIT(A)'], order passed under section 250 of the Income Tax Act 1961 (for brevity 'the Act') for assessment years 2013-14 and 2014-15, date of orders 31.12.2024 and 16.12.2024 respectively. The impugned orders emanated from the orders of the National Faceless Assessment Centre, Delhi (for

brevity the 'Ld. AO') order passed under section 147 r.w.s. 144B of the Act, date of order 24.03.2022 and 27.03.2022 for A.Y. 2013-14 and A.Y. 2014-15 respectively.

2. Both the appeals of the assessee was filed with a delay of 151 days. The Managing Director of the assessee-company Shri Sanjay Mahaveer Prasad Jain filed a sworn affidavit duly executed on 01.09.2025. The Managing Director stated that he was extremely disturbed and was not in mental state of mind due to the ill health of his father. He fully relied on his Income tax consultant for filing the said appeal. The Ld. AR stated that due to the unavoidable circumstances the assessee was unable to file the appeal before the ITAT in time. The Ld. DR had not made any strong objection against the submission of the assessee. Accordingly, we find that there is a sufficient cause in delay in filing appeal before us. Accordingly, we condone the delay for 151 days for both the appeals and both the appeals are taken for adjudication.

3. Since both the appeals pertain to the same assessee, involving similar issues arising out of a similar factual matrix, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order. With the consent of the parties, the appeal for the **A.Y. 2013-14, ITA No.4788/Mum/2025** is treated as a lead case, and the decision rendered therein shall apply mutatis mutandis to other appeal before us.

4. The Ld. AR argued filed two paper books containing **pages 1 to 41** and **1 to 16** which are placed on record. The Ld. AR initiated his arguments by challenging

the jurisdiction of the Ld. AO in reassessment without issuing notice u/sec. 143(2) of the Act and accordingly. He argued the **Ground No.4** of the assessee's appeal. The Ld. AR contended that the entire issue is described by Shri Sanjay Mahaveer Prasad Jain, Managing Director of the assessee's company by a sworn affidavit on 31.10.2025 affirming for non-receiving of notice u/sec. 143(2) of the Act, annexed in **APB page 1 to 2A**. The content of the said affidavit is reproduced as below:

**"AFFIDAVIT**

*I, Shri Sanjay Mahaveer Prasad Jain, having my place of residence situated at Bhadada Bagh, Gulabpura, Bhilwara, Rajasthan 311021 do hereby declare on solemn affirmation as under :-*

*1.0 THAT, I am the Managing Director of M/s Kabel Metal Power Cables Ltd, which is assessed to Income Tax under the jurisdiction of Dy. Commissioner of Income Tax, Circle-5(2)(1), Mumbai and holding the PAN No. AAECK1357M;*

*2.0 THAT, relevant to the A.Y-2013-14, I had intimated to the assessing Authority on 06/10/2021 to treat the original return of income filed u/s.139(1) as the return of income in response to notice u/s.148 of the Act. Thereafter, I had e-filed the return of income vide Acknowledgement No.900088180261121 on 26/11/2021. I further state and declare that the statutory notice u/s. 143(2) had not been served to me to scrutinize the above stated return of income filed u/s 148 and the Income Tax Portal does not disclose the issuance on notice u/s.143(2) by the assessing authority.*

*In support of the above, understated documents are relied upon (copies enclosed) :-*

*a) Intimation provided to the assessing authority on 06/10/2021 to treat the original return of income filed u/s.139(1) as the return of income filed in response to notice u/s. 148 of the Act;*

*b) LT. Acknowledgement receipt of electronic return filed on 26/11/2021 in response to notice u/s. 148 of the Act;*

*c) E-assessment proceeding sheet, which does not disclose the issuance of statutory notice u/s. 143(2) of the Act.*

*3.0 THAT, relevant to the A.Y-2014-15, I had intimated to the assessing Authority on 06/10/2021 to treat the original return of income filed u/s.139(1) as the return of income in response to*

notice u/s. 148 of the Act. Thereafter, I had e-filed the return of income vide Acknowledgement No. 901088610261121 on 26/11/2021. I further state and declare that the statutory notice u/s.143(2) had not been served to me to scrutinize the above stated return of income filed u/s.148 and the Income Tax Portal does not disclose the issuance of notice u/s.143(2) by the assessing authority.

In support of the above, understated documents are relied upon (copies enclosed) :-

- a) Intimation provided to the assessing authority on 06/10/2021 to treat the original return of income filed u/s.139(1) as the return of income filed in response to notice u/s. 148 of the Act;
- b) I.T. Acknowledgement receipt of electronic return filed on 26/11/2021 in response to notice u/s. 148 of the Act;
- c) E-assessment proceeding sheet, which does not disclose the issuance of statutory notice u/s. 143(2) of the Act.

Solemnly affirm to this day on 31 October, 2025 at Mumbai.

**SIGNED AND DELIVERED by the**  
**Within named Shri Sanjay M. Jain,**  
**being the director of M/s Kabel Metal**  
**Power Cables Ltd in the presence of ....**

**Witness:**

Sworn on oath before me.”

6. The Ld. AR advanced his argument and stated that the response filed on 06.10.2021 to treat the original return of income filed under section 139(1) with section 148. Further the return was filed but it cost delay due to the technical glitch. The response sheet is annexed here.

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Income Tax Portal, Government of India View Response (TBA) Page

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Income Tax Department, Government of India

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Dashboard > Pending Actions > e-File/seedings > View Notices > View Response

### View Response to Notice ID 100036675005

**Processing Name**  
Assessment Proceeding u/s 147  
PAN: AAEEK1357M  
Assessee Name: KABEL METAL POWER CABLES LIMITED  
Assessment Year: 2012-13

**Assessment Year**  
2013-14  
Document reference ID: ITBA/AST/F/142(1)/2021-22/1034244883(1)  
Notice Section: 142(1)  
Served on: -

**Description**  
[ITBA]Notice u/s 142(1) of Income Tax Act 1961.

#### Responses

**Response Remarks**  
Dear Sir/ Madam, This is in connection with the notice u/s. 148 issued by Your Goodself. In this regard, we most humbly request Your Honours to kindly issue the reasons recorded for reassessment. Regards, Kabel Metal Power Cable Ltd

**Response Submitted On**  
02-Oct-2021  
**Response Type**  
Partial  
**Response Filed By**  
Self


**Response Remarks**  
Dear Sir/ Madam, We wish to state that the Income Tax Return already filed under section 139(1) may be treated as a return filed in compliance to notice under section 148. Further, we most humbly request Your Honours to kindly issue the reasons recorded for reassessment. Regards, Kabel Metal Power Cable Ltd

**Response Submitted On**  
06-Oct-2021  
**Response Type**  
Partial  
**Response Filed By**  
Self

**Attachments**  
Acknowledgement

Copy downloaded from Income Tax portal


Back



*Hardik*

The Ld. AR invited our attention to the e-assessment proceedings sheet, enclosed at **APB pages 9 to 16**, wherein there is no noting or reference whatsoever regarding the issuance of notice under section 143(2) of the Act.

7. The Ld. DR argued and filed written submissions bearing No. **SR.AR/ITAT 'E' Bench/KMPCL/2025-26** dated **16.09.2025**, which have been taken on record. The Ld. DR contended that the assessee had filed the return of income in response to the notice issued under section 148 of the Act belatedly and, therefore, the CPC did not generate a notice under section 143(2) of the Act. The Ld. DR sought time to submit a report from the Ld. AO, and accordingly, the matter was treated as part-heard. Thereafter, the Ld. DR argued the matter further and submitted a report received from the Ld. Assistant Commissioner of Income-tax, Circle-5(2)(1), Mumbai. The said report is reproduced below:

 OFFICE OF THE  
COMMISSIONER OF INCOME-TAX  
5(2)(1), MUMBAI

Room no. 571, 5<sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020  
(022) 22000168(Direct), E-mail: mumbai.dcit5.2.1@incometax.gov.in

No. ACIT-5(2)(1)/ITAT Report/2026-27 Dated: 22.01.2026

**To,**  
**Pr. Commissioner of Income Tax (In-situ)**  
**CIT(DR)-6 ITAT 'E' Bench**  
**Mumbai**

Respected Sir,

**Sub:** For submission of specific report in the case of Kabel Metal Power Cables Ltd in  
ITA No.4788 & 4789/M/25 for A.Y 2013-14 & 2014-15. reg  
\*\*\*\*\*

Kindly refer to the above.

A letter dated 20.01.2026 is received from your good office asking to submit report, whether the notice 143(2) of the Income Tax Act was issued in the above-mentioned case or not.

Respected sir, as per the status monitor of assessment worklist, which was completed by FAO, it is found that no notices u/s 143(2) was issued.

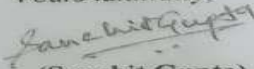
However as per notice u/s 148 the assessee was required to file ITR within 30 days of receipt of notice u/s 148 of the Act. As per CPC 2.0 the assessee filed ITR on 26/11/2021 which is beyond the limitation of due date as prescribed in the Act and as mentioned in the notice u/s 148 of the Act. Thus notice u/s 143(2) was not required to be issued to the assessee in absence of a valid return filed by assessee in response to notice u/s 148 of the Act.

The above is submitted for your kind information and necessary perusal, please

विभागीय प्रतिनिधि अधिकारी, अपीलीय टिक्सनल व्हा कार्यालय  
Office of the Commissioner of Income Tax (DR)  
ITAT 'E' Bench, Mumbai

23 JAN 2026  
E-BENCH  
Mumbai  
मुंबई

1171

Yours faithfully,  
  
(Sanchit Gupta)  
ACIT-Circle-5(2)(1), Mumbai

Copy to: 1). Jt.CIT-5(2), Mumbai

8. The Ld. AR advanced his arguments and stated that without issuing notice u/sec. 143(2) had vitiated entire proceeding which is not a curable u/sec. 292BB of the Act. He respectfully relied on the order of Hon'ble High Court of Bombay in

the case of **CIT vs Fomento Finance and Investment (P) Ltd.** reported in **(2020)**

**113 taxmann.com 237 (Bom)** the relevant **para 22 to 26** is reproduced as below:

*“22. According to us, the aforesaid substantial question of law will have to be decided in favour of the Assessee in view of the decision of the Hon'ble Apex Court in Hotel Blue Moon (supra). The issue relating to service of notice under Section 143(2) of the Income Tax Act is a issue which goes to the root of the matter. In Hotel Blue Moon (nupra), the Hon'ble Supreme Court has now held that issuance of notice under Section 143(2) of the Income Tax Act, 1961 is a mandatory requirement and not some mere procedural irregularity and the same can be said to be curable. In its decision the Apex Court in clear terms has held that the omission on the part of the Assessing Authority to issue notice under Section 143(2) cannot be regarded as a procedural irregularity and the same is not curable and such requirement cannot be dispensed with. Hon'ble Apex Court has held that even for the purpose of Chapter XIV-B of the Income Tax Act for determining of undisclosed income for block assessment in proceedings under Section 158BC, provisions of Section 142, 143(2) and 143(3) are applicable and no assessment can be made without issuing notice under Section 142 of the said Act.*

*23. Accordingly, we decide the additional substantial question of law in favour of the Assessee and against the Revenue*

*24. Since, jurisdictional issue is decided in favour of the Assessee and against the Revenue, no useful purpose will be served in deciding the substantial questions of law framed at the time of admission of this Appeal on 27.08.2008. Even if we were to decide these questions of law in favour of the Revenue, same, would be of no avail to the Revenue because the very initiation of the assessment proceedings without issuance of notice under Section 143(2) of the Income Tax Act has rendered such assessment proceedings incompetent.*

*25. In the aforesaid circumstances, we see no ground to interfere with the impugned Judgment and Order dated 10.12.2007. By answering the additional substantial question of law in favour of the Assessee and against the Revenue, we dismiss this Appeal. There shall be no order as to costs.*

*26. In view of the aforesaid, any decision on the issue of condonation of delay in filing the cross-objections is rendered merely academic and therefore, the Miscellaneous Civil Application No. 179 of 2016 is also disposed of, accordingly.”*

9. In continuation of his argument he respectfully relied on the order of Hon'ble Apex Court in case of **CIT vs Lakshman Das Khandelwal** reported in **(2019) 108 taxmann.com 183(SC)** relevant observations of the Hon'ble Apex Court is reproduced as below:

*“9. 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. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the section does not save complete absence of notice. For Section 292BB to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself.”*

10. We heard the rival submissions and perused the material available on record. The assessee had raised both original and additional grounds before the Bench. By way of **Additional Ground No. 4**, the assessee specifically challenged the jurisdiction of the Ld. AO to initiate reassessment proceedings without issuance of notice under section 143(2) of the Act. On facts, it is admitted by the Ld. AO that no notice under section 143(2) of the Act was served upon the assessee prior to initiation of the reassessment proceedings. The Ld. AO, in his letter dated 22.01.2026 bearing No. ACIT-5(2)(1)/ITAT Report/2026-27, noted that the return in response to notice issued under section 148 of the Act was required to be filed within 30 days and that the assessee had delayed filing the return before the CPC. On this premise, it was stated that issuance of notice under section 143(2) of the Act was not essential.

On the contrary, the Ld. AR contended that delay in filing the return cannot dispense with the mandatory requirement of issuing notice under section 143(2)

of the Act. Reliance was placed on the Judgment of the Hon'ble **Patna High Court** in **CIT-11 v. Nagendra Prasad [2023] 156 taxmann.com 19 (Patna)**, wherein it was held that even where the return was filed belatedly in response to notice under section 148, issuance of notice under section 143(2) was mandatory and such requirement could not be waived. Similar view has been taken by the Hon'ble **Gujarat High Court** in **PCIT v. Devendranath G. Chaturvedi [2017] 83 taxmann.com 141 (Guj)**.

It is a settled legal position that non-issuance of notice under section 143(2) of the Act vitiates the entire proceedings. Respectfully following the judgment of the Hon'ble Supreme Court in **Lakshman Das Khandelwal** (supra) and the decision of the Hon'ble Jurisdictional High Court in **Fomento Finance and Investment (P.) Ltd** (supra) it is held that the protection of section 292BB of the Act is not available in cases of non-issuance of notice under section 143(2) of the Act.

In view of the binding judicial precedents and the settled legal position, we hold that since no notice under section 143(2) of the Act was issued, the order passed under section 147 r.w.s. 144B of the Act, along with all consequential proceedings, is invalid and unsustainable in law. Accordingly, the reassessment proceedings are hereby quashed.

Since the appeal has been decided on the basis of **Additional Ground No. 4** and the entire assessment order has been quashed, the remaining grounds are rendered academic in nature and are kept open.

12. In the result, the appeal of the assessee bearing **ITA No.4788 and 4789/Mum/2025** are allowed.

Order pronounced in the open court on 10<sup>th</sup> day of February 2026.

Sd/-

(MAKARAND VASANT MAHADEOKAR)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 10/02/2026  
SAUMYASr.PS

Sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI